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Part III

Department of Education

34 CFR Part 602

The Secretary's Recognition of Accrediting Agencies; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 602

RIN 1845–AA09

The Secretary's Recognition of Accrediting Agencies

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Secretary's recognition of accrediting agencies to implement provisions added to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998. The Secretary recognizes accrediting agencies to assure that those agencies are, for HEA and other Federal purposes, reliable authorities regarding the quality of education or training offered by the institutions or programs they accredit.

DATES: These regulations are effective July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Karen W. Kershenstein, U.S. Department of Education, 400 Maryland Avenue, SW., room 3012, ROB–3, Washington, DC 20202–5244. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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SUPPLEMENTARY INFORMATION: The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the Higher Education Act requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form in the **Federal Register** on June 25, 1999 (64 FR 34466) in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by August 24, 1999, and several comments were received. An analysis of the comments and of the changes in the proposed regulations follows.

In the preamble to the notice of proposed rulemaking (NPRM), we discussed the changes we proposed to improve the accrediting agency recognition process. The major changes included the following:

- Revising and reordering the standards accrediting agencies must have.
- Providing a maximum timeframe for agencies to come into compliance with the criteria for recognition (called the ''12-month rule'').
- Including distance education in the scope of an agency's recognition.

Other proposed changes included in the NPRM were the result of discussion and subsequent consensus among negotiators about how to improve the current regulations by clarifying existing regulatory language and eliminating redundancies.

These final regulations contain several changes resulting from the 26 public comments we received. Most of the changes are clarifications of the regulatory language rather than substantive changes.

We discuss substantive changes under the sections of the regulations to which they pertain. We discuss major issues according to subject, with appropriate sections of the regulations referenced in parentheses. Generally, we do not address technical and other minor changes in the proposed regulations, and do not respond to comments suggesting changes that the Secretary is not authorized by law to make, *e.g.*, requiring accrediting agencies to conduct unannounced inspections. Finally, we do not address comments directed at our processes, such as a comment that the regulations should be revised to say that we will evaluate the consistency of an accrediting agency's application of standards on the basis of ''actual fact.''

Analysis of Comments and Changes

Required Accreditation Standards (§ 602.16)

Comments: One commenter believed that the regulations needed to include a definition of ''effectively,'' which appears in 602.16(a)(1). This commenter suggested that the definition state that ''input demands cannot override student learning.'' Another commenter asked what data, factors, or other elements we will use to determine if an agency's standards effectively address each area for which the agency is required to have a standard.

Discussion: We disagree with the alternative language suggested by the first commenter. ''Student learning'' is extremely important, but it is difficult to assess comprehensively. Furthermore, success with respect to student achievement is only one of the areas for which Congress has mandated that agencies have standards.

While we appreciate the desire for some type of benchmark in the regulations by which to measure the effectiveness of an agency's standards, we believe the issue is quite complex, and any attempt to define the issue thoroughly would be over-regulation at best. Aspects of effectiveness are found in the agency's standards themselves, in the agency's efforts to conduct a systematic program of review that demonstrates that its standards are adequate to evaluate educational quality and relevant to the education and training needs of students, and in the agency's application of its standards, policies, and procedures. As desirable as it might be to try to define ''effectiveness'' in a manner that encompasses and quantifies all of these perspectives, we believe a more reasoned approach is one of seeking patterns of evidence that, taken collectively, demonstrate effectiveness.

Change: None.

Success With Respect to Student Achievement (§ 602.16(a)(1))

Comments: While several commenters expressed satisfaction with our overall approach to the requirement that agencies have a standard that assesses success with respect to student achievement, one commenter expressed concern that the regulations failed to make student achievement the ''touchstone'' of accreditation. To remedy this situation, the commenter suggested that this section include a statement that an accrediting agency will not be considered to be a reliable authority regarding educational quality if it denies accreditation to an institution because the institution does not adhere to the agency's input standards even though the institution achieves success with respect to student achievement in relation to its mission. Another commenter felt the regulations needed to make it clear that agencies are not required to measure success with respect to student achievement using a particular assessment strategy.

Discussion: As we explained previously, we believe requiring success with respect to student achievement to

override all other areas for which Congress requires agencies to have standards would conflict with the intent of Congress. We agree that agencies should be permitted flexibility in selecting strategies for measuring success with respect to student achievement. We recognize that assessing success with respect to student achievement is a complex, multi-dimensional problem. For this reason, we discussed in the preamble to the NPRM a number of measures that an agency could use, or could require its institutions or programs to use, in the assessment of student achievement. The key, we believe, is the measurement of success with respect to student achievement in relation to institutional mission. Different institutional missions may dictate different measures, and agencies should be free to choose the measure or measures they believe to be best suited to the types of institutions or programs they accredit, provided they can demonstrate that those measures are effective.

Change: None.

The ''12-Month'' Rule (§§ 602.32 and 602.35)

Comments: We received numerous comments about these sections of the regulations that deal with the provision in the 1998 Amendments to the HEA requiring the Secretary to limit, suspend, or terminate the recognition of an agency if the agency either does not meet the criteria for recognition or is ineffective in its performance with respect to the criteria. Alternatively, the statute permits the Secretary to grant an agency a period of no more than 12 months during which it must come into compliance or demonstrate effectiveness in its performance. If it fails to do so within the specified timeframe, then the statute requires the Secretary to limit, suspend, or terminate the agency's recognition.

Many commenters felt the regulations needed to specify when the 12-month period begins. They also felt that it should begin on the date of the Secretary's decision.

One commenter felt that the regulations needed to define what constitutes good cause. The commenter felt that the regulations should make it clear that the Secretary is expected to grant extensions only for demonstrable exigency and lack of fault and that extensions of the timeframe should be rare and brief.

Many commenters raised questions about how we will review agencies under this provision. In particular, they questioned how some of our previous citations of agencies as being ''in need of strengthening'' compliance will be handled under the 12-month rule.

Finally, several commenters expressed the opinion that the regulations should give the National Advisory Committee or the Secretary some latitude in implementing the 12-month rule, either for the benefit of agencies that are trying to improve their processes or to allow agencies to continue to be recognized despite their noncompliance with some of the criteria.

One commenter thought the regulations needed to make it clear that recognized agencies maintain their status as recognized agencies even if they are under a deferral or until a decision on their application for continued recognition has been reached.

Discussion: We understand and appreciate the many concerns that commenters, most of whom were affiliated with recognized accrediting agencies, expressed about this new, statutorily mandated provision. We note that some of the concerns are directed toward process, i.e., how we will implement this provision, rather than toward the provision itself, and we generally do not address process in the regulations.

With regard to the issue of when the 12-month period begins, we note that some of the commenters appear to assume that the Secretary must always give agencies 12 months to correct whatever problem caused the Secretary to decide to defer a decision on the agency's application for recognition. That is incorrect. Nevertheless, we believe it would be useful for the regulations to establish clearly that whatever deferral period the Secretary grants, that period begins on the date of the Secretary's deferral decision.

On the issue of defining good cause in the regulations, we note that negotiators carefully considered whether the regulations should define ''good cause'' and in the end concluded that it was best not to define this term. Instead, the burden rests with an agency that has failed to meet the statutory deadline to demonstrate that good cause exists for the Secretary to grant a request for an extension of time.

With regard to the call for greater flexibility to continue to recognize agencies that are not in full compliance, no change can be made because the statute does not allow for greater flexibility.

Finally, the proposed regulations were intended to convey that a recognized agency maintains its status as a recognized agency even if action on its continued recognition has been deferred or a decision on recognition has not been reached. Deferral is not a final decision.

Changes: We have changed 602.35(b)(3)(iii) to state that the deferral period begins on the date of the Secretary's decision. We have also changed 602.35(d) to clarify that recognition of a recognized agency continues until the Secretary reaches a final decision to approve or deny recognition.

