

**DRAFT Federal Register Instructions for Amendatory Language
Accreditation**

1 For the reasons discussed in the preamble, the Secretary
2 amends part 602 of title 34 of the Code of Federal
3 Regulations as follows:

4 PART 602 - THE SECRETARY'S RECOGNITION OF ACCREDITING
5 AGENCIES

6 x. The authority citation for part 602 continues to
7 read as follows:

8 Authority: 20 U.S.C. 1099b, unless otherwise noted.

9 x. Section 602.3 is amended by:

10 A. Revising the title and definition of *Adverse*
11 *accrediting action*.

12 B. Adding a new definition of *Direct assessment*
13 *program*.

14 C. Adding a new definition of *Recognition*.

15 D. Revising the definition of *Scope of Recognition*.

16 The additions and revisions read as follows:

17 §602.3 What definitions apply to this part?

18 * * * * *

19 *Adverse accrediting decision* means a decision to deny,
20 withdraw, suspend, revoke, or terminate accreditation or
21 preaccreditation, or any comparable accrediting decision an
22 agency may make against an institution or program, that
23 will become final unless appealed.

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1 * * * * *

2 *Direct assessment program* means an instructional
3 program that, in lieu of credit hours or clock hours as a
4 measure of student learning, utilizes direct assessment of
5 student learning, or recognizes the direct assessment of
6 student learning by others.

7 * * * * *

8 *Recognition* means an unappealed determination by the
9 senior Department official under 34 C.F.R. §602.34, or a
10 determination by the Secretary on appeal under 34 C.F.R.
11 §602.36, that an accrediting agency complies with the
12 criteria for recognition listed in subpart B of this part
13 and that the agency is effective in its performance with
14 respect to those criteria. Recognition is conditional and
15 may be revoked at any time prior to its expiration upon a
16 determination made in accordance with 34 C.F.R. §602.34 or
17 34 C.F.R. §602.36, as applicable, that the agency no longer
18 complies with the subpart B criteria or that it has become
19 ineffective in its performance with respect to those
20 criteria.

21 * * * * *

22 *Scope of Recognition* or *scope* means the range of
23 accrediting activities for which the Secretary recognizes
24 an agency. The Secretary may place a limitation on the

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1 scope of an agency's recognition for Title IV, HEA
2 purposes. Except with respect to programs approved by the
3 Secretary under 34 C.F.R. §668.10, scope does not include
4 accreditation or preaccreditation granted to or
5 comprehending any program offered in whole or in part as a
6 direct assessment program. The Secretary's designation of
7 scope defines the recognition granted according to--

8 * * * * *

9 x. Section 602.15 is amended by:

10 A. Revising paragraph (b)(1).

11 B. Revising paragraph (b)(2).

12 The revisions read as follows:

13 §602.15 Administrative and fiscal responsibilities.

14 * * * * *

15 (b) * * *

16 (1) Its last full accreditation or preaccreditation
17 review of each institution or program, including on-site
18 evaluation team reports, the institution's or program's
19 responses to on-site reports, periodic review reports, any
20 reports of special reviews conducted by the agency between
21 regular reviews, substantive change reviews, and a copy of
22 the institution's or program's most recent self-study; and

23 (2) All decisions made throughout an institution's or
24 program's affiliation with the agency regarding the

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1 accreditation and preaccreditation of the institution or
2 program and substantive changes, including all
3 correspondence that is significantly related to those
4 decisions.

5 x. Section 602.16 is amended by:

6 A. Revising paragraph (a).

7 B. Revising paragraph (a)(1)(i).

8 C. Adding a new paragraph (a)(1)(vii)(A).

9 D. Adding a new paragraph (a)(1)(vii)(B).

10 The additions and revisions read as follows:

11 §602.16 Accreditation and preaccreditation standards.

