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)

Changes to the version provided for the April 21-23 meeting:

Changes have been made to reflect the language on which we reached tentative agreement during our discussions in April. These changes are highlighted in yellow (light shading).

Tentative agreement: yes

Regulatory language (contextual format):

§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 is not 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 may 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.

(32) 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

Changes to the version provided for the April 21-23 meeting:

For consistency in terminology, the word "education" has been added after "distance" in the last paragraph. This change is highlighted in aqua (dark shading).

Tentative agreement: yes

Regulatory language (contextual format):

§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 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 education 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)

Changes to the version provided for the April 21-23 meeting:

A change has been made reflecting the discussion during the April 21-23 meeting. This change is highlighted in yellow (light shading). In addition, the new paragraph has been designated (f) instead of (e) to reflect the restructuring in Issue # 10. This change is highlighted in aqua (dark shading).

Tentative agreement: yes

Regulatory language (contextual format):

NOTE: The changes in §602.16 reflect the restructuring presented in issue #10.

§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) (f) 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

Changes to the version provided for the April 21-23 meeting:

To make it clear that the final regulations will contain a specific cross reference to the general provisions regulation addressing transfer of credit, an "x" has been added after §668.43. This change is highlighted in aqua (dark shading).

Tentative agreement: yes

Regulatory language (contextual format):

§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(x);
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)

Changes to the version provided for the April 21-23 meeting:

Changes have been made to reflect the suggestions, made during the April 21-23 session, with which the Department concurs. These changes are highlighted in aqua (dark shading).

Tentative agreement: Not yet reached

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 institutions, or an institutional location that provides one hundred percent of at least one program offered, stops offering, ceases to operate one or more of its educational programs before all enrolled students enrolled in that program have completed their 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, specifies additional costs,
if any, and provides for notification to the students of any additional costs, 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.

(4) (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. 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 and that
it will provide students with information about additional costs, if any 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.
Proposed Regulatory Language
Team III - Accreditation

Issue #6

Origin: ED

Issue: Definition of Recognition

Statutory Cite: HEA section 496 (o)

Regulatory Cites: 34 CFR 602.3

Changes to the version provided for the April 21-23 meeting:

The changes made during the April 21-23 session are highlighted in yellow (light shading.) No additional changes to the version redrafted during session 2, and on which tentative agreement was reached on April 23rd, have been made.

Tentative Agreement: yes

Regulatory language (contextual format):

§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 application of with respect to those criteria.

A grant of recognition to an agency as a reliable authority regarding the quality of education or training offered by institutions or programs it accredits remains in effect for the term granted except 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 application of 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

Changes to the version provided for the April 21-23 meeting:

The changes to subparts C and D provided for the discussion at the April 21-23 session were in plain text, rather than a redline version. On April 23, we provided a marked-up version, to reflect the discussion to date, with deleted text struck through and added text shown in bold with underlining. Suggestions agreed to the morning of April 23 are highlighted in yellow (light shading). Technical changes made are highlighted in aqua (dark shading).

Tentative agreement: on all sections except §§602.36(b) and 602.37(f).

Regulatory language (contextual format):

§602.3 What definitions apply to this part?

The following definitions apply to this part:

* * *

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

* * *

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

SUBPART C - The Recognition Process

APPLICATION AND REVIEW BY DEPARTMENT STAFF

§602.30 Activities covered by recognition procedures.

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

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

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

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

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

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

§602.31 Agency submissions to the Department.

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

(1) A statement of the agency’s requested scope of recognition;
(2) Evidence, including documentation, that the agency complies with the criteria for recognition listed in subpart B of this part and is effectively applies in its performance with respect to those criteria; and

(3) Evidence, including documentation, of how an agency that includes or seeks to include distance education or correspondence education in its scope of recognition applies its standards in evaluating programs and institutions it accredits that offer distance education or correspondence education.

(4) Supporting documentation.