Distance Education and Scope of Recognition (§ 602.3)

Comments: Several commenters expressed concerns about the inclusion of distance education in the scope of an agency's recognition. Most of their comments focused on whether agencies would have to go through a separate review process before distance education would be included in their scope of recognition, although one commenter asked why distance education, which the commenter described as ''just one particular type of instructional methodology,'' should be included in an agency's scope of recognition.

Discussion: The 1998 amendments to the Higher Education Act clearly require us to evaluate distance education accrediting activities as part of the recognition process and to include distance education as a component in determining the scope of an agency's recognition. We do not envision implementing this provision by requiring agencies to go through a separate review process to have distance education included in their scope. Rather, we will observe and evaluate, as part of our regular review of an agency for initial or continued recognition, the agency's compliance with the criteria for recognition, including the agency's compliance in accrediting distance education programs and institutions.

Change: None.

Section 602.3 Definitions

Adverse action

Comments: One commenter felt that show cause and probation should be considered adverse actions to allow accrediting agencies to work more effectively with institutions that need more time to improve. In raising this issue, the commenter noted that students are the ones who are hurt most if schools have to close if they lose their accreditation. Another commenter, however, supported the change we proposed that excludes show cause and probation from the term ''adverse action.''

Discussion: We continue to believe that including interim actions such as

probation and show cause as adverse actions would permit a noncompliant institution or program to retain accreditation or preaccreditation well beyond the maximum timeframes the regulations prescribe. It would also put students at risk because the quality of education provided by the institution or program might suffer as a result of the institution's or program's noncompliance with the agency's standards. We believe that the provision in 602.20(b), allowing an agency to extend the timeframe for coming into compliance for good cause, gives the agency the flexibility it needs on a case-by-case basis to deal with situations in which the agency believes there is justification for giving the institution or program more time.

Change: None.

Representative of the public

Comment: One commenter expressed concern that the proposed definition does not state that a student may serve as a representative of the public.

Discussion: We continue to believe, as we stated in the preamble to the final regulations previously amending this part 602, published April 29, 1994 (59 FR 22250) (the 1994 regulations), that it is useful for agencies to include students and members of their families as representatives of the public. The students are the consumers in this context. However, the definition we proposed in the NPRM, which is the same as the definition in the 1994 regulations, does not preclude selection of students or their family members for this purpose. Therefore, there is no need to change the definition.

Change: None.

Vocational Education

Comment: One commenter requested that we add a definition of ''vocational education'' to 602.3, noting that we mentioned the term in the discussion of success with respect to student achievement in the preamble to the NPRM.

Discussion: The term is not used in the regulations. Therefore, there is no need to define it.

Change: None.

Section 602.14 Purpose and Organization

Comments: One commenter suggested that recognized agencies be exempt from demonstrating compliance with this section when they apply for continued recognition if they were found to be in compliance the last time they were reviewed and their structure has not changed since then. Another commenter believed that the provisions related to the waiver of the ''separate and independent'' requirement nullify the availability of the waiver and are not consistent with the statute.

Discussion: We believe the suggestion that recognized agencies not be required to demonstrate compliance with 602.14 when they apply for continued recognition has merit. However, we do not think a regulatory change is needed to implement it. We expect to develop new guidelines for agencies on how to submit petitions for recognition under these regulations, and we will implement this suggestion in those materials.

With respect to the waiver of the ''separate and independent'' requirement, we disagree with the commenter's conclusion that the regulations are inconsistent with the statute and nullify the availability of the waiver. We note that the regulations on this point remain unchanged from those issued in 1994.

Change: None.

Section 602.15 Administrative and Fiscal Responsibilities

Comment: One commenter suggested that the composition of on-site evaluation teams should be reconsidered but offered no specific suggestions for change.

Discussion: Even though the commenter provided no specific suggestions, we reconsidered the proposed language in 602.15(a)(3) and (4) governing the composition of an agency's evaluation, policy, and decision-making bodies. We found that the language allowed an agency that accredited a single-purpose institution, such as a freestanding law school, to satisfy the regulations by simply having educators, i.e., *academic and administrative personnel, on these bodies and not any practitioners. While we know that most agencies that accredit single-purpose institutions include practitioners on their evaluation teams, we felt it was important that the regulations require this practice.*

Change: We have modified 602.15(a)(4) to require an agency to have educators and practitioners on its evaluation, policy, and decision-making bodies if it accredits programs or single-purpose institutions that prepare students for a specific profession.

Section 602.19 Monitoring and Reevaluation of Accredited Institutions and Programs

Comment: Two commenters expressed concern about the discussion in the preamble of the NPRM about agencies' responsibilities for monitoring accredited institutions and programs throughout the accreditation period. Specifically, they objected to the statement that an agency's monitoring procedures must provide for prompt and appropriate action by an agency whenever it receives substantial, credible evidence from any reliable source, including the courts, that indicates a systemic problem that calls into question the ability of an institution or program to meet the agency's standards. They also objected to the statement in the preamble that we find it unacceptable for an agency to have as its policy that it will not look at, or take appropriate action based upon, information that comes to its attention through pending third-party litigation. The commenters felt that our position would place the agency in the middle of the litigation.

Discussion: The comments are directed to preamble, rather than regulatory, language, so there is no need to make any changes to the regulations. Agencies, under the regulations, have a responsibility to monitor institutions and programs throughout their accreditation period to ensure that educational quality is maintained and to take appropriate action whenever they receive substantial, credible evidence from any reliable source that calls into question the quality of the education or training provided by the institution or program. That obligation applies with respect to information the agency obtains as a result of litigation, just as it applies to information obtained from other sources.

Change: None.

Section 602.21 Review of Standards

Comments: Most commenters liked the proposed regulations, which require agencies to maintain a systematic program of review that demonstrates their standards are adequate to evaluate the quality of education or training provided by the institutions and programs they accredit and relevant to the needs of students. Two commenters, however, preferred the language in the 1994 regulations, which required agencies to maintain a systematic program of review that demonstrated their standards were valid and reliable indicators of educational quality. One commenter thought the phrase ''relevant to the needs of students'' in the proposed regulations should be replaced by the phrase from the 1994 regulations, ''relevant to the education and training needs of students,'' which the commenter believed was more appropriate. Finally, one commenter stated that an agency's standards should not be deemed adequate to evaluate the quality of education or relevant to the

needs of students if they resulted in the denial of accreditation to schools that achieve student success in learning.

Discussion: The issue of the validation of standards through the systematic review of an agency's standards was discussed at length during negotiated rulemaking. The ultimate consensus that was reached reflects negotiators' belief that the language in the proposed regulations strikes a balance between overly prescriptive regulation of agencies' standards and processes and a requirement that looks only at an agency's review process and not at the substance of the standards. It also avoids some of the problems encountered with the language in the 1994 regulations that uses the terms ''validity'' and ''reliability,'' the interpretations of which, when applied in the context of agencies' standards, were often misunderstood and misused.

We believe the comment about the need for agencies to demonstrate that their standards are relevant to the education and training needs of students, not simply the needs of students, has merit. However, we disagree that an agency's standards should not be deemed adequate to evaluate the quality of education or relevant to the needs of students if its standards resulted in the denial of accreditation to schools that achieve student success in learning. Demonstrating success with respect to student achievement is certainly necessary to establishing the adequacy of an agency's standards. By itself, however, such a demonstration is by no means sufficient to ensure the adequacy of those standards.

Change: We have changed 602.21(a) to require agencies to maintain a systematic program of review that demonstrates their standards are relevant to the education and training needs of students.

Section 602.21(c) Process for Changing Standards

Comment: Several commenters raised concerns that the proposed regulations require an agency to provide notice about proposed changes to standards only to its relevant constituencies but not to other interested parties. One commenter felt regional accreditors should be required to notify all institutions in their region, while specialized accreditors should be required to provide notice to all institutions that provide education in the field. Another commenter felt the regulations should require agencies to give institutions opportunity and adequate time to respond, with the knowledge that their comments will be considered. Finally, one commenter felt the requirement for agencies to complete an action to change a standard ''within a reasonable period of time'' after a problem is found was too vague. The commenter suggested as an alternative that agencies could demonstrate that they have a formal process that allows changes to the standards to occur in a systematic manner.

