

**Proposed Regulatory Language  
Committee IV -- Accreditation**

Issue #12: Recognition procedures  
Issue #13: Decision-making authority

Tentative agreement: Not yet fully discussed

*The bolded text reflects changes made on 4-26-07. The highlighted text is new.*

**Tracked changes are suggestions made by the non-federal negotiators**

Subpart A - General

§602.3 What definitions apply to this part?

\* \* \*

Recognition means an unappealed determination by the senior Department official under 34 C.F.R. §602.34, or a determination by the Secretary on appeal under 34 C.F.R. §602.36, that an accrediting agency complies with the criteria for recognition listed in subpart B of this part and that the agency is effective in its performance with respect to those criteria.

Subpart C - The Recognition Process

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

\* \* \*

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

(1) Observations from site visits, on an announced or unannounced basis to the agency or on an announced basis to some of the institutions or programs it accredits or preaccredits.

(2) Responses, as appropriate to third party comment

(3) Responses, to the issues raised by the agency's review of the draft staff analysis which will be provided

**Deleted:** Recognition is conditional and may be revoked at any time prior to its expiration upon a determination made in accordance with 34 C.F.R. §602.34 or 34 C.F.R. §602.36, as applicable, that the agency no longer complies with the subpart B criteria or that it has become ineffective in its performance with respect to those criteria.

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to the agency no later than eight weeks before the scheduled Advisory Committee hearing.

Deleted: review of the draft staff analyses which will be provided to the agency no later than eight weeks before the scheduled Advisory Committee hearing.

\* \* \*

(e) Except with respect to an application that is withdrawn under paragraph (d) of this section, when Department staff completes its evaluation of the agency, the staff -

(2)Sends the analysis including detailed explanations of all areas in which an agency is considered to be out of compliance, if any, and all supporting documentation, including all third-party comments the Department received by the established deadline, to the agency no later than sixty days before the Advisory Committee meeting; and

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(3)Invites the agency to provide a written response to the staff analysis and third-party comments, specifying a deadline which provides at least thirty days for the agency's response; and

(4)Sends the complete record, including the final analysis and all pertinent information, to the agency and the Advisory Committee no later than two (2) weeks prior to the Advisory Committee meeting.

\* \* \*

(f) An agency may request that the Advisory Committee defer acting on an application at the meeting if the Department staff fails (1) to provide the agency with the materials described in paragraph (2) of this section at least sixty days before the Advisory Committee meeting or (2) to provide the agency and the Advisory Committee with the complete record described in paragraph (4) two weeks prior to the Advisory Committee meeting. If the Department's failure to send the materials or the complete record in accordance with the time frames of paragraphs (2) and (4) is due to the failure of the agency to submit reports, other information or its response by the deadlines established, the agency forfeits its right to request a deferral.

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**§602.32 What procedures will the Department staff follow in investigating recognized agencies?**

(a) Department staff may conduct an investigation into the compliance of a recognized agency with the criteria for recognition at any time, on its own initiative, at the

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request of the Advisory Committee, or based on any other relevant information received, including any third party complaint that, upon investigation, appears credible and raises issues relevant to recognition. The investigation may include, but need not be limited to, any of the activities described in 34 C.F.R. §602.31(b)(1), (b)(2), (b)(3), and (c).

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(b) If, in the course of the investigation, Department staff concludes that one or more material deficiencies may exist in the agency's compliance with the criteria for recognition, it-

(1) Must notify the agency in writing of the criteria and issues of concern and discuss the matter with agency representatives;

(2) If not satisfied with the agency's explanation, establishes a time period, not to exceed three months from the date of the notice provided under paragraph (1), during which the agency must file a written report (including documentation) demonstrating compliance with the criteria cited by the staff or presenting an acceptable plan to resolve all issues the staff has raised;

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(3) Reviews any report submitted by an agency under paragraph (2) and, if still dissatisfied-

(i) Establishes a schedule for the review of the issues by the Advisory Committee;

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

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

(iv) Prepares a written analysis of the agency's compliance with the criteria identified that reflects the results of the investigation, and that includes a recommendation regarding what action to take with respect to recognition. Possible recommendations include, but are

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not limited to, limiting, suspending, or terminating recognition;

(v) Sends its analysis and all supporting documentation to the agency for response and, if necessary, prepares an addendum, all in accordance with §602.31(e)(2), (e)(3), (f), and (g);

(vi) Before the Advisory Committee ~~meeting~~ **hearing**, provides the Advisory Committee with any materials generated or obtained under this section, along with any other information Department staff relied on in developing its analysis; and

(vii) At least 30 days before the Advisory Committee ~~meeting~~ **meets to conduct hearings for review of agencies**, publishes a notice of the meeting in the Federal Register inviting interested parties, including those who submitted third-party comments concerning the agency's compliance with the criteria for recognition, to make oral presentations before the Advisory Committee.

