

## PART 602—ACCREDITATION

### Subpart A—General

#### §602.1 Why does the Secretary recognize accrediting agencies?

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

#### §602.3 What definitions apply to this part?

(a) The following definitions are contained in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Accredited

Branch campus

Correspondence course

Credit hour

Distance education

Institution of higher education

Nationally recognized accrediting agency

Preaccreditation

Religious mission

Secretary

State

Teach-out

Teach-out agreement

Teach-out plan

(b) The following definitions apply to this part:

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

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

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

**Comment [A1]:** NOTE TO NEGOTIATORS: Definitions listed in (a) and deleted in (b) are not being eliminated, but instead moved to a more appropriate section of the regulations. Please refer to 34 CFR Part 600 for full definitions, including any proposed changes.

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

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

*Compliance report* means a written report that the Department requires an agency to file when that agency is found to be out of compliance to demonstrate that the agency has addressed deficiencies specified in a decision letter from the senior Department official or the Secretary. Compliance reports must be reviewed by the Department staff and the Advisory Committee and approved by the senior Department official to renew or, in the case of an initial award, grant, recognition.

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

*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, if such assessment is consistent with the institution's or program's accreditation, and meets the conditions of 34 CFR 668.10. For title IV, HEA purposes, the institution must obtain approval from the Secretary before its first direct assessment program will qualify as an eligible program.

As part of the accrediting agency's review, in order for any direct assessment program to qualify as an eligible program, the accrediting agency must have—

- (1) Evaluated the program(s) based on the agency's accreditation standards and criteria, and included them in the institution's grant of accreditation or preaccreditation; and
- (2) Reviewed and approved the institution's claim of each direct assessment program's equivalence in terms of credit or clock hours.

*Final accrediting action* means a final determination by an accrediting agency regarding the accreditation or preaccreditation status of an institution or program. A final accrediting action is the decision made by the agency, at the conclusion of any appeal process available to the institution or program under the agency's due process policies and procedures.

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

*Monitoring report* means a report that an agency is required to submit to the Department when it is found to be substantially compliant. The report contains documentation to demonstrate that –

- (1) The agency is implementing its current or corrected policies;
- (2) The agency has had more time to document that it is compliant; or
- (3) The agency, which is compliant in practice, has updated its policies to align with those compliant practices.

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

*Programmatic accrediting agency* means an agency that accredits specific educational programs, including those that prepare students in specific academic disciplines or for entry into a profession, occupation, or vocation.

**Comment [A2]:** NOTE TO NEGOTIATORS: The Department proposes to codify the distinction between compliance reports and monitoring reports. A compliance report is required if the agency is not compliant, but the Department believes that the agency can come into compliance within 12 months. Staff and NACIQI must review and the SDO must approve a compliance report in order for recognition to be granted or continued. A monitoring report is required if the agency is substantially compliant but the Department wishes to closely monitor that agency's performance to ensure that an improvement plan is in place and effective, or that the agency operates in continuous compliance. The report must be reviewed by staff and approved by the SDO for recognition to continue.

*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 and consistent in its application of 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 upon a determination made in accordance with subpart C of this part that the agency no longer complies with the subpart B criteria or that it has become ineffective in its application of those criteria.

*Representative of the public* means a person who is not—

- (1) An employee, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that either is accredited or preaccredited by the agency or has applied for accreditation or preaccreditation;
- (2) A member of any trade association or membership organization related to, affiliated with, or associated with the agency; or
- (3) A spouse, parent, child, or sibling of an individual identified in paragraph (1) or (2) of this definition.

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

- (1) Geographic area of accrediting activities such that the inclusion of a particular geographic area (including but not limited to a State or tribal lands) in one agency's scope does not preclude the inclusion of that same or a similar geographic area in another agency's scope;
- (2) Types of degrees and certificates covered;
- (3) Types of institutions and programs covered;
- (4) Types of preaccreditation status covered, if any; and
- (5) Coverage of accrediting activities related to distance education or correspondence courses.

*Senior Department official* means the senior official in the U.S. Department of Education designated by the Secretary to make decisions on accrediting agency recognition.

*Substantial compliance* means the agency has the necessary policies, practices, and standards in place, and generally adheres with fidelity to those policies, practices, and standards; or the agency has policies, practices, and standards in place that need minor modifications to reflect its generally compliant practice.

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

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55426, Oct. 27, 2009]

**Comment [A3]:** In order to end the monopoly of the current regional accreditation system, and to acknowledge that distance learning, additional locations, and branch campuses have expanded the reach of regional agencies far beyond their historic geographical scope, it is important for agencies to acknowledge every state in which they accredit an institution, branch campus, or additional location, and to allow for more than one agency to include a particular State or tribal nation in its scope. Note that this definition would also enable, for example, tribal nations to form their own regional agency in which one or more tribal nations could define the geographic scope of the agency.

**Comment [A4]:** NOTE TO NEGOTIATORS: Substantial compliance could indicate that an agency's practices are compliant, but a minor correction or addition is needed to its written policies or other documents, or to the way in which it has implemented its policies in some circumstances. For example, when an institution is serving as a teach-out provider to students at a closing or closed campus, the agency may need to waive certain policies in order to allow that institution to accommodate additional students and to more generously accept credits earned by students at the closing or closed institution. There may also be instances where the agency cannot apply its standards to a particular institution due to extenuating circumstances, such as local or regional economic challenges, natural disaster, differences in state or tribal laws, the implementation of certain innovations, or the unique nature or mission of an institution (e.g. an aviation program or a conservatory may have very different performance requirements – including physical performance requirements - or employment outcomes than a more traditional institution).

## Subpart B—The Criteria for Recognition

### Basic Eligibility Requirements

#### §602.10 Link to Federal programs.

The agency must demonstrate that--

(a) If the agency accredits institutions of higher education, its accreditation is a required element in enabling at least one of those institutions to establish eligibility to participate in HEA programs. The agency satisfies this requirement if, pursuant to 34 CFR 600.11(b), it accredits one or more institutions that participate in HEA programs and that could designate the agency as its link to HEA programs, even if the institution at the time of application currently designates another institutional agency as its Federal link; or

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

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

#### §602.11 Geographic scope of accrediting activities.

The agency must demonstrate that its accrediting activities are limited to--

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

(b) A region in which all of the institutions, additional locations, and branch campuses the agency accredits are located; or

(c) The United States.

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

#### §602.12 Accrediting experience.

(a)(1) An agency seeking initial recognition must demonstrate that it has granted accreditation or preaccreditation prior to submitting an application for recognition--

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

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

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

(2) After an agency has successfully completed the recognition process as outlined in subpart C and the Secretary has made a decision to grant initial recognition--

**Comment [A5]:** NOTE TO NEGOTIATORS: This provision is necessary to enable new agencies to enter the marketplace. Until an agency is recognized, it is highly unlikely that an already accredited institution or program will relinquish its current accreditation in hope that a new agency that may be better suited to its mission will become recognized.

**Comment [A6]:** NOTE TO NEGOTIATORS: The original proposal was not intended to force regional agencies to eliminate states from their scope or force institutions or programs to find new agencies. Rather, it was designed to point out that most regional agencies actually function as national agencies since they accredit additional locations and branch campuses outside of their scope. To clarify that we do not expect existing regional agencies to reduce their scope to 10 states, we have eliminated the reference to specific numbers of states and have instead changed the definition to require that the agency's scope include every state in which an institution, additional location or branch campus is located. Agencies are permitted to have overlapping geographic scope, which reflects current practice since agencies already accredit branch campuses that are in states that are part of the scope of other agencies.