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

(1) Specify the scope requested;

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

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

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

(d) Review following an increase in headcount enrollment. If an agency that has notified the Secretary in writing of its change in scope to include distance education or correspondence education in accordance with §602.27(a)(5) has reported an increase in headcount enrollment under in accordance with §602.19(f) for an institution it accredits, or if the Department notifies the agency of such an increase at one of the agency’s
accredited institutions, the agency must, within 30 days of reporting the increase or receiving notice of the increase from the Department, as applicable, submit a report addressing explaining—

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

(2) The results of the evaluation in the case of the individual specific circumstances regarding the growth at the institution(s) or programs(s) that triggered the review and the results of any evaluation conducted by the agency; and

(3) Any other information that the agency deems appropriate to demonstrate the effective application of the criteria for recognition or that the Department may require.

(e) Consent to sharing of information. By submitting an application for recognition, the agency authorizes Department staff throughout the application process and during any period of recognition—

(1) To observe its site visits to one or more of the institutions or programs it accredits or preaccredits, on an announced or unannounced basis; and

(2) To visit locations where agency activities such as training, review and evaluation panel meetings, and decisions meetings take place, on an announced or unannounced basis; throughout the application process and during any period of recognition;

(3) To obtain copies of all documents the staff deems necessary to complete its review of the agency; and

(4) To gain access to agency records, personnel and facilities.
(f) **Public availability of agency records obtained by the Department.** (1) The Secretary’s processing and decision making on requests for public disclosure of agency materials 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. 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 Advisory Committee available to the public.
§602.32 Procedures for Department review of applications for recognition or for change in scope, compliance reports, and increases in enrollment.

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

(b) The Department staff analyzes the agency’s application for initial or renewal of recognition, compliance report, or report submitted under §602.31(d) 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 in the agency’s performance with respect to effectiveness in applying the criteria, and any previously identified deficiencies. The analysis of an application for recognition and, as appropriate, of a report required under §602.31(c) or (d), includes--

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

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

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

(c) The Department staff analyzes the materials submitted in support of an application for expansion of scope to ensure that the agency has the requisite experience, compliant policies that comply with subpart B, capacity and performance record to support the request.

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

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

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

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

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

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

(2) Sends the draft analysis including any identified areas of non-compliance and a proposed recognition
recommendation, and all supporting documentation, including all
third-party comments the Department received by the established
deadline, to the agency;
(3) Invites the agency to provide a written response to
the draft analysis and proposed recognition recommendation and
third-party comments, specifying a deadline that provides at
least 30 days for the agency’s response;
(4) Reviews the response to the draft analysis the agency
submits, if any, and prepares the written final analysis. The
final analysis includes a recognition recommendation to the
senior Department official, as the Department staff deems
appropriate, including, but not limited to, a recommendation to
approve, deny, limit, suspend, or terminate recognition, require
the submission of a compliance report and continue recognition
pending a final decision on compliance, or approve or deny a
request for expansion of scope, or revise or affirm the scope of
the agency; and
(5) Provides to the agency, no later than seven days
before the Advisory Committee meeting, the final staff analysis
and any other available information provided to the Advisory
Committee under §602.34(c).
(g) The agency may request that the Advisory Committee
defer acting on an application at that Advisory Committee
meeting if Department staff fails to provide the agency with the
materials described, and within the timeframes provided, in
paragraphs (f)(3) and (f)(5) of this section. If the Department
staff’s failure to send the materials in accordance with the
timeframe described in paragraph (f)(3) or (f)(5) of this
section is due to the failure of the agency to submit reports to
the Department, other information the Secretary requested, or
its response to the draft analysis, by the deadline established
by the Secretary, the agency forfeits its right to request a deferral of its application.

§602.33 Procedures for Department review of agencies during the period of recognition.

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

(1) On its own initiative;

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

(3) Based on any other relevant information received, including any third party complaint that, upon analysis—determined by Department staff—appears credible and raises issues relevant to recognition.

