

## Directed Questions to Non-Federal Negotiators

The Department seeks recommendations from negotiators on the following provisions. Please come to the next negotiating session prepared to discuss possible solutions, which should take into account and not exceed the Department's existing statutory authority:

### 1. ALTERNATIVE STANDARDS AND WAIVERS

**The Department seeks recommendations from negotiators about when and how agencies should be allowed to have alternative standards for meeting agency requirements, such as when they accredit institutions with vastly different missions, student populations or educational objectives. The Department also seeks recommendations from negotiators about when and how agencies should be allowed to grant waivers to one or more standards, such as to allow for educational innovations that may not fit neatly into the agency's typical requirements, or in situations where an institution cannot reasonably be expected to comply with a given standard due to circumstances beyond their control, or in the event that an institution has agreed to serve as a teach-out provider for students enrolled at a closed or closing institution. Should institutions be required to meet minimum performance requirements (such as no outstanding program reviews, sufficient financial responsibility scores, or sufficient cohort default rates), in order to qualify for waivers?**

#### **Background:**

##### Alternative Standards

There are instances when accreditors may wish to have multiple standards that allow institutions of different types or with different missions or even to allow different programs within a single institution to meet standards for student achievement, faculty credential requirements, facilities, financial capacity and student services in different ways. For example, a small, rural community college may face challenges in identifying a sufficient number of instructors who have advanced degrees in their academic field, and may elect to hire instructors who demonstrate their qualification to be effective educators through other mechanisms. High school teachers who successfully teach advanced courses at the high school level may be well qualified to teach remedial or first year courses at the college level – even if the high school teacher has an advanced degree in education rather than a specific academic field.

In other instances, a comprehensive university may wish to rely on licensure exam pass rates to evaluate the performance of some academic programs, but to rely on qualitative measures to evaluate student success in arts and humanities programs, and employer feedback or graduate school enrollment to evaluate student success in other programs. Accreditors should have flexibility to allow institutions to develop outcomes standards that are most relevant to the programs they offer and the promises they make to students and employers they serve.

## Waivers

There are also instances when an accreditor which has a single set of standards may wish to waive certain of those standards because of circumstances beyond the control of the institutions they accredit. For example, a programmatic accreditor may have a bright-line standard for licensure pass rates, but some states or territories do not require professionals in that field to take the licensure exam in order to work in the field. In such situations, an accreditor may wish to waive licensure pass rates and use a different standard to evaluate program quality since students who are not required to take licensure exams may not do so, or may do so in a way that doesn't accurately reflect the quality of the program. Students may feel less compelled to prepare for or do their best on an exam that has no bearing on whether or not they can work in their field.

Other circumstances that may point to the need for alternative standards or waivers from typical standards include:

- An agency may have expectations that institutions employ a shared governance model, but since such a model is not required by statute or regulations, it may wish to allow institutions or programs focused on meeting workforce needs to have a different governance model that prioritizes employers in the decision-making process, and allows for more rapid responses to changing curricular needs.
- An agency may find that a single set of accountability standards set the bar too low for a highly selective institution, but at the same time too high for an open enrollment institution, or that a single set of standards fails to adequately distinguish between the public service goals of a research university and a small rural community college.
- An agency may wish to allow an institution that is implementing an innovative pedagogical strategy or technology to exchange one or more of the agency's typical standards for alternative standards that more appropriately measure the effectiveness of that strategy or technology.
- An agency may implement enrollment caps for certain academic programs, in part to control supply of trained professionals and in part to ensure adequate internship or externship opportunities, but may wish to waive those caps in instances where that institution wishes to serve students displaced from a closing or closed institution, especially if internship or externship sites continue to be available to those students when they transition to a new institution.

### **Statutory Context:**

*Agencies must abide by, and cannot waive, requirements that are specifically imposed upon them or on the institutions or programs they accredit by federal or state law, nor can they expand their scope of recognition without Department approval. Agencies must have standards in place for each of the recognition requirements specified by statute, including 20 U.S.C. § 1099b, and listed in Section 34 C.F.R. § 602.16(a)(1). While agencies cannot waive any of these statutory recognition requirements for an*

*accredited institution, agencies have flexibility in defining how an institution must meet those requirements. There is nothing that would prohibit an agency from waiving a particular accreditor developed requirement designed to fulfill a federal or state requirement as long as the agency has an effective alternative requirement that satisfies the state or federal law.*

*Similarly, there is nothing that would prohibit an agency from maintaining dual or alternate standards for meeting those requirements to ensure that institutions with different missions, size or selectivity are held accountable in ways most appropriate to their mission and the students they serve. Like all standards, the dual or alternative policies must effectively address the quality of the institution or program to which it is tailored. In some instances, an agency may not have an alternative standard in place, but if an exceptional circumstance arises, it may wish to use a waiver process to allow an institution to meet the recognition requirements in a way not anticipated by the agency or included in its written standards but that meets the quality assurance requirements of accreditation as well as all other applicable legal requirements.*

## **2. SEPARATE AND INDEPENDENT**

**The Department also seeks recommendations from negotiators on how it could discourage or prevent accreditors from aligning with state licensing bodies, professional organizations or other vocational credentialing boards to exclude individuals who prepare for work through apprenticeship, the military, or other work-based learning pathways from sitting for licensing exams that they could otherwise pass. Similarly, the Department seeks recommendations on how to prevent costly and unnecessary credential inflation, which is sometimes driven by accreditors in partnership with affiliated credentialing organizations.**

### **Background:**

The Department is concerned about the growing number of professional and licensing bodies that have joined forces with accreditors to make completion of an accredited program a requirement for an individual to qualify to sit for a licensure or certification exam. Many of these licensing bodies once honored dual pathways to eligibility so that those who learned through on-the-job training or military service could demonstrate competency and earn licensure by sitting for the exam. Some programmatic accreditors have gone as far as sending letters to the Secretary of Labor demanding that he not register apprenticeship programs that could be equally, if not more effective in preparing individuals to pass licensure exams and to work in the field, but at a lower cost to individuals.