(i) The agency must notify the Department prior to commencing its first accreditation review of an institution or program during that initial period of recognition. Department staff will observe associated accreditation activities to determine whether the agency conducts such activities in accordance with the Secretary's Criteria for Recognition and the agency's accreditation standards. If, during observations, Department staff determines that the agency is not conducting its accreditation process in accordance with the Secretary's Criteria for Recognition or the agency's accreditation standards, Department staff will proceed as provided in §602.33(c); and

(ii) The agency must complete an accreditation review of, and make an accreditation decision regarding, an institution or program during its first recognition period. If the agency does not make an accreditation decision during that recognition period, the Secretary will consider whether to withdraw recognition on that basis or review of the agency's application for renewal of recognition. (b)(1) A recognized agency seeking an expansion of its scope of recognition must demonstrate that it has accreditation or preaccreditation policies in place that meet all recognition criteria and cover the range of the specific degrees, certificates, institutions, and programs for which it seeks the expansion of scope.

(2) A recognized agency seeking expansion of scope to include graduate programs must justify its reasons for adding programs at the graduate level by demonstrating that employers requiring a graduate level credential will pay a salary commensurate with the cost of graduate education. An agency must have policies that engage employers in the review and consideration of new graduate programs to determine whether the graduate-level credential is required for employment, whether sufficient employment opportunities are available for new graduates, and whether salaries align with the cost of graduate education.. (3) An agency that cannot demonstrate experience in making accreditation or preaccreditation decisions under the expanded scope at the time of its application or review for an expansion of scope may--

(i) If it is an institutional agency, be limited in the number of institutions to which it may grant accreditation under the expanded scope for a designated period of time; or

(ii) If it is a programmatic agency be limited in the number of programs to which it may grant accreditation under that expanded scope for a certain period of time; and

(iii) Be required to submit monitoring reports regarding accrediting decisions made under the expanded scope.

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

### **§602.13 Agency acceptance by employers and practitioners**

The agency must demonstrate that its standards, policies, procedures, and decisions to grant or deny accreditation are sufficiently rigorous to be accepted by employers and practitioners.

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

**Comment [A7]:** NOTE TO NEGOTIATORS: This change seeks to solve the "chicken/egg" problem of requiring an agency to accredit an institution or program outside of its current scope in order to seek an expansion of scope; however, prior to receiving the expansion of scope, the institution or program is not considered eligible for Title IV or other Federal programs. We need to create on-ramps for agencies that seek an appropriate and necessary expansion of scope.

**Comment [A8]:** NOTE TO NEGOTIATORS: The "widely accepted" requirement is not found in statute, was too vaguely defined, and inconsistently enforced by the Department, and has enabled agencies, licensing bodies, and institutions to engage in anti-competitive practices to protect their market share. For example, licensing bodies that have an affiliated accrediting function are unlikely to approve a new accreditor as a trusted source of quality for the purpose of meeting eligibility requirements to sit for licensing exams. The revised language recognizes that even more important than being recognized by competitors as a reliable arbiter of quality, is the importance of being recognized by employers and practitioners as a trusted entity in ensuring that graduates of an institution are well prepared to enter and succeed in the workforce. By engaging employers in the evaluation of an accreditors standards, policies and procedures to grant or deny accreditation, students will have more opportunities to prepare for their occupation of choice and accreditors will be held to higher levels of accountability and less likely to engage in anti-competitive practices. Therefore, this change replaces an anti-competitive practice with one that more closely aligns with the ultimate goal of quality assurance in education.

## §602.14 Purpose and organization.

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

(1) A State agency that-

(i) Has as a principal purpose the accrediting of institutions of higher education, higher education programs, or both; and

(ii) Has been listed by the Secretary as a nationally recognized accrediting agency on or before October 1, 1991 and has been recognized continuously since that date.

(2) An accrediting agency that-

(i) Has a voluntary membership of institutions of higher education;

(ii) Offers accreditation that is used to provide a link to Federal HEA programs in accordance with § 602.10; and

(iii) Satisfies the "separate and independent" requirements contained in paragraph (b) of this section;

(3) An accrediting agency that-

(i) Has a voluntary membership; and

(ii) Has as its principal purpose the accrediting of higher education programs, or both higher education programs and institutions of higher education, and the accreditation it offers is used to provide a link to non-HEA Federal programs in accordance with § 602.10;

(4) An accrediting agency that, for purposes of determining eligibility for title IV, HEA programs--

(i) (A) Has a voluntary membership of individuals participating in a profession; or

(B) Has as its principal purpose the accrediting of programs within institutions that are accredited by another nationally recognized accrediting agency; and

(ii) Satisfies the "separate and independent" requirements contained in paragraph (b) of this section or obtains a waiver of those requirements under paragraph (d) of this section;

(b) For purposes of this section, "separate and independent" means that-

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

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

(3) The agency has established and implemented guidelines for each member of the decision-making body including guidelines on avoiding conflicts of interest in making decisions;

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

**Comment [A9]:** NOTE TO NEGOTIATORS: The Department is recommending the elimination of this table in response to feedback from the field that it is confusing. In its place, we propose language that more clearly explains the categories of agencies recognized by the Secretary.

**Comment [A10]:** NOTE TO NEGOTIATORS: The Department is concerned about the relationships between agencies and affiliated professional organizations that restrict eligibility for entrance into an occupation to graduates of institutions or programs accredited by the affiliated agency. We are also concerned when a membership organization votes to increase credential requirements, prompting the affiliated agency to increase the credential level of accredited programs to satisfy the requirements of the membership organization (especially when the membership organization also functions as a licensing board). The Department believes that agencies must demonstrate why a higher-level credential is required, based on employer demand and assurances that wages will increase commensurate with the added cost of education. It is also important to demonstrate that a higher credential is the preferred or only alternative and that curricular improvements or other changes would be insufficient.

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

(c) The Secretary considers that any joint use of personnel, services, equipment, or facilities by an agency and a related, associated, or affiliated trade association or membership organization violates the “separate and independent” requirements in paragraph (b) of this section.

(d) For purposes of paragraph (a)(4) of this section, the Secretary may waive the “separate and independent” requirements in paragraph (b) of this section if the agency demonstrates that—

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

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

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

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

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

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

### §602.15 Administrative and fiscal responsibilities.

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

(a) The agency has -

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

(2) Competent and knowledgeable individuals, qualified by education or **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, policies, and make its accrediting and preaccrediting decisions, including, if applicable to the agency's scope, their responsibilities regarding distance education and correspondence courses;

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

**Comment [A11]:** NOTE TO NEGOTIATORS: The Department once thought that these provisions could ensure compliance with the separate and independent requirement. However, the considerable amount of credential inflation that has taken place in occupations, including healthcare, is troubling. When even current safeguards regarding the joint use of space have proven insufficient, it is clear additional steps are needed to protect students and prevent unnecessary barriers to work..

**Comment [A12]:** NOTE TO NEGOTIATORS: The Department wishes to ensure such individuals are competent, but does not believe that competency can only be achieved through a formal education program when work-based learning or military service are viable alternatives. Our standards will no longer give priority to academic credentials over other avenues of competency development.

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

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

(6) Clear and effective controls including guidelines to prevent or resolve conflicts of interest, or the appearance of conflicts of interest, by the agency's -

(i) Board members;

(ii) Commissioners;

(iii) Evaluation team members;

(iv) Consultants;

(v) Administrative staff; and

(vi) Other agency representatives; and

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

(1) Its last full accreditation or preaccreditation review 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 decision letters made by the agency regarding the accreditation and preaccreditation of any institution or program and any substantive changes.

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

[ 64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55426, Oct. 27, 2009]

## Required Standards and Their Application

### §602.16 Accreditation and preaccreditation standards.

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

(1) The agency's accreditation standards clearly define its expectations for the institutions or programs it accredits, 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.

