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To: 2024 Negotiated Rulemaking
 Program Integrity and Institutional Quality Committee

Date: February 6, 2024

Re: Accreditation Proposals for Session Two

NOTE: Red text is Department-proposed text; yellow highlighted text is Department-proposed text that is new to Session Two. Negotiator proposals appear in blue highlighted text.

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Board Members, Public Members, and Conflicts of Interest

We appreciate the Department’s commitment to enhancing the definition of a public member. Accrediting agencies are required to have public members on their boards (1 for every 7 overall members). But [research](#) has found that most of those public members are, in reality, from other institutions of higher education. As of January 2019, 22 of 69 public members on commissions were from institutional backgrounds (including 12 of 38 at agencies formerly known as regional accreditors and 10 of 31 at national accreditors).

As we proposed in Session One, we suggest also prohibiting anyone with a current or recent fiduciary obligation to a regulated entity, like another institution of higher education, from serving as a public member, from reviewing or consulting on the development of an agency’s budget, or from serving as an expert (a “competent and knowledgeable individual”) in an agency’s practice. Even if the institution is accredited by a different accrediting agency, administrators of a college wouldn’t be able to serve as a public member. We hope this would help prevent agencies from simply accessing people with the same interests but in another accreditor’s portfolio to fill a role designed to serve as an independent check on how the accreditor operates.

We also propose establishing that an employee of an accrediting agency, or a consultant to the agency, cannot serve as a public member, even after the five-year window of recent experience. An individual with such close ties to the accrediting agency and the institutions it has approved cannot be expected to serve in the independent role of a public representative.

Finally, we propose small changes to § 602.14(b)(3), as we did in Session One, to ensure agencies avoid conflicts of interest, applying a clearer responsibility on the entity to ensure conflicts of interest don't happen in practice, rather than simply requiring policies that avoid conflicts of interest.

§ 602.3 What definitions apply to this part?

* * *

Representative of the public means a person who is not--

(1) An A current or former 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 membercurrent or former member, employee, or representative of any trade association or membership organization related to, affiliated with, or associated with the agency;~~or an institution or program that either is accredited or preaccredited by the agency or has applied for accreditation or preaccreditation;~~

(3) An current or former current or former employee of or consultant to the agency;

(4)(3) An current or former employee of a member of the program integrity triad (the Department of Education; State higher education agencies or other officials or representatives of the State; and accrediting agencies); ~~or~~

(5) A spouse, parent, child, or sibling of an individual identified in paragraph (1) or, (2)), (3), or (4) of this definition.

(5) An individual with a fiduciary obligation to a regulated entity, such as an institution of higher education;

(65) A person who served in a capacity covered by paragraphs (1), (2), (34), or (45) of this definition in the past five years; or

(67) A family member of an individual identified in paragraphs (1), (2), (3), or (4) of this definition, including--

(i) Parent or stepparent, sibling or step-sibling, spouse, child or stepchild, or grandchild or stepgrandchild;

(ii) Spouse's parent or stepparent, sibling or step-sibling, child or stepchild, or grandchild or step-grandchild;

(iii) Child's spouse; or

(iv) Sibling's spouse.

§ 602.14 Purpose and organization.

* * *

(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 effective guidelines for each member of the decision-making body, including ensuring members avoid 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

(5) The agency develops and determines its own budget, with no review by or consultation with any other entity or organization or by any individual with a fiduciary obligation to a regulated entity, such as an institution of higher education.

* * * *

§602.15 Administrative and fiscal responsibilities.

The agency must have the administrative and fiscal capability to effectively 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, data and technology infrastructure, 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, apply or establish its policies, and make its accrediting and preaccrediting decisions, including, if applicable to the agency's scope, their responsibilities regarding distance education and correspondence courses, **except that the agency shall not include provided that individuals described in 34 CFR 668.14(b)(18)(i) or (ii) or 668.16(k) or individuals with a fiduciary obligation to a regulated entity, such as an institution of higher education do not meet this requirement.**

* * * *

Substantial Compliance

We are concerned that the concept of substantial compliance (for which institutions are subject to a monitoring report) is too subjective to be reliably enforced. In the wrong hands, substantial compliance could be used to allow an institution to operate with non-compliant practices in ways that cause significant harm to students.

As we did in Session One, we propose that the Department limit the use of this status for institutions that are behaving appropriately and are compliant in their practice, but which need to make documentation or paperwork updates to meet the Department's bar for recognition.

§ 602.3 What definitions apply to this part?

* * *

Monitoring report means a report that an agency is required to submit to Department staff when it is found to be substantially compliant. The report contains documentation to demonstrate that ~~t~~

~~(i) The agency is implementing its current or corrected policies; or~~

~~(ii) The agency, which is compliant in practice, has updated its policies to align with those compliant practices.~~

* * *

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

Standards for Accrediting Agencies

We appreciate the Department’s changes to ensure accreditors meet their statutory obligations to review institutions against standards that include student achievement, fiscal and administrative capacity, and student support services, among others. However, we are concerned that accrediting agencies too often fall short of the yardstick of serving as a “reliable authority regarding the quality of the education or training provided.”

To that end, we suggest several language changes that would enhance the expectations of accrediting agencies, including ensuring that agencies’ standards are effective; using federal data wherever such data are available; and establishing appropriate performance goals for each institution across the standards. We also recommend clarifying within the requirement that accreditors look at student achievement that they consider the achievement of *all* students in the school, measured across subgroups.