12 (a) The agency must demonstrate that it has standards
13 for accreditation and, if offered, preaccreditation that
14 are sufficiently rigorous to ensure that the agency is a
15 reliable authority regarding the quality of the education
16 or training provided by the institutions or programs it
17 accredits. The agency ~~meets~~ this requirement if--

18 (1) * * *

19 (i) Success with respect to student achievement in
20 relation to the institution's mission, which may include
21 different standards for different types of institutions or
22 programs. Standards satisfying this criterion must
23 include, but are not limited to--

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1 (A) Expected levels of performance, established by the
2 agency, for vocational programs and programs leading to
3 professional licensure or certification, including
4 completion rates, job placement rates, and, as applicable,
5 pass rates on State licensing examinations or other
6 appropriate measures of occupational competency, and the
7 methods of calculating these measures.

8 (B) For any standard that permits the institution or
9 program to establish the applicable expected level of
10 performance with respect to student achievement,
11 provisions--

12 (1) Requiring the institution or program to specify
13 its educational objectives;

14 (2) Requiring that the level of performance
15 established by the institution or program be based in part
16 on external criteria;

17 (3) Requiring the institution or program to
18 demonstrate its performance against those expected levels
19 of performance using quantitative and qualitative measures
20 that are externally validated, as appropriate; and

21 (4) Ensuring agency review and judgments regarding the
22 appropriateness of the level of performance established by
23 the institution or program, and evidence of acceptable
24 performance.

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1 * * *

2 (vii) Recruiting and admissions practices, academic
3 calendars, catalogs, publications, grading, and
4 advertising.

5 (A) Agency standards on admissions must include
6 provisions for ensuring that decisions about transfer of
7 credit and acceptance of credentials are not made solely on
8 the source of accreditation of a sending institution or
9 program, as long as the accreditation in question is from a
10 recognized accrediting agency and within that agency's
11 scope, and must also ensure that the institutions or
12 programs provide a complete description to prospective
13 students of their policies concerning transfer of credit
14 and acceptance of credentials.

15 (B) The agency must require each program or
16 institution it accredits to publish information related to
17 the program's or institution's effectiveness in fulfilling
18 program objectives or institutional mission, especially
19 indicators of the program's or institution's performance
20 regarding student achievement, including data specified in
21 §602.16(a)(1)(i)(A).

22 x. Section 602.17 is amended by:

23 A. Adding a new paragraph (a) that reads as follows:

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1 §602.17 Application of standards in reaching an
2 accrediting decision.

3 * * * * *

4 (a) Applies its accreditation standards in a manner
5 that does not undermine the religious mission of any
6 institution of higher education with a stated religious
7 mission;

8 B. Redesignating paragraphs (a) through (f) as
9 paragraphs (b) through (g).

10 x. Section 602.19 is amended by:

11 A. Revising paragraph (b).

12 B. Adding a new paragraph (c).

13 C. Adding a new paragraph (d).

14 The additions and revisions read as follows:

15 §602.19 Monitoring and reevaluation of accredited
16 institutions and programs.

17 * * * * *

18 (b) The agency must monitor institutions or programs
19 throughout their accreditation or preaccreditation period,
20 by requiring periodic reports and conducting special
21 evaluations or site visits, as necessary.

22 (c) To signal the need for agency review of the status
23 of the institution or program, the agency must regularly
24 collect and analyze information on key performance

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1 indicators. These may include, but are not limited to,
2 enrollments, financial audits or other financial
3 information, retention rates, completion rates, job
4 placement rates, and State license examination pass rates,
5 and measures of student achievement identified by the
6 agency.

7 (d) The agency must demonstrate it has, and
8 effectively applies, a set of monitoring and reevaluation
9 approaches that provide the agency with reasonable
10 certainty of identifying potential problems with an
11 institution's or program's continued compliance with agency
12 standards and that take into account institutional or
13 program strengths and stability.

14 x. Section 602.20 is amended by:

15 A. Revising paragraph (a)(1).

16 B. Revising paragraph (b).

17 The revisions read as follows:

18 §602.20 Enforcement of standards.

