



August 2, 2010

Ms. Jessica Finkel
U.S. Department of Education
1990 K Street, NW Room 8031
Washington, DC 20006-8502

Docket ID ED-2010-OPE-0004

Dear Ms. Finkel:

I am writing on behalf of the National Association of College and University Business Officers (NACUBO) to provide comments on the notice of proposed rulemaking addressing program integrity issues that was published in the *Federal Register* on June 18. NACUBO represents chief business officers and their staff, including bursars and student financial services directors, at over 2,100 public and nonprofit colleges and universities. Our mission is to promote sound fiscal management and business administration at institutions of higher education.

NACUBO strongly supports the Department of Education's efforts to ensure the integrity of the Title IV programs. We appreciated the opportunity to serve on the negotiated rulemaking committee that considered these regulatory changes. NACUBO concurs with the general comments submitted by the American Council on Education and a number of other associations, but would like to address in greater detail our concerns with several of the proposed changes.

Provisions for Books and Supplies (§668.164(i))

NACUBO supports the proposed requirement that institutions provide a way for their neediest students to obtain necessary books and supplies in a timely manner, and appreciates the flexibility afforded schools under the provision. In negotiated rulemaking, Department officials listened to and understood the concerns of institutions, particularly community colleges, to some of its earlier proposals and crafted a solution that balances the needs of all parties.

NACUBO recommends one modification, however, in order to make this provision more workable. An institution should be able to require a student to authorize it to pay amounts charged to the student's account with Title IV funds before advancing funds for books and supplies to the student. Otherwise, an institution could be forced to advance the value of the student's expected Title IV credit balance to the student prior to disbursing federal aid and then pay the same funds directly to the student when the Title IV funds were disbursed. Paying students a credit balance when they have an outstanding balance due on their account is confusing to students and a hardship for institutions. Many institutions currently offer some type of book voucher program to students with pending financial aid and ask

that they sign an authorization first. In some cases, an authorization is included on the bookstore charge slip that the student signs at the time of purchase.

This could be accomplished by adding a new (3) to proposed §668.164(i) that reads:

(3) An institution that chooses to advance funds to the student for this purpose or allow the student's books and supplies to be charged to the student's account at the institution may stipulate that the student sign an authorization under §668.165(b) in order to be eligible.

Return of Title IV Funds – Modular Programs (§668.22(a)(2) and (f)(2)(i))

NACUBO is very concerned that the proposed changes to the return of Title IV (R2T4) rules will make it much more difficult for institutions to comply with these regulations. Violations of the R2T4 rules are repeatedly in the top five audit and program review findings, not because colleges and universities willfully fail to comply but, we believe, due to the complexity of the requirements.

While NACUBO appreciates the problem that ED is trying to address, and agrees that completion of a short one- or two-credit module should not make R2T4 calculations unnecessary, the solution proposed seems to blur the line between withdrawal from the institution and dropping a class and will require much additional monitoring of student schedules, many more R2T4 calculations, and is bound to create further confusion among students.

The language of the proposed new paragraph (a)(2) is confusing.

(2) A student is considered to have withdrawn from a payment period or period of enrollment if, prior to withdrawing--
 (i) In the case of a program that is measured in credit hours, the student does not complete all the days in the payment period or period of enrollment that the student was scheduled to complete; and
 (ii) In the case of a program that is measured in clock hours, the student does not complete all of the clock hours in the payment period or period of enrollment that the student was scheduled to complete.

ED seems to be defining "withdrawn" by specifying what the student didn't do before "withdrawing," implying an action by the student. (Of course, the problem is usually figuring out whether a student who took no official action should be treated as a withdrawn student.) Is the phrase "prior to withdrawing" placed appropriately? In the preamble on page 34824, ED rephrases this provision as follows:

...the student would be considered to have withdrawn if he or she does not complete all the days in the payment period or period of enrollment that the student was scheduled to complete prior to withdrawing.

Here "prior to withdrawing" modifies "scheduled to complete," and the meaning is different.

