

AUGUST 2002 ACTION UPDATE

U.S. Department of Education
Washington D.C.

in Regard to

“THE NEGOTIATED RULEMAKING PROCESS

This update is to inform you of Department of Education action on the negotiated rulemaking process, in which CHEA and Dr. Charles Cook, Director of the New England Association of Schools and Colleges (NEASC) Commission on Colleges, participated. The negotiated rulemaking team met three times earlier this year and concluded its work in April after reaching consensus on all but two items, the 12-hour rule and incentive compensation for recruiters. The proposed regulations are now available for public comment.

For those who wish to view these regulations in their entirety, the Notice of Proposed Rule Making (NPRM) is available online at the Department of Education's Website, <http://ifap.ed.gov/fregisters/FR0808200205.html>. The focus of this update is on the 12-hour rule. This was the regulation in which the input of the accrediting community was sought.

The purpose of the negotiated rulemaking sessions was to examine where regulations could be streamlined or simplified. Known as FED-UP, these sessions were a result of comments sought from the higher education community by Rep. Buck McKeon (R-CA) and Rep. Patsy Mink (D-Hawaii). Two teams were formed, one concerning loan issues and one concerning broader programmatic issues. CHEA and Dr. Cook participated on the programmatic team.

Because negotiated rulemaking for the programmatic team did not result in consensus on the entire package of regulations, the Department was not bound by language upon which participants agreed during negotiated rulemaking and was thus free to publish the rules as they wished. Rules governing the loan programs were also published in the *Federal Register* on August 6, 2002.

The Department published a NPRM that would amend regulations on Institutional Eligibility, Student Assistance General Provisions; General Provisions for the Perkins, Federal Work Student, and FSEOG programs; and the Federal Work Study, Federal Family Education Loan, Direct Loan, Pell, and GEAR-UP programs. Our input was requested specifically to examine how changes in student aid eligibility with respect to the 12-hour rule would affect the work of accreditation.

Current law and Regulations: 12-hour Rule

The 12-hour rule has its genesis in the statute that governs the academic year. Section 481(a) (2) of the Higher Education Act provides that an academic year, for purposes of Title IV HEA, student financial assistance programs, must contain at least 30 weeks of instructional time. For a full-time undergraduate student, the student must complete at least 24 semester or trimester hours, 36 quarter hours, or 900 clock hours.

Section 668.2 of the regulations currently defines a week of instructional time for standard term programs using credit hours or clock hours as "any week in which one day of regularly scheduled instruction, examination, or preparation for examination is offered." This is commonly referred to as the "one day rule." What constitutes one day is not defined.

For education programs using credit hours in a nonterm or nonstandard term format, the regulations define a week of instructional time as "any week in which at least 12 hours of instruction, examination, or preparation for examination is offered." This requirement is what is commonly referred to as "the 12-hour rule."

For a more complete discussion of the 12-hour rule, legislative history, and background, you can read the Department of Education's Report to Congress on the 12-hour rule which noted, "The Department did not establish a minimum number of instructional hours that must occur during that one day because, as stated in the preamble to the November 29, 1994 regulations, full-time students attending standard term programs were generally presumed to be in class attendance for at least 12 hours each week." {Student Financial Assistance and Nontraditional Educational Programs (Including the "12-hour rule") A Report to Congress, U.S. Department of Education, Office of Postsecondary Education, July 2001}

Proposed Change: 12-hour Rule and Student Financial Aid Disbursement

The Department has proposed eliminating the 12-hour rule for nonstandard and nonterm programs and would apply the one-day rule across all programs. The 30-week academic year definition would not change as that definition is statutory and, thus, would require a change in the law by Congress.

In addition, the Department has proposed student financial aid disbursement safeguards for credit hour programs without terms and, in doing so, amends section 668.4 (b). Students enrolled in these programs, which are eligible programs that measure progress in credit hours and do not have academic terms, the student must complete not only one-half the academic coursework required, but also one-half of the required weeks of instruction in that period. The first payment period is the time in which the student completes half the number of credit hours in the program and half the number of weeks in the program. The second payment period is the period of time in which the student completes the program. Proposed changes in this area also address situations in which students withdraw from a clock hour program or credit hour nonterm program during a payment period, but then returns to school.

Implications for Accreditation

It is not clear how and to what extent these regulations will directly impact the work of accrediting organizations. If published in final form, as the changes to the 12-hour rule are currently proposed, the main difference will be that programs previously not eligible (or found it practically impossible to meet requirements for eligibility because of the 12-hour rule) for student financial assistance now will be. For example, the greatest impact will be on distance education programs that do not have fixed schedules, and on some programs offered by traditional institutions, such as weekend courses.

If, as a result of loosening the restrictions of the 12-hour rule new cases of fraud and abuse occur, accrediting organizations and their standards will receive special scrutiny. They will be examined by policymakers who regard accrediting organizations as the responsible entity for ensuring institutions' compliance with Title IV, to see whether accrediting standards and their enforcement, could have prevented the fraud and abuse.

It is important to highlight one section in preamble of the NPRM that specifically mentions how accrediting organizations are aware of the "new program formats" and have taken steps to ensure the educational quality in these new formats. The reference to "new program formats" stems from the negotiated rulemaking sessions in which we discussed how those accrediting organizations that review institutions offering distance learning had policies, procedures, or practices in place to ensure the quality of those offerings. It was also pointed out during the discussion that there were a number of examples of site-based programs that could be nonterm or nonstandard term programs and the elimination of the 12-hour rule would apply to them as well.

These proposed changes raise questions for consideration:

- 1) What are examples of types of programs that would be ineligible for Title IV funds under current regulations and eligible under the proposed rules?
- 2) What, if any, additional obligations would accreditation have under these proposed rules? Would this affect accreditation standards and policies?
- 3) How would the proposed regulations affect USDE recognition criteria and review?

The Department has allowed a 60-day public comment period and intends to publish final regulations by November 1, 2002 so that they become effective by July 1, 2003. Accrediting organizations that wish to comment need to do so within this 60-day timeframe (by October 7, 2002) and CHEA respectfully asks that you share a copy of your comments with us. If you have any questions regarding this update or on the other draft regulations published, please feel free to contact me.

Best Wishes,

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