19 (a) * * *

20 (1) Immediately initiate an action to deny, withdraw,
21 suspend, revoke, or terminate accreditation or
22 preaccreditation, or take comparable action against, the
23 institution or program; or

24 (2) * * *

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1 (b) If the institution or program does not bring
2 itself into compliance within the specified period, the
3 agency must take an immediate action to deny, withdraw,
4 suspend, revoke, or terminate accreditation or
5 preaccreditation, or take comparable action against the
6 institution or program unless the agency, for good cause,
7 extends the period for achieving compliance.

8 x. Section 602.22 is amended by:

9 A. Revising paragraph (a)(2)(iii).

10 B. Revising paragraph (a)(2)(iv).

11 C. Adding a new paragraph (a)(2)(vii).

12 D. Redesignating paragraph (a)(2)(vii) as paragraph
13 (a)(2)(viii) and revising it.

14 E. Adding a new paragraph (a)(3).

15 F. Revising paragraph (b).

16 G. Revising paragraph (c).

17 H. Revising paragraph (c)(2).

18 The additions and revisions read as follows:

19 §602.22 Substantive change.

20 * * * * *

21 (a) * * *

22 (2) * * *

23 (iii) The addition of courses or programs that
24 represent a significant departure from the scope of

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1 existing offerings of educational programs, or method of
2 delivery, from those that were offered when the agency last
3 evaluated the institution.

4 (iv) The addition of courses or programs at a degree
5 or credential level different from that which is included
6 in the institution's current accreditation or
7 preaccreditation.

8 * * * * *

9 (vii) If the agency's accreditation of an institution
10 enables the institution to seek eligibility to participate
11 in Title IV, HEA programs, the entering into a contract
12 under which an institution or organization not certified to
13 participate in those programs offers more than 25 percent
14 of one or more of the accredited institution's educational
15 programs.

16 (viii) If the agency's accreditation of an institution
17 enables the institution to seek eligibility to participate
18 in Title IV, HEA programs, the establishment of an
19 additional location geographically apart from the main
20 campus at which the institution offers at least 50 percent
21 of an educational program. An addition of such a location
22 must be approved by the agency in accordance with paragraph
23 (c) of this section unless the accrediting agency
24 determines, and issues a written determination stating,

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1 that the institution has successfully completed at least
2 one cycle of accreditation of maximum length offered by the
3 agency and one renewal or has been accredited for at least
4 ten years, has at least three additional locations that the
5 agency has approved, and has met criteria established by
6 the agency indicating sufficient capacity to add additional
7 locations without individual prior approvals, including, at
8 a minimum, satisfactory evidence of a system to ensure
9 quality across a distributed enterprise that includes—

10 (A) Clearly identified academic control;

11 (B) Regular evaluation of the locations;

12 (c) Adequate faculty, facilities, resources, and
13 academic and student support systems;

14 (D) Financial stability; and

15 (E) Long-range planning for expansion.

16 The agency's procedures must require timely reporting
17 to the agency of every additional location established
18 under this approval. Each agency determination or
19 redetermination to preapprove the addition of multiple
20 locations under this paragraph must be of limited duration,
21 and may not exceed five years. The approval may not remain
22 in force after an institution undergoes a change in
23 ownership resulting in a change in control as defined in 34
24 C.F.R. §600.31.

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1 (3) The agency's substantive change policy must define
2 when the changes made or proposed are or would be
3 sufficiently extensive to require the agency to do a new
4 comprehensive evaluation of the institution.

5 (b) The agency may determine the procedures it uses to
6 grant prior approval of the substantive change. However,
7 the procedures must specify an effective date, not
8 retroactive, on which the change is included in the
9 program's or institution's accreditation. An agency may
10 designate the date of a change of ownership as the
11 effective date of its approval of that substantive change
12 if the accreditation decision is made within 30 days of the
13 change of ownership. Except as provided in paragraph (c)
14 of this section, the agency's approval policies may, but
15 need not, require a visit by the agency.