The R2T4 rules, by statute, only apply to a student who “withdraws from an institution during a payment period.” That would seem to support the argument that a student taking modular courses who drops some classes, but attends subsequent classes within the term, has not withdrawn from the institution and is not subject to R2T4. It is not clear, however, whether ED intends its proposed language to define “withdrawn” so broadly that whether or not the student has actually left the institution or ceased enrollment is immaterial.

Under the proposal, how would the following students be treated?

Student A registers for four 3-credit modules which run sequentially for four weeks each. Student A completes the first module, attends one week of the second and then drops the course, drops the third module, but finishes the fourth module successfully.

Student B registers for the same four modules as Student A. Student B completes the first and second modules, attends one week of the third and then drops the course, and drops the fourth module.

Student C registers for the same four modules as Student A, but also registers for a required 1-credit physical education class that runs for the entire length of the term. Student C has the same attendance pattern as Student B, but continues to attend the 1-credit PE class through the end of the term.

Does it only matter if a student does not attend classes at the end of her period of enrollment? What about a student who misses three weeks in the middle of a traditional term but completes all of her courses? Strictly speaking, she has not attended all the days she was scheduled to complete.

Another key term used in the proposed regulations that is not defined is “scheduled to complete.” In addition to new paragraph (a)(2), it is used in paragraph (f)(2):

(2)(i) The total number of calendar days in a payment period or period of enrollment includes all days within the period that the student, prior to withdrawing, was scheduled to complete...

Student schedules are dynamic. A student can change which classes he is registered for after the term has begun without changing his aid eligibility, but potentially altering the number of days he is scheduled to attend. With the variety of available course schedules and lengths, particularly at many community colleges, which schedule is the institution supposed to use for determining the length of time the student was “scheduled to attend?” Is there a distinction between students taking modular courses who drop a class (particularly near the end of the term) and those who are considered to have withdrawn? For instance:

Student D begins the semester enrolled in one 16-week course, and two 8-week courses that take place during the first half of the semester. During the drop/add period, Student D drops the 16-week class and adds a four-week class that begins at the start of the sixth week. Then at the start of week seven, the student withdraws. What term length does the institution use in calculating R2T4, 16 weeks or 10 weeks?

Student E begins the semester enrolled in three modules, two 8-week courses that begin on the first day of the term, and one 6-week class that begins at the mid-point of the term. During the drop/add period Student E drops the 6-week class. Has she withdrawn or just

dropped a class? What if the 6-week class had been scheduled first, followed by the 8-week classes? Is the result different if she drops the class after attending for two days?

We are also concerned about the potential impact of treating a student who has dropped a class as a withdrawal in relation to the institution's reporting obligations to the National Student Loan Data System (NSLDS). Institutional systems are set up to tie withdrawal determinations under R2T4 to NSLDS reporting, which has implications for student loan repayment obligations.

Another term that is unclear is "all the days" that the student was scheduled to complete. If a student takes a class that starts on the fourth day of the term, and doesn't have a final exam during the official exam period, does that student's length of term need to be adjusted for purposes of the R2T4 calculation?

It is important that students readily understand the R2T4 rules and potential consequences resulting from their action or inaction. Current R2T4 rules are exceedingly challenging to explain to students. The proposed changes will make it even more difficult. Consider two students, living at home, attending a typical summer session at a university which is divided into two 7-week sessions:

Student F registers to take 3 three-credit classes during the summer term, two in the first session and one in the second. If he drops one of the classes in the first session after attending three days and completes the other two, he will have completed 6 credits or 66 percent of what he was originally scheduled to take, and no R2T4 calculation is necessary.

Student G registers for same 3 three-credit classes as Student F and completes the two classes in the first session. Student G then drops the third class after attending for three days. Even though he also earned 66 percent of the credits he was originally scheduled to take, he will be subject to R2T4. He will have earned only 53 percent of his Title IV aid, even though he was charged at least 66 percent of tuition and fees (and maybe more depending on the school's refund policy). How would the result change if Student G dropped the third class earlier in the summer term, without attending any classes?