The Department does not have authority over licensing bodies but has the authority, e.g., to ensure that accreditors function separately and independently from affiliated membership, professional or trade organizations. The Department asks negotiators to provide recommendations on how to ensure that accreditors continue to act in the best interest of students, rather than members of professional organizations.

**Statutory Context:**

The separate and independent requirements are found at 20 U.S.C. § 1099b(b).

**3. TRANSFER OF CREDIT**

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

**Background:**

Many institutions have not established criteria by which transfer of credit requests are evaluated, and instead leave it to the subjective opinion of the faculty to make that determination. Without established criteria, many decisions to accept or deny a transfer of credit request seem arbitrary to students. This lack of transparency leaves some students confused about how and why specific TOC decisions were made, and can even result in different treatment of TOC requests from one academic department to another within the same institution.

The Department seeks the advice of negotiators on how to ensure that students are treated fairly and that transfer of credit decisions are made based on thoughtful analysis of curriculum, content, learning objectives or rigor rather than categorical denials because the sending institution is nationally accredited, is an open enrollment institution, or offers degrees at a lower level than the receiving institution (such as transfer of credits from community colleges to four-year institutions). Institutions are permitted to establish their own transfer of credit policies, which could include denying any and all transfer credits. However, among institutions that accept transfer credits, the Department is concerned that accreditors have put burden of proof on a decision to accept rather than deny transfer of credits. Instead of requiring institutions to justify why they did accept transfer of credits, it may be in the best interest of students if accreditors required institutions to justify why they did not accept transfer credits. It may also be helpful if the Department or accreditors required institutions to report the percentage of transfer credit requests approved for the major, approved to fulfill electives or general education requirements, and denied. What, if any, provisions should the Department consider in order to encourage institutions to issue credit through prior learning assessment?

**Statutory Context:**

*20 U.S.C. 1092(h) requires institutions to disclose their transfer of credit policies that include at a minimum, any established criteria used to evaluate transfer credits and a list of any institutions with which the institution has an articulation agreement.*

*Note: Any proposal from the negotiators should encourage institutions to be transparent and evenhanded in applying established criteria to transfer of credit requests without requiring an institution to adopt a particular policy, procedure, or practice. The Department does not seek to direct, control, or supervise the curriculum, program of instruction, administration, or personnel of any institution, or over any accrediting agency in accordance with 20 U.S.C. 1092(h), and any proposal should not require the Department to do so.*

#### **4. STUDENT ACHIEVEMENT**

**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.**

##### **Background:**

The Department is seeking to appropriately balance the need to hold institutions accountable for student outcomes with the recognition that open enrollment institutions and less selective institutions, by virtue of their mission, will have different outcomes than elite, selective institutions. The Department also seeks to expand the ways in which accreditors are permitted to measure student achievement to include qualitative as well as quantitative measures and to recognize that for many institutions, the number of degrees awarded under-reports the contributions an institution makes to students, including to those who do not seek a degree. The Department is concerned that accreditors inappropriately have been encouraged and in some cases required to adopt bright-line student achievement standards, and to elevate those standards despite the lack of evidence that higher standards are reasonable or appropriate or include appropriate statistical techniques to isolate the impact of program quality on student outcomes. The Department has also ignored the role of student accountability in determining outcomes. The Department wishes to identify ways to ensure continuous improvement and rigorous outcomes among institutions, while at the same time avoiding one-size-fits-all solutions that fail to appropriately account for differences in institutional mission, occupational pathways, student ambition, or choices about work-life balance. The Department seeks to ensure that it, and the Advisory Council, avoid violations of the statutory prohibitions on dictating student achievement standards, while at the same time requiring institutions to achieve strong outcomes.

##### **Statutory Context:**

*20 U.S.C. § 1099b(g) states: “Nothing in this chapter shall be construed to permit the Secretary to establish criteria for accrediting agencies or associations that are not required by this section. Nothing in this chapter shall be construed to prohibit or limit any accrediting agency or association from adopting additional standards not provided for in this section. Nothing in this section shall be construed to permit the Secretary to establish any criteria that specifies, defines, or prescribes the standards that accrediting agencies or associations shall use to assess any institution’s success with respect to student achievement.” 20 U.S.C. § 1099b(n)(3) states: “The Secretary shall not, under any circumstances, base*

*decisions on the recognition or denial of recognition of accreditation agencies or associations on criteria other than those contained in this section.” 20 U.S.C. § 1099b(p) provides: “Nothing in subsection (a)(5)[, which addresses the standards of an accreditation agency or association,] shall be construed to restrict the ability of (1) an accrediting agency or association to set, with the involvement of its members, and to apply, accreditation standards for or to institutions or programs that seek review by the agency or association; or (2) an institution to develop and use institutional standards to show its success with respect to student achievement, which achievement may be considered as part of any accreditation review”). 20 U.S.C. § 1099b(o) provides: “Notwithstanding any other provision of law, the Secretary shall not promulgate any regulation with respect to the standards of an accreditation agency or association described in subsection (a)(5)[, which addresses the standards of an accreditation agency or association].” Note also that there is no specific authority for the Department to seek or ensure continuous improvement.*