Cooley

Managing COVID-19 Disruption: Title IV Processing

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On March 5, the US Department of Education issued guidance on Title IV processing flexibilities associated with the response to COVID-19 and has set up a website dedicated to COVID-19 related issues.

While it provides some flexibility, the announcement is also notable for what it *does not* waive. Under the Higher Education Act, ED can provide waivers from various requirements related to the disbursement, repayment and administration of federal student aid to institutions in certain geographic areas designated as a federally declared disaster areas, as defined in the Stafford Disaster Relief and Emergency Assistance Act. But as of today, the President has not declared the COVID-19 pandemic a federal disaster, which means that ED currently does not have the authority to waive statutory requirements of Title IV processing to assist institutions dealing with the COVID-19 outbreak and, as a general rule, the Title IV rules remain in effect unless exceptions are specifically outlined in ED guidance.

ED's guidance outlines the permissible flexibilities currently provided to institutions in the categories of Federal Work Study, length of the academic year, professional judgement, satisfactory academic progress, initial course attendance, enrollment status changes, R2T4 calculations, withdrawal date and date of determination of withdrawal, timing of refunds, reentries and enrollment reporting. The guidance falls in two categories: (1) student impact, such as when a student is ill or has been quarantined, has been recalled from a study abroad experience or can no longer participate in a clinical or externship, and (2) school closure impact, such as when a campus needs to temporarily suspend operations.

Below are the key flexibilities in each category. Note that ED recommends that institutions document, as contemporaneously as possible, any actions taken as a result of COVID-19, including utilizing any of the flexibilities outlined in ED's guidance. The guidance also makes clear that, as noted below, certain requirements (such as R2T4 calculations and Last Day of Attendance) have *not* been altered in the face of COVID-19.

Student Impact

- The institution may exercise professional judgement where students and their families have been impacted financially by COVID-19. This must be done on a case-by-case basis.
- Circumstances resulting from local outbreak of COVID-19 can be the basis of a Satisfactory Academic Progress appeal.
- It is not necessary to recalculate a student's Direct Loan eligibility based on changes in enrollment status that occur after the institution originates a Direct Loan.
- For enrollment status changes that occur after an institution's established Pell Grant recalculation (census) date, a recalculation is not required.
- An R2T4 calculation must be performed and funds returned in the required timeframe, if the student withdraws.

Institutional Closure Impact

- The institution may continue paying the student Federal Work Study wages during that closure if the closure occurred after the beginning of the term, the institution is continuing to pay its other employees (including faculty and staff), and the institution continues to meet its institutional wage share requirement. Note that if the institution has furloughed or otherwise laid off regular employees, it cannot substitute work-study students.
- The Department may approve a reduced academic year if the closure was due to COVID-19.
- If a student was unable to begin attendance due to a COVID-19-related school closure, the provisions of 34 CFR § 668.21(a)(2)(ii), which require the institution to notify any third-party servicer of the student's failure to begin attendance, do not apply because the option for the student to begin attendance did not exist.
- If an institution ceases operation during a payment period and fails to reopen by the end of that payment period, R2T4 calculations must be performed.
- If the institution is required to take attendance, the withdrawal date is the last day of documented attendance prior to the closure.
- If the institution is not required to take attendance, the withdrawal date can be the midpoint or the date that the institution ceased operation.
- When performing an R2T4 calculation, the number of days in the payment period or period of enrollment includes

all of the original days of the period.
- The date of determination of withdrawal is also the date of the closure. Timeframes for completing the R2T4 calculation and making the appropriate returns or post-withdrawal disbursements begin on that date.
- Institution can defer reporting an affected student's enrollment status as "withdrawn" in these circumstances when the institution has a reasonable expectation that:
    - The institution will reopen at the start of a payment period that begins no later than 90 days following the closure; and
    - The student will resume attendance when the institution reopens.

This is a very dynamic situation, with more guidance likely. We will be regularly updating on these and other COVID-19-related issues as more information becomes available.

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