16 (c) If the agency's accreditation of an institution
17 enables the institution to seek eligibility to participate
18 in Title IV, HEA programs, the agency's procedures for the
19 approval of an additional location described in paragraph
20 (a)(2)(viii) of this section must determine if the
21 institution has the fiscal and administrative capacity to
22 operate the additional location. In addition, the agency's
23 procedures must include--

24 (1) * * *

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1 (2) An effective mechanism for conducting, at
2 reasonable intervals throughout the accreditation cycle,
3 visits to a representative sample of additional locations
4 of institutions that operate more than three additional
5 locations; and

6 (3) * * *

7 x. Section 602.25 is amended by:

8 A. Inserting a new paragraph (b).

9 B. Redesignating paragraphs (b) through (d) as
10 paragraphs (c) through (e).

11 C. Revising the newly designated paragraph (c).

12 D. Revising the newly designated paragraph (d).

13 §602.25 Due process.

14 * * * * *

15 (b) In arriving at an adverse accrediting decision,
16 the agency applies procedures that--

17 (1) ~~Require~~ written notice of the deficiencies the
18 institution or program is believed to have under the
19 agency's standards and policies;

20 (2) Provide a reasonable period of time for the
21 institution or program to prepare its response to the
22 deficiencies identified;

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1 (3) Permit the institution or program to present
2 information--written and, if deemed necessary by the
3 agency, oral--to the agency in its response; and

4 (4) Ensure that the agency's decision makers are
5 objective and free of conflicts of interest.

6 (c) The agency notifies the institution or program in
7 writing of any adverse accrediting decision or an action to
8 place the institution or program on probation or show
9 cause. The notice describes the basis for the decision or
10 action.

11 (d) The agency permits the institution or program the
12 opportunity to appeal an adverse accrediting decision. The
13 appeal procedures include--

14 (1) The right to be represented by counsel during that
15 appeal;

16 (2) The right to have individuals who are objective
17 and free of conflicts of interest hear and make the
18 decision or the recommended decision on the appeal; and

19 (3) If the agency allows institutions or programs the
20 right to appeal other types of actions, the agency has the
21 discretion to limit the appeal to a written appeal.

22 (e) The agency notifies the institution or program in
23 writing of the result of its appeal and the basis for that
24 result.

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1 x. 602.27 is amended by:

2 A. Revising paragraph (e).

3 B. Revising paragraph (f).

4 The revisions read as follows:

5 §602.27 Other information an agency must provide the
6 Department.

7 The agency must submit to the Department--

8 * * * * *

9 (e) The name of any institution or program it
10 accredits that the agency has reason to believe is failing
11 to meet its Title IV, HEA program responsibilities or is
12 engaged in fraud or abuse, along with the agency's reasons
13 for concern about the institution or program, without
14 informing the institution or program; and

15 (f) If the Secretary requests, information that may
16 bear upon an accredited or preaccredited institution's
17 compliance with its Title IV, HEA program responsibilities,
18 including the eligibility of the institution or program to
19 participate in Title IV, HEA programs. Unless specifically
20 requested otherwise by the Secretary, the agency must keep
21 the inquiry confidential from the institution.

22 x. Section 602.28 is amended by:

23 A. Revising paragraph (d).

24 B. Revising paragraph (e).

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1 The revisions read as follows:

2 §602.28 Regard for decisions of States and other
3 accrediting agencies.

4 * * * * *

5 (d) If the agency learns that an institution it
6 accredits or preaccredits, or an institution that offers a
7 program it accredits or preaccredits, is the subject of an
8 action to deny, withdraw, suspend, revoke, or terminate
9 accreditation or preaccreditation, or take comparable
10 action against the institution or program by another
11 recognized accrediting agency or has been placed on
12 probation or an equivalent status by another recognized
13 agency, the agency must promptly review its accreditation
14 or preaccreditation of the institution or program to
15 determine if it should also take such action or place the
16 institution or program on probation or show cause.

17 (e) The agency must, upon request, share with other
18 appropriate recognized accrediting agencies and recognized
19 State approval agencies information about the accreditation
20 or preaccreditation status of an institution or program and
21 any action it has taken to deny, withdraw, suspend, revoke,
22 or terminate accreditation or preaccreditation, or take
23 comparable action against an accredited or preaccredited
24 institution or program.

