

Issue #1

Proposed Regulatory Language
Team III – Accreditation

Origin: HEOA

Issue: Definitions of distance education and correspondence education

Statutory cites: HEOA section 103(a)(1)
Amends HEA section 103(7)
See page 10 of statutory language handout

Regulatory cites: 34 CFR 602.3 (and 34 CFR 600.2)

Summary of changes:

Amends current regulations to incorporate definitions of “correspondence education” and “distance education”.

Changes:

§ 602.3 What definitions apply to this part?

The following definitions apply to this part:

* * *

Correspondence education means:

(1) Education provided through one or more “home study” courses by an institution under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are separated from the instructor.

(2) Interaction between the instructor and the student is limited, is not regular and substantive, and is primarily initiated by the student.

(3) Correspondence courses are typically self-paced.

(4) Correspondence education may not be considered distance education.

* * *

Distance education means education that uses one or more of the technologies listed in paragraphs (1) through (4) to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between the students and the instructor, either synchronously or asynchronously. The technologies include--

(1) The internet;

(2) One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;

(3) Audio conferencing; or

(4) Video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in paragraphs (1) through (3).

§ 600.2 Definitions.

* * *

Correspondence course: (1) A "home study" course provided by an institution under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are ~~not physically attending classes at the institution~~ separated from the instructor. ~~When students complete a portion of the instructional materials, the students take the examinations that relate to that portion~~

~~of the materials, and return the examinations to the institution for grading.~~ **Interaction between the instructor and student is limited, is not regular and substantive, and is primarily initiated by the student.**
Correspondence courses are typically self-paced.

~~(2) A home study course that provides instruction in whole or in part through the use of video cassettes or video discs in an award year is a correspondence course unless the institution also delivers the instruction on the cassette or disc to students physically attending classes at the institution during the same award year.~~

~~(3) If a course is part correspondence and part residential training, the Secretary considers the course to be a correspondence course.~~

(3) A correspondence course may not be considered distance education.

Issue #2

**Proposed Regulatory Language
Team III – Accreditation**

Origin: HEOA

Issue: Accreditation team members

Statutory cites: HEOA section 495(2)(A)
Amends HEA section 496(c)(1)
See page 5 of statutory language handout

Regulatory cite: 34 CFR 602.15

Summary of change:

Adds the statutory requirement that evaluation team members are trained by the agency on their responsibilities

Change:

§ 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--

* * *

(2) Competent and knowledgeable individuals, qualified by education and experience in their own right and trained by the agency on their responsibilities, as appropriate for their roles, regarding the agency's ~~its~~ standards, policies, and procedures, to conduct its on-site evaluations, apply or establish its policies, and make its accrediting and preaccrediting decisions, including, if applicable to the agency's scope, their responsibilities regarding distance and correspondence education;

Issue #3

Proposed Regulatory Language Team III – Accreditation

Origin: HEOA

Issue: Student achievement standard

Statutory cites: HEOA section 495(1)(B)
Amends HEA section 496(a)(5)(A)
See page 3 of statutory language handout

Regulatory cites: 34 CFR 602.16(a)(1) and (e)

Summary of change:

Amends current regulations to make them consistent with the statutory language and adds the statutory language from the Rule of Construction.

Change:

§ 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, which may include different standards for different institutions or programs, as established by the institution, including, as appropriate, consideration of State licensing examinations, course completion, and job placement rates.

* * * * *

(e) Nothing in paragraph (a) restricts--

(1) An accrediting agency from setting, with the involvement of its members, and applying accreditation standards for or to institutions or programs that seek review by the agency; or

(2) An institution from developing and using institutional standards to show its success with respect to student achievement, which achievement may be considered as part of any accreditation review, with accrediting agency approval.

Issue #4

Proposed Regulatory Language
Team III - Accreditation

Origin: HEOA
Issue: Operating procedures – Transfer of credit
Statutory cites: HEOA section 495(2)(C)
Amends HEA section 496(c)
See page 6 of statutory language handout
Regulatory cite: 34 CFR 602.24

Summary of change:

Amends current regulations on operating procedures to address transfer of credit policies.

Change:

§ 602.24 Additional procedures certain institutional accreditors must have.

* * * * *

(e) Transfer of credit policies. The accrediting agency must confirm, as part of its review for initial accreditation or preaccreditation, or renewal of accreditation, that the institution has transfer of credit policies that--

(1) Are publicly disclosed in accordance with §668.43; and

(2) Include a statement of the criteria established by the institution regarding the transfer of credit earned at another institution of higher education.

Issue #5

**Proposed Regulatory Language
Team III - Accreditation**

Origin: HEOA

Issue: Operating procedures – Teach-out plan approval

Statutory cites: HEOA section 495(2)(C)
Amends HEA section 496(c) by adding a new paragraph (3)
See page 5 of statutory language handout

Regulatory cites: 34 CFR 602.3 and 602.24(c)

Summary of Changes:

Amends current regulations to add a definition of “teach-out plan” and to require submission of teach-out plans to accrediting agencies under specified conditions.

Changes:

§ 602.3 What definitions apply to this part?

The following definitions apply to this part:

* * *

Teach-out agreement means a written agreement between institutions that provides for the equitable treatment of students and a reasonable opportunity for students to complete their program of study if ~~one of these~~ an institutions, or an institutional location that provides one hundred percent of at least one program offered, stops offering one or more of its ~~an~~ educational programs s before all students ~~enrolled in that program~~ have completed their ir program of study.

Teach-out plan means a written plan developed by an institution that provides for the equitable treatment of students if an institution, or an institutional location that provides one hundred percent of at least one program, ceases to operate before all students have completed their program of study, and may include, if required by the institution's accrediting agency, a teach-out agreement between institutions.

§ 602.24 Additional procedures certain institutional accreditors must have.

* * * * *

(c) Teach-out plans and agreements. (1) The agency must require an institution it accredits or preaccredits to submit a teach-out plan to the agency for approval upon the occurrence of any of the following events:

(i) The Secretary notifies the agency that the Secretary has initiated an emergency action against an institution, or an action to limit, suspend, or terminate an institution participating in any title IV, HEA program, in accordance with the relevant portions of subpart G of part 668.

(ii) The agency acts to withdraw, terminate, or suspend the accreditation or preaccreditation of the institution.

(iii) The institution notifies the agency that it intends to cease operations entirely or close a location that provides one hundred percent of at least one program.

(iv) A State licensing or authorizing agency notifies the agency that an institution's license or legal

authorization to provide an educational program has been or will be revoked.