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

(c) If, in the course of the review, and after provision to the agency of the documentation concerning the inquiry and consultation with the agency, Department staff concludes notes that one or more deficiencies may exist in the agency’s compliance with the criteria for recognition or in the agency’s effective application of effectiveness in its performance with respect to those criteria, it--

(1) Prepares a written draft analysis of the agency’s compliance with the criteria of concern. The analysis reflects the results of the review, and includes a recommendation regarding what action to take with respect to recognition. Possible recommendations include, but are not limited to, a recommendation to limit, suspend, or terminate recognition, or require the submission of a compliance report and to continue recognition pending a final decision on compliance;
(2) Sends the draft analysis including any identified areas of non-compliance, and a proposed recognition recommendation, and all supporting documentation to the agency; and

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

(d) If, after review of the agency’s response to the draft analysis, Department staff concludes that the agency has demonstrated compliance with the criteria for recognition, the staff notifies the agency in writing of the results of the review. If the review was requested by the Advisory Committee, staff also provides the Advisory Committee with the results of the review.

(e) If, after review of the agency’s response to the draft analysis, Department staff concludes that the agency has not demonstrated compliance, the staff--

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

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

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

(4) Finalizes the staff analysis as necessary to reflect its review of any agency response and any public comment received; and
(5) Provides to the agency, no later than seven days before the Advisory Committee meeting, the final staff analysis and a recognition recommendation and any other information provided to the Advisory Committee under §602.34(c).

(f) The Advisory Committee reviews the matter in accordance with §602.34.

(c) If, after review of the agency’s response to the draft analysis, Department staff concludes that the agency has demonstrated compliance with the criteria for recognition, the staff notifies the agency of the results of the review. If the review was requested by the Advisory Committee, staff provides the Committee with the results of the review.

REVIEW BY THE NATIONAL ADVISORY COMMITTEE ON INSTITUTIONAL QUALITY AND INTEGRITY

§602.34 Advisory Committee meetings.

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

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

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

(1) The agency’s application for recognition or for expansion of scope, the agency’s compliance report, or the agency’s report submitted under §602.31(d), and supporting documentation;
(2) The final Department staff analysis of the agency developed in accordance with §602.32 or §602.33, and any supporting documentation;

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

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

(5) Any agency response to third-party comments; and

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

(d) 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.

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

(f) The written motion adopted by the Advisory Committee regarding each agency’s recognition will be made available during the Advisory Committee meeting. The Department will provide each agency, upon request, with a copy of the motion on recognition at the meeting. Each agency that was reviewed will be sent an electronic copy of the motion relative to that agency as soon as practicable after the meeting.

(g) After each meeting of the Advisory Committee at which a review of agencies occurs, the Advisory Committee forwards to the senior Department official its recommendation with respect
to each agency, which may include, but is not limited to, a recommendation to approve, deny, limit, suspend, or terminate recognition, to grant or deny a request for expansion of scope, to revise or affirm the scope of the agency, or to require the agency to submit a compliance report and to continue recognition pending a final decision on compliance.

§602.35 Responding to the Advisory Committee’s recommendation.

(a) Within ten days of the date of following the Advisory Committee meeting, the agency and Department staff may submit written comments to the senior Department official on the Advisory Committee’s recommendation. The agency must simultaneously submit a copy of its written comments, if any, to Department staff. Department staff must simultaneously submit a copy of its written comments, if any, to the agency.

(b) Comments may address must be limited to--

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

(2) Any Omissions in the incomplete Advisory Committee recommendation based on the agency’s application; and

(3) Disagreement with the Advisory Committee’s recommendation on recognition and, at the agency’s or Department staff’s discretion, the inclusion of any recommendation or a draft proposed decision for the senior Department official’s consideration.