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1 x. Subpart C is revised to read as follows:

2 Subpart C--The Recognition Process

3 §602.30 How does an agency apply for recognition?

4 (a) An accrediting agency seeking initial or continued
5 recognition must submit a written application to the
6 Secretary. The application must consist of--

7 (1) A statement of the agency's requested scope of
8 recognition;

9 (2) Evidence that the agency complies with the
10 criteria for recognition listed in subpart B of this part;
11 and

12 (3) Supporting documentation.

13 (b) By submitting an application for recognition, the
14 agency authorizes Department staff to observe its site
15 visits and decision meetings and to gain access to agency
16 records, personnel, and facilities on an announced or
17 unannounced basis.

18

19 §602.31 How does Department staff review an agency's
20 application?

21 (a) Upon receipt of an agency's application for either
22 initial or continued recognition, Department staff--

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1 (1) Establishes a schedule for the review of the
2 agency by Department staff, the National Advisory Committee
3 on Institutional Quality and Integrity, and the Secretary;

4 (2) Publishes a notice of the agency's application in
5 the Federal Register inviting the public to comment on the
6 agency's compliance with the criteria for recognition and
7 establishing a deadline for receipt of public comment; and

8 (3) Provides State licensing or authorizing agencies,
9 all currently recognized accrediting agencies, and other
10 appropriate organizations with copies of the Federal
11 Register notice.

12 (b) Department staff analyzes the agency's application
13 to determine whether the agency satisfies the criteria for
14 recognition, taking into account all available relevant
15 information concerning the compliance of the agency with
16 those criteria and any deficiencies in the agency's
17 performance with respect to the criteria. The analysis
18 includes--

19 (1) Site visits, on an announced or unannounced basis,
20 to the agency or to some of the institutions or programs it
21 accredits or preaccredits.

22 (2) Review of the public comments and other third-
23 party information the Department staff receives by the
24 established deadline, as well as any other information

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1 Department staff assembles for purposes of evaluating the
2 agency under this part; and

3 (3) Review of complaints or legal actions involving
4 the agency.

5 (c) Department staff's evaluation may also include a
6 review of information directly related to institutions or
7 programs accredited or preaccredited by the agency relative
8 to their compliance with the agency's standards, the
9 effectiveness of the standards, and the agency's
10 application of those standards.

11 (d) If, at any point in its evaluation of an agency
12 seeking initial recognition, Department staff determines
13 that the agency fails to demonstrate substantial compliance
14 with the basic eligibility requirements in §§602.10 through
15 602.13, the staff--

16 (1) Returns the agency's application and provides the
17 agency with an explanation of the deficiencies that caused
18 staff to take that action; and

19 (2) Recommends that the agency withdraw its
20 application and reapply when the agency can demonstrate
21 compliance.

22 (e) Except with respect to an application that is
23 withdrawn under paragraph (d) of this section, when

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1 Department staff completes its evaluation of the agency,
2 the staff--

3 (1) Prepares a written analysis of the agency, which
4 includes a recognition recommendation;

5 (2) Sends the analysis and all supporting
6 documentation, including all third-party comments the
7 Department received by the established deadline, to the
8 agency no later than 45 days before the Advisory Committee
9 meeting; and

10 (3) Invites the agency to provide a written response
11 to the staff analysis and third-party comments, specifying
12 a deadline for the response that is at least two weeks
13 before the Advisory Committee meeting.

14 (f) If Department staff fails to provide the agency
15 with the materials described in paragraph (e)(2) of this
16 section at least 45 days before the Advisory Committee
17 meeting, the agency may request that the Advisory Committee
18 defer acting on the application at that meeting. If
19 Department staff's failure to send the materials at least
20 45 days before the Advisory Committee meeting is due to the
21 failure of the agency to submit reports or other
22 information the Secretary requested by the deadline the
23 Secretary established, the agency forfeits its right to
24 request a deferral.

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1 (g) Department staff reviews any response to the staff
2 analysis that the agency submits. If necessary, Department
3 staff prepares an addendum to the staff analysis and
4 provides the agency with a copy.