Discussion: During negotiated rulemaking, accreditors readily acknowledged their responsibility to notify persons they knew to be interested, but expressed concern about the burden and cost of providing timely and effective notice to a large number of entities to see if they might have an interest in commenting on proposed changes to their standards. The language negotiators agreed upon was an attempt to find a reasonable solution to the problem. Based on the comments we received, we have reconsidered the matter. We believe the concept of requiring a regional accreditor to notify all institutions in its region of proposed changes to its standards has some merit, but that it imposes a greater burden than necessary to address the concern. A more reasonable approach, we believe, is to require an accrediting agency to provide notice of proposed changes to its standards to all parties who have made their interest known to the agency. This will ensure that all who want notice will get it.

With regard to the comment that the regulations should require agencies to give institutions opportunity and adequate time to respond, we believe the regulations, by stating that agencies must give ''adequate opportunity to comment on the proposed changes,'' already do this.

Finally, we do not believe the phrase ''within a reasonable period of time'' is too vague. Rather, we believe it provides a degree of flexibility to agencies in establishing schedules for meetings, within a reasonable range.

Change: We have added the phrase ''and other parties who have made their interest known to the agency'' to 602.21(c)(1).

Section 602.22(a)(vii) Substantive Change Procedures for Additional Locations

Comments: Most commenters welcomed the changes to the requirement for mandatory site visits to new sites within 6 months. One commenter, however, wanted us to remove the requirement for a site visit to any additional locations a school establishes.

Discussion: We continue to believe that there is need for an accrediting agency to monitor an institution very closely as it begins to operate more than just the main campus. While the need for that close monitoring may diminish once the institution has gained experience in establishing effective systems for the administration of multiple sites, we do not believe that, in general, the addition of a single additional site is sufficient for an institution to be able to demonstrate that it has in place effective mechanisms to administer multiple sites.

Change: None.

Section 602.24(b) Change in Ownership

Comment: One commenter stated that the proposed regulations did not address a problem that existed with the 1994 regulations, namely that an agency cannot conduct a site visit unless it is notified of the change in ownership. The commenter suggested requiring agencies to conduct the site visit within 6 months following the change, or notification of the change, whichever comes later.

Discussion: The regulations require an agency's definition of substantive change to include any change in the legal status, form of control, or ownership of the institution. The agency's procedures for handling substantive change must also require an institution to obtain the agency's approval before the change is included in its scope of accreditation of the institution. Thus, the situation the commenter describes represents a failure by the school to follow the agency's required procedures and should be dealt with by the agency. No regulatory change is needed. Obviously, an agency can only conduct a site visit if it knows about the change in ownership, and we would not regard the agency as being in violation of the criteria for recognition if it failed to conduct a visit within 6 months of the change solely because it was not informed of the change at the time it occurred.

Change: None.

Section 602.24(c)(ii) Teach-outs

Comment: One commenter noted that the location of the closing institution may not be very near other institutions that offer similar programs and suggested that the regulations require the teach-out institution to be as geographically proximate to the closing institution as possible.

Discussion: We believe that this provision in the regulations must balance the goal of achieving the most geographically proximate teach-out with

the goal of ensuring, to the extent possible, that a teach-out is offered. Sometimes there is no institution that is as close to the closing institution as we might wish. In other instances, the most geographically proximate institution does not want to provide the teach-out, but another institution is willing to do so even if it is not as close to the closing institution.

We believe the regulations contain the flexibility necessary to best protect students. They address the proximity issue by requiring the teach-out institution to demonstrate that it can provide students access to the program without requiring them to move or travel substantial distances.

Change: None.

Section 602.26 Notification of Accrediting Decisions

Comments: One commenter stated that the 24-hour rule for notifying the public of final decisions to place an institution or program on probation or an equivalent status or to deny, withdraw, suspend, revoke, or terminate the accreditation or preaccreditation of an institution or program was unclear. The commenter asked whether this provision meant notifying the public in general, for example, by posting the notice to the agency's web site, or whether it meant telling anyone who happened to call the agency to inquire about the institution or program.

Another commenter suggested that guaranty agencies be included in the notification.

Discussion: With respect to the first commenter, we believe the principal issue here is providing effective notice to the public. We believe one way to do this is to post the information to the agency's web site within 24 hours of notifying the institution or program, but there may be other ways. The agency should have the flexibility to decide the approach that suits it best. Certainly the agency should give the information out to anyone who happens to call the agency inquiring about the institution or program after the 24-hour timeframe.

We agree with the commenter who suggested that guaranty agencies should receive notification about accrediting decisions. However, an accrediting agency may not know which guaranty agencies service a particular institution. Accordingly, the Department will establish a process for forwarding this information, upon receipt, to guaranty agencies.

Change: None.

Section 602.33 Appeal of an Advisory Committee Recommendation

Comments: One commenter thought that the 10-day timeframe for an agency to file its intent to appeal an Advisory Committee recommendation was too short. The commenter also questioned whether the 10-day timeframe meant 10 calendar days or 10 business days.

Discussion: We do not believe the 10-day timeframe to file an intent to appeal an Advisory Committee recommendation is too short. An agency knows the Advisory Committee's recommendation as soon as it is made, and it need only submit a simple declaration of intent to appeal, without any documentation, to meet the 10-day requirement. The regulations permit the agency 30 days to submit the actual appeal, along with any supporting documentation that agency may wish the Secretary to consider.

On the issue of whether the timeframe refers to calendar or business days, we note that all timeframes specified in these regulations follow the same convention as in the previous regulations; namely, they refer to calendar days, not business days.

Change: None.

Section 602.42 Appeal of the Subcommittee's Recommendation

Comments: One commenter thought that the selection of a subcommittee of the Advisory Committee to conduct a hearing on whether an agency's recognition should be limited, suspended, or terminated should be done randomly.

Discussion: With regard to the composition of the subcommittee, the principal issue is the availability of members to serve. The subcommittee is only convened if Department staff has concluded that an agency fails to comply with the criteria for recognition or is ineffective with respect to those criteria, either of which is a very serious situation and must be dealt with as quickly as possible. Requiring that subcommittee members be selected on a completely random basis, or even on a rotating basis, could jeopardize the Department's ability to convene the subcommittee quickly.

Change: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with these final regulations are those resulting from statutory requirements and those we have determined to be necessary for a determination that an accrediting agency that seeks recognition is in fact a reliable authority regarding the quality of education or training provided by the institutions or programs it accredits.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We discussed the potential costs and benefits of these final regulations in the preamble to the NPRM under the headings: Changes From Existing Regulations (64 FR 34467–34473), Paperwork Reduction Act of 1995 (64 FR 34474), and Regulatory Flexibility Act Certification (64 FR 34474).

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require accrediting agencies to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. We display the valid OMB control number assigned to the collection of information in these final regulations at the end of the affected sections of the regulations.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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List of Subjects in 34 CFR Part 602

Colleges and universities, Education, Reporting and recordkeeping requirements.

Dated: October 4, 1999.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations by revising part 602 to read as follows:

PART 602—THE SECRETARY'S RECOGNITION OF ACCREDITING AGENCIES

Subpart A—General

Subpart B—The Criteria for Recognition

Subpart C—The Recognition Process

Subpart D—Limitation, Suspension, or Termination of Recognition

Subpart E—Department Responsibilities

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

Subpart A—General

§ 602.1 Why does the Secretary recognize accrediting agencies?

(a) The Secretary recognizes accrediting agencies to ensure that these agencies are, for the purposes of the Higher Education Act of 1965, as amended (HEA), or for other Federal purposes, reliable authorities regarding the quality of education or training offered by the institutions or programs they accredit.

(b) The Secretary lists an agency as a nationally recognized accrediting agency if the agency meets the criteria for recognition listed in subpart B of this part.