**Comment [A13]:** NOTE TO NEGOTIATORS: The Department believes that decision letters are important documents that should be retained, but that indefinite retention of every email or deliberative document leading up to the decision memo is unnecessary.

**Comment [A14]:** NOTE TO NEGOTIATORS: The Department is concerned that determining effectiveness of a standard or practice may be highly subjective, take many years, and requires an obvious and major deficiency before ineffectiveness becomes apparent. The Department expects agencies to respond effectively to such major outliers promptly, but also to focus on working with institutions or programs towards continuous improvement and to set realistic expectations for making meaningful progress towards genuine (rather than superficial) improvement.

(ii) Curricula.

(iii) Faculty.

(iv) Facilities, equipment, and supplies.

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

(vi) Student support services.

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

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

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

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

(2) The agency's preaccreditation standards, if offered--

(i) Are appropriately related to the agency's accreditation standards; and

(ii) Do not permit the institution or program to hold preaccreditation status for more than five years before a final accreditation decision is made.

(b) Agencies are not required to apply the standards described in paragraph (a)(1)(x) of this section to institutions or programs that do not participate in title IV, HEA programs. The agency's grant of accreditation or preaccreditation under this section must specify that the grant, by request of the institution, does not include participation by the institution or program in title IV, HEA programs.

(c) 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.

(d)(1) 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, correspondence courses, or direct assessment education, the agency's standards must effectively address the quality of an institution's distance education, correspondence courses, or direct assessment education in the areas identified in paragraph (a)(1) of this section.

(2) The agency is not required to have separate standards, procedures, or policies for the evaluation of distance education or correspondence courses except that an agency that has or seeks to include either type of program within the scope of recognition must define "distance education" and "correspondence courses" in accordance with the definitions in 34 CFR 600.2 and in a manner that clearly distinguishes between the types of delivery.

**Comment [A15]:** NOTE TO NEGOTIATORS: Institutions that seek accreditation to demonstrate institutional quality, but that do not participate in title IV, are not required to meet accreditation standards associated with title IV participation.

**Comment [A16]:** NOTE TO NEGOTIATORS: Regular and substantive is defined elsewhere. The Department is interested in feedback regarding whether this language should be deleted if the Distance Learning and Educational Innovation Subcommittee and Main Committee ultimately decide to have the Department, rather than accrediting agencies, define these terms in 600.2.

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

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

(g) Nothing in paragraph (a) of this section 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;

(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;

(3) Agencies from having different governance requirements for approving curricular changes to programs preparing students for employment in a specific field or occupation in order to enable programs to more effectively meet the recommendations or requirements of--

- (i) Industry advisory boards that include employers who hire program graduates;
- (ii) Widely recognized industry standards and organizations;
- (iii) Credentialing or other occupational registration or licensure; or
- (iv) Employers in a given field or occupation in making hiring decisions.

**Directed Questions:**

**1. The Department seeks recommendations from negotiators about when and how agencies should be allowed to grant waivers to institutions, such as to support innovation or in situations where an institution cannot reasonably be expected to comply with a given standard or requires for good cause additional time to come into compliance; when an institution is serving as a teach-out provider to students at a closed or closing institution; when state or local occupational licensing requirements are inconsistent with accreditation requirements; in the event of a natural disaster or catastrophic circumstance; to support innovation; or under other reasonable circumstances. Should institutions meet minimum performance requirements (such as no outstanding program reviews, sufficient financial responsibility scores, or student outcomes) in order to qualify for waivers for the purpose of experimenting with educational innovations?**

**2. The Department also seeks recommendations from negotiators on how it could discourage or prevent accreditors from aligning with state licensing bodies or other vocational credentialing boards to exclude the licensure of individuals who prepare for work through apprenticeship, the military, or other work-based learning pathways, and to prevent accreditors from responding to efforts to expand or elevate credentials that serve as minimum requirements for licensure or certification.**

**3. The Department also seeks the advice of negotiators on how to ensure that transfer of credits remain the decision of institutions, but disallow institutions from categorically denying credits from**

**Comment [A17]:** NOTE TO NEGOTIATORS: The Department hears frequently from employers that colleges and universities are not responsive to rapidly changing workforce needs due to faculty governance models that often favor the status quo, make changes slowly when changes are made at all, and , and lack knowledge of current industry practices. While faculty may prefer models providing them with significant decision-making authority, there is nothing in statute or regulation that requires this to be the primary or only governance model acceptable to agencies. The Department wishes to encourage agencies to accept multiple governance models, including those that are more responsive to employer needs.

The Department is concerned that many high quality workforce preparation programs currently reside in the non-credit and continuing education divisions of colleges and universities. Many have asserted that this less-than-ideal work-around is necessary to avoid the lengthy, burdensome, and unforgiving requirements of traditional faculty approval. In addition, campus leaders tell us that faculty pay scales in their regular academic programs are insufficient to allow the institution to hire individuals with exceptional technical skills, but not traditional academic credentials. These arrangements significantly disadvantage students and employers because college credits are not conferred to provide evidence of student learning, and often taxpayer subsidies are not extended to non-credit programs, which makes them much more expensive than programs offered for credit. These artificial and unnecessary barriers harm students and underserve employers, but they lack any basis in federal statute or regulation.

**national accreditors if the courses completed by the student are in alignment with those offered by the accepting institution.**

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

[ 64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55427, Oct. 27, 2009]

### **§602.17 Application of standards in reaching an accrediting decision.**

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

(a) Evaluates whether an institution or program—

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

(2) Is successful in achieving its stated objectives;

(b) Requires the institution or program to engage in a self-study process that assesses the institution's or program's educational quality and success in meeting its educational quality objectives highlights opportunities for improvement and includes a plan for making those improvements to meet the institution's or program's educational quality objectives;

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

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

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

(f) Provides the institution or program with a detailed written report that assesses the institution's or program's compliance with the agency's standards, including areas needing improvement, and the institution's or program's performance with respect to student achievement; and

**NOTE TO NEGOTIATORS: The Department seeks advice from negotiators on how to ensure continuous improvement and rigorous outcomes, while at the same time avoiding one-size-fits-all solutions that fail to appropriately account for differences in institutional mission, occupational pathways, or the accountability that students have for their own success. The Department seeks to ensure that it, and NACIQI, does not violate the statutory prohibitions on dictating student achievement standards, while at the same time requiring institutions to achieve strong outcomes.**

**Comment [A18]:** NOTE TO NEGOTIATORS: The Department is concerned that accreditation has become too focused on paperwork submission and bureaucracy with significant implications for the cost of and ability to innovate within postsecondary education. We propose to refocus accreditation on institutional mission, academic opportunity and rigor, and the student experience. The rising cost of accreditation is especially acute for small colleges, which must spend hundreds of thousands of dollars on consultants to prepare for accreditation reviews, site visits, and other requirements for maintaining accreditation. We also hear complaints that in many instances, the individuals who serve as peer reviewers have no experience at an institution like the one they are visiting – perhaps because small rural institutions cannot afford to participate in accreditation activities that take them away from their campuses and students

Bureaucratic assessment models that employ the use of complicated rubrics and expensive tracking and reporting software further adds to the cost of accreditation. The Department does not believe that assessment regimes should be so highly prescriptive or that institutions or programs should feel the need to hire outside consultants to take the superficial steps that sometimes seem necessary to maintain accreditation. Rather than a one-size-fits-all method for review, the Department believes that peer reviewers should be more open to evaluating the materials an institution or program presents, and considering them in the context of the

**Comment [A19]:** NOTE TO NEGOTIATORS: The Department and the Advisory Committee have, for too many years, pressured some agencies into adopting one-size-fits-all standards to evaluate institutions and programs, despite the fact that many have different missions and purposes, serve different populations of students, and emphasize different purposes of higher education (e.g., workforce preparation, character development, higher level problem-solving, research productivity, arts and humanities, or scholarly study). Not only does the HEA prohibit the Department from regulating student achievement standards, it also disallows the Secretary from requiring agencies to employ bright-line standards. A single standard might not serve as a valid quality measure for a welding program, a nursing program and a social work program. Similarly, a single standard may be ineffective in comparing employment outcomes for students who have different goals and ambitions or who live in different parts of the country. Bright-line standards that do not take into account the many variables that impact student outcomes, may lack scientific rigor and validity, and may essentially allow institutional selectivity to be the driver of quality assessments. The Department is more interested in evaluating the value proposition of an institution or program, which requires a more sophisticated analysis that takes into account the many variables that affect student outcomes.