5 (h) Before the Advisory Committee meeting, Department
6 staff provides the Advisory Committee with the following
7 information:

8 (1) The agency's application for recognition and
9 supporting documentation.

10 (2) The Department staff analysis of the agency.

11 (3) Any written third-party comments the Department
12 received about the agency on or before the established
13 deadline.

14 (4) Any agency response to either the Department staff
15 analysis or third-party comments.

16 (5) Any referendum to the Department staff analysis.

17 (6) Any other information Department staff relied on
18 in developing its analysis.

19 (i) At least 30 days before the Advisory Committee
20 meeting, the Department publishes a notice of the meeting
21 in the Federal Register inviting interested parties,
22 including those who submitted third-party comments
23 concerning the agency's compliance with the criteria for

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1 recognition, to make oral presentations before the Advisory
2 Committee.

3 §602.32 What other type of review may Department staff
4 conduct?

5 (a) Department staff may conduct an investigation into
6 the compliance of a recognized agency with the criteria for
7 recognition at any time, on its own initiative, at the
8 request of the Advisory Committee, or in response to a
9 third party complaint. The investigation may include, but
10 need not be limited to, any of the activities described in
11 34 C.F.R. §602.31(b)(1), (b)(2), (b)(3), and (c).

12 (b) If, in the course of the investigation, Department
13 staff identifies one or more areas of apparent
14 noncompliance with the criteria for recognition, it--

15 (1) May request that an agency file a report
16 (including documentation) addressing the criteria with
17 which the agency's continued compliance is in question;

18 (2) If not satisfied as to the agency's compliance,
19 establishes a schedule for the review of the issues by the
20 Advisory Committee;

21 (3) Publishes a notice in the Federal Register
22 inviting the public to comment on the agency's compliance
23 with the criteria in question and establishing a deadline
24 for receipt of public comment;

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1 (4) Provides State licensing or authorizing agencies,
2 all currently recognized accrediting agencies, and other
3 appropriate organizations with copies of the Federal
4 Register notice; and

5 (5) Prepares a written analysis of the agency's
6 compliance with the criteria identified that reflects the
7 results of the investigation, and that includes a
8 recommendation regarding what action to take with respect
9 to recognition. Possible recommendations include, but are
10 not limited to, limiting, suspending, or terminating
11 recognition.

12 (c) The Department staff sends its analysis and all
13 supporting documentation to the agency for response, and,
14 if necessary, prepares an addendum, all in accordance with
15 §602.31(e)(2), (e)(3), (f), and (g).

16 (d) Before the Advisory Committee meeting, Department
17 staff provides the Advisory Committee with any materials
18 generated or obtained under this section, along with any
19 other information Department staff relied on in developing
20 its analysis.

21 (e) At least 30 days before the Advisory Committee
22 meeting, the Department publishes a notice of the meeting
23 in the Federal Register inviting interested parties,
24 including those who submitted third-party comments

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1 concerning the agency's compliance with the criteria for
2 recognition, to make oral presentations before the Advisory
3 Committee.

4 §602.33 What is the role of the Advisory Committee in the
5 review of an agency's application?

6 (a) The Advisory Committee considers an agency's
7 application for recognition, or a staff analysis prepared
8 under §602.32 together with the associated agency report,
9 if any, at a public meeting and invites Department staff,
10 the agency, and other interested parties to make oral
11 presentations at the meeting. A transcript is made of each
12 Advisory Committee meeting.

13 (b) When it concludes its review, the Advisory
14 Committee makes such recommendations to the senior
15 Department official as the Committee deems appropriate,
16 including, but not limited to, a recommendation to approve,
17 deny, limit, suspend, or terminate recognition, or to defer
18 a decision on the agency's application for recognition.

19 (1)(i) The Advisory Committee recommends approval of
20 recognition if the agency complies with the criteria for
21 recognition listed in subpart B of this part and if the
22 agency is effective in its performance with respect to
23 those criteria.

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1 (ii) If the Advisory Committee recommends approval,
2 the Advisory Committee also recommends a recognition period
3 and a scope of recognition.