(2) The agency must evaluate the teach-out plan to ensure it provides for the equitable treatment of students under criteria established by the agency and does not result in duplicative or increased charges.

(3) If the agency approves a teach-out plan that includes a program that is accredited by another recognized accrediting agency, it must notify that accrediting agency of its approval.

(4) The agency may require an institution it accredits or preaccredits to enter into a teach-out agreement as part of its teach-out plan.

~~(1)~~(5) The agency must require an institution it accredits or preaccredits that enters into a teach-out agreement, either on its own or at the request of the agency, 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--

(A) Provide an educational program that is of acceptable quality and reasonably similar in content, structure, and scheduling to that provided by the ~~closed~~ institution that is ceasing operations, either entirely or at one of its locations; and

(B) Remain stable, carry out its mission, and meet all obligations to existing students; 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 **or to incur duplicative or increased charges.**

~~(3)~~ (d) **Closed Institution.** If an institution the agency accredits or preaccredits closes **without a teach-out plan or agreement**, 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~~ **duplicative or increased** charges.

Note: Team V will be developing regulations related to institutional requirements for teach-outs and eligibility and certification procedures regarding the treatment of teach-outs. In the 2nd session, Team V is starting with the proposed regulatory language for teach-out plan that is provided above. However, discussion may lead to an amended definition. Team III will have an opportunity to review and comment on the Team V definition.

Issue #6

Proposed Regulatory Language
Team III - Accreditation

Origin: ED
Issue: Definition of Recognition
Statutory Cite: HEA section 496 (o)
Regulatory Cites: 34 CFR 602.3

Summary of Change:

The Higher Education Act provides authority to the Secretary to promulgate regulations for the recognition of accrediting agencies. This draft regulation amends the current definition section of the accreditation regulations to provide for a definition of recognition. *[NOTE: The cross references are to sections of subpart C as restructured in issues 7 and 8]*

Change:

§ 602.3 What definitions apply to this part?

The following definitions apply to this part:

* * *

Recognition means an unappealed determination by the senior Department official under §602.36, or a determination by the Secretary on appeal under §602.37, that an accrediting agency complies with the criteria for recognition listed in subpart B of this part and that the agency is effective in its performance with respect to those criteria. Recognition may be revoked at any time prior to its expiration upon a determination made in accordance with subpart C that the agency no longer complies with the subpart B criteria or that it has become ineffective in its performance with respect to those criteria.

Issues #7 and #8

**Proposed Regulatory Language
Team III – Accreditation**

Origin: HEOA and ED

Issues: Recognition Procedures – Subparts C & D
Demonstration of compliance within 12 months and recognition when not fully compliant

Statutory Cites: HEA Sections 496(l)(1)(B)
HEA Sections 496(d), 496(l), and 496(m), 496(o)
HEOA Section 106, 495(1)(A), 495(5)

Regulatory Cites: 34 CFR 602.3 and 602 Subparts C & D

Summary of Changes:

Reflects changes made by the HEOA regarding the review of distance education and correspondence education and the role of chairperson of NACIQI in establishing the meeting agenda. Amends current regulations by combining Subparts C & D, thereby streamlining agency review procedures. Establishes the senior Department official as the decision-maker on recognition and the Secretary as the decision-maker on appeals. Clarifies that agencies may be out of compliance for no more than 12 months, after which time a decision on recognition will be made on the basis of a compliance report. Establishes a process for reviewing agencies at any time during their period of recognition.

Changes:

§ 602.3 What definitions apply to this part?

The following definitions apply to this part:

* * *

1 Compliance report means a written report that the
2 Department requires an agency to file to demonstrate that
3 the agency has addressed deficiencies specified in a
4 decision letter from the senior Department official or the
5 Secretary.
6

1 * * *

2 Designated Federal Official means the Federal officer
3 designated under section 10(f) of the Federal Advisory
4 Committee Act, 5 U.S.C. Appdx. 1.

5
6 SUBPART C - The Recognition Process

7 APPLICATION AND REVIEW BY DEPARTMENT STAFF

8 **§ 602.30 Activities covered by recognition procedures.**

9 Recognition proceedings are administrative actions
10 taken on any of the following matters:

11 (a) Applications for initial or continued recognition
12 submitted under §602.31(a).

13 (b) Applications for an expansion of scope submitted
14 under §602.31(b).

15 (c) Compliance reports submitted under §602.31(c).

16 (d) Reviews of agencies that have expanded their
17 scope of recognition by notice, following receipt by the
18 Department of information of an increase in headcount
19 enrollment described in §602.19(f).

20 (e) Staff analyses identifying areas of non-
21 compliance based on a review conducted under §602.33.

22
23 **§ 602.31 Agency submissions to the Department.**

24 (a) *Applications for recognition or renewal of*
25 *recognition.* An accrediting agency seeking initial or
26 continued recognition must submit a written application to
27 the Secretary. Each accrediting agency must submit an
28 application for continued recognition at least once every
29 five years, or within a shorter time period specified in
30 the final recognition decision. The application must
31 consist of--

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

3 (2) Evidence that the agency complies with the
4 criteria for recognition listed in subpart B of this part
5 and is effective in its performance with respect to those
6 criteria;

7 (3) Evidence of how an agency that includes or seeks
8 to include distance education or correspondence education
9 in its scope of recognition applies its standards in
10 evaluating programs and institutions it accredits that
11 offer distance education or correspondence education; and

12 (4) Supporting documentation.

13 (b) *Applications for expansions of scope.* An agency
14 seeking an expansion of scope by application must submit a
15 written application to the Secretary. The application
16 must--

17 (1) Specify the scope requested;

18 (2) Include documentation of experience in accordance
19 with §602.12(b); and

20 (3) Provide copies of any relevant standards,
21 policies or procedures developed and applied by the agency
22 and documentation of the application of these standards,
23 policies or procedures.

24 (c) *Compliance reports.* If an agency is required to
25 submit a compliance report, it must do so within 30 days
26 following the end of the period for achieving compliance,
27 not to exceed 12 months, specified in the decision of the
28 senior Department official or Secretary, as applicable.

29 (d) *Review following an increase in headcount*
30 *enrollment.* If an agency has reported an increase in

1 headcount enrollment under §602.19(f) for an institution it
2 accredits, or if the Department notifies the agency of such
3 an increase at one of the agency's accredited institutions,
4 the agency must, within 30 days of reporting the increase
5 or receiving notice of the increase from the Department, as
6 applicable, submit a report addressing--

7 (1) How it evaluates the capacity of institutions or
8 programs it accredits to accommodate large increases in
9 enrollment and maintain educational quality;

10 (2) The results of the evaluation in the case of the
11 individual institution(s) or programs(s) that triggered the
12 review; and

13 (3) Any other information the Department may require.