(g) Requires institutions to have processes in place through which the institution establishes that the student who registers in any course, including a distance education or correspondence 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 classes, takes exams, or submits assignments by using, at the option of the institution, methods such as--

(i) A secure login and pass code or electronic badging systems;

(ii) Photo identification issued by a State or Federal agency, a foreign government, or the institution;

(iii) Proctored examinations; or

(iv) New or other technologies and practices that are effective in verifying student identity; and

(2) Makes clear in writing that institutions must use processes that protect student privacy and notify students of any projected additional student charges associated with the verification of student identity at the time of registration or enrollment.

(Authority: 20 U.S.C. 1099b) [ 64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55427, Oct. 27, 2009]

### **§602.18 Ensuring consistency in decision-making.**

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

(a) Provides the institution or program with a detailed written report that clearly identifies any deficiencies in the institution's or program's compliance with the agency's standards;

(b) At the request of an institution, performs a review of the agency's respect for the institution's religious mission and provides a written report of the results of that review;

(c) Does not deny preaccreditation or accreditation, or take action against an institution or program, due to an institution's adherence to its religious mission in any of its policies and practices; and

(d) Publishes any policies for retroactive application of an accreditation decision.

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

[ 64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55427, Oct. 27, 2009]

### **§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.

#### **Comment [A20]: NOTE TO NEGOTIATORS:**

Because students enrolled at public or non-profit institutions may participate in title IV programs once the institution or program is preaccredited, it is important for those students to benefit from an affirmative final accreditation decision, even if it isn't made until after the student completes a program. As long as the student was enrolled in the institution or program during the period of preaccreditation that resulted in the final decision, all credits earned during that enrollment are considered to have been earned from an accredited institution or program. Some agencies require up to five years of preaccreditation prior to a final accreditation decision, require a cohort of students to graduate from the program before a final accreditation decision will be made, or require an institution to undergo an extensive review subsequent to an approved change of control. Therefore, it is necessary for those agencies to retroactively award accreditation to ensure that the student's interests are served and that taxpayer dollars used to support the student's enrollment will enable the student to work and repay their student loans.

Without retroactive accreditation, new institutions or programs would be required to graduate at least one cohort of students from a program, even though students who completed the program would have no chance of having their credential recognized as accredited. This would be irresponsible for an institution to do and unfair for the students who may unwittingly go through such an program.

In 2017, the Department issued an announcement that retroactive accreditation was impermissible. The Department rescinded that guidance in 2018 and now wishes to codify the permissibility of retroactive accreditation in regulation.

(b) The agency must demonstrate it has, and effectively applies, monitoring and evaluation approaches that enable the agency to identify problems with an institution's or program's continued compliance with agency standards and that take into account institutional or program strengths and stability. These approaches must include periodic reports and collection and analysis of key data and indicators identified by the agency, including, but not limited to, fiscal information and measures of student achievement, consistent with the provisions of §602.16(f). This provision does not require institutions or programs to provide annual reports on each specific accreditation criterion.

(c) Each agency must monitor overall growth of the institutions or programs it accredits and, at least annually, collect headcount enrollment data from those institutions or programs.

(d) Institutional accrediting agencies must monitor the growth of programs at institutions experiencing significant enrollment growth, as reasonably defined by the agency.

(e) Any agency that has notified the Secretary of a change in its scope in accordance with § 602.27(a)(4) must monitor the headcount enrollment of each institution it has accredited that offers distance education or correspondence courses. The Secretary will require a review, at the next meeting of the National Advisory Committee on Institutional Quality and Integrity, of any change in scope undertaken by an agency if the enrollment of an institution that offers distance education or correspondence courses that is accredited by such agency increases by 50 percent or more within any one institutional fiscal year. If any such institution has experienced an increase in headcount enrollment of 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.

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

[ 64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55427, Oct. 27, 2009]

### §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) Have and follow a written policy for notifying the institution or program of the finding, provide sufficient opportunity for the institution or program to respond to that finding, and requiring the submission and approval of additional information, a compliance report, or a monitoring report, or a combination thereof, to demonstrate the institution's progress toward or success in achieving compliance;

(2) Have a written policy explaining the circumstances under which the agency will initiate an immediate adverse action;

(3) Have a written policy to evaluate and approve or disapprove monitoring or compliance reports it requires, to provide ongoing monitoring if warranted, and to evaluate an institution's or program's progress in resolving the finding of noncompliance;

(4) Provide the institution or program with a written timeline for coming into compliance that is reasonable, as determined by the agency's decision-making body, based on the nature of the finding,

**Comment [A21]:** NOTE TO NEGOTIATORS: This is a statutory provision.

**Comment [A22]:** NOTE TO NEGOTIATORS: While agencies should be permitted to take immediate adverse action against an institution or program, doing so is almost never in the best interest of students. Students' interests are best served when institutions or programs have time to implement a teach-out plan, enter into teach-out agreements with other institutions or programs, and help students move to a new institution to complete their programs. For students close to completion, it may be preferable to complete the program prior to the implementation of the adverse action. Oftentimes, institutions lose accreditation due to financial instability, not insufficient academic quality or institutional integrity. In such cases, it may cause unnecessary harm to students to force an institution into a precipitous closure. Therefore, the Department wishes to provide discretion to the agency to make a decision about the timing of an adverse action, based on the nature of the deficiency and the condition of the institution and its academic programs.

Meaningful academic improvement may be difficult within a 12-month period of time. Changes requiring faculty approval and implementation, changes in admissions standards, and improved employment outcomes all may require entire cohorts of students to matriculate. Accreditors should ensure progress towards these goals, but cannot expect genuine, meaningful change to occur within 12 months.

the time it would reasonably take to come into compliance, and the stated mission and educational objectives of the institution or program. The timeline may include intermediate checkpoints on the way to full compliance; and

(5) Have and follow a written policy describing the process and criteria for requesting and being granted a good-cause extension of the timeline.

(b) If the institution or program does not bring itself into compliance within the period specified by the agency, including under paragraph (a)(3) and (a)(4) of this section, the agency must take immediate adverse action against the institution or program, but may award a good cause extension if circumstances warrant such a decision, and may continue accreditation or preaccreditation for a sufficient amount of time to enable the institution or program to develop and implement a teach-out plan that provides the opportunity for students near completion of their program to do so and others to transfer to a new institution or program.

(c) An agency that accredits institutions may limit the adverse or other action to particular programs that are offered by the institution or to particular additional locations of an institution, without necessarily taking action against the entire institution and all of its programs, provided the noncompliance was limited to that particular program or location.

(d) All adverse actions taken under this subpart are subject to the arbitration requirements in 20 U.S.C. 1099b(e).

(e) An agency is not responsible for enforcing requirements in 34 CFR 668.14, 668.15, 668.16, 668.41, or 668.46, but if in the course of an agency's work it identifies instances or potential instances of non-compliance with any of these requirements, it must notify the Department.

