

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

Issue #1: Due Process

Regulatory Cite: §602.3, §602.25, §602.20, §602.28

Summary of change for March session: Substitutes “adverse accrediting decision” for “adverse accrediting action” or “adverse action” in §§602.3 and 602.25 to clarify the timing of the “process due” under new §602.25(b); revises §§602.20 and 602.28, which had used the term “adverse accrediting action”, to retain the current meaning of those regulations. Specifies the procedures an agency must follow in arriving at an adverse accrediting decision. Changes in the procedures include providing adequate written notice to the institution or program about deficiencies, giving an institution or program the opportunity to present oral and written information to the decision-makers, and ensuring the decision-makers making adverse accrediting decisions and hearing appeals are impartial and free of conflicts of interest.

Update since March session: Changes the word “action” to “decision” where necessary for the sake of consistency. Makes clear that the procedures an agency must follow in arriving at an adverse accrediting decision include permitting an institution or program to provide written testimony and giving the agency the option of allowing oral testimony. Stipulates that agency representatives involved in both the initial decision and in the appeal should be objective and free of conflicts of interest. Modifies language to accommodate the use of appeal panels that are not decision-making bodies.

Tentative Agreement: Not yet fully discussed.

Change:

§602.3 What definitions apply to this part?

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

§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

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comply with the agency's requests for information and documents.

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

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

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

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

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

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

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

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

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

(3) 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.

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

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§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 an action to deny, withdraw, suspend, revoke, or terminate accreditation or preaccreditation, or take comparable action against, the institution or program; or

(2) * * *

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

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

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(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 action to deny, withdraw, suspend, revoke, or terminate accreditation or preaccreditation, or take comparable action against the institution or program 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 such 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 action it has taken to deny, withdraw, suspend, revoke,

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or terminate accreditation or preaccreditation, or take comparable action against an accredited or preaccredited institution or program.

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Issue #2: Substantive Change

Regulatory Cite: §602.22

Summary of change for March session: Expands the list of types of substantive changes to include an accredited institution's contracting out of 25% or more of a program to entities that are not eligible to participate in Title IV student aid program. Modifies the descriptions of the substantive changes in §602.22(a)(ii) and (iii) to include a change in academic subject matter and a change in level of offerings, in any direction.

Provides greater flexibility for an accrediting agency to grant prior approval for addition of multiple locations for certain types of institutions that provide information acceptable to the accrediting agency about their practices. Clarifies the requirement that any agency have a mechanism for conducting visits to additional locations operated by institutions that have more than three additional locations by specifying that a representative sample of additional locations must be visited throughout the accreditation cycle.

A new provision requires agencies to define in their substantive change policy when changes would be so extensive that the institution or program would need to seek initial accreditation as a new institution or program. Finally, a change has been made to require agencies to include in their approvals a date, that is not retroactive, on which the change becomes incorporated into the program's or institution's accreditation.

Update since March session: Modifies the language in §602.22(a)(ii) to make clearer the kind of change in the scope of academic offerings that would require a substantive change review. Eliminates the requirement that a school applying to an agency for approval to add locations without getting individual prior approval submit a management plan and, instead, requires that the institution demonstrate that it has a system in place to ensure quality across a distributed enterprise. Changes the period of time for which an agency can grant prior approval for the addition of multiple locations from four years to five years and clarifies that the approval may not remain in force if an institution undergoes a change in ownership resulting in a change in control.

Clarifies that agencies would do a new comprehensive evaluation of institutions where changes are extensive, rather than specifying that an agency must require an application for initial accreditation in such cases. Allows an agency evaluating a change in ownership to designate the date of the change as the effective date for its approval as long as the decision is made within 30 days of the change.

Tentative Agreement: Yes

Change:

§602.22 Substantive change.

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(a)(2) The agency's definition of a 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 from the scope of existing offerings of educational programs, 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 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) 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 those programs offers more than 25 percent of one or more of the accredited institution's educational programs.

(viii) If the agency's accreditation of an institution enables the institution 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 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, has at least three additional locations that the

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agency has approved, and has 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--

- (A) Clearly identified academic control;
- (B) Regular evaluation of the locations;
- (C) Adequate faculty, facilities, resources, and academic and student support systems;
- (D) Financial stability; and
- (E) Long-range planning for expansion.