4 (iii) If the recommended scope or period of
5 recognition is less than that requested by the agency, the
6 Advisory Committee explains its reasons for recommending
7 the lesser scope or recognition period.

8 (2)(i) If the agency fails to comply with the criteria
9 for recognition cited in the Department staff analysis, or
10 if the agency is not effective in its performance with
11 respect to those criteria, the Advisory Committee
12 recommends denial, limitation, suspension, or termination
13 of recognition, unless the Advisory Committee concludes
14 that a deferral by the senior Department official under
15 paragraph (b)(3) of this section is warranted.

16 (ii) If the Advisory Committee recommends denial,
17 limitation, suspension, or termination of recognition, the
18 Advisory Committee specifies the reasons for its
19 recommendation, including all criteria the agency fails to
20 meet and all areas in which the agency fails to perform
21 effectively.

22 (iii) If the Advisory Committee identifies areas of
23 noncompliance with the criteria for recognition (or in the
24 effectiveness of agency performance with respect to those

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1 criteria) that are not identified in the Department staff
2 analysis before the Advisory Committee, the Advisory
3 Committee postpones further consideration of the agency
4 until its next meeting, and Department staff conducts an
5 investigation under 34 C.F.R. §602.32.

6 (3)(i) The Advisory Committee may recommend deferral
7 of a decision on recognition if it concludes that the
8 agency's deficiencies do not warrant immediate loss of
9 recognition and if it concludes that the agency will
10 demonstrate or achieve compliance with the criteria for
11 recognition and effective performance with respect to those
12 criteria before the expiration of the deferral period.

13 (ii) In its deferral recommendation, the Advisory
14 Committee states the bases for its conclusions, specifies
15 any criteria for recognition the agency fails to meet, and
16 identifies any areas in which the agency fails to perform
17 effectively with respect to the criteria.

18 (iii) The Advisory Committee also recommends a
19 deferral period, which may not exceed 12 months, either as
20 a single deferral period or in combination with any
21 expiring deferral period in which similar deficiencies in
22 compliance or performance were cited by the Secretary.

23 (c) At the conclusion of its meeting, the Advisory
24 Committee forwards its recommendations to the senior

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1 Department official, except as provided in paragraph
2 (b) (2) (iii) of this section.

3 §602.34 What does the senior Department official consider
4 when making a recognition decision?

5 The senior Department official makes a decision
6 regarding recognition of an agency based on the entire
7 record made under 34 C.F.R. §§602.31 or 602.32, including
8 the following:

9 (a) The Advisory Committee's recommendation.

10 (b) The Department staff analysis of the agency.

11 (c) Any addendum to the Department staff analysis.

12 (d) Any agency response to the Department staff
13 analysis and third-party comments.

14 (e) The agency's application submitted under 34 C.F.R.
15 §602.31, or its report submitted under 34 C.F.R. §602.32,
16 and supporting documentation.

17 (f) All written third-party comments forwarded by
18 Department staff to the Advisory Committee for
19 consideration at the meeting.

20 (g) All oral presentations at the Advisory Committee
21 meeting.

22 §602.35 What information does the senior Department
23 official's recognition decision include?

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1 (a) The senior Department official notifies the agency
2 in writing of the senior Department official's decision
3 regarding the agency's recognition.

4 (b) The decision the senior Department official may
5 make includes, but is not limited to, approving, denying,
6 limiting, suspending, or terminating recognition, or
7 deferring a decision on the agency's recognition.

8 (1)(i) The senior Department official approves
9 recognition if the agency complies with the criteria for
10 recognition listed in subpart B of this part and if the
11 agency is effective in its performance with respect to
12 those criteria.

13 (ii) If the senior Department official approves
14 recognition, the recognition decision defines the scope of
15 recognition and the recognition period.

16 (iii) If the scope or period of recognition is less
17 than that requested by the agency, the senior Department
18 official explains the reasons for approving a lesser scope
19 or recognition period.