(f) The Secretary may not require an agency to take action against an institution or program that does not participate in any title IV, HEA or other Federal programs as a result of a requirement specified in this chapter.

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

### §602.21 Review of standards.

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

(b) Before finalizing any changes to its standards, the agency must--

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

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

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

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

**Comment [A23]:** NOTE TO NEGOTIATORS: The Department is clarifying that title IV compliance reviews are the responsibility of the Department, not agencies. However, if in the course of an accreditation review an agency identifies a deficiency or lack of compliance with a title IV requirement, it must report that deficiency to the Department.

**Comment [A24]:** NOTE TO NEGOTIATORS: The removal of this section is intended to provide more flexibility for an agency to devise its standards without undue interference from the Department. The Department continues to have the authority, however, to review the agency's policies and procedures to ensure that they are sufficient for meeting the Department's requirements. It is reasonable to believe that agencies may need to review the adequacy of their standards, policies and processes on different timelines, based on the number and kinds of institutions or programs they accredit. It may also be more effective for an agency to review a portion of its standards each year rather than performing a comprehensive review at longer or shorter intervals.

## Required Operating Policies and Procedures

### §602.22 Substantive changes and other reporting requirements.

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

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

(2) The agency's definition of substantive change covers high-impact, high-risk changes, including at least the following--

(i) Any substantial change in the established mission or objectives of the institution or its programs,

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

(ii) The addition of programs that represent a significant departure from the existing offerings or educational programs, or method of delivery, from those that were offered when the agency last evaluated the institution.

(iii) The addition of graduate programs by an institution that previously offered only undergraduate programs or certificates.

(iv) A change in the way an institution measures student progress, such as whether the institution measures progress in clock hours or credit-hours, semesters, trimesters, or quarters; uses term or non-term programs; or uses time-based or non-time based methods.

(v) The addition of subscription programs.

(vi) A substantial increase in the number of clock hours or credit hours awarded, or an increase in the level of credential awarded, for successful completion of one or more programs.

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

(viii) 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.

(ix) The addition of each new location or branch campus, except as provided in paragraph (b)(2) of this section. The agency's review shall include assessment of the institution's fiscal and administrative capability to operate the location or branch, the regular evaluation of locations, and verification of the following:

(A) Academic control is clearly identified by the institution;

(B) The institution has adequate faculty, facilities, resources, and academic and student support systems in place;

(C) The institution is financially stable; and

(D) The institution has engaged in long-range planning for expansion; and

(x) Entering into a written arrangement under 34 CFR 668.5 under which an institution or organization not certified to participate in the title IV, HEA programs offers more than 50 percent of one or more of the accredited institution's educational programs.

(b)(1) Institutions that have been placed on a show-cause directive, have been subject to a negative action by the agency over the prior three academic years, or are subject to sanction by the Department, must receive approval for the following additional substantive changes (all other institutions must simply report these changes within 30 days to their accrediting agency):

(i) A change in an existing program's method of delivery.

(ii) A change of 25 percent or more of a program since the agency's most recent prior review.

(iii) The development of customized pathways or abbreviated or modified courses or programs to—

(A) Accommodate and recognize a student's existing knowledge, such as knowledge attained through employment or military service; and

(B) Close competency gaps between demonstrated prior knowledge (or competency) and the full requirements of a particular course or program.

(iv) Entering into a written arrangement under 34 CFR 668.5 wherein an institution or organization not certified to participate in the title IV, HEA programs offers more than 50 percent but less than 75 percent of one or more of the accredited institution's educational programs.

(2) Institutions that have received agency approval for the addition of a first additional location or branch campus as provided in paragraph (a)(2)(ix) of this section, that have not been placed on a show-cause directive or been subject to a negative action by the agency over the prior three academic years, and that are not subject to sanction by the Department, need not apply for agency approval of subsequent additions of locations and branches, and may simply report these changes to the accrediting agency within 30 days, if the institution 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—

(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

**Comment [A25]:** The Innovation Subcommittee is working to develop recommendations regarding written arrangements (see 668.5 and the Department's description of written agreements, which explains a number of scenarios under which written agreements may improve educational opportunities or reduce costs to students or institutions).

(v) Long-range planning for expansion.

(c) The agency must have an effective mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations approved under paragraphs (a)(2)(vii) and (a)(2)(viii) of this section.

(d) The agency may determine the procedures it uses to grant prior approval of the substantive change.

(e) 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 that is not a branch campus where at least 50 percent of an educational program is offered must provide for

(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 the additional location is meeting all of the agency standards that apply to that additional location; 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) A mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations of institutions that operate more than three additional locations; and

(3) A 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.

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

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

[ 64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55428, Oct. 27, 2009]

### **§602.23 Operating procedures all agencies must have.**

(a) The agency must maintain and make available to the public 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, preaccreditation, or substantive changes and the sequencing of those steps relative to any applications or decisions required by or from States or the Department relative to the agency's preaccreditation, accreditation, or substantive change decisions;

**Comment [A26]:** NOTE TO NEGOTIATORS: The Department has identified a number of instances in which confusion about the sequencing of approvals has jeopardized the continuation of accreditation. These instances have been identified relating to the addition of new programs, the addition of new locations, the establishment of a branch campus, and change of control. We believe that the agency should provide a clear timeline of approvals required for an institution to make a substantive change.

(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) A list of the names, academic and professional qualifications, and relevant employment and organizational affiliations of--

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

(ii) The agency's principal administrative staff.

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

(c) The accrediting agency must—

(1) Review in a timely, fair, and equitable manner any complaint it receives against an accredited institution or program that is related to the agency's standards or procedures. 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;

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

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

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

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

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

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

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

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

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

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

[ 64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55428, Oct. 27, 2009]

### **§602.24 Additional procedures certain institutional agencies must have.**

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

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

- (1) The educational program to be offered at the branch campus or additional location; and
- (2) The projected revenues and expenditures and cash flow at the branch campus.

(b) Site visits. The agency must undertake a site visit to a new branch campus or additional location, or following a change of ownership, as soon as practicable, but no later than six months after the establishment of that campus or additional location or the change of ownership.

(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, in accordance with section 487(c)(1)(G) of the HEA, or an action to limit, suspend, or terminate an institution participating in any title IV, HEA program, in accordance with section 487(c)(1)(F) of the HEA, and that a teach-out plan is required.

(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, including if the location is being moved (which, depending upon State requirements, may or may not be treated as a teach-out or closed school).

(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 includes a list of academic programs offered by the institution, and the names of other institutions that offer similar programs and that could potentially enter into a teach-out agreement with the institution.

(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.

**Comment [A27]:** NOTE TO NEGOTIATORS: The Department seeks to clarify that moving to a new location may or may not be considered a teach-out or closure, depending upon agency and State requirements regarding travel distance between campuses, and access to public transportation lines, etc.

**Comment [A28]:** NOTE TO NEGOTIATORS: The Department has learned through recent teach-out experiences that, while teach-out agreements cannot be executed until an institution has formally entered into a teach-out, it is important to know which institutions may have comparable programs that would enable those institutions to serve as potential teach-out partners.

(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.

(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 for approval. The agency may approve the teach-out agreement only if the agreement is consistent with applicable standards and regulations, and provides for the equitable treatment of students by ensuring that the institution accepting students through the teach-out agreement--

(i) Has the necessary experience, resources, and support services to provide an educational program that is of acceptable quality and reasonably similar in content, delivery modality, and scheduling to that provided by the institution that is ceasing operations either entirely or at one of its locations; however, while an online option may be made available to students enrolled in a closing ground-based program, such an option is not sufficient unless ground-based options are also provided;

(ii) Is able to remain stable, carry out its mission, and meet all obligations to existing students;

(iii) Has not been subject to show cause, probation, or an equivalent action by the agency during the prior two years, unless the action was rescinded by the agency or resolved by the institution to the satisfaction of the agency; and

(iv) Demonstrates that it can provide students access to the program and services without requiring them to move or travel for substantial distances or durations and that it will provide students with information about additional charges, if any.