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

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

(b) The agency may determine the procedures it uses to grant prior approval of the substantive change. However, the procedures must specify an effective date, not retroactive, on which the change is included in the program's or institution's accreditation. An agency may designate the date of a change of ownership as the effective date of its approval of that substantive change if the accreditation decision is made within 30 days of the change of ownership. Except as provided in paragraph (c) of this section, the agency's approval policies 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

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approval of an additional location described in paragraph (a)(2)(viii) 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 throughout the accreditation cycle, visits to a representative sample of 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.

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Issue #3: Monitoring of institutions

Regulatory Cite: §602.19

Summary of change for March session: Clarifies the two-fold purpose of monitoring and specifies that agencies must collect and analyze information on key performance indicators to identify new problems at an institution or program that may require agency intervention. Requires each agency to provide a rationale for the length of intervals between evaluations and periodic reporting throughout the accreditation period.

Update since March session: Adds periodic reports to the list of ways agencies monitor institutions and programs and removes language indicating that agencies use monitoring to ensure the resolution of problems and continued improvement in the institution's or program's performance. Clarifies that agencies do not have to collect and analyze information on the entire list of key performance indicators, and adds additional performance indicators to the list. Removes the provision related to providing a rationale for the intervals between evaluations and institutional reporting. Adds a provision that provides greater flexibility for agencies to use different monitoring and reevaluation approaches for various programs and institutions.

Tentative Agreement: Not yet fully discussed.

Change:

§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, by requiring periodic reports and conducting special evaluations or site visits, as necessary.

(c) To signal the need for agency review of the status of the institution or program, the agency must regularly collect and analyze information on key performance indicators. These may include, but are not limited to, enrollments, financial audits or other financial information, retention rates, completion rates, job placement rates, and State license examination pass rates, and measures of student achievement identified by the agency.

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

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Issue #4: Relationship of input and resource standards to student achievement

Regulatory Cite: §602.16

Summary of Change:

Based on discussions at the first meeting, the Department proposed dropping this issue. The committee concurred.

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Issue #5: Standard definitions of terms related to student achievement

Regulatory Cite: §602.16

Summary of Change:

Based on discussions at the first meeting, the Department proposed dropping this issue.
The committee concurred.

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Issue #6: Quantitative standards for programs leading to gainful employment
Issue #7: Institutional success with respect to student achievement

Regulatory Cite: §602.16

Summary of change for March session: Specifies that an agency must establish minimum quantitative standards for completion rates, job placement rates, and pass rates on licensing and professional certification exams or other measures of occupational or professional competency for prebaccalaureate vocational programs and for baccalaureate and professional degree programs that prepare students for employment in an occupation or profession that requires certification or licensure.

Requires agencies to select one of three approaches for measuring institutional success with respect to student achievement. In the first option, the agency establishes for all institutions it accredits specific quantitative and qualitative measures of student achievement and an expected level of performance. In the second option, the agency develops a set of evaluative rubrics for groups of institutions with similar missions, which includes a variety of quantitative and qualitative measures. The agency then weights the components of the rubric for each institution and specifies an expected level of performance on each component. In the third option, the institution establishes quantitative and qualitative measures for each of the programs it offers, and an expected level of performance, that is satisfactory to the agency. The institution is required to make available to the public, and to each prospective student, information about its mission and each program's objectives, expected levels of performance on measures of student achievement, and actual performance.

Update since March session: Removes the three approaches for measuring success with respect to student achievement. Streamlines language addressing vocational programs and programs leading to professional licensure or certification, while retaining the same meaning. Incorporates language provided by non-federal negotiators into proposed regulations to allow for establishment by institutions and programs of their own expected levels of performance, and agency review and judgment of the appropriateness of the performance expectations. Also provides flexibility for accrediting agencies to establish expected levels of performance for institutions and programs, and to set different standards for different types of institutions or programs.

Tentative agreement: Not yet fully discussed.

Change:

§602.16 Accreditation and preaccreditation standards.

(a) The agency must demonstrate that it has standards for accreditation and, if offered, preaccreditation that are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education

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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 types of institutions or programs. Standards satisfying this criterion must include, but are not limited to--

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

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

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

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

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

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

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Issue #8: Consideration of mission in application of standards

Regulatory Cite: §602.17

Summary of change for March session: Reinforces the principle of mission-based evaluation of institutions and programs, while affirming the need for all institutions to meet standards of educational quality.

Update since March session: Requires accrediting agencies to not undermine the religious mission of an institution when applying their standards.