(**Authority:** 20 U.S.C. 1099b)

§ 602.2 How do I know which agencies the Secretary recognizes?

(a) Periodically, the Secretary publishes a list of recognized agencies in the **Federal Register**, together with each agency's scope of recognition. You may obtain a copy of the list from the Department at any time. The list is also available on the Department's web site.

(b) If the Secretary denies continued recognition to a previously recognized agency, or if the Secretary limits, suspends, or terminates the agency's recognition before the end of its recognition period, the Secretary publishes a notice of that action in the **Federal Register**. The Secretary also makes the reasons for the action available to the public, on request.

(**Authority:** 20 U.S.C. 1099b)

§ 602.3 What definitions apply to this part?

The following definitions apply to this part:

Accreditation means the status of public recognition that an accrediting agency grants to an educational institution or program that meets the agency's standards and requirements.

Accrediting agency or *agency* means a legal entity, or that part of a legal entity, that conducts accrediting activities through voluntary, non-Federal peer review and makes decisions concerning the accreditation or preaccreditation status of institutions, programs, or both.

Act means the Higher Education Act of 1965, as amended.

Adverse accrediting action or *adverse action* means the denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution or program.

Advisory Committee means the National Advisory Committee on Institutional Quality and Integrity.

Branch campus means a location of an institution that meets the definition of branch campus in 34 CFR 600.2.

Distance education means an educational process that is characterized by the separation, in time or place, between instructor and student. The term includes courses offered principally through the use of—

(1) Television, audio, or computer transmission, such as open broadcast, closed circuit, cable, microwave, or satellite transmission;

(2) Audio or computer conferencing;

(3) Video cassettes or disks; or

(4) Correspondence.

Final accrediting action means a final determination by an accrediting agency regarding the accreditation or

preaccreditation status of an institution or program. A final accrediting action is not appealable within the agency.

Institution of higher education or *institution* means an educational institution that qualifies, or may qualify, as an eligible institution under 34 CFR part 600.

Institutional accrediting agency means an agency that accredits institutions of higher education.

Nationally recognized accrediting agency, nationally recognized agency, or *recognized agency* means an accrediting agency that the Secretary recognizes under this part.

Preaccreditation means the status of public recognition that an accrediting agency grants to an institution or program for a limited period of time that signifies the agency has determined that the institution or program is progressing towards accreditation and is likely to attain accreditation before the expiration of that limited period of time.

Program means a postsecondary educational program offered by an institution of higher education that leads to an academic or professional degree, certificate, or other recognized educational credential.

Programmatic accrediting agency means an agency that accredits specific educational programs that prepare students for entry into a profession, occupation, or vocation.

Representative of the public means a person who is not—

(1) An employee, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that either is accredited or preaccredited by the agency or has applied for accreditation or preaccreditation;

(2) A member of any trade association or membership organization related to, affiliated with, or associated with the agency; or

(3) A spouse, parent, child, or sibling of an individual identified in paragraph (1) or (2) of this definition.

Scope of recognition or *scope* means the range of accrediting activities for which the Secretary recognizes an agency. The Secretary may place a limitation on the scope of an agency's recognition for Title IV, HEA purposes. The Secretary's designation of scope defines the recognition granted according to—

(1) Geographic area of accrediting activities;

(2) Types of degrees and certificates covered;

(3) Types of institutions and programs covered;

(4) Types of preaccreditation status covered, if any; and

(5) Coverage of accrediting activities related to distance education, if any.

Secretary means the Secretary of the U.S. Department of Education or any official or employee of the Department acting for the Secretary under a delegation of authority.

Senior Department official means the senior official in the U.S. Department of Education who reports directly to the Secretary regarding accrediting agency recognition.

State means a State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. The latter three are also known as the Freely Associated States.

Teach-out agreement means a written agreement between institutions that provides for the equitable treatment of students if one of those institutions stops offering an educational program before all students enrolled in that program have completed the program.

(Authority: 20 U.S.C. 1099b)

Subpart B—The Criteria for Recognition

Basic Eligibility Requirements

§ 602.10 Link to Federal programs.

The agency must demonstrate that—

(a) If the agency accredits institutions of higher education, its accreditation is a required element in enabling at least one of those institutions to establish eligibility to participate in HEA programs; or

(b) If the agency accredits institutions of higher education or higher education programs, or both, its accreditation is a required element in enabling at least one of those entities to establish eligibility to participate in non-HEA Federal programs.

(Authority: 20 U.S.C. 1099b)

§ 602.11 Geographic scope of accrediting activities.

The agency must demonstrate that its accrediting activities cover—

(a) A State, if the agency is part of a State government;

(b) A region of the United States that includes at least three States that are reasonably close to one another; or

(c) The United States.

(Authority: 20 U.S.C. 1099b)

§ 602.12 Accrediting experience.

(a) An agency seeking initial recognition must demonstrate that it has—

(1) Granted accreditation or preaccreditation—

(i) To one or more institutions if it is requesting recognition as an institutional accrediting agency and to one or more programs if it is requesting recognition as a programmatic accrediting agency;

(ii) That covers the range of the specific degrees, certificates, institutions, and programs for which it seeks recognition; and

(iii) In the geographic area for which it seeks recognition; and

(2) Conducted accrediting activities, including deciding whether to grant or deny accreditation or preaccreditation, for at least two years prior to seeking recognition.

(b) A recognized agency seeking an expansion of its scope of recognition must demonstrate that it has granted accreditation or preaccreditation covering the range of the specific degrees, certificates, institutions, and programs for which it seeks the expansion of scope.

(Authority: 20 U.S.C. 1099b)

§ 602.13 Acceptance of the agency by others.

The agency must demonstrate that its standards, policies, procedures, and decisions to grant or deny accreditation are widely accepted in the United States by—

(a) Educators and educational institutions; and

(b) Licensing bodies, practitioners, and employers in the professional or vocational fields for which the educational institutions or programs within the agency's jurisdiction prepare their students.

(Authority: 20 U.S.C. 1099b)

Organizational and Administrative Requirements

§ 602.14 Purpose and organization.

(a) The Secretary recognizes only the following four categories of agencies:

The Secretary recognizes . . .	that . . .
(1) An accrediting agency	(i) Has a voluntary membership of institutions of higher education;

The Secretary recognizes . . .	that . . .
	(ii) Has as a principal purpose the accrediting of institutions of higher education and that accreditation is a required element in enabling those institutions to participate in HEA programs; and (iii) Satisfies the ''separate and independent'' requirements in paragraph (b) of this section.
(2) An accrediting agency	(i) Has a voluntary membership; and (ii) Has as its principal purpose the accrediting of higher education programs, or higher education programs and institutions of higher education, and that accreditation is a required element in enabling those entities to participate in non-HEA Federal programs.
(3) An accrediting agency	for purposes of determining eligibility for Title IV, HEA programs— (i) Either has a voluntary membership of individuals participating in a profession or has as its principal purpose the accrediting of programs within institutions that are accredited by a nationally recognized accrediting agency; and (ii) Either satisfies the ''separate and independent'' requirements in paragraph (b) of this section or obtains a waiver of those requirements under paragraphs (d) and (e) of this section.
(4) A State agency	(i) Has as a principal purpose the accrediting of institutions of higher education, higher education programs, or both; and (ii) The Secretary listed as a nationally recognized accrediting agency on or before October 1, 1991 and has recognized continuously since that date.

(b) For purposes of this section, the term *separate and independent* means that—

(1) The members of the agency's decision-making body—who decide the accreditation or preaccreditation status of institutions or programs, establish the agency's accreditation policies, or both—are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association or membership organization;

(2) At least one member of the agency's decision-making body is a representative of the public, and at least one-seventh of that body consists of representatives of the public;

(3) The agency has established and implemented guide lines for each member of the decision-making body to avoid conflicts of interest in making decisions;

(4) The agency's dues are paid separately from any dues paid to any related, associated, or affiliated trade association or membership organization; and

(5) The agency develops and determines its own budget, with no review by or consultation with any other entity or organization.