20 (2)(i) If the agency fails to comply with the criteria
21 for recognition in subpart B of this part, or if the agency
22 is not effective in its performance with respect to those
23 criteria, the senior Department official denies, limits,
24 suspends, or terminates recognition, unless the senior

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1 Department official concludes that a deferral under
2 paragraph (b)(3) of this section is warranted.

3 (ii) If the senior Department official denies, limits,
4 suspends, or terminates recognition, the senior Department
5 official specifies the reasons for this decision, including
6 all criteria the agency fails to meet and all areas in
7 which the agency fails to perform effectively with respect
8 to the criteria.

9 (3)(i) The senior Department official may defer a
10 decision on recognition if the senior Department official
11 concludes that the agency's deficiencies do not warrant
12 immediate denial, limitation, suspension, or termination of
13 recognition and if the senior Department official concludes
14 that the agency will demonstrate or achieve compliance with
15 the criteria for recognition and effective performance with
16 respect to those criteria before the expiration of the
17 deferral period.

18 (ii) In the deferral decision, the senior Department
19 official states the bases for the senior Department
20 official's conclusions, specifies any criteria for
21 recognition the agency fails to meet, and identifies any
22 areas in which the agency fails to perform effectively with
23 respect to the criteria.

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1 (iii) The senior Department official also establishes
2 a deferral period, which begins on the date of the senior
3 Department official's decision.

4 (iv) The deferral period may not exceed 12 months,
5 either as a single deferral period or in combination with
6 any expiring deferral period in which similar deficiencies
7 in compliance or performance were cited by the senior
8 Department official, except that the senior Department
9 official may grant an extension of an expiring deferral
10 period at the request of the agency for good cause shown.

11 (c) No recognition period may exceed five years.
12 Prior to the expiration of a period of recognition, an
13 agency desiring renewal must apply under 34 C.F.R. §602.31.

14 (d) If the senior Department official does not reach a
15 final decision to approve, deny, limit, suspend, or
16 terminate an agency's recognition before the expiration of
17 its recognition period, the senior Department official
18 automatically extends the recognition period until the
19 final decision is reached.

20 (e) Unless appealed in accordance with 34 C.F.R.
21 §602.36, the senior Department official's decision is the
22 final decision of the Secretary.

23 §602.36 How may an agency appeal the senior Department
24 official's decision?

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1 (a) The agency may appeal the senior Department
2 official's decision to the Secretary. If an agency wishes
3 to appeal, the agency must--

4 (1) Notify the Secretary and the senior Department
5 official in writing of its intent to appeal the decision no
6 later than 10 days after receipt of the decision;

7 (2) Submit its appeal to the Secretary in writing no
8 later than 30 days after receipt of the decision; and

9 (3) Provide the senior Department official with a copy
10 of the appeal at the same time it submits the appeal to the
11 Secretary.

12 (b) The senior Department official may file a written
13 response to the appeal. To do so, the senior Department
14 official must--

15 (1) Submit a response to the Secretary no later than
16 30 days after receipt of a copy of the appeal; and

17 (2) Provide the agency with a copy of the senior
18 Department official's response at the same time it is
19 submitted to the Secretary.

20 (c) Neither the agency nor the senior Department
21 official may include any new evidence in its submission,
22 i.e., evidence it did not previously submit to the Advisory
23 Committee.

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1 (d) On appeal, the Secretary makes a recognition
2 decision in accordance with 34 C.F.R. §602.34, rendering a
3 final decision after taking into account the senior
4 Department official's decision and the parties' written
5 submissions on appeal, as well as the entire record before
6 the Advisory Committee and the Advisory Committee's
7 opinion. The Secretary notifies the agency in writing of
8 the Secretary's decision regarding the agency's
9 recognition.

10 §602.37 May an agency appeal the Secretary's final
11 decision to deny, limit, suspend, or terminate its
12 recognition?

13 An agency may appeal the Secretary's decision under
14 this part in the Federal courts as a final decision in
15 accordance with applicable Federal law.

16 x. Subpart D is removed in its entirety.

17 x. Current ~~subpart E is redesignated as~~ subpart D.