(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 assist students in finding reasonable opportunities to complete their education without additional charges.

(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 are publicly disclosed in accordance with 34 CFR 668.43(a)(11).

(f) Agency designations. In its accrediting practice, the agency must--

(1) Adopt and apply the definitions of "branch campus" and "additional location" in 34 CFR 600.2;

(2) On the Secretary's request, conform its designations of an institution's branches and additional locations with the Secretary's if it learns its designations diverge; and

(3) Ensure that it does not accredit or preaccredit an institution comprising fewer than all of the programs, branches, and locations of an institution as certified for title IV participation by the Secretary, except with notice to and permission from the Secretary.

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

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

[ 64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55428, Oct. 27, 2009; 75 FR 66947, Oct. 29, 2010]

**Comment [A29]:** NOTE TO NEGOTIATORS: The Department believes that it must clarify that it is insufficient to limit a teach-out plan or teach-out agreements to providers that offer programs using a different instructional modality than the closing institution. For example, students enrolled in a ground-based program may be offered the opportunity to complete the program online, but must also be offered the opportunity to complete the program at another institution that will provide a ground-based opportunity. An online program must include, among potential teach-out options, other online programs that are similar to the program being taught out.

**Comment [A30]:** NOTE TO NEGOTIATORS: The Department believes that it is important for students involved in a teach-out or campus closure to be provided with teach-out options at institutions or programs that can accommodate the additional students, help them through the transition between campuses, and will be likely to be operational until the student can complete his or her program.

### **§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.

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

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

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

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

(iii) Does not serve only an advisory or procedural role, and has and uses the authority to make the following decisions: to affirm, amend, remand, or reverse adverse actions of the original decision-making body; and

(iv) Affirms, amends, reverses, or remands the adverse action. A decision to affirm, amend, or reverse the adverse action is implemented by the appeals panel or by the original decision-making body, at the agency's option; however, in the event of a decision to remand the adverse action to the original decision-making body for further consideration, the appeals panel must explain the basis for a decision that differs from that of the original decision-making body and the original decision-making body in a remand must act in a manner consistent with the appeals panel's decisions or instructions.

(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 that the agency permits the institution or program to make on its own during the appeal.

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

(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 decision subject to appeal was made.

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

(iii) The only remaining deficiency cited by the agency in support of a final adverse action decision is 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 (h)(1) of this section only once and any determination by the agency made with respect to that review does not provide a basis for an appeal.

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

[ 74 FR 55429, Oct. 27, 2009]

#### **§602.26 Notification of accrediting decisions.**

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

...

(c) Provides written notice to the public of the decisions listed in paragraphs (b)(1), (b)(2), and (b)(3) of this section within one business day 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, no later than 60 days after the decision, a brief statement summarizing the reasons for the agency's decision and the official comments 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.

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

(1) Decides to withdraw voluntarily from accreditation or preaccreditation, within 3 business days of receiving notification from the institution or program that it is withdrawing voluntarily from accreditation or preaccreditation; or

(2) Lets its accreditation or preaccreditation lapse, within 3 business days of the date on which accreditation or preaccreditation lapses.

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

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

[ 64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55429, Oct. 27, 2009]

**§602.27 Other information an agency must provide the Department.**

(a) The agency must submit to the Department—

(1) A copy, updated annually, of its list of accredited and preaccredited institutions and programs;

(2) 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;

(3) 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 (a)(4) of this section; or

(ii) Compliance with the criteria for recognition;

(4) Notification that the agency has expanded its scope of recognition to include distance education or correspondence courses as provided 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;

(5) 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

(6) 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.

(b) If an agency has a policy regarding notification to an institution or program of contact with the Department in accordance with paragraph (a)(5) or (a)(6) of this section, it must provide for a case-by-case review of the circumstances surrounding the contact, and the need for the confidentiality of that contact. Upon a specific request by the Department citing what the Department considers to be a compelling need for confidentiality, such as a matter relating to a criminal investigation, the agency must consider that contact confidential.

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

[ 74 FR 55430, Oct. 27, 2009]

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

...

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

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

## Subpart C—The Recognition Process

SOURCE: 74 FR 55430, Oct. 27, 2009, unless otherwise noted.

### Application and Review by Department Staff

#### §602.30 [Reserved]

#### §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) Documentation, as specified in the Recognition Handbook for the year as posted on the Department's website, that the agency complies with the criteria for recognition listed in subpart B of this part; and

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

(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) Provide copies of any relevant standards, policies, or procedures developed and applied by the agency for its use in accrediting activities conducted within the expansion of scope proposed and documentation of the application of these standards, policies, or procedures; and

(3) Provide the materials required by § 602.32(h)(1).

(c) *Compliance or monitoring reports.* If an agency is required to submit a compliance or monitoring report, it must do so within 30 days following the end of the period for achieving compliance 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 courses in accordance with §602.27(a)(4) reports an increase in headcount enrollment in accordance with §602.19(e) 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 45 days of reporting the increase or receiving notice of the increase from the Department, as applicable, submit a report explaining—

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

(2) The 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.

(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;

(2) To visit locations where agency activities such as training, review and evaluation panel meetings, and decision meetings take place, on an announced or unannounced basis;

(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, before submission to the Department—

(i) Redact the names and any other personally identifiable information about individual students and any other individuals who are not agents of the agency or of an institution the agency is reviewing;

(ii) Redact the personal addresses, personal telephone numbers, personal email addresses, Social Security numbers, and any other personally identifiable information regarding individuals who are acting as agents of the agency or of an institution under review;

(iii) 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; and

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

(2) The agency may, but is not required to, redact the identities of institutions that it believes are not essential to the Department's review of the agency and may 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 public disclosure.

(3) 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.

(4) Upon request by Department staff, the agency must disclose to Department staff any specific material the agency has redacted that Department staff believes is needed to conduct the staff review. Department staff will make any arrangements needed to ensure that the materials are not made public if prohibited by law.

**Comment [A31]:** NOTE TO NEGOTIATORS: Given the increase in Freedom of Information Act (FOIA) requests, the Department must require agencies to redact personally identifiable information (PII) and other sensitive information prior to sending the documents to the Department to ensure that sensitive information is protected from public disclosure.

(g) *Length of submissions.* The Secretary may publish in the Recognition Handbook posted for the year on the Department’s website reasonable, uniform limits on the length of submissions described in this section.

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

### **§602.32 Procedures for Department review of applications for recognition or for change in scope and increases in enrollment.**

(a) (1) An agency preparing for renewing recognition will submit, 24 months prior to the date on which the current recognition expires--

(i) A list of all institutions or programs that the agency plans to consider for an award of initial recognition or renewed recognition over the next year or, if none, over the succeeding year, as well as any institutions or programs currently subject to compliance report review or reporting requirements. An agency that does not anticipate a review of any institution for an initial award of recognition or renewed recognition in the 24 months prior to the date of recognition expiration may submit a list of institutions or programs it has reviewed for an initial award of accreditation or renewal of accreditation at any time since the prior award of recognition or leading up to the application for an initial award of recognition; and

(ii) The agency’s application for initial or renewed recognition, as defined in §602.31(a), to include a copy of the agency’s policies and procedures manual, and its accreditation standards.

(2) Department staff publishes a notice of the agency's submission of an application in the FEDERAL REGISTER inviting the public to comment on the agency's compliance with the criteria for recognition and establishing a deadline for receipt of public comment.