14 (e) *Consent to sharing of information.* By submitting
15 an application for recognition, the agency authorizes
16 Department staff to observe its site visits to one or more
17 of the institutions or programs it accredits or
18 preaccredits, and to visit locations where agency activities
19 such as training, review and evaluation panel meetings, and
20 decisions meetings take place, on an announced or
21 unannounced basis throughout the application process and
22 during any period of recognition; to obtain copies of all
23 documents the staff deems necessary to complete its review
24 of the agency; and to gain access to agency records,
25 personnel and facilities.

26 (f) *Public availability of agency records obtained by*
27 *the Department.* (1) The Secretary's processing and
28 decision making on requests for public disclosure of agency
29 materials reviewed under this part are governed by the
30 Freedom of Information Act, 5 U.S.C. §552; the Trade
31 Secrets Act, 18 U.S.C. §1905; the Privacy Act of 1974, as

1 amended, 5 U.S.C §552a; the Federal Advisory Committee Act,
2 5 U.S.C. Appdx. 1, and all other applicable laws. In
3 recognition proceedings, agencies must--

4 (i) Redact information that would identify
5 individuals or institutions that is not essential to the
6 Department's review of the agency;

7 (ii) Make a good faith effort to designate all
8 business information within agency submissions that the
9 agency believes would be exempt from disclosure under
10 exemption 4 of the Freedom of Information Act (FOIA), 5
11 U.S.C. §552(b)(4). A blanket designation of all
12 information contained within a submission, or of a category
13 of documents, as meeting this exemption will not be
14 considered a good faith effort and will be disregarded;

15 (iii) Identify any other material the agency believes
16 would be exempt from public disclosure under FOIA, the
17 factual basis for the request and any legal basis the
18 agency has identified for withholding the document from
19 disclosure; and

20 (iv) Ensure documents submitted are only those
21 required for Department review or as requested by
22 Department officials.

23 (2) The Secretary processes FOIA requests in
24 accordance with 34 CFR part 5 and makes all documents
25 provided to the Advisory Committee available to the public.

26
27 **§ 602.32 Procedures for Department review of applications**
28 **for recognition or for change in scope, compliance reports,**
29 **and increases in enrollment.**

1 (a) After receipt of an agency's application for
2 initial or continued recognition, or change in scope, or an
3 agency's compliance report, or an agency's report submitted
4 under §602.31(d), Department staff publishes a notice of
5 the agency's application or report in the Federal Register
6 inviting the public to comment on the agency's compliance
7 with the criteria for recognition and establishing a
8 deadline for receipt of public comment.

9 (b) The Department staff analyzes the agency's
10 application for initial or renewal of recognition,
11 compliance report, or report submitted under §602.31(d) to
12 determine whether the agency satisfies the criteria for
13 recognition, taking into account all available relevant
14 information concerning the compliance of the agency with
15 those criteria and in the agency's performance with respect
16 to the criteria, and any previously identified
17 deficiencies. The analysis of an application for
18 recognition and, as appropriate, of a report required under
19 §602.31(c) or (d), includes--

20 (1) Observations from site visit(s), on an announced
21 or unannounced basis, to the agency or to a location where
22 agency activities such as training, review and evaluation
23 panel meetings, and decision meetings take place and to one
24 or more of the institutions or programs it accredits or
25 preaccredits;

26 (2) Review of the public comments and other third-
27 party information the Department staff receives by the
28 established deadline, and the agency's responses to the
29 third-party comments, as appropriate, as well as any other
30 information Department staff assembles for purposes of
31 evaluating the agency under this part; and

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

3 (c) The Department staff analyzes the materials
4 submitted in support of an application for expansion of
5 scope to ensure that the agency has the requisite
6 experience, compliant policies, capacity and performance
7 record to support the request.

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

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

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

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

25 (f) Except with respect to an application that has
26 been returned or is withdrawn under paragraph (e) of this
27 section, when Department staff completes its evaluation of
28 the agency, the staff--

29 (1) Prepares a written draft analysis of the agency;

30 (2) Sends the draft analysis including any identified
31 areas of non-compliance and a proposed recognition

1 recommendation, and all supporting documentation, including
2 all third-party comments the Department received by the
3 established deadline, to the agency;

4 (3) Invites the agency to provide a written response
5 to the draft analysis and proposed recognition
6 recommendation and third-party comments, specifying a
7 deadline that provides at least 30 days for the agency's
8 response;

9 (4) Reviews the response to the draft analysis the
10 agency submits, if any, and prepares the written final
11 analysis. The final analysis includes a recognition
12 recommendation to the senior Department official, as the
13 Department staff deems appropriate, including, but not
14 limited to, a recommendation to approve, deny, limit,
15 suspend, or terminate recognition, require the submission
16 of a compliance report and continue recognition pending a
17 final decision on compliance, or approve or deny a request
18 for expansion of scope; and

19 (5) Provides to the agency, no later than seven days
20 before the Advisory Committee meeting, the final staff
21 analysis and any other available information provided to
22 the Advisory Committee under §602.34(c).

23 (g) The agency may request that the Advisory
24 Committee defer acting on an application at that Advisory
25 Committee meeting if Department staff fails to provide the
26 agency with the materials described, and within the
27 timeframes provided, in paragraphs (f)(3) and (f)(5) of
28 this section. If the Department staff's failure to send
29 the materials in accordance with the timeframe described in
30 paragraph (f)(3) or (f)(5) of this section is due to the
31 failure of the agency to submit reports to the Department,

1 other information the Secretary requested, or its response
2 to the draft analysis, by the deadline established by the
3 Secretary, the agency forfeits its right to request a
4 deferral of its application.

5
6 **§ 602.33 Procedures for Department review of agencies**
7 **during the period of recognition.**

8 (a) Department staff may review the compliance of a
9 recognized agency with the criteria for recognition at any
10 time--

11 (1) On its own initiative;

12 (2) At the request of the Advisory Committee; or

13 (3) Based on any other relevant information received,
14 including any third party complaint that, upon analysis,
15 appears credible and raises issues relevant to recognition.

16 (b) The review may include, but need not be limited
17 to, any of the activities described in §602.32(b) and (d).