(c)(1) Neither the Department staff nor the The agency may not submit additional documentary evidence with its comments unless the Advisory Committee’s recognition recommendation proposes finding the agency noncompliant with, or ineffective in its application of performance with respect to, a criterion or
criteria for recognition not identified in the final Department staff analysis provided to the Advisory Committee.

(2) Within ten days of receipt by the Department staff of an agency’s comments or new evidence, if applicable, or of receipt by the agency of the Department staff’s comments, Department staff, the agency, or both, as applicable, may submit a response to the senior Department official. Simultaneously with submission, the agency must provide a copy of any response to the Department staff. Simultaneously with submission, Department staff must provide a copy of any response to the agency.

REVIEW AND DECISION BY THE SENIOR DEPARTMENT OFFICIAL

§602.36  Senior Department official’s decision.

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

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

(2) The transcript of the Advisory Committee meeting;

(3) The recommendation of the Advisory Committee;

(4) Written comments and responses submitted under §602.35;

(5) New evidence submitted in accordance with §602.35(c)(1);

(6) A communication from the Secretary referring an issue to the senior Department official’s consideration under §602.37(e).

(b) In the event that statutory authority or appropriations for the Advisory Committee ends, or there are
fewer duly appointed Advisory Committee members than needed to constitute a quorum, and there are serious concerns about an agency’s compliance with subpart B that require prompt attention, the senior Department official may make a decision in a recognition proceeding based on the record compiled under §§602.32 or §602.33, after providing the agency with an opportunity to respond to the final staff analysis. Any decision made by the senior Department official absent a recommendation from the Advisory Committee may be appealed to the Secretary as provided in §602.37.

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

(d) Except with respect to decisions made under paragraphs (b), (f), or (g) of this section and matters referred to the senior Department official under §602.37(e) or (f), the senior Department official notifies the agency in writing of the senior Department official’s decision regarding the agency’s recognition within 90 days of the Advisory Committee meeting or conclusion of the review under paragraph (b).

(e) The senior Department official’s decision may include, but is not limited to, approving, denying, limiting, suspending, or terminating recognition, granting or denying an application for an expansion of scope, revising or affirming the scope of the agency, or continuing recognition pending submission and review of a compliance report under §§602.32 and 602.34, and review of the report by the senior Department official under §602.35 this section.

(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 effectively applies 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. The recognition period does not exceed five years, including any time during which recognition was continued to permit submission and review of a compliance report.

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

(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 criteria the agency has failed to apply effectively with respect to the criteria.

(3)(i) Except as provided in paragraph (ii)(2), if a recognized agency fails to demonstrate compliance with or effective application of a criterion or criteria performance in one or more areas, but the senior Department official concludes that the agency will demonstrate or achieve compliance with the criteria for recognition and effective application of performance with respect to those criteria within twelve 12
months or less, the senior Department official may continue the agency’s recognition, pending submission by the agency of a compliance report, review of the report under §§602.32 and 602.34, and review of the report by the senior Department official under this section. In such a case, the senior Department official specifies the criteria the compliance report must address, and a time period, not longer than twelve months, during which the agency must achieve compliance and effectively performance apply the criteria. The compliance report documenting compliance and effective application of criteria is due not later than 30 days after the end of the period specified in the senior Department official’s decision.

(ii) If, following submission of the record includes a compliance report, and the senior Department official determines that an agency has not complied with the criteria for recognition, or has not demonstrated effectively performance with respect to applied those criteria, during the time period specified by the senior Department official in accordance with paragraph (3)(i), the senior Department official denies, limits, suspends, or terminates recognition, except, in extraordinary circumstances, upon a showing of good cause for an extension of time as determined by the senior Department official and detailed in the senior Department official’s decision. If the senior Department official determines good cause for an extension has been shown, the senior Department official specifies the length of the extension and what the agency must do during it to merit a renewal of recognition.