Tentative Agreement: Yes

Change:

§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) Applies its accreditation standards in a manner that does not undermine the religious mission of any institution of higher education with a stated religious mission;

(b) Evaluates whether an institution or program--

(Renumber as necessary)

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Issue #9: Transfer of credit and acceptance of credentials

Regulatory Cite: §602.16(a)(1)(vii)

Summary of change for March session: Specifies that an agency's standards related to admissions and recruiting practices must address transfer of credit and acceptance of credentials by requiring that decisions about the acceptance of credits and credentials cannot be made solely on the basis of the accreditation of the sending institution or program, provided that institution or program is accredited by a recognized agency. Also requires that institutions inform prospective students of their policy.

Update since March session: Modifies language so that it does not require an audit of practice. Removes reference to transfer of credit in §602.16(a)(1)(vii)(vii), thereby retaining the statutory language.

Tentative Agreement: Not yet fully discussed.

Change:

§602.16 Accreditation and preaccreditation standards.

(a) The agency must demonstrate that it has standards for accreditation and, if offered, preaccreditation, 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:

* * *

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

(A) Agency standards on admissions must include provisions for ensuring that decisions about transfer of credit and acceptance of credentials are not made solely on the source of accreditation of a sending institution or program, as long as the accreditation in question is from a recognized accrediting agency and within that agency's scope, and must also ensure that the institutions or programs provide a complete description to prospective

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students of their policies concerning transfer of credit
and acceptance of credentials.

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Issue #10: Direct assessment programs

Regulatory Cite: §602.3, §602.18

Summary of change for March session: Adds definition of “direct assessment program” and “direct assessment of student learning” to the accreditation regulations and modifies the definition of “scope of recognition” to incorporate direct assessment programs, if applicable. Also incorporates a reference to these types of programs in the provision addressing the agency’s obligation to consistently apply and enforce its standards to ensure the quality of the education or training offered by an institution or program.

Update since March session: The definition of “direct assessment of student learning” has been removed. Agencies will be regarded as recognized for their accreditation of direct assessment programs only to the extent the direct assessment programs they accredit are approved by the Secretary for title IV purposes under §668.10. The agency does not apply for an expansion of scope or look to the scope granted in the recognition process to determine if recognition includes direct assessment programs; instead, it looks to whether the Secretary has approved the program under §668.10.

Tentative Agreement: Not yet fully discussed.

Change:

§602.3 What definitions apply to this part?

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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.

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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 C.F.R. §668.10, scope does not include accreditation or preaccreditation granted to or comprehending 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--

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

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

§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--

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Issue #11: Scope of Recognition

Regulatory Cite: §602.2(a), §602.3, §602.12(b), §602.15, §602.22(a)(1),
§602.27(d)(1), §602.30(a)(1), §602.32(a)(1)(ii) and (iii)

Summary of Change:

The Department proposed dropping this item based on the discussion at the first meeting and a subsequent determination that the issue can be dealt with on an operational level. The committee concurred.

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

Regulatory Cite: §602.3; Part 602, Subparts C and D

Summary of change for March meeting: A new definition of “Recognition” clarifies that recognition is conditional and may be revoked at any time during the agency’s period of recognition if the agency is found to be out of compliance with the criteria for recognition or is no longer effective in its performance. A new §602.32 details the procedures for conducting an investigation into the compliance of a recognized agency with the criteria for recognition in the midst of the recognition period, for soliciting information from the agency, and for bringing the agency before NACIQI.

A change in §602.31(b)(1) gives Department staff, in doing their analysis of an agency’s application, the option of visiting the agency and/or institutions or programs the agency accredits. The senior Department official, rather than the Secretary, will receive and act upon NACIQI’s recommendations. The Secretary will be the decision-making authority for appeals. The appeal procedures are detailed in a new §602.35.

Two procedural subparts, one for the recognition process and the other for the limitation, suspension or termination of recognition, are combined. NACIQI is given authority to recommend any type of action at its regular meeting. In the new §602.33(b)(2)(iii), the Advisory Committee is required to postpone further consideration of any agency if areas of noncompliance or concerns about the effectiveness of any agency are identified by the Advisory Committee that were not identified in the staff analysis.

Update since March meeting: Revises the paragraph addressing staff visits to make it clear that a site visit is a required part of the staff review, but that the visit may be done either to the agency or to an institution or program accredited by the agency. Reorders the list of items the senior Department official would consider in making a decision about the recognition of an agency.

Tentative Agreement: Not yet fully discussed.

Change:

Subpart A - General

§602.3 What definitions apply to this part?

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Recognition means an unappealed determination by the senior Department official under 34 C.F.R. §602.34, or a determination by the Secretary on appeal under 34 C.F.R.

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

Subpart C - The Recognition Process

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

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(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 or to some of the institutions or programs it accredits or preaccredits.