18 (c) If, in the course of the review, Department staff
19 concludes that one or more deficiencies exist in the
20 agency's compliance with the criteria for recognition or in
21 the agency's effectiveness in its performance with respect
22 to those criteria, it--

23 (1) Prepares a written draft analysis of the agency's
24 compliance with the criteria of concern. The analysis
25 reflects the results of the review, and includes a
26 recommendation regarding what action to take with respect
27 to recognition. Possible recommendations include, but are
28 not limited to, a recommendation to limit, suspend, or
29 terminate recognition, or require the submission of a
30 compliance report and to continue recognition pending a
31 final decision on compliance;

1 (2) Sends the draft analysis including any identified
2 areas of non-compliance, and a proposed recognition
3 recommendation, and all supporting documentation to the
4 agency, and

5 (3) Invites the agency to provide a written response
6 to the draft analysis and proposed recognition
7 recommendation, specifying a deadline that provides at
8 least 30 days for the agency's response.

9 (d) If, after review of the agency's response to the
10 draft analysis, Department staff concludes that the agency
11 has not demonstrated compliance, the staff--

12 (1) Notifies the agency that the draft analysis will
13 be finalized for presentation to the Advisory Committee;

14 (2) Publishes a notice in the Federal Register
15 including, if practicable, an invitation to the public to
16 comment on the agency's compliance with the criteria in
17 question and establishing a deadline for receipt of public
18 comment;

19 (3) Provides the agency with a copy of all public
20 comments received and, if practicable, invites a written
21 response from the agency;

22 (4) Finalizes the staff analysis as necessary to
23 reflect its review of any agency response and any public
24 comment received; and

25 (5) Provides to the agency, no later than seven days
26 before the Advisory Committee meeting, the final staff
27 analysis and a recognition recommendation and any other
28 information provided to the Advisory Committee under
29 §602.34(c).

30 (e) If, after review of the agency's response to the
31 draft analysis, Department staff concludes that the agency

1 has demonstrated compliance with the criteria for
2 recognition, the staff notifies the agency of the results
3 of the review. If the review was requested by the Advisory
4 Committee, staff provides the Committee with the results of
5 the review.

6

7 REVIEW BY THE NATIONAL ADVISORY COMMITTEE ON INSTITUTIONAL
8 QUALITY AND INTEGRITY

9 **§ 602.34 Advisory Committee meetings.**

10 (a) Department staff submits a proposed schedule to
11 the Chairperson of the Advisory Committee based on
12 anticipated completion of staff analyses.

13 (b) The Chairperson of the Advisory Committee
14 establishes an agenda for the next meeting and, in
15 accordance with the Federal Advisory Committee Act,
16 presents it to the Designated Federal Official for
17 approval.

18 (c) Before the Advisory Committee meeting, Department
19 staff provides the Advisory Committee with--

20 (1) The agency's application for recognition or for
21 expansion of scope, the agency's compliance report, or the
22 agency's report submitted under §602.31(d), and supporting
23 documentation;

24 (2) The final Department staff analysis of the agency
25 developed in accordance with §602.32 or §602.33, and any
26 supporting documentation;

27 (3) At the request of the agency, the agency's
28 response to the draft staff analysis;

29 (4) Any written third-party comments the Department
30 received about the agency on or before the established
31 deadline;

1 (5) Any agency response to third-party comments; and
2 (6) Any other information Department staff relied on
3 in developing its analysis.

4 (e) At least 30 days before the Advisory Committee
5 meeting, the Department publishes a notice of the meeting
6 in the Federal Register inviting interested parties,
7 including those who submitted third-party comments
8 concerning the agency's compliance with the criteria for
9 recognition, to make oral presentations before the Advisory
10 Committee.

11 (f) The Advisory Committee considers the materials
12 provided under paragraph (c) in a public meeting and
13 invites Department staff, the agency, and other interested
14 parties to make oral presentations during the meeting. A
15 transcript is made of all Advisory Committee meetings.

16 (g) The written motion regarding each agency's
17 recognition will be made available during the Advisory
18 Committee meeting. The Department will provide each
19 agency, upon request, with a copy of the motion on
20 recognition.

21 (h) After each meeting of the Advisory Committee at
22 which a review of agencies occurs, the Advisory Committee
23 forwards to the senior Department official its
24 recommendation with respect to each agency, which may
25 include, but is not limited to, a recommendation to
26 approve, deny, limit, suspend, or terminate recognition, to
27 grant or deny a request for expansion of scope, or to
28 require the agency to submit a compliance report and to
29 continue recognition pending a final decision on
30 compliance.

31

1 **§ 602.35 Responding to the Advisory Committee's**
2 **recommendation.**

3 (a) Within ten days of the date of the Advisory
4 Committee meeting, the agency and Department staff may
5 submit written comments to the Senior Department official
6 on the Advisory Committee's recommendation. The agency
7 must simultaneously submit a copy of its written comments,
8 if any, to Department staff. Department staff must
9 simultaneously submit a copy of its written comments, if
10 any, to the agency.

11 (b) Comments may address--

12 (1) Any Advisory Committee recommendation that the
13 agency or Department staff believes is not supported by the
14 record;

15 (2) Omissions in the Advisory Committee
16 recommendation; and

17 (3) Disagreement with the Advisory Committee's
18 recommendation on recognition and, at the agency's or
19 Department staff's discretion, a draft proposed decision
20 for the senior Department official's consideration.

21 (c)(1) The agency may not submit additional
22 documentary evidence with its comments unless the Advisory
23 Committee's recognition recommendation proposes finding the
24 agency noncompliant with, or ineffective in its performance
25 with respect to, a criterion or criteria for recognition
26 not identified in the final Department staff analysis
27 provided to the Advisory Committee.

28 (2) Within ten days of receipt by the Department
29 staff of an agency's comments or new evidence, if
30 applicable, or of receipt by the agency of the Department
31 staff's comments, Department staff, the agency, or both, as

1 applicable, may submit a response to the senior Department
2 official. Simultaneously with submission, the agency must
3 provide a copy of any response to the Department staff.
4 Simultaneously with submission, Department staff must
5 provide a copy of any response to the agency.

6

7 REVIEW AND DECISION BY THE SENIOR DEPARTMENT OFFICIAL

8 **§ 602.36 Senior Department official's decision.**

9 (a) The senior Department official makes a decision
10 regarding recognition of an agency based on the record
11 compiled under §§602.32, 602.33, 602.34 and 602.35
12 including, as applicable, the following:

13 (1) The materials provided to the Advisory Committee
14 under §602.34(c);

15 (2) The transcript of the Advisory Committee meeting;

16 (3) Written comments and responses submitted under
17 §602.35;

18 (4) New evidence submitted in accordance with
19 §602.35(c)(1);

20 (5) A communication from the Secretary referring an
21 issue to the senior Department official's consideration
22 under §602.37(e).