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

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

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

(g) If relevant information regarding an agency, pertaining to an agency’s compliance with recognition criteria, but not contained in the record, comes to the senior Department official’s attention while a decision regarding the agency’s recognition is pending before the senior Department official, and if the senior Department official concludes the recognition decision should not be made without consideration of the information, the senior Department official either--

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

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

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

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

(iii) Provides Department staff with an opportunity to respond in writing to the agency’s submission under paragraph (ii), specifying a deadline; and
(iv) Issues a recognition decision based on the record described in paragraph (a), as supplemented by the information provided under this paragraph.

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

(i) 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 a final decision is reached.

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

APPEAL RIGHTS AND PROCEDURES

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

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

(1) Notify the Secretary and the senior Department official in writing of its intent to appeal the decision of the senior Department official, no later than ten 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 in its submission any new evidence it did not submit previously in the proceeding.

(d) On appeal, the Secretary makes a recognition decision, as described in §602.36(e), except that any required If the decision requires a compliance report, the report is due within 30 days after the end of the period specified in the Secretary’s decision. The Secretary renders a final decision after taking into account the senior Department official’s decision, the agency’s written submissions on appeal, the senior Department official’s response to the appeal, if any, and the entire record before the senior Department official. The Secretary notifies the agency in writing of the Secretary’s decision regarding the agency’s recognition.

(e) If the Secretary may determines, based on the record, that a decision to deny, limit, suspend or terminate an agency’s recognition may be warranted based on a finding that the agency is noncompliant with, or ineffective in its performance application with respect to, a criterion or criteria for recognition not identified as an area of noncompliance earlier in the proceedings. In that case, the Secretary, without further consideration of the appeal, refers the matter to the senior Department official for consideration of the issue.
under §602.36(f). After the senior Department official makes a
decision, the agency may, if desired, appeal that decision to
the Secretary.

(f) If relevant information pertaining to an agency’s
compliance with recognition criteria regarding an agency, but
not contained in the record, comes to the Secretary’s attention
while a decision regarding the agency’s recognition is pending
before the Secretary, and if the Secretary concludes the
recognition decision should not be made without consideration of
the information, the Secretary either--

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

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

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

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

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

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

(g) No agency may submit information to the senior
Department official Secretary, or ask others to submit
information on its behalf, for purposes of invoking paragraph
(f).
(h) If the Secretary does not reach a final decision on appeal to approve, deny, limit, suspend, or terminate an agency’s recognition before the expiration of its recognition period, the Secretary automatically extends the recognition period until a final decision is reached.

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

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

[Note: subpart D is being removed]
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

Changes to the version provided for the April 21-23 meeting:

The changes made during the April 21-23 session are highlighted in yellow (light shading.) No additional changes to the version redrafted during session 2, and on which tentative agreement was reached on April 23rd, have been made. A technical made is highlighted in aqua (dark shading).

Tentative Agreement:  yes

Regulatory language (contextual format):

§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, and meets the conditions of §668.10. For title IV purposes, the institution must obtain approval for the direct assessment program from the Secretary under §668.10(g) or (h) as applicable. As part of that approval, the accrediting agency must–

(1) Evaluate the program(s) and include them in the institution’s grant of accreditation or preaccreditation; and
(2) Review and approve the institution’s claim of the each direct assessment program’s equivalence in terms of credit or clock hours.
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

Changes to the version provided for the April 21-23 meeting:

Changes have been made to reflect the suggestions, made during the April 21-23 session, with which the Department concurs. These changes are highlighted in aqua (dark shading).

Tentative agreement: Not yet reached

Regulatory language (contextual format):

§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. 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, procedures, or policies 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 such as—

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

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

(2) Makes clear in writing that institutions must use processes that protect should not use or rely on technologies that interfere with student privacy and notify students, before enrollment, of additional costs, if any, associated with verification.

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

(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;

(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 as provided for in section 496(a)(4)(B)(i)(I) of the HEA. 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

Changes to the version provided for the April 21-23 meeting:

Changes have been made to reflect the suggestions, made during the April 21-23 session, with which the Department concurs. These changes are highlighted in aqua (dark shading). Yellow highlighting (light shading) indicates those changes made and agreed to during the April 21-23 session.