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

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

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

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

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

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

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

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

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

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

(e) 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.

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

(a) The Advisory Committee considers an agency's application for recognition, or a staff analysis prepared under §602.32 together with the associated agency report, if any, 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 makes such recommendations to the senior Department official as the Committee deems appropriate, including, but not limited to, a recommendation to approve, deny, limit, suspend, or terminate recognition, or to defer a decision on the agency's application for recognition.

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

(ii) If the Advisory Committee recommends denial, limitation, suspension, or termination of recognition, the Advisory Committee specifies the reasons for its recommendation, including all criteria the agency fails to

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meet and all areas in which the agency fails to perform effectively.

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

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(c) At the conclusion of its meeting, the Advisory Committee forwards its recommendations to the senior Department official, except as provided in paragraph (b)(2)(iii) of this section.

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

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

- (a) The Advisory Committee's recommendation.
- (b) The Department staff analysis of the agency.
- (c) Any addendum to the Department staff analysis.
- (d) Any agency response to the Department staff analysis and third-party comments.
- (e) The agency's application submitted under 34 C.F.R. §602.31, or its report submitted under 34 C.F.R. §602.32, and supporting documentation.
- (f) All written third-party comments forwarded by Department staff to the Advisory Committee for consideration at the meeting.
- (g) All oral presentations at the Advisory Committee meeting.

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

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

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

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

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

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

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

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

(3)(i) The senior Department official may defer a decision on recognition if the senior Department official concludes that the agency's deficiencies do not warrant immediate denial, limitation, suspension, or termination of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Issue #14: Agency materials — record keeping and confidentiality

Regulatory Cite: §602.15(b), §602.27(f), §602.30(c)

Summary of change for March session: The requirement that agencies retain materials related to each institution's or program's last two accreditation reviews has been modified. The proposed regulation requires retention of materials related to a single accreditation cycle for each institution or program, and also materials related to substantive change reviews. The requirement in §602.15(b) that addresses agency retention of information about accreditation decisions and related correspondence has been modified to clarify the length of time these materials must be retained, and to include in the requirement the retention of materials related to substantive change decisions. The paragraph §602.30(c) that provided unauthorized assurance to agencies and institutions about the Department's ability to keep confidential all materials submitted by an agency related to its review of institutions or programs has been deleted. A change to §602.27(f) clarifies the obligation of agencies to provide information to the Secretary about accredited institutions or programs for any purpose related to compliance with Title IV requirements.

Update since March session: New language makes explicit that agencies should not notify institutions they accredit with the agency shares information with the Department related to an institution's compliance with its Title IV, HEA program responsibilities.

Tentative Agreement: Not yet fully discussed.

Change:

§602.15 Administrative and fiscal responsibilities.

* * * * *

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

(1) Its last 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, substantive change 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 the institution or program and substantive changes, including all

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correspondence that is significantly related to those decisions.

§602.30 How does an agency apply for recognition?

* * * * *

(b) * * *

(c) deleted

§602.27 Other information an agency must provide the Department.

The agency must submit to the Department--

* * *

(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, without informing 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. Unless specifically requested otherwise by the Secretary, the agency must keep the inquiry confidential from the institution.

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Issue #15: Providing information to the public

Regulatory Cite: §602.16(a)(1)(vii), §602.23(a)

Summary of change for March session: Modifies requirements for an agency's accreditation standards related publications and advertising. Agencies must now require that their accredited institutions and programs publish information about their effectiveness, particularly their performance regarding student outcomes. Also modifies agency operating procedures to require agencies to make available to the public information about the agency's expectation of performance in relation to each standard or criterion.

Update since March session: Changes in §602.16(a)(1)(vii)(B) make it clear that agencies that accredit institutions must require the institutions they accredit to report student achievement data at the institutional level under this standard. Also requires the publication of information about completion, job placement and licensure pass rates for vocational programs and programs leading to professional licensure or certification. Proposed language that would have required agencies to describe their expectations in relation to each standard is removed.

Tentative Agreement: Not yet fully discussed.

Change:

§602.16 Accreditation and preaccreditation standards.

(a) The agency must demonstrate that it has standards for accreditation, and, if offered, preaccreditation 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:

* * *

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

* * *

(B) The agency must require each program or institution it accredits to publish information related to the program's or institution's effectiveness in fulfilling

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program objectives or institutional mission, especially indicators of the program's or institution's performance regarding student achievement, including data specified in §602.16(a)(1)(i)(A).

§602.23 Operating procedures all agencies must have.

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

* * *

(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.