(c) The Secretary considers that any joint use of personnel, services, equipment, or facilities by an agency and a related, associated, or affiliated trade association or membership organization does not violate the ''separate and independent'' requirements in paragraph (b) of this section if—

(1) The agency pays the fair market value for its proportionate share of the joint use; and

(2) The joint use does not compromise the independence and confidentiality of the accreditation process.

(d) For purposes of paragraph (a)(3) of this section, the Secretary may waive the ''separate and independent'' requirements in paragraph (b) of this section if the agency demonstrates that—

(1) The Secretary listed the agency as a nationally recognized agency on or before October 1, 1991 and has recognized it continuously since that date;

(2) The related, associated, or affiliated trade association or membership organization plays no role in making or ratifying either the accrediting or policy decisions of the agency;

(3) The agency has sufficient budgetary and administrative autonomy to carry out its accrediting functions independently; and

(4) The agency provides to the related, associated, or affiliated trade association or membership organization only information it makes available to the public.

(e) An agency seeking a waiver of the ''separate and independent'' requirements under paragraph (d) of this section must apply for the waiver each time the agency seeks recognition or continued recognition.

(Authority: 20 U.S.C. 1099b)

§ 602.15 Administrative and fiscal responsibilities.

The agency must have the administrative and fiscal capability to carry out its accreditation activities in light of its requested scope of recognition. The agency meets this requirement if the agency demonstrates that—

(a) The agency has—

(1) Adequate administrative staff and financial resources to carry out its accrediting responsibilities;

(2) Competent and knowledgeable individuals, qualified by education and experience in their own right and trained by the agency on its standards, policies, and procedures, to conduct its on-site evaluations, establish its policies, and make its accrediting and preaccrediting decisions;

(3) Academic and administrative personnel on its evaluation, policy, and decision-making bodies, if the agency accredits institutions;

(4) Educators and practitioners on its evaluation, policy, and decision-making bodies, if the agency accredits programs or single-purpose institutions that prepare students for a specific profession;

(5) Representatives of the public on all decision-making bodies; and

(6) Clear and effective controls against conflicts of interest, or the appearance of conflicts of interest, by the agency's—

(i) Board members;

(ii) Commissioners;

(iii) Evaluation team members;

(iv) Consultants;

(v) Administrative staff; and

(vi) Other agency representatives; and

(b) The agency maintains complete and accurate records of—

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

(2) All decisions regarding the accreditation and preaccreditation of any institution or program, including all correspondence that is significantly related to those decisions.

(Approved by the Office of Management and Budget under control number 1845–0003)

(Authority: 20 U.S.C. 1099b)

Required Standards and Their Application

§ 602.16 Accreditation and preaccreditation standards.

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

(1) The agency's accreditation standards effectively address the quality of the institution or program in the following areas:

(i) Success with respect to student achievement in relation to the institution's mission, including, as appropriate, consideration of course completion, State licensing examination, and job placement rates.

(ii) Curricula.

(iii) Faculty.

(iv) Facilities, equipment, and supplies.

(v) Fiscal and administrative capacity as appropriate to the specified scale of operations.

(vi) Student support services.

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

(viii) Measures of program length and the objectives of the degrees or credentials offered.

(ix) Record of student complaints received by, or available to, the agency.

(x) Record of compliance with the institution's program responsibilities under Title IV of the Act, based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and any other information that the Secretary may provide to the agency; and

(2) The agency's preaccreditation standards, if offered, are appropriately related to the agency's accreditation standards and do not permit the institution or program to hold preaccreditation status for more than five years.

(b) If the agency only accredits programs and does not serve as an institutional accrediting agency for any of those programs, its accreditation standards must address the areas in paragraph (a)(1) of this section in terms of the type and level of the program rather than in terms of the institution.

(c) If none of the institutions an agency accredits participates in any Title IV, HEA program, or if the agency only accredits programs within institutions that are accredited by a nationally recognized institutional accrediting agency, the agency is not required to have the accreditation standards described in paragraphs (a)(1)(viii) and (a)(1)(x) of this section.

(d) An agency that has established and applies the standards in paragraph (a) of this section may establish any additional accreditation standards it deems appropriate.

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(**Authority:** 20 U.S.C. 1099b)

§ 602.17 Application of standards in reaching an accrediting decision.

The agency must have effective mechanisms for evaluating an institution's or program's compliance with the agency's standards before reaching a decision to accredit or preaccredit the institution or program. The agency meets this requirement if the agency demonstrates that it—

(a) Evaluates whether an institution or program—

(1) Maintains clearly specified educational objectives that are consistent with its mission and appropriate in light of the degrees or certificates awarded;

(2) Is successful in achieving its stated objectives; and

(3) Maintains degree and certificate requirements that at least conform to commonly accepted standards;

(b) Requires the institution or program to prepare, following guidance provided by the agency, an in-depth self-study that includes the assessment of educational quality and the institution's or program's continuing efforts to improve educational quality;

(c) Conducts at least one on-site review of the institution or program during which it obtains sufficient information to determine if the institution or program complies with the agency's standards;

(d) Allows the institution or program the opportunity to respond in writing to the report of the on-site review;

(e) Conducts its own analysis of the self-study and supporting documentation furnished by the institution or program, the report of the on-site review, the institution's or program's response to the report, and any other appropriate information from other sources to determine whether the institution or program complies with the agency's standards; and

(f) Provides the institution or program with a detailed written report that assesses—

(1) The institution's or program's compliance with the agency's standards, including areas needing improvement; and

(2) The institution's or program's performance with respect to student achievement.

(**Authority:** 20 U.S.C. 1099b)

§ 602.18 Ensuring consistency in decision-making.

The agency must consistently apply and enforce its standards to ensure that the education or training offered by an institution or program, including any offered through distance education, is of sufficient quality to achieve its stated objective for the duration of any accreditation or preaccreditation period granted by the agency. The agency meets this requirement if the agency—

(a) Has effective controls against the inconsistent application of the agency's standards;

(b) Bases decisions regarding accreditation and preaccreditation on the agency's published standards; and

(c) Has a reasonable basis for determining that the information the agency relies on for making accrediting decisions is accurate.

(**Authority:** 20 U.S.C. 1099b)

§ 602.19 Monitoring and reevaluation of accredited institutions and programs.

(a) The agency must reevaluate, at regularly established intervals, the institutions or programs it has accredited or preaccredited.

(b) The agency must monitor institutions or programs throughout their accreditation or preaccreditation period to ensure that they remain in compliance with the agency's standards. This includes conducting special evaluations or site visits, as necessary.

(**Authority:** 20 U.S.C. 1099b)

§ 602.20 Enforcement of standards.

(a) If the agency's review of an institution or program under any standard indicates that the institution or program is not in compliance with that standard, the agency must—

(1) Immediately initiate adverse action against the institution or program; or

(2) Require the institution or program to take appropriate action to bring itself into compliance with the agency's standards within a time period that must not exceed—

(i) Twelve months, if the program, or the longest program offered by the institution, is less than one year in length;

(ii) Eighteen months, if the program, or the longest program offered by the institution, is at least one year, but less than two years, in length; or

(iii) Two years, if the program, or the longest program offered by the

institution, is at least two years in length.

(b) If the institution or program does not bring itself into compliance within the specified period, the agency must take immediate adverse action unless the agency, for good cause, extends the period for achieving compliance.

(**Authority:** 20 U.S.C. 1099b)

§ 602.21 Review of standards.

(a) The agency must maintain a systematic program of review that demonstrates that its standards are adequate to evaluate the quality of the education or training provided by the institutions and programs it accredits and relevant to the educational or training needs of students.

