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U.S. Department of Education Releases Final Rule on Distance Learning in Higher Education

August 26, 2020

On August 24, 2020, the U.S. Department of Education (the "Department") issued the unofficial version of the final Distance Education and Innovation rule that governs distance learning in higher education (the "final regulations"), which will be published in the Federal Register. According to the Department, the final regulations promote educational innovation to better serve the needs of an increasingly diverse population of students. The Department explained that the final regulations resulted from a negotiated rulemaking effort that began with public hearings and engaged a subcommittee of subject matter experts to formulate recommendations that were ultimately considered by a panel of representatives from the higher education and consumer protection communities.

The final regulations, among others, encourage employer participation in developing educational programs; define "regular and substantive" interaction between students and instructors to avoid confusion over whether a course is eligible for Title IV aid; allow students enrolled in Title IV, Higher Education Act ("HEA")-eligible foreign institutions to complete up to 25% of their programs at an eligible institution in the United States; create a new, student-centric system for disbursing Title IV, HEA assistance to students in subscription-based programs; require prompt action by the Department on applications to participate, or continue to participate, as an eligible institution in the HEA, Title IV program, which, in the past, stalled for months or even years; clarify and simplify the requirements for direct assessment programs, including how to determine equivalent credit hours; emphasize demonstrated learning over seat time; and allow clock hour programs.

The Department noted that the COVID-19 national emergency underscores the need for students to have access to high-quality remote learning options. However, the final regulations will not become effective until July 1, 2021; though higher education institutions may voluntarily utilize the new flexibilities once the final regulations are officially published in the Federal Register.

Please note that state or local rules regarding distance learning may apply to your higher education institution as well. If you have questions regarding any aspects of higher education law and any implications these final regulations will have on your institution, feel free to contact James G. Ryan at (516) 357-3750 or via email at jryan@cullenllp.com, Kevin P. McDonough at (516) 357-3787 or via email at kmcdonough@cullenllp.com, Dina L. Vespia at (516) 357-3726 or via email at dvespia@cullenllp.com, or Hayley B. Dryer at (516) 357-3745 or via email at hdryer@cullenllp.com.

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Practices

- Higher Education

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