(b) Department staff analyzes the agency's application for initial or renewal of recognition, including the documentation identified in the Recognition Handbook for the year posted on the Department’s website, 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 the agency’s consistency in applying the criteria. The analysis of an application for recognition includes—

(1) Observations from site visit(s), on an announced or unannounced basis, to the agency or to a location where agency conducts activities such as training, review and evaluation panel meetings, or decision meetings;

(2) Observations from site visit(s), on an announced or unannounced basis, to one or more of the institutions or programs the agency accredits or preaccredits;

(3) A file review at the agency of documents identified in the Recognition Handbook for the year posted on the Department’s website, at which time Department staff may retain copies of documents needed for inclusion in the administrative record;

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

**Comment [A32]:** NOTE TO NEGOTIATORS: At the suggestion of the Department’s Office of Inspector General (Control Number ED-OIG/A09R0003), accreditation staff is transitioning to a process of randomly selecting agency actions and decisions as part of an agency’s initial recognition or renewal of recognition review. Therefore, the Department needs to know which actions and decisions an agency anticipates performing in advance of the Department’s review period so that it can select from among those actions or activities.

(5) Review of complaints or legal actions involving the agency; however, although complaints or legal actions brought by a third party against an accredited institution or program may be considered, they are not determinative of compliance unless the complaint or legal action results in a final judgment on the merits by a court or administrative agency.

(c) Department staff analyzes the materials submitted in support of an application for expansion of scope to ensure that the agency has the requisite experience, to the extent possible, and policies that comply with subpart B of this part, 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, but must make any and all such materials available to the agency for review and comment.

(e) Department staff's evaluation of a compliance report or monitoring report includes review of public comments solicited by Department staff in the Federal Register received by the established deadline, the agency's responses to the third-party comments, as appropriate, other third-party information Department staff receives, and additional information described in paragraphs (b) and (d) of this section, as appropriate.

(f) 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 602.15, 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) Requires that the agency withdraw its application and instructs the agency that it may reapply when the agency is able to demonstrate compliance.

(g) Except with respect to an application that has been returned and 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's application;

(2) Sends to the agency the draft analysis including any identified areas of potential non-compliance and all third-party comments and complaints, if applicable, and any other materials the Department received by the established deadline or is including in its review;

(3) Invites the agency to provide a written response to the draft analysis and third-party comments or other material included in the review, specifying a deadline that provides at least 180 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—

(i) Indicating that the agency is in full compliance, substantial compliance, or non-compliance with each recognition standard; and

(ii) Recommending that the senior Department official approve, continue with compliance reporting requirements due in 12 months, continue with compliance reporting requirements with a deadline in excess of 12 months based on a finding of good cause and extraordinary circumstances,

**Comment [A33]:** NOTE TO NEGOTIATORS: This provision is intended to codify current practice. The Accreditation Group currently accepts such documentation as evidence that a new agency will meet the federal gatekeeping requirement if recognized.

approve with monitoring or other reporting requirements, approve a monitoring report, deny, limit, suspend, or terminate recognition; and

(5) Provides to the agency, no later than 30 days before the Advisory Committee meeting, the final staff analysis and any other available information provided to the Advisory Committee under §602.34(c).

(h) 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 (g)(3) and (g)(5) of this section. If the Department staff's failure to send the materials in accordance with the timeframe described in paragraph (g)(3) or (g)(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.

(h) An agency seeking initial recognition must follow the policies and procedures outlined in section (a), but in addition must also submit—

(1) Letters of support for the agency from at least three accredited programs or institutions, three educators, and, if appropriate, three employers or practitioners, explaining the role for such an agency and the reasons for their support; and

(2) Letters from at least one program or institution that will rely on the agency as its link to a Federal program upon recognition of the agency, or intends to seek multiple accreditation which will allow it in the future to designate the agency as its Federal link.

(i)(1) An agency seeking an expansion of scope, either as part of the regular renewal of recognition process or during a period of recognition, must submit an application to the Secretary, separately or as part of the policies and procedures outlined in section (a), that--

(i) States the reason for the expansion of scope request;

(ii) Includes letters from at least three institutions or programs that would seek accreditation under one or more of the elements of the expansion of scope;

(iii) Explains how the agency must expand capacity in order to support the expansion of scope, if applicable, and, if necessary, how it will do so and how its budget will support that expansion of capacity; and

(iv)(A) If the application for initial recognition or expansion of scope includes graduate programs, or higher credential level programs than the agency has accredited previously, provides letters of support from a sample of employers who hire employees in that field or occupation supporting the need for the higher or graduate level credential and committing to salaries and wages commensurate with the cost of education at the higher or graduate credential level. The agency must also submit a study that provides clear and convincing evidence that any shortcomings of current education and training programs at the current credential level cannot be resolved through changes in the curriculum at the current credential level;

(B) If the application includes graduate programs among member institutions, demonstrates that the agency has in place policies to provide evidence that employers are demanding graduate

**Comment [A34]:** NOTE TO NEGOTIATORS: The Department is concerned about the growth in graduate programs, which increase the cost of education and reduce opportunities for low-income students in areas where a higher level credential might not actually be needed to perform the job and wages may not match the added cost of additional education. Faculty are naturally inclined to want to offer programs at the graduate level and professionals are inclined to want to increase the prestige of their field. However, it is inappropriate to increase credential levels unless there is evidence that the needs of the field cannot be met by changing curricular requirements at the current credential level and that employers will raise wages commensurate with the added cost of the higher level credential.

credentials of employees in that field, that graduate degrees are necessary, and that salaries paid to graduates are commensurate with the added cost of obtaining a higher level credential; and

(C) If the application for initial recognition or expansion of scope includes graduate programs, or higher credential level programs than the agency has accredited previously, statements by or on behalf of trade associations will not meet the requirements of providing documentation to justify an increased credential level or the addition of graduate programs.

(2) If an agency submits an application for expansion of scope, outside of the regular renewal of recognition process--

(j) Department staff will—

(A) Analyze the application and provide a written analysis to the agency, to include any areas of non-compliance with the Department's standards, and provide 90 days for the agency to provide supplemental information addressing those areas; and

(B) Provide a written recommendation, based on the review of the application and any responses provided by the agency to the written analysis, to the senior Department official regarding the approval or denial of the application;

(ii) Within 90 days of receiving a recommendation from Department staff, the senior Department official will issue a decision regarding the expansion of scope application, including approval, approval with conditions, deferral of decision, or denial; and

(iii) The agency will have 30 days to appeal that decision to the Secretary, following the procedures in § 602.37.

(3) The agency must notify the Department within 30 days if any institution it accredits that offers distance education or correspondence courses increases its enrollment by 50 percent or more during any one institutional fiscal year. In such a case, the Secretary will require a review of the agency at the next available meeting of the Advisory Committee, based on the documentation provided as required in §602.19(e) and follow the process outlined in §602.32(a)-(g).

(k) The Secretary may view the following as mitigating against accepting an initial, renewed, or expanded scope of recognition as proposed by an applicant agency:

(1) Evidence of collaboration by the agency, or any related or affiliated association, with a trade association or a State or occupational licensing or certification entity in supporting--

(A) An increase in the level of credential required for graduates to sit for a licensure or certification exam without evidence that employers will provide a commensurate increase in wages, or other restrictions, to enter the field; or

(B) Barriers that deny individuals who prepare through the military or work-based learning to qualify to sit for licensure or certification exams;

(2) Documentation that a lower level credential than that for which recognition is sought has historically been acceptable for graduates to enter the field, or is currently acceptable to a substantial number of employers;

(3) Evidence that institutions or programs accredited by the agency discriminate against credits or degrees earned from another institution or program based solely on the geographic scope of the recognized accreditor that accredits the institution or program, or without substantial regard to the academic content of the courses requested for transfer; or

(4) Evidence that the agency has established standards that reduce opportunities for students in secondary schools to participate in or earn credits through a dual or concurrent enrollment program, as defined in 20 U.S.C. 7801.