(b) The agency determines the specific procedures it follows in evaluating its standards, but the agency must ensure that its program of review—

(1) Is comprehensive;

(2) Occurs at regular, yet reasonable, intervals or on an ongoing basis;

(3) Examines each of the agency's standards and the standards as a whole; and

(4) Involves all of the agency's relevant constituencies in the review and affords them a meaningful opportunity to provide input into the review.

(c) If the agency determines, at any point during its systematic program of review, that it needs to make changes to its standards, the agency must initiate action within 12 months to make the changes and must complete that action within a reasonable period of time. Before finalizing any changes to its standards, the agency must—

(1) Provide notice to all of the agency's relevant constituencies, and other parties who have made their interest known to the agency, of the changes the agency proposes to make;

(2) Give the constituencies and other interested parties adequate opportunity to comment on the proposed changes; and

(3) Take into account any comments on the proposed changes submitted timely by the relevant constituencies and by other interested parties.

(**Authority:** 20 U.S.C. 1099b)

Required Operating Policies and Procedures

§ 602.22 Substantive change.

(a) If the agency accredits institutions, it must maintain adequate substantive change policies that ensure that any substantive change to the educational mission, program, or programs of an institution after the agency has accredited or preaccredited the institution does not adversely affect the capacity of the institution to continue to meet the agency's standards. The agency meets this requirement if—

(1) The agency requires the institution to obtain the agency's approval of the substantive change before the agency includes the change in the scope of accreditation or preaccreditation it previously granted to the institution; and

(2) The agency's definition of substantive change includes at least the following types of change:

(i) Any change in the established mission or objectives of the institution.

(ii) Any change in the legal status, form of control, or ownership of the institution.

(iii) The addition of courses or programs that represent a significant departure, in either content or method of delivery, from those that were offered when the agency last evaluated the institution.

(iv) The addition of courses or programs at a degree or credential level above that which is included in the institution's current accreditation or preaccreditation.

(v) A change from clock hours to credit hours.

(vi) A substantial increase in the number of clock or credit hours awarded for successful completion of a program.

(vii) The establishment of an additional location geographically apart from the main campus at which the institution offers at least 50 percent of an educational program.

(b) The agency may determine the procedures it uses to grant prior approval of the substantive change. Except as provided in paragraph (c) of this section, these may, but need not, require a visit by the agency.

(c) If the agency's accreditation of an institution enables the institution to seek eligibility to participate in Title IV, HEA programs, the agency's procedures for the approval of an additional location described in paragraph (a)(2)(vii) of this section must determine if the institution has the fiscal and administrative capacity to operate the additional location. In addition, the agency's procedures must include—

(1) A visit, within six months, to each additional location the institution establishes, if the institution—

(i) Has a total of three or fewer additional locations;

(ii) Has not demonstrated, to the agency's satisfaction, that it has a proven record of effective educational oversight of additional locations; or

(iii) Has been placed on warning, probation, or show cause by the agency or is subject to some limitation by the agency on its accreditation or preaccreditation status;

(2) An effective mechanism for conducting, at reasonable intervals, visits to additional locations of institutions that operate more than three additional locations; and

(3) An effective mechanism, which may, at the agency's discretion, include visits to additional locations, for ensuring that accredited and preaccredited institutions that experience rapid growth in the number of additional locations maintain educational quality.

(d) The purpose of the visits described in paragraph (c) of this section is to verify that the additional location has the personnel, facilities, and resources it claimed to have in its application to the agency for approval of the additional location.

(**Authority:** 20 U.S.C. 1099b)

§ 602.23 Operating procedures all agencies must have.

(a) The agency must maintain and make available to the public, upon request, written materials describing—

(1) Each type of accreditation and preaccreditation it grants;

(2) The procedures that institutions or programs must follow in applying for accreditation or preaccreditation;

(3) The standards and procedures it uses to determine whether to grant, reaffirm, reinstate, restrict, deny, revoke, terminate, or take any other action related to each type of accreditation and preaccreditation that the agency grants;

(4) The institutions and programs that the agency currently accredits or preaccredits and, for each institution and program, the year the agency will next review or reconsider it for accreditation or preaccreditation; and

(5) The names, academic and professional qualifications, and relevant employment and organizational affiliations of—

(i) The members of the agency's policy and decision-making bodies; and

(ii) The agency's principal administrative staff.

(b) In providing public notice that an institution or program subject to its jurisdiction is being considered for accreditation or preaccreditation, the agency must provide an opportunity for third-party comment concerning the institution's or program's qualifications for accreditation or preaccreditation. At the agency's discretion, third-party comment may be received either in writing or at a public hearing, or both.

(c) The accrediting agency must—

(1) Review in a timely, fair, and equitable manner any complaint it

receives against an accredited institution or program that is related to the agency's standards or procedures;

(2) Take follow-up action, as necessary, including enforcement action, if necessary, based on the results of its review; and

(3) Review in a timely, fair, and equitable manner, and apply unbiased judgment to, any complaints against itself and take follow-up action, as appropriate, based on the results of its review.

(d) If an institution or program elects to make a public disclosure of its accreditation or preaccreditation status, the agency must ensure that the institution or program discloses that status accurately, including the specific academic or instructional programs covered by that status and the name, address, and telephone number of the agency.

(e) The accrediting agency must provide for the public correction of incorrect or misleading information an accredited or preaccredited institution or program releases about—

(1) The accreditation or preaccreditation status of the institution or program;

(2) The contents of reports of on-site reviews; and

(3) The agency's accrediting or preaccrediting actions with respect to the institution or program.

(f) The agency may establish any additional operating procedures it deems appropriate. At the agency's discretion, these may include unannounced inspections.

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(**Authority:** 20 U.S.C. 1099b)

§ 602.24 Additional procedures certain institutional accreditors must have.

If the agency is an institutional accrediting agency and its accreditation or preaccreditation enables those institutions to obtain eligibility to participate in Title IV, HEA programs, the agency must demonstrate that it has established and uses all of the following procedures:

(a) *Branch campus.* (1) The agency must require the institution to notify the agency if it plans to establish a branch campus and to submit a business plan for the branch campus that describes—

(i) The educational program to be offered at the branch campus;

(ii) The projected revenues and expenditures and cash flow at the branch campus; and

(iii) The operation, management, and physical resources at the branch campus.

(2) The agency may extend accreditation to the branch campus only after it evaluates the business plan and takes whatever other actions it deems necessary to determine that the branch campus has sufficient educational, financial, operational, management, and physical resources to meet the agency's standards.

(3) The agency must undertake a site visit to the branch campus as soon as practicable, but no later than six months after the establishment of that campus.

(b) *Change in ownership.* The agency must undertake a site visit to an institution that has undergone a change of ownership that resulted in a change of control as soon as practicable, but no later than six months after the change of ownership.

(c) *Teach-out agreements.* (1) The agency must require an institution it accredits or preaccredits that enters into a teach-out agreement with another institution to submit that teach-out agreement to the agency for approval.

(2) The agency may approve the teach-out agreement only if the agreement is between institutions that are accredited or preaccredited by a nationally recognized accrediting agency, is consistent with applicable standards and regulations, and provides for the equitable treatment of students by ensuring that—

(i) The teach-out institution has the necessary experience, resources, and support services to provide an educational program that is of acceptable quality and reasonably similar in content, structure, and scheduling to that provided by the closed institution; and

(ii) The teach-out institution demonstrates that it can provide students access to the program and services without requiring them to move or travel substantial distances.

(3) If an institution the agency accredits or preaccredits closes, the agency must work with the Department and the appropriate State agency, to the extent feasible, to ensure that students are given reasonable opportunities to complete their education without additional charge.

(Approved by the Office of Management and Budget under control number 1845–0003)

(Authority: 20 U.S.C. 1099b)

§ 602.25 Due process.

The agency must demonstrate that the procedures it uses throughout the accrediting process satisfy due process. The agency meets this requirement if the agency does the following:

(a) The agency uses procedures that afford an institution or program a reasonable period of time to comply with the agency's requests for information and documents.

