



August 19, 2024

Gregory Martin  
Office of Postsecondary Education  
U.S. Department of Education  
400 Maryland Ave. SW  
Washington, DC 20024

***In re: Notice of Proposed Rulemaking—Program Integrity and Institutional Quality:  
Distance Education, Return of Title IV, HEA Funds, and Federal TRIO Programs  
(Docket ID: ED-2024-OPE-0050)***

Dear Gregory Martin,

On behalf of Advance CTE, the nation’s longest-standing not-for-profit that represents State Directors and leaders responsible for secondary, postsecondary and adult Career Technical Education (CTE) across all 50 states and U.S. territories, and the Association for Career and Technical Education (ACTE), the nation’s largest not-for-profit association committed to the advancement of education that prepares youth and adults for career success, we are writing in response to the changes the U.S. Department of Education (ED) has recently proposed impacting the current federal regulatory definition for “distance education.”

As you are aware, ED issued and subsequently implemented an updated definition for distance education in 2020 (Docket ID: ED-2018-OPE-0076). Throughout this process our organizations engaged with ED and other critical stakeholders to ensure this definition balanced the need for flexibility and innovation with reasonable and appropriate safeguards to protect students and taxpayers. We believe finding the right balance between these two needs is critically important. Unfortunately, ED’s new proposed definition for distance education would move in the opposite direction and negatively impact public postsecondary CTE institutions in the process. This new definition disregards significant concerns raised during the previous regulatory activity and in the most recent round of negotiated rulemaking held earlier this year by many of the session’s negotiators; and would undermine innovations in distance education that have occurred in recent years in the wake of the pandemic.

Specifically, we are concerned that the proposed regulatory definition offered by ED in this rulemaking is overly restrictive, limiting distance learning experiences in clock-hour programs to only synchronous coursework, eliminating existing allowances for asynchronous instruction in clock-hour programs. We strongly oppose this change as it will limit access to postsecondary CTE programs that currently make use of this approach, and stifle innovation within postsecondary CTE.

Postsecondary institutions and states are broadly empowered to determine whether a program is offered via clock hours or credit hours. However, this distinction has no bearing on the quality of content of the program.

In nearly two-thirds of states, Area Technical Centers (ATCs) are part of states' wider public education systems, and in about half of states, they serve postsecondary students, most often authorized as non-degree-granting postsecondary institutions offering clock-hour programs.<sup>1</sup> Such fully accredited programs often cover the same content as programs offered for credit hours at community or technical colleges nearby. Yet, as structured, this rule would negatively impact ATCs and related postsecondary CTE programs simply due to institutional structure – one that is largely out of their control. Since their creation, ATCs have historically been used to provide flexible learning opportunities that may not otherwise be met by existing state postsecondary infrastructure.

Online coursework within CTE programs most often supplements in-person training, labs, or other practical and hands-on learning experiences such as internships and apprenticeships. As we collectively saw during the pandemic, online instructional modalities serve an essential function of ensuring that all learners, regardless of where they may reside, have access to learning opportunities. Online instruction can also be used to help accelerate students to in-demand credentials and degrees. These needs are reflected in recent annual survey data of chief learning officers at postsecondary institutions who have consistently reported increased demand for online learning options from students.<sup>2</sup>

The proposed rule argues that the current definition for distance education does not allow for adequate attendance tracking or affords students “regular and substantive” interactions with instructors. Yet, existing distance education technologies and related platforms already allow for attendance monitoring and provide systems for tracking student participation in online activities to meet related attendance verification requirements already required by federal regulations. In addition, such technologies already ensure that learners have access to instructors as envisioned elsewhere in this rulemaking. This proposed rulemaking ignores these existing technical capabilities rather than embracing them.

Requiring that all clock-hour distance education occur synchronously creates undue burden for students and is at odds with the flexibility that is needed for learner success. As ED is aware, an increasing portion of postsecondary students are post-traditional, meaning they are often older and are juggling multiple life responsibilities such as childcare or full-time employment.<sup>3</sup> Current flexibilities allowing for asynchronous coursework within the existing distance education definition

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<sup>1</sup> For more information on ATCs and how states make use of these institutions see:

<https://areatechnicalcenters.org/wp-content/uploads/2021/02/ATC-50StateReport.pdf>

<sup>2</sup> <https://qualitymatters.org/sites/default/files/research-docs-pdfs/QM-Eduventures-EDUCAUSE-CHLOE%209-Report-2024.pdf>

<sup>3</sup> [https://pnpi.org/wp-content/uploads/2023/03/PostTraditional\\_FactSheet\\_Mar2023.pdf](https://pnpi.org/wp-content/uploads/2023/03/PostTraditional_FactSheet_Mar2023.pdf)

are in place to ensure that these student populations, who are rapidly increasing in number, can have access to quality learning opportunities. This proposal would directly harm these populations rather than further supporting them.

The limitations envisioned by ED in this rulemaking related to distance education are also not supported in the statutory text of the Higher Education Act (HEA). With recent rulings from the Supreme Court, we remain concerned that this proposed regulatory change will inevitably be legally challenged for this reason. In the process, impacted postsecondary institutions, like ATCs, will be forced to begin complying with a rule change that reduces access to CTE learning opportunities and will potentially put institutions, programs, and the learners that they serve in limbo while courts resolve the legality of this regulatory proposal.

For these reasons, we strongly urge ED to reverse course and retain existing flexibilities in the federal regulatory definition for distance education that allow for asynchronous instruction.

We appreciate your time and consideration of our perspectives and recommendations. Should you have any questions or would like to discuss the issues raised in this letter further, please do not hesitate to contact ACTE's Chief Policy, Research and Content Officer Alisha Hyslop ([ahyslop@acteonline.org](mailto:ahyslop@acteonline.org)) or Advance CTE's Policy Advisor Steve Voytek ([svoytek@careertech.org](mailto:svoytek@careertech.org)).

Sincerely,



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