We provide these examples not because we expect ED to provide a manual on R2T4 calculations in the regulations or as part of the final notice, but to illustrate how complicated and confusing the proposed changes will be to manage in practice. NACUBO is afraid that the attempt to address one inequity will create new inequities and greatly increase the complexity of these regulations. In summary, the main questions we pose are:

1. What is the difference between dropping a class and withdrawing for a student who takes modular courses?
2. If a student drops a modular course creating a period of non-enrollment within a term, but attends another class later in the term, does R2T4 ever apply?
3. Would the school now be required to calculate a student-specific "length of term" for every student who withdraws?

Return of Title IV Funds – Taking Attendance (§668.22(b)(3))

NACUBO objects to the proposal to redefine what it means for an institution to be "required to take attendance." The statutory language does not set separate standards for institutions that *choose* to take attendance voluntarily, but for those that are *required* to do so. We

believe that requiring institutions to follow different sets of rules for limited periods of time or for certain subsets of students will greatly increase the complexity of the rules, with little benefit.

A large university offers hundreds of educational programs, some of which may take attendance. If the attendance taking is an external requirement, the institution can be expected to set up formal processes to gather and report the information. If, however, the educators decide voluntarily to institute a practice of taking attendance, these formal systems may not be established, attendance may not be reported beyond an entry in a professor's grade book, and those personnel responsible for calculating R2T4 are unlikely to know that attendance records exist. Further, students are often free to take classes outside of their specific program or major, so that attendance taking practices in one program will not offer a complete picture of the student's presence.

Institutions that take attendance for only a short period of time often do not have a centralized system for reporting and maintaining attendance records. Instructors may be required to report no-shows or students who attended briefly and then ceased, so that accurate enrollment records can be established, state census requirements met, and Title IV eligibility confirmed. If a student is absent toward the end of the period, the instructor may make a judgment call as to whether the student will return (and is sometimes proven wrong). A student's absence at the end of a short period at the beginning of a term does not indicate that the student has withdrawn, but only that the student has missed one or two class sessions.

NACUBO would not be surprised if, as a direct consequence of this change if it is adopted, some institutions which currently ask professors to take attendance cease to do so. One of the primary rationales of colleges with attendance-taking policies is to bolster retention by allowing them to quickly identify and counsel students who may be having trouble. Attendance taking is a pedagogical choice, and it seems counterproductive for the R2T4 rules to provide a disincentive.

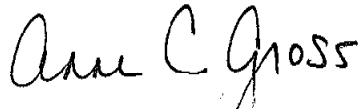
Currently, business office or financial aid personnel have to expend time and effort examining any instances where students have grades of F or W in all classes at the end of a term, in order to determine whether the student was present and failed or ceased attendance at some point during the term without officially withdrawing. This frequently involves direct communication with each of the student's instructors and is quite time consuming. The proposed change in the definition of taking attendance could require this type of effort for all withdrawals, official or not, in order to determine whether attendance records were kept for each of the student's classes. It may be possible to develop centralized electronic reporting but such systems are expensive to build and faculty buy-in is hard to get.

The R2T4 rules should not drive institutional policy or impose any more burden than they already do. The current rules require 157 pages in ED's Student Financial Aid Handbook—how many additional pages will the two changes proposed in this notice require?

NACUBO appreciates the opportunity to comment on these proposed rules. We agree with many of the proposed changes, but are concerned about the additional burden that the R2T4 proposals will place on many institutions, particularly community colleges who serve

so many low-income students who often struggle to remain in school. We strongly recommend that the Department reconsider its proposed changes to the R2T4 regulations and reconvene a negotiated rulemaking team to consider these issues, which did not receive the attention they deserved in the sessions reviewing the program integrity issues. The proposed rules will be problematic for institutions and leave many more students owing money to either their school or ED. Please contact Anne Gross at 202.861.2544 or anne.gross@nacubo.org if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Anne C. Gross". The signature is written in a cursive style with a large, looped "A" and "G".

Anne C. Gross
Vice President, Regulatory Affairs