(b) The agency notifies the institution or program in writing of any adverse accrediting action or an action to place the institution or program on probation or show cause. The notice describes the basis for the action.

(c) The agency permits the institution or program the opportunity to appeal an adverse action and the right to be represented by counsel during that appeal. If the agency allows institutions or programs the right to appeal other types of actions, the agency has the discretion to limit the appeal to a written appeal.

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

(Authority: 20 U.S.C. 1099b)

§ 602.26 Notification of accrediting decisions.

The agency must demonstrate that it has established and follows written procedures requiring it to provide written notice of its accrediting decisions to the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and the public. The agency meets this requirement if the agency, following its written procedures—

(a) Provides written notice of the following types of decisions to the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and the public no later than 30 days after it makes the decision:

(1) A decision to award initial accreditation or preaccreditation to an institution or program.

(2) A decision to renew an institution's or program's accreditation or preaccreditation;

(b) Provides written notice of the following types of decisions to the Secretary, the appropriate State licensing or authorizing agency, and the appropriate accrediting agencies at the same time it notifies the institution or program of the decision, but no later than 30 days after it reaches the decision:

(1) A final decision to place an institution or program on probation or an equivalent status.

(2) A final decision to deny, withdraw, suspend, revoke, or terminate the accreditation or preaccreditation of an institution or program;

(c) Provides written notice to the public of the decisions listed in paragraphs (b)(1) and (b)(2) of this section within 24 hours of its notice to the institution or program;

(d) For any decision listed in paragraph (b)(2) of this section, makes available to the Secretary, the appropriate State licensing or authorizing agency, and the public upon request, no later than 60 days after the decision, a brief statement summarizing the reasons for the agency's decision and the comments, if any, that the affected institution or program may wish to make with regard to that decision; and

(e) Notifies the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and, upon request, the public if an accredited or preaccredited institution or program—

(1) Decides to withdraw voluntarily from accreditation or preaccreditation, within 30 days of receiving notification from the institution or program that it is withdrawing voluntarily from accreditation or preaccreditation; or

(2) Lets its accreditation or preaccreditation lapse, within 30 days of the date on which accreditation or preaccreditation lapses.

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(Authority: 20 U.S.C. 1099b)

§ 602.27 Other information an agency must provide the Department.

The agency must submit to the Department—

(a) A copy of any annual report it prepares;

(b) A copy, updated annually, of its directory of accredited and preaccredited institutions and programs;

(c) A summary of the agency's major accrediting activities during the previous year (an annual data summary), if requested by the Secretary to carry out the Secretary's responsibilities related to this part;

(d) Any proposed change in the agency's policies, procedures, or accreditation or preaccreditation standards that might alter its—

(1) Scope of recognition; or

(2) Compliance with the criteria for recognition;

(e) The name of any institution or program it accredits that the agency has reason to believe is failing to meet its Title IV, HEA program responsibilities or is engaged in fraud or abuse, along with the agency's reasons for concern about the institution or program; and

(f) If the Secretary requests, information that may bear upon an accredited or preaccredited institution's compliance with its Title IV, HEA program responsibilities, including the eligibility of the institution or program to participate in Title IV, HEA programs. The Secretary may ask for this information to assist the Department in resolving problems with the institution's participation in the Title IV, HEA programs.

(Approved by the Office of Management and Budget under control number 1845–0003)

(Authority: 20 U.S.C. 1099b)

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

(a) If the agency is an institutional accrediting agency, it may not accredit or preaccredit institutions that lack legal authorization under applicable State law to provide a program of education beyond the secondary level.

(b) Except as provided in paragraph (c) of this section, the agency may not grant initial or renewed accreditation or preaccreditation to an institution, or a program offered by an institution, if the agency knows, or has reasonable cause to know, that the institution is the subject of—

(1) A pending or final action brought by a State agency to suspend, revoke, withdraw, or terminate the institution's legal authority to provide postsecondary education in the State;

(2) A decision by a recognized agency to deny accreditation or preaccreditation;

(3) A pending or final action brought by a recognized accrediting agency to suspend, revoke, withdraw, or terminate the institution's accreditation or preaccreditation; or

(4) Probation or an equivalent status imposed by a recognized agency.

(c) The agency may grant accreditation or preaccreditation to an institution or program described in paragraph (b) of this section only if it provides to the Secretary, within 30 days of its action, a thorough and reasonable explanation, consistent with its standards, why the action of the other body does not preclude the agency's grant of accreditation or preaccreditation.

(d) If the agency learns that an institution it accredits or preaccredits, or an institution that offers a program it accredits or preaccredits, is the subject of an adverse action by another recognized accrediting agency or has been placed on probation or an equivalent status by another recognized agency, the agency must promptly review its accreditation or preaccreditation of the institution or program to determine if it should also take adverse action or place the institution or program on probation or show cause.

(e) The agency must, upon request, share with other appropriate recognized accrediting agencies and recognized State approval agencies information about the accreditation or preaccreditation status of an institution or program and any adverse actions it has taken against an accredited or preaccredited institution or program.

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(Authority: 20 U.S.C. 1099b)

Subpart C—The Recognition Process

Application and Review by Department Staff

§ 602.30 How does an agency apply for recognition?

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

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

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

(3) Supporting documentation.

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

(c) The Secretary does not make available to the public any confidential agency materials a Department employee reviews during the evaluation of either the agency's application for recognition or the agency's compliance with the criteria for recognition.

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(Authority: 20 U.S.C. 1099b)

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

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

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

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

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

(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) Site visits, on an announced or unannounced basis, to the agency and, at the Secretary's discretion, to some of the institutions or programs it accredits or preaccredits;

(2) Review of the public comments and other third-party information the Department staff receives by the established deadline, as well as any other information Department staff assembles for purposes of evaluating the agency under this part; and

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

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

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

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

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

(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—

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

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

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

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

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

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

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

(2) The Department staff analysis of the agency.

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

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

(5) Any addendum to the Department staff analysis.

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

(i) At least 30 days before the Advisory Committee meeting, the Department 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.

(Authority: 20 U.S.C. 1099b)

Review by the National Advisory Committee on Institutional Quality and Integrity

§ 602.32 What is the role of the Advisory Committee and the senior Department official in the review of an agency's application?

(a) The Advisory Committee considers an agency's application for recognition at a public meeting and invites Department staff, the agency, and other interested parties to make oral presentations at the meeting. A transcript is made of each Advisory Committee meeting.

(b) When it concludes its review, the Advisory Committee recommends that the Secretary either approve or deny recognition or that the Secretary defer a decision on the agency's application for recognition.

(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 recognition.

(iii) If the recommended scope or period of recognition is less than that requested by the agency, the Advisory Committee explains its reasons for recommending the 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 Advisory Committee recommends denial of recognition, unless the Advisory Committee concludes that a deferral under paragraph (b)(3) of this section is warranted.

(ii) If the Advisory Committee recommends denial, 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.

(3)(i) The Advisory Committee may recommend deferral of a decision on recognition if it concludes that the agency's deficiencies do not warrant immediate loss of recognition and if it 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 its deferral recommendation, the Advisory Committee states the bases for its 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 Advisory Committee also recommends a deferral period, which 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 Secretary.

(c) At the conclusion of its meeting, the Advisory Committee forwards its recommendations to the Secretary through the senior Department official.

(d) For any Advisory Committee recommendation not appealed under

§ 602.33, the senior Department official includes with the Advisory Committee materials forwarded to the Secretary a memorandum containing the senior Department official's recommendations regarding the actions proposed by the Advisory Committee.

(Authority: 20 U.S.C. 1099b and 1145)

§ 602.33 How may an agency appeal a recommendation of the Advisory Committee?

(a) Either the agency or the senior Department official may appeal the Advisory Committee's recommendation. If a party wishes to appeal, that party must—

(1) Notify the Secretary and the other party in writing of its intent to appeal the recommendation no later than 10 days after the Advisory Committee meeting;

(2) Submit its appeal in writing to the Secretary no later than 30 days after the Advisory Committee meeting; and

(3) Provide the other party with a copy of the appeal at the same time it submits the appeal to the Secretary.