23 (b) In the event that statutory authority or
24 appropriations for the Advisory Committee ends, or there
25 are fewer duly appointed Advisory Committee members than
26 needed to constitute a quorum, the senior Department
27 official may make a decision in a recognition proceeding
28 based on the record compiled under §602.32 or §602.33. Any
29 decision made by the senior Department official absent a
30 recommendation from the Advisory Committee may be appealed
31 to the Secretary as provided in §602.37.

1 (c) Following consideration of an agency's recognition
2 under this section, the senior Department official issues a
3 recognition decision.

4 (d) Except with respect to matters referred to the
5 senior Department official under §602.37(e), the senior
6 Department official notifies the agency in writing of the
7 senior Department official's decision regarding the
8 agency's recognition within 90 days of the Advisory
9 Committee meeting.

10 (e) The senior Department official's decision may
11 include, but is not limited to, approving, denying,
12 limiting, suspending, or terminating recognition, granting
13 or denying an application for an expansion of scope, or
14 continuing recognition pending submission and review of a
15 compliance report under §§602.32 and 602.34, and review of
16 the report by the senior Department official under §602.35.

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

22 (ii) If the senior Department official approves
23 recognition, the recognition decision defines the scope of
24 recognition and the recognition period. The recognition
25 period does not exceed five years, including any time
26 during which recognition was continued to permit submission
27 and review of a compliance report.

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

1 (2)(i) Except as provided in paragraph (e)(3), if the
2 agency either fails to comply with the criteria for
3 recognition listed in subpart B of this part, or is not
4 effective in its performance with respect to those
5 criteria, the senior Department official denies, limits,
6 suspends, or terminates recognition.

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

13 (3)(i) Except as provided in paragraph (2), if a
14 recognized agency fails to demonstrate compliance or
15 effective performance in one or more areas, but the senior
16 Department official concludes that the agency will
17 demonstrate or achieve compliance with the criteria for
18 recognition and effective performance with respect to those
19 criteria within twelve months or less, the senior
20 Department official may continue the agency's recognition,
21 pending submission by the agency of a compliance report,
22 review of the report under §§602.32 and 602.34, and review
23 of the report by the senior Department official under this
24 section. In such a case, the senior Department official
25 specifies the criteria the compliance report must address,
26 and a time period, not longer than twelve months, during
27 which the agency must achieve compliance and effective
28 performance. The compliance report documenting compliance
29 and effective performance is due not later than 30 days
30 after the end of the period specified in the senior
31 Department official's decision.

1 (ii) If, following submission of a compliance report,
2 the senior Department official determines that an agency
3 has not complied with the criteria for recognition, or has
4 not demonstrated effective performance with respect to
5 those criteria, during the time period specified by the
6 senior Department official in accordance with paragraph
7 (3)(i), the senior Department official denies, limits,
8 suspends, or terminates recognition, except, in
9 extraordinary circumstances, upon a showing of good cause
10 for an extension of time as determined by the senior
11 Department official and detailed in the senior Department
12 official's decision. If the senior Department official
13 determines good cause for an extension has been shown, the
14 senior Department official specifies the length of the
15 extension and what the agency must do during it to merit a
16 renewal of recognition.

17 (f) If the senior Department official determines,
18 based on the record, that a decision to deny, limit,
19 suspend, or terminate an agency's recognition may be
20 warranted based on a finding that the agency is
21 noncompliant with, or ineffective in its performance with
22 respect to, a criterion or criteria of recognition not
23 identified earlier in the proceedings as an area of
24 noncompliance, the senior Department official provides--

25 (1) The agency with an opportunity to submit a
26 written response and documentary evidence addressing the
27 finding; and

28 (2) The staff with an opportunity to present its
29 analysis in writing.

30 (g) If information regarding an agency, but not
31 contained in the record, comes to the senior Department

1 official's attention while a decision regarding the
2 agency's recognition is pending before the senior
3 Department official, and if the senior Department official
4 concludes the recognition decision should not be made
5 without consideration of the information, the senior
6 Department official either--

7 (1)(i) Does not make a decision regarding recognition
8 of the agency; and

9 (ii) Refers the matter to Department staff for review
10 and analysis under §§602.32 or 602.33, as appropriate, and
11 consideration by the Advisory Committee under §602.34; or

12 (2)(i) Provides a copy or summary of the information
13 to the agency and Department staff;

14 (ii) Permits the agency to respond to the senior
15 Department official and the Department staff in writing,
16 and to include additional evidence relevant to the issue,
17 and specifies a deadline;

18 (iii) Provides Department staff with an opportunity
19 to respond in writing to the agency's submission under
20 paragraph (ii), specifying a deadline; and

21 (iv) Issues a recognition decision based on the
22 record described in paragraph (a), as supplemented by the
23 information provided under this paragraph.

24 (h) No agency may submit information to the senior
25 Department official, or ask others to submit information on
26 its behalf, for purposes of invoking paragraph (g).

27 (i) If the senior Department official does not reach
28 a final decision to approve, deny, limit, suspend, or
29 terminate an agency's recognition before the expiration of
30 its recognition period, the senior Department official

1 automatically extends the recognition period until a final
2 decision is reached.

3 (j) Unless appealed in accordance with §602.37, the
4 senior Department official's decision is the final decision
5 of the Secretary.

6

7

APPEAL RIGHTS AND PROCEDURES

8

§602.37 Appealing the senior Department official's 9 decision to the Secretary.

10

(a) The agency may appeal the senior Department
11 official's decision to the Secretary. Such appeal stays
12 the decision of the senior Department official until final
13 disposition of the appeal. If an agency wishes to appeal,
14 the agency must--

15

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

18

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

20

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

23

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

26

(1) Submit a response to the Secretary no later than
27 30 days after receipt of a copy of the appeal; and

28

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

1 (c) Neither the agency nor the senior Department
2 official may include in its submission any new evidence it
3 did not submit previously in the proceeding.