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

### **§602.33 Procedures for 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) Based on the submission of a monitoring report as directed by a decision by the senior Department official or Secretary; or

(2) Based on any information that, as determined by Department staff, appears credible and raises issues relevant to the recognition criteria.

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

(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 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 those criteria, it—

(1) Prepares a written draft analysis of the agency's compliance with the criteria of concern;

(2) Sends the draft analysis, including any identified areas of non-compliance and all supporting documentation, to the agency;

(3) Invites the agency to provide a written response to the draft analysis within 90 days, and, if neither the senior Department official nor the Secretary has requested a monitoring report, provides the agency with an opportunity to submit a monitoring report to remedy any deficiencies;

(4) Reviews the response provided by the agency, including any monitoring report submitted, and, either--

(i) Concludes the review;

(ii) Continues monitoring of the agency's areas of deficiencies; or

(iii) Makes a formal recommendation to the agency and the senior Department official to require a formal compliance report, require another monitoring report, or limit, suspend, or terminate recognition;

(5) Notifies the agency, in the event that the agency's response and monitoring report does not satisfy the staff, that the draft analysis will be finalized for presentation to the Advisory Committee;

(6) Publishes a notice in the FEDERAL REGISTER with an invitation for the public to comment on the agency's compliance with the criteria in question and establishing a deadline for receipt of public comment;

(7) Provides the agency with a copy of all public comments received and invites a written response from the agency;

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

(9) 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); and

(10) Submits the matter for review by the Advisory Committee in accordance with §602.34.

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

## **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) As applicable, the agency's application for recognition, renewal of recognition, or expansion of scope when Advisory Committee review is required, or the agency's compliance report or monitoring report; and all supporting documentation submitted by the agency;

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

(3) The agency's response to the draft 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 to make oral presentations before the Advisory Committee.

(e) The Advisory Committee considers the materials provided under paragraph (c) of this section 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, 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--

(1)(i) For an agency that is fully compliant, approve initial or renewed recognition;

(ii) Continue recognition with a required compliance report to be submitted to the Department within 12 months from the senior Department official;

(iii) In conjunction with a finding of exceptional circumstances and good cause, continue recognition for a specified period in excess of 12 months pending submission of a compliance report;

(iv) In the case of substantial compliance, grant initial recognition or renewed recognition and recommend a monitoring report with a set deadline to be reviewed by staff to ensure that corrective action is taken and full compliance is achieved or maintained (or for action by staff under §602.33 if it is not); or

(v) Deny, limit, suspend, or terminate recognition;

(2) Grant or deny a request for expansion of scope; or

(3) Revise or affirm the scope of the agency;

(4) Approve a compliance report.

(h) 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.

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

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

(a) Within ten business days 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 must be limited to—

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

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

(3) The inclusion of any recommendation or draft proposed decision for the senior Department official's consideration.

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

(2) Within ten business 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. No additional comments or new documentation may be submitted after the responses described in this paragraph are submitted.

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

## **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

under extraordinary circumstances when there are serious concerns about an agency's compliance with subpart B of this part 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 under this paragraph 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 paragraph (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) of this section.

(e) The senior Department official's decision may include, but is not limited to, approving for recognition; approving with a monitoring report; denying, limiting, suspending, or terminating recognition following the procedures in paragraph (g); granting or denying an application for an expansion of scope; revising or affirming the scope of the agency; approving a monitoring report; 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 this section.

(1)(i) The senior Department official approves recognition if the agency complies or substantially complies with the criteria for recognition listed in subpart B of this part.

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

(2)(i) Except as provided in paragraph (e)(3) of this section, if the agency either fails to comply with the criteria for recognition listed in subpart B of this part, 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 criteria the agency has failed to apply effectively.

(3)(i) If the senior Department official concludes an agency is non-compliant, the senior Department official may continue the agency's recognition and require the agency to submit a compliance report that will be subject to review in the recognition process, provided that

(A) the senior Department official concludes that the agency will demonstrate compliance with and effective application of the criteria for recognition within 12 months from the date of the senior Department official's decision or less; or

(B) the senior Department official identifies a deadline more than 12 months from the date of the decision by which the senior Department official concludes the agency will demonstrate full compliance with and effective application of the criteria for recognition, and also identifies exceptional

circumstances and good cause for allowing the agency more than 12 months to achieve compliance and effective application.

(ii) In the case of a compliance report ordered under paragraph (e)(3)(i) of this section, the senior Department official specifies the criteria the compliance report must address, and the time period for achieving compliance and effective application of 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 the record includes a compliance report required under paragraph (e)(3)(i) of this section, and the senior Department official determines that an agency has not complied with the criteria for recognition, or has not effectively applied those criteria, during the time period specified by the senior Department official in accordance with paragraph (e)(3)(i) of this section, 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 that the agency is substantially compliant, or is fully compliant but has concerns about the agency maintaining compliance, the senior Department official may approve the agency's recognition or renewal of recognition and require periodic monitoring reports that are to be reviewed and approved by Department staff.

(g) 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 one or more standards of recognition, or if the agency does not hold institutions accountable for complying with one or more of the agency's standards or criteria for accreditation that were 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 evidence addressing the finding; and

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

(h) If relevant and material information 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 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 (g)(2)(ii) of this section, specifying a deadline; and

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

(i) No agency may submit information to the senior Department official, or ask others to submit information on its behalf, for purposes of invoking paragraph (h) of this section. Before invoking paragraph (h) of this section, the senior Department official will take into account whether the information, if submitted by a third party, could have been submitted in accordance with §602.32(a) or §602.33(e)(2).

(j) 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.

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

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

#### 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 10 business 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) Once the agency's appeal and the senior Department official's response, if any, have been provided, no additional written comments may be submitted by either party.

(d) Neither the agency nor the senior Department official may include in its submission any new documentation it did not submit previously in the proceeding.

(e) On appeal, the Secretary makes a recognition decision, as described in §602.36(e). 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.

(f) The Secretary may determine, 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 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.

(g) If relevant and material information pertaining to an agency's compliance with recognition criteria, 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 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 (g)(2)(ii) of this section, specifying a deadline; and

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

(h) No agency may submit information to the Secretary, or ask others to submit information on its behalf, for purposes of invoking paragraph (g) of this section. Before invoking paragraph (g) of this section, the Secretary will take into account whether the information, if submitted by a third party, could have been submitted in accordance with §602.32(a) or §602.33(e)(2).

(i) 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.

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

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

...

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

**Subpart D—Department Responsibilities**

SOURCE: 64 FR 56617, Oct. 20, 1999. Redesignated at 74 FR 55435, Oct. 27, 2009, unless otherwise noted.

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

...

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

**PART 603—SECRETARY'S RECOGNITION PROCEDURES FOR STATE AGENCIES**

**§603.24 Criteria for State agencies.**

The following are the criteria which the Secretary will utilize in designating a State agency as a reliable authority to assess the quality of public postsecondary vocational education in its respective State.

...

(c) Capacity to foster ethical practices. The State agency must demonstrate its capability and willingness to foster ethical practices by showing that it:

(i) Promotes a well-defined set of ethical standards governing institutional or programmatic practices, including recruitment, advertising, transcripts, fair and equitable student tuition refunds, and student placement services;

(ii) Maintains appropriate review in relation to the ethical practices of each approved institution or program.

(Authority: 20 U.S.C. 1094(c)(4))

[39 FR 30042, Aug. 20, 1974, as amended at 75 FR 66947, Oct. 29, 2010]

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