(b) The non-appealing party may file a written response to the appeal. If that party wishes to do so, it must—

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

(2) Provide the appealing party with a copy of its response at the same time it submits its response 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.

(**Authority:** 20 U.S.C. 1099b and 1145)

Review and Decision by the Secretary

§ 602.34 What does the Secretary consider when making a recognition decision?

The Secretary makes the decision regarding recognition of an agency based on the entire record of the agency's application, including the following:

(a) The Advisory Committee's recommendation.

(b) The senior Department official's recommendation, if any.

(c) The agency's application and supporting documentation.

(d) The Department staff analysis of the agency.

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

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

(g) Any addendum to the Department staff analysis.

(h) All oral presentations at the Advisory Committee meeting.

(i) Any materials submitted by the parties, within the established timeframes, in an appeal taken in accordance with § 602.33.

(**Authority:** 20 U.S.C. 1099b)

§ 602.35 What information does the Secretary's recognition decision include?

(a) The Secretary notifies the agency in writing of the Secretary's decision regarding the agency's application for recognition.

(b) The Secretary either approves or denies recognition or defers a decision on the agency's application for recognition.

(1)(i) The Secretary 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 Secretary approves recognition, the Secretary's 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 Secretary 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 Secretary denies recognition, unless the Secretary concludes that a deferral under paragraph (b)(3) of this section is warranted.

(ii) If the Secretary denies recognition, the Secretary 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.

(3)(i) The Secretary may defer a decision on recognition if the Secretary concludes that the agency's deficiencies do not warrant immediate loss of recognition and if the Secretary 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 Secretary states the bases for the Secretary'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 Secretary also establishes a deferral period, which begins on the date of the Secretary'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 Secretary, except that the Secretary may grant an extension of an expiring deferral period at the request of the agency for good cause shown.

(c) The recognition period may not exceed five years.

(d) If the Secretary does not reach a final decision to approve or deny an agency's application for continued recognition before the expiration of its recognition period, the Secretary automatically extends the recognition period until the final decision is reached.

(**Authority:** 20 U.S.C. 1099b)

§ 602.36 May an agency appeal the Secretary's final recognition decision?

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.

(**Authority:** 20 U.S.C. 1099b)

Subpart D—Limitation, Suspension, or Termination of Recognition Limitation, Suspension, and Termination Procedures

§ 602.40 How may the Secretary limit, suspend, or terminate an agency's recognition?

(a) If the Secretary determines, after notice and an opportunity for a hearing, that a recognized agency does not comply with the criteria for recognition in subpart B of this part or that the agency is not effective in its performance with respect to those criteria, the Secretary—

(1) Limits, suspends, or terminates the agency's recognition; or

(2) Requires the agency to take appropriate action to bring itself into compliance with the criteria and achieve effectiveness within a timeframe that may not exceed 12 months.

(b) If, at the conclusion of the timeframe specified in paragraph (a)(2) of this section, the Secretary determines, after notice and an opportunity for a hearing, that the agency has failed to bring itself into compliance or has failed to achieve effectiveness, the Secretary limits, suspends, or terminates recognition, unless the Secretary extends the timeframe, on request by the agency for good cause shown.

(**Authority:** 20 U.S.C. 1099b).

§ 602.41 What are the notice procedures?

(a) Department staff initiates an action to limit, suspend, or terminate an agency's recognition by notifying the agency in writing of the Secretary's intent to limit, suspend, or terminate recognition. The notice—

(1) Describes the specific action the Secretary seeks to take against the agency and the reasons for that action, including the criteria with which the agency has failed to comply;

(2) Specifies the effective date of the action; and

(3) Informs the agency of its right to respond to the notice and request a hearing.

(b) Department staff may send the notice described in paragraph (a) of this section at any time the staff concludes that the agency fails to comply with the criteria for recognition in subpart B of this part or is not effective in its performance with respect to those criteria.

(**Authority:** 20 U.S.C. 1099b)

§ 602.42 What are the response and hearing procedures?

(a) If the agency wishes either to respond to the notice or request a hearing, or both, it must do so in writing no later than 30 days after it receives the notice of the Secretary's intent to limit, suspend, or terminate recognition.

(1) The agency's submission must identify the issues and facts in dispute and the agency's position on them.

(2) If neither a response nor a request for a hearing is filed by the deadline, the notice of intent becomes a final decision by the Secretary.

(b)(1) After receiving the agency's response and hearing request, if any, the Secretary chooses a subcommittee composed of five members of the Advisory Committee to adjudicate the matter and notifies the agency of the subcommittee's membership.

(2) The agency may challenge membership of the subcommittee on grounds of conflict of interest on the part of one or more members and, if the agency's challenge is successful, the Secretary will replace the member or members challenged.

(c) After the subcommittee has been selected, Department staff sends the members of the subcommittee copies of the notice to limit, suspend, or terminate recognition, along with the agency's response, if any.

(d)(1) If a hearing is requested, it is held in Washington, DC, at a date and time set by Department staff.

(2) A transcript is made of the hearing.

(3) Except as provided in paragraph (e) of this section, the subcommittee allows Department staff, the agency, and any interested party to make an oral or written presentation, which may include the introduction of written and oral evidence.

(e) On agreement by Department staff and the agency, the subcommittee review may be based solely on the written materials submitted.

(**Authority:** 20 U.S.C. 1099b)

§ 602.43 How is a decision on limitation, suspension, or termination of recognition reached?

(a) After consideration of the notice of intent to limit, suspend, or terminate recognition, the agency's response, if any, and all submissions and presentations made at the hearing, if any, the subcommittee issues a written opinion and sends it to the Secretary, with copies to the agency and the senior Department official. The opinion includes—

(1) Findings of fact, based on consideration of all the evidence, presentations, and submissions before the subcommittee;

(2) A recommendation as to whether a limitation, suspension, or termination of the agency's recognition is warranted; and

(3) The reasons supporting the subcommittee's recommendation.

(b) Unless the subcommittee's recommendation is appealed under § 602.44, the Secretary issues a final decision on whether to limit, suspend, or terminate the agency's recognition. The Secretary bases the decision on consideration of the full record before the subcommittee and the subcommittee's opinion.

(**Authority:** 20 U.S.C. 1099b)

Appeal Rights and Procedures

§ 602.44 How may an agency appeal the subcommittee's recommendation?

(a) Either the agency or the senior Department official may appeal the subcommittee's recommendation. If a party wishes to appeal, that party must—

(1) Notify the Secretary and the other party in writing of its intent to appeal the recommendation no later than 10 days after receipt of the recommendation;

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

(3) Provide the other party with a copy of the appeal at the same time it submits the appeal to the Secretary.

(b) The non-appealing party may file a written response to the appeal. If that party wishes to do so, it must—

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

(2) Provide the appealing party with a copy of its response at the same time it submits its response 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 subcommittee.

(d) If the subcommittee's recommendation is appealed, the Secretary renders a final decision after taking into account that recommendation and the parties' written submissions on appeal, as well as the entire record before the subcommittee and the subcommittee's opinion.

(**Authority:** 20 U.S.C. 1099b)

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

An agency may appeal the Secretary's final decision limiting, suspending, or terminating its recognition to the Federal courts as a final decision in accordance with applicable Federal law.

(**Authority:** 20 U.S.C. 1099b)

Subpart E—Department Responsibilities

§ 602.50 What information does the Department share with a recognized agency about its accredited institutions and programs?

(a) If the Department takes an action against an institution or program accredited by the agency, it notifies the agency no later than 10 days after taking that action.

(b) If another Federal agency or a State agency notifies the Department that it has taken an action against an institution or program accredited by the agency, the Department notifies the agency as soon as possible but no later than 10 days after receiving the written notice from the other Government agency.

(**Authority:** 20 U.S.C. 1099b)

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