4 (d) On appeal, the Secretary makes a recognition
5 decision, as described in §602.36(e), except that any
6 required compliance report is due within 30 days after the
7 end of the period specified in the Secretary's decision.
8 The Secretary renders a final decision after taking into
9 account the senior Department official's decision, the
10 agency's written submissions on appeal, the senior
11 Department official's response to the appeal, if any, and
12 the entire record before the senior Department official.
13 The Secretary notifies the agency in writing of the
14 Secretary's decision regarding the agency's recognition.

15 (e) If the Secretary determines, based on the record,
16 that a decision to deny, limit, suspend or terminate an
17 agency's recognition may be warranted based on a finding
18 that the agency is noncompliant with, or ineffective in its
19 performance with respect to, a criterion or criteria for
20 recognition not identified as an area of noncompliance
21 earlier in the proceedings, the Secretary, without further
22 consideration of the appeal, refers the matter to the
23 senior Department official for consideration of the issue
24 under §602.36(f). After the senior Department official
25 makes a decision, the agency may, if desired, appeal that
26 decision to the Secretary.

27 (f) If information regarding an agency, but not
28 contained in the record, comes to the Secretary's attention
29 while a decision regarding the agency's recognition is
30 pending before the Secretary, and if the Secretary
31 concludes the recognition decision should not be made

1 without consideration of the information, the Secretary
2 either--

3 (1)(i) Does not make a decision regarding recognition
4 of the agency; and

5 (ii) Refers the matter to Department staff for review
6 and analysis under §§602.32 or 602.33, as appropriate, and
7 review by the Advisory Committee under §602.34; and
8 consideration by the senior Department official under
9 §602.36; or

10 (2)(i) Provides a copy or summary of the information
11 to the agency and the senior Department official;

12 (ii) Permits the agency to respond to the Secretary
13 and the senior Department official in writing, and to
14 include additional evidence relevant to the issue, and
15 specifies a deadline;

16 (iii) Provides the senior Department official with an
17 opportunity to respond in writing to the agency's
18 submission under paragraph (ii), specifying a deadline; and

19 (iv) Issues a recognition decision based on all the
20 materials described in paragraphs (d) and (f) of this
21 section.

22 (g) No agency may submit information to the senior
23 Department official, or ask others to submit information on
24 its behalf, for purposes of invoking paragraph (f).

25 (h) If the Secretary does not reach a final decision
26 on appeal to approve, deny, limit, suspend, or terminate an
27 agency's recognition before the expiration of its
28 recognition period, the Secretary automatically extends the
29 recognition period until a final decision is reached.

30

1 § 602.38 Contesting the Secretary's final decision to
2 deny, limit, suspend, or terminate an agency's recognition.

3 An agency may contest the Secretary's decision under
4 this part in the Federal courts as a final decision in
5 accordance with applicable Federal law. Unless otherwise
6 directed by the court, a decision of the Secretary to deny,
7 limit, suspend, or terminate the agency's recognition is
8 not stayed during an appeal in the Federal courts.

[Note: subpart D is being removed]

Issue #9

**Proposed Regulatory Language
Team III – Accreditation**

Origin: ED
Issue: Direct Assessment Program
Statutory Cite: HEA section 481(b)(4)
Regulatory Cites: 34 CFR 602.3

Summary of Changes:

The Higher Education Act provides for eligible educational programs to include instructional programs that use direct assessment of a student’s learning, or recognize the direct assessment of a student’s learning by others, in lieu of measuring student learning in credit hours or clock hours. This language amends current accreditation regulations to provide for a definition of direct assessment program which mirrors the definition found in the student assistance general provisions and modifies the definition of “scope of recognition” to incorporate direct assessment programs, if applicable.

Change:

§ 602.3 What definitions apply to this part?

The following definitions apply to this part.

* * *

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

* * *

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. Except with respect to programs approved by the Secretary under 34 CFR 668.10, scope does not include accreditation or preaccreditation granted to or covering any program offered in whole or in part as a direct assessment program. The Secretary's designation of scope defines the recognition granted according to--

* * *

Issue #10

Proposed Regulatory Language Team III – Accreditation

Origin: HEOA

Issue: Distance education and correspondence education

Statutory cites: HEOA sections 495(1)(A) and (5)
Amends HEA section 496(a)(4)(B) and (q)
See pages 2-3 and 9 of statutory language handout

Regulatory cites: 34 CFR 602.03, 602.16, 602.17, 602.18, and 602.27

Summary of changes:

Amends current regulations regarding change of scope and agency standards to include references to distance education and correspondence education and to require processes to authenticate distance education and correspondence education students.

Changes:

NOTE: The changes in the scope of recognition definition in § 602.3 reflect the changes to the definition proposed in issue #9.

§ 602.3 What definitions apply to this part?

The following definitions apply to this part:

* * *

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. Except with respect to programs approved by the Secretary under 34 CFR 668.10, scope does not include accreditation or preaccreditation granted to or covering any program offered in whole or in part as a direct assessment program. The Secretary's designation of scope defines the recognition granted according to--

* * *

(5) Coverage of accrediting activities related to distance education or correspondence education.

§ 602.16 Accreditation and preaccreditation standards.

* * * * *

(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 the agency has or seeks to include within its scope of recognition the evaluation of the quality of institutions or programs offering distance education or correspondence education, the agency's standards must effectively address the quality of an institution's distance education or correspondence education in the areas identified in paragraph (a)(1). The agency is not required to have separate standards for the evaluation of distance education or correspondence education;

Reorder current (c) and (d) as (d) and (e)

§ 602.17 Application of standards in reaching an accrediting decision.

* * * * *

(g) Requires institutions that offer distance education or correspondence education to have processes in

place through which the institution establishes that the student who registers in a distance education or correspondence education course or program is the same student who participates in and completes the course or program and receives the academic credit. The agency meets this requirement if it--

(1) Requires institutions to verify the identity of a student who participates in class or coursework by using such methods as--

(i) A secure login and pass code, randomly generated personal questions, or proctored examinations; and

(ii) New identification technologies as they become widely accepted; and

(2) Makes clear that institutions should not use or rely on technologies that interfere with student privacy.

§ 602.18 Ensuring consistency in decision-making.

The agency must consistently apply and enforce its standards that respect the stated mission of the institution, including religious mission, and that to ensure that the education or training offered by an institution or program, including any offered through distance education or correspondence 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--

* * * * *

NOTE: The changes in §602.27 reflect the restructuring of the section presented in issue #14.

§ 602.27 Other information an agency must provide the Department.

(a) The agency must submit to the Department--

~~(a)~~ **(1)** A copy of any annual report it prepares;

~~(b)~~ **(2)** A copy, updated annually, of its directory of accredited and preaccredited institutions and programs.