Tentative Agreement: Not yet reached

Regulatory language (contextual format):

§ 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, including but not limited to financial information and measures of student success. 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) 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.

(g) 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 any institution has experienced an increase in headcount enrollment of fifty 50 percent or more within one institutional fiscal year, the agency must report that information to the Secretary within 30 days of acquiring such data.
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

Changes to the version provided for the April 21-23 meeting:

Changes have been made to reflect the suggestions made to simplify and clarify the language on which we reached tentative agreement during our discussion. These changes are highlighted in yellow (light shading). Changes based on the discussions at the table with which the Department concurs are highlighted in aqua (dark shading).

Tentative agreement: Not yet reached

Regulatory language (contextual format):

§ 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 in either content from the academic content 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 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) For institutions that operate with a main campus. 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.

(ix) For institutions that operate as a distributed enterprise. (A) If the agency’s accreditation of the institution enables it to seek eligibility to participate in title IV HEA programs, the establishment of an additional location where at least 50 percent of an educational program is offered. The 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 additional locations, pursuant to (viii)(ix)(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 additional locations under (viii)(ix)(A) must be of limited duration and may not exceed five years.

(D) The agency may not preapprove an institution’s addition of multiple additional locations described in this paragraph.

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

(xi) 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 an prospective effective date, which is 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 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 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 of the institution’s 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)

Change to the version provided for the April 21-23 meeting:

The changes made during the April 21-23 session are highlighted in yellow (light shading.) The only additional changes to the version redrafted during session 2, and on which tentative agreement was reached on April 23rd, that have been made are to change “such” to “that” in §602.27(b). These changes are highlighted in aqua (dark shading).

Tentative Agreement: yes

Regulatory language (contextual format):

§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--

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

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

(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;

(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;

[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 provided for in section 496(a)(4)(B)(i)(I) of the HEA, as applicable. Such an expansion of scope is effective on the date the Department receives the notification;

(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. If an agency has a policy regarding notification to an institution or program of contact with the Department in accordance with paragraphs (a)(6) or (a)(7), it must provide for a case by case review of the circumstances surrounding the contact, and the need for the confidentiality of such that contact. Upon a specific request by the Department, the agency must consider such that 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 may--

(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

Changes to the version provided for the April 21-23 meeting:

Changes have been made to reflect the suggestions, made during the April 21-23 session, with which the Department concurs. These changes are highlighted in aqua (dark shading).

Tentative agreement: Not yet reached

Regulatory language (contextual format):

§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 clearly identifies any deficiencies in 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;

(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.

(e) 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 
decision-making 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.

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

(e)(h)(1) The agency must provide for a process, in 
accordance with written procedures, through which an institution 
or program may, before the agency reaches a final adverse action 
decision, 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 until after the conclusion of the fact-finding phase of the action prior to the determination described under paragraph (e).

(ii) The financial information provided is significant and bears materially on the financial deficiencies identified by the agency. The criteria of significance and materiality are defined by the agency.

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

(iv) The only remaining deficiency cited by the agency in support of a final adverse action decision is In the absence of such new financial information, the appeals panel would affirm a final adverse action based solely on the remaining deficiency. This is upon the institution’s or program’s failure to meet an agency standard pertaining to finances.

(2) An institution or program may seek the review of new financial information described in paragraph (1) only once and any determination by the agency made with respect to that review does not provide a basis for an appeal.

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

Changes to the version provided for the April 21-23 meeting:

The changes made during the April 21-23 session are highlighted in yellow (light shading.) No additional changes to the version redrafted during session 2, and on which tentative agreement was reached, have been made.

Tentative agreement: yes

Regulatory language (contextual format):

§ 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, as defined by the agency, 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 provide official comment;