~~§602.33 What is the role of the Advisory Committee in the review of an agency's application? How are Advisory Committee hearings for review of agencies conducted?~~

(a) The Advisory Committee considers an agency's application for recognition **and staff analysis and agency response, if any, prepared under §602.31**, or a staff analysis prepared under §602.32 together with the associated agency report **and response**, ~~at~~ **in** a public ~~meeting~~ **hearing** and invites Department staff, the agency, and other interested parties to make oral presentations ~~at~~ **during** the ~~meeting~~ **hearing**. A transcript is made of ~~each~~ **all** Advisory Committee ~~meeting~~ **hearings**.

(b) When it concludes its review, the Advisory Committee makes such recommendations to the senior Department official as the Committee deems appropriate, including, but not limited to, a recommendation to approve, deny, limit, suspend, or terminate recognition, or to defer a decision on the agency's application for recognition. If at least three fourths of the eligible voting members of the Advisory Committee are not available to vote on the recommendation, the agency, at its option may request and receive a deferral.

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

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

(iii) If the recommended scope or period of federal recognition is less than that requested by the agency, the Advisory Committee explains its reasons under section (d) of this section for recommending the lesser scope or recognition period.

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

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

(iii) If the Advisory Committee identifies areas of noncompliance with the criteria for recognition (or in the effectiveness of agency performance with respect to those criteria) that are not identified in the Department staff analysis before the Advisory Committee, the Advisory Committee defers further consideration of the agency until its next meeting, and Department staff conducts an investigation under 34 C.F.R. §602.32 of only the new issues raised by the Advisory Committee.

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(c) At the conclusion of its ~~meeting~~ **hearings for review of agencies**, the Advisory Committee forwards its recommendations to the senior Department official, except as provided in paragraph (b)(2)(iii) of this section. The senior department official, as defined by \_\_\_\_\_, shall be free of conflicts of interest and shall not have participated in the staff analysis under section 602.31 or investigation recommendations under section 602.32.

(d) Each agency under review will receive the Advisory Committee's written recommendation regarding its proposed status within sixty days of the hearing.

(e) Each agency shall have the opportunity to provide comments on the Advisory Committee's recommendation to the senior department official within fifteen days of receipt of the Advisory Committee's written recommendation.

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

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

(a) The Advisory Committee's written recommendation and any accompanying Agency response.

(b) The Department staff analysis of the agency.

(c) Any addendum to the Department staff analysis.

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

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

(f) All written third-party comments forwarded by Department staff to the Advisory Committee for consideration ~~at the meeting~~ **during the Advisory Committee hearing.**

(g) A transcript of all oral presentations **made during** ~~at the Advisory Committee meeting~~ **hearing.**

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

(a) The senior Department official, within ninety days of the Advisory Committee's hearing, notifies the agency in writing of the senior Department official's decision regarding the agency's recognition.

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

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

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

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

(2)(i) If the agency fails to comply with the criteria for recognition in subpart B of this part, or if the agency is not effective in its performance with respect to those criteria, the senior Department official denies, limits, suspends, or terminates recognition, unless the senior Department official concludes that a deferral under paragraph (b)(3) of this section is warranted.

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

(3)(i) The senior Department official may defer a decision on recognition if the senior Department official concludes that the agency's deficiencies do not warrant

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immediate denial, limitation, suspension, or termination of recognition and if the senior Department official concludes that the agency will demonstrate or achieve compliance with the criteria for recognition and effective performance with respect to those criteria before the expiration of the deferral period.

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

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

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

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

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

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

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

(a) The agency may appeal the senior Department official's decision to the Secretary and request a hearing,

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and such appeal stays the decision of the senior department official to limit, suspend or terminate the agency's recognition until its final disposition. If an agency wishes to appeal, the agency must--

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

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

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

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

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

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

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

(d) The Secretary is required to use Department staff who are objective and free of conflicts of interest to review the materials submitted by both the agency and Department and make recommendations concerning the Secretary's decision on the appeal.

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

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the Secretary's decision regarding the agency's recognition  
within ninety days.

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

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