~~(c)~~ **(3)** 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)~~ **(4)** Any proposed change in the agency's policies, procedures, or accreditation or preaccreditation standards that might alter its--

(i) Scope of recognition, **except as provided in paragraph (5);** or

(ii) Compliance with the criteria for recognition;

(5) Notification that the agency is expanding its scope of recognition to include distance education or correspondence education, as applicable. Such an expansion of scope is effective on the date the Department receives the notification.

* * * * *

Issues #11 and #12

**Proposed Regulatory Language
Team III - Accreditation**

Origin: HEOA and ED

Issue: Monitoring of Institutions and Programs Throughout Period; Operating Procedure – Growth Monitoring

Statutory Cite: Section 496(c)(1), (c)(2), (q)

Regulatory Cite: 34 CFR 602.19

Summary of Changes:

Modifies current regulations to incorporate changes put forward in HEOA regarding an agency's need to monitor enrollment growth at its accredited institutions after a change of scope to include distance education or correspondence education is effected by means of notice to the Secretary; and those programs at institutions experiencing significant growth. The proposed amendments also incorporate more specificity in terms of what an agency should be monitoring and the frequency of that monitoring.

Changes:

§ 602.19 Monitoring and reevaluation of accredited institutions and programs.

* * * * *

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

(c) The agency must monitor the growth of programs at institutions experiencing significant enrollment growth, as reasonably defined by the agency.

(d) The agency must monitor overall growth of the institutions it accredits and, no less frequently than

annually, collect headcount enrollment data from those institutions.

(e) For the purposes of determining the need for agency review of the status of the institution or program, the agency must regularly collect and analyze key data and performance indicators. These may include but are not limited to--

(1) Financial audits or other financial information;

(2) Retention rates, completion or graduation rates, and job placement rates; and

(3) State licensing examination pass rates or other measures of student success.

(f) Any agency that has notified the Secretary of a change in its scope in accordance with §602.27(a)(5) must monitor the headcount enrollment of each institution it has accredited that offers distance education or correspondence education. If the institution has experienced an increase in headcount enrollment of fifty percent or more within one institutional fiscal year, the agency must report that information to the Secretary within 30 days of acquiring such data.

(g) The agency must demonstrate it has, and effectively applies, a set of monitoring and reevaluation approaches that enables the agency to identify potential problems with an institution's or program's continued compliance with agency standards and that takes into account institutional or program strengths and stability. This provision does not require institutions or programs to provide annual reports on each specific accreditation criterion.

Issue # 13

Proposed Regulatory Language
Team III - Accreditation

Origin: ED

Issue: Substantive Change

Statutory Cites: HEA section 496(a)(1), (a)(4), (c)(1), (c)(2), (c)(4), (c)(5), 498(i)

Regulatory Cite: 34 CFR 602.22

Summary of Changes:

Amends the descriptions of substantive change to include a change in scope of existing offerings rather than a change in content and a change in the level of program offerings in any direction, and adds three new types of changes. The additions include the contracting out of more than 25 percent of a program to organizations not eligible to participate in the title IV student financial aid programs; the establishment of a permanent additional location at a site previously operated by another institution at which the institution provided a teach-out; and the acquisition of an institution or program or location of another institution. Requires the agency's substantive change policy to list those changes sufficient to require a comprehensive review and provides greater flexibility to agencies in preapproving multiple locations. Finally, insures that if substantive changes are approved, they are effective going forward as part of the institution's accreditation.

Changes:

§ 602.22 Substantive change.

(a) * * *

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

* * *

(iii) The addition of courses or programs that represent a significant departure from the academic content of existing offerings of educational programs ~~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 different from above that which is included in the institution's current accreditation or preaccreditation.

* * *

~~(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.~~

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

~~(vii)(viii)(A) If the agency's accreditation of an institution enables it to seek eligibility to participate in title IV HEA programs,~~ 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. An addition of such a location must be approved by the agency in accordance with paragraph (c) of this section unless the accrediting agency determines, and issues a written determination stating that the institution has--

(1) Successfully completed at least one cycle of accreditation of maximum length offered by the agency and one renewal, or has been accredited for at least ten years;

(2) At least three additional locations that the agency has approved; and

(3) Met criteria established by the agency indicating sufficient capacity to add additional locations without individual prior approvals, including at a minimum satisfactory evidence of a system to ensure quality across a distributed enterprise that includes--

(i) Clearly identified academic control;

(ii) Regular evaluation of the locations;

(iii) Adequate faculty, facilities, resources, and academic and student support systems;

(iv) Financial stability; and

(v) Long-range planning for expansion.

(B) The agency's procedures for approval of multiple locations, pursuant to (viii)(A), must require timely reporting to the agency of every additional location established under this approval.

(C) Each agency determination or redetermination to preapprove the addition of multiple locations under (viii)(A) must be of limited duration and may not exceed five years.

(D) The agency may not preapprove an institution's addition of multiple locations under (viii)(A) after the institution undergoes a change in ownership resulting in a change in control as defined in 34 CFR 600.31 until the institution demonstrates that it meets the conditions for the agency to preapprove multiple locations described in this paragraph.

(ix) The acquisition of any other institution or any program or location of another institution.

(x) The addition of a permanent location at a site at which the institution is conducting a teach-out for students of another institution that has ceased operating before all students have completed their program of study.

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

(b) The agency may determine the procedures it uses to grant prior approval of the substantive change. However, these procedures must specify a prospective effective date on which the change is included in the program's or institution's accreditation. An agency may designate the date of a change in ownership as the effective date of its approval of that substantive change if the accreditation decision is made within 30 days of the change in ownership. Except as provided in paragraph (c) of this section, the agency's procedures for approval of multiple locations 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~~)(viii) of this section must provide for a determination ~~determine if~~ of the institution's ~~has the~~ fiscal and administrative capacity to operate the additional location. In addition, the agency's procedures must include--

* * *

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

* * * * *

Issue #14

Proposed Regulatory Language
Team III - Accreditation

Origin: ED

Issue: Record Keeping and Confidentiality

Statutory Cites: HEA sections 496(a)(1), (a)(7), (a)(8), (c)(7), (c)(8), (c)(9), (n) and (o)

Regulatory Cites: 34 CFR 602.15 (b), 602.27(f), and 602.31 (g)

Summary of Changes:

Amends current regulations to address the need for accurate and timely record keeping as required in the HEA while reducing the burden on accrediting agencies, and to insure the claims of confidentiality of records provided to the Department are clear and understandable and in accordance with statute.

Changes:

§ 602.15 Administrative and fiscal responsibilities.

* * * * *

(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 made throughout an institution's or program's affiliation with the agency regarding the accreditation and preaccreditation of any institution or

program and substantive changes, including all correspondence that is significantly related to those decisions.

* * * * *

§ 602.27 Other information an agency must provide the Department.

- (a)** The agency must submit to the Department--
 - ~~(a)~~ **(1)** A copy of any annual report it prepares;
 - ~~(b)~~ **(2)** A copy, updated annually, of its directory of accredited and preaccredited institutions and programs;
 - ~~(c)~~ **(3)** 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)~~ **(4)** Any proposed change in the agency's policies, procedures, or accreditation or preaccreditation standards that might alter its--
 - ~~(1)~~ **(i)** Scope of recognition; or
 - ~~(2)~~ **(ii)** Compliance with the criteria for recognition;

[NOTE: The addition of (5) below reflects a change made in issue #10 and conforms with the restructure of §602.27]

(5) Notification that the agency has expanded its scope of recognition to include distance education or correspondence education, as applicable;

- ~~(e)~~**(6)** 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)(7)~~ 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.~~

(b) An agency must not establish or maintain a policy of providing notification to an institution of the agency's contact with the Department under paragraphs (a)(6) or (a)(7). The agency must comply with a request from the Department to consider such contact confidential.

* * * * *

§ 602.31(g) Agency submissions to the Department.

[NOTE: this section reflects the restructuring in issues # 7 and # 8.]

* * * * *

(f) **Public availability of agency records to the Department.**

(1) **The Secretary's processing and decision making on requests for public disclosure of agency material reviewed under this part are governed by the Freedom of Information Act, 5 U.S.C. §552; the Trade Secrets Act, 18. U.S.C §1905; the Privacy Act of 1974, as amended 5 U.S.C. §552a; the Federal Advisory Committee Act, 5 U.S.C. Appdx. 1; and all other applicable laws.** ~~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. In recognition proceedings, agencies must--~~

(i) Redact information that would identify individuals or institutions that is not essential to the Department's review of the agency;

(ii) Make a good faith effort to designate all business information within agency submissions that the agency believes would be exempt from disclosure under exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. §552(b)(4). A blanket designation of all information contained within a submission or of a category of documents as meeting this exemption will not be considered a good-faith effort and will be disregarded;

(iii) Identify any other material the agency believes would be exempt from public disclosure under FOIA, the factual basis for the request, and any legal basis the agency has identified for withholding the document from disclosure; and

(iv) Ensure documents submitted are only those required for Department review or as requested by Department officials.

(2) The Secretary processes FOIA requests in accordance with 34 CFR part 5 and makes all documents provided to the National Advisory Committee on Institutional Quality and Integrity available to the public.

Issue #15

Proposed Regulatory Language
Team III - Accreditation

Origin: HEOA

Issue: Due process and appeals

Statutory cites: HEOA section 495(1)(C)
Amends HEA 496(a)
See pages 3-4 of statutory language handout

Regulatory cites: 34 CFR 602.18, 602.23(a) and 602.25

Summary of changes:

Modifies current regulations regarding consistency in decision-making and due process to include (1) clear standards for accreditation, and (2) expanded due process requirements.

Changes:

§ 602.18 Ensuring consistency in decision-making.

The agency must consistently apply and enforce its standards **that respect the stated mission of the institution, including religious mission, and that** ~~to~~ ensure that the education or training offered by an institution or program, including any offered through distance education, **or correspondence 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 written specification of the requirements for accreditation and preaccreditation that include clear standards for an institution or program to be accredited;

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

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

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

(e) Provides the institution or program with a detailed written report that assesses the institution's or program's compliance with the agency's standards, including any deficiencies identified by the agency.

§ 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.

* * * * *

(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. The agency may not complete its review and make a decision regarding a complaint unless, in accordance with published procedures, it ensures that the institution or program has sufficient opportunity to provide a response to the complaint.

* * * * *

§ 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) Provides adequate written specification of its requirements, including clear standards, for an institution or program to be accredited or preaccredited;

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

(c) Provides written specification of any deficiencies identified at the institution or program examined.

(d) Provides sufficient opportunity for a written response by an institution or program regarding any deficiencies identified by the agency, to be considered by the agency within a timeframe determined by the agency, and before any adverse action is taken.

~~(b)~~ (e) ~~The agency n~~ 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.~~

(f) Provides an opportunity, upon written request of an institution or program, for the institution or program to appeal any adverse action, orally or in writing, at the option of the institution, prior to the action becoming final.

(1) The appeal must take place at a hearing before an appeals panel that--

(i) May not include current members of the agency's decision-making body that took the initial adverse action.

(ii) Is subject to a conflict of interest policy.

(2) The agency must recognize the right of the institution or program to employ counsel to represent the institution or program during its appeal, including to make any presentation, orally or in writing, at the option of the institution, that the agency permits the institution or program to make on its own during the appeal.

(3) The agency must provide for a process, in accordance with written procedures, through which an institution or program may seek review of new financial information if all of the following conditions are met:

(i) The financial information was unavailable to the institution or program prior to the determination described under paragraph (e).

(ii) The financial information provided bears materially on the financial deficiencies identified by the agency.

(iii) The financial information meets the criteria of significance and materiality, as defined by the agency.

(iv) In the absence of such new financial information, the appeals panel would affirm a final adverse action based solely upon the institution's or program's failure to meet an agency standard pertaining to finances.

(4) Any determination by the agency made with respect to the new financial information described in paragraph (3) is not separately appealable by the institution or program.

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

Issue #16

**Proposed Regulatory Language
Team III – Accreditation**

Origin: HEOA

Issue: Operating procedures – Summary of agency actions

Statutory cites: HEOA section 495(2)(D)
Amends HEA section 496(c)(7)
See page 6 of statutory language handout

Regulatory cite: 34 CFR 602.26

Summary of change:

Amends current regulations on information made available to the Department, State licensing or authorizing authorities and the public.

Change:

§ 602.26 Notification of accrediting decisions.

* * * * *

(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.

(3) A final decision to take any other adverse action not listed in paragraph (b)(2);

(c) Provides written notice to the public of the decisions listed in paragraphs (b)(1), ~~and (b)(2)~~, and (b)(3) 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 official comments ~~, if any,~~ that the affected institution or program may wish to make with regard to that decision, or evidence that the affected institution has been offered the opportunity to comment;