Finally, we propose to require that accreditors establish adequate controls to avoid manipulation of the standards by institutions (similar to language we suggested in Session One). For instance, a common student achievement metric for nursing programs is a minimum pass-rate on the licensure exam (NCLEX), as is mentioned in the statute for student achievement standards. Some students who enrolled in nursing programs have reported that, despite otherwise completing the program successfully, their schools did not allow them to graduate because they failed to meet a minimum score set by the school on a third-party’s standardized practice test for the NCLEX. (Two such students addressed this committee directly during the public comment periods on January 8 and January 9.) One student ended up with nearly \$30,000 in debt, and no degree to show for it. Another exhausted most of his GI Bill benefits and was forced to appeal to the school to be readmitted and permitted to retake the practice test. When schools prevent students who have otherwise completed the curriculum from graduating and sitting for a licensure exam, they artificially inflate their licensure exam pass-rate. Allowing schools to use such high-stakes exams to prevent students from taking the NCLEX and other such manipulative practices undermine accreditors’ obligation to oversee institutional quality by manipulating schools’ performance on commonly used accreditor student achievement measures.

§ 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 the following conditions are met:

~~(1) The agency’s accreditation standards must set forth clear expectations for the institutions or programs it accredits in the following areas:~~ (1) The agency’s accreditation standards must set forth clear and effective minimum expectations of performance that the agency must verify and enforce for each the institutions or programs it accredits, including by using, where appropriate, valid consistent, and

reliable data, which shall may include Federal data where available. The accreditation standards must set forth minimum expectations, including, as applicable, a quantified and statistically appropriate performance goal for each institution or program, in the following areas:

- (i) Success with respect to student achievement in relation to the institution's mission, which may include different standards for different institutions or programs and which includes student achievement for student subgroups, as established by the institution, including, as appropriate, consideration of State licensing examinations, course completion, and job placement rates.
- (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 of the Act, 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 standards must include adequate controls to prevent institutions from manipulating or otherwise inflating their performance on the standards, such as by discouraging or precluding students who complete coursework from taking licensure exams or by preventing institutions from inflating their job placement rates by counting individuals as employed who are not bona fide employees or who were employed in the field prior to graduation.

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

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

- (ii) Not permit the institution or program to hold preaccreditation status for more than five years before a final accrediting action is made.

* * * *

Enforcement and Oversight of Institutions

We propose to enhance expectations for how accrediting agencies oversee institutions and programs, and how quickly they enforce their standards for institutions and programs that fall short. Accrediting agency approval serves as both an important signal to students about the quality of their institutions, and a necessary precursor to receiving federal financial aid to attend that institution. Yet even where accrediting agencies have concerns about the caliber or compliance of an institution, they may continue the accreditation of that school for years on end, allowing it to run out the clock. Students are sometimes left in the dark about these concerns.

As we proposed at Session One, we suggest clarifying in § 602.19 that agencies be required to allow for both regular scheduled evaluations of institutions/programs and also that they conduct ongoing oversight of their institutions and programs. We also suggest clarifying that agencies have effective procedures to monitor institutions and programs by emphasizing the need to use accurate, current, and representative information; and by clarifying that data collection/analysis should be regular. We recommend that agencies be required to identify, assess, and act accordingly when they identify high-risk institutions, which may be those with the most extensive history of noncompliance, severe or a high volume of complaints, high tuition, and low retention or completion rates or high dropout rates.

Additionally, we propose some changes to the timeline for enforcement under proposed § 602.20(a), (b), and (h). For the enforcement timeframes that the Department proposed, we suggested using the length of the predominant program offered at the school, rather than the length of the longest program offered, for institutional accreditors, to better reflect the amount of time the school should reasonably need to come back into compliance. Under the Department's proposed language (i.e., current regulations), an institution that offers predominantly associate degrees but a single four-year degree program would have longer to come into compliance than an institution with entirely associate degrees -- a full six months extra for non-student-achievement concerns, and an entire year extra for student achievement issues.

With respect to subparagraph (h), we seek additional information from the Department in response to questions submitted by Carolyn Fast shortly after Session One (available at <https://www2.ed.gov/policy/highered/reg/hearulemaking/2023/questions-for-department-regarding-proposed-34-cfr-submitted-by-carolyn-fast.pdf>). In the interim, we retain our proposal from Session One to shorten the three-year timeframe to a one-year timeframe.

We also include confirming changes to these requirements in Part 604, the Secretary's Recognition of State Agencies for the Approval of Nurse Education.

§ 602.19 Monitoring and reevaluation of accredited institutions and programs.

(a) The agency must reevaluate, at regularly established intervals, and on an ongoing basis as appropriate, the institutions or programs it has accredited or preaccredited.

(b) The agency must demonstrate it has, and effectively applies, monitoring and evaluation approaches that provide the agency with the most current, representative, and accurate information available, and 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, periodic audits of a sample of data from institutions, and regular 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(g). This provision does not require institutions or programs to provide annual reports on each specific accreditation criterion.

(c) The agency must identify, monitor, evaluate, and act appropriately to address institutions that present a high risk of financial instability, low academic quality, lack of administrative capability, and/or lack of success with respect to student achievement. The agency's process for identifying such institution must provide for the consideration of institutions' history of noncompliance, severity and/or volume of complaints, investigations, and legal proceedings against the institution, high tuition, and low retention or completion rates or high annual dropout rates, and other factors determined by the agency to be relevant.

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

* * * *

§ 602.20 Enforcement of standards.

(a) If the agency's review of an institution or program under any standard, except a standard setting forth the agency's expectations for success with respect to student achievement as required under § 602.16(a)(1)(i), indicates that the institution or program is not in compliance with that standard, the agency must—

~~(1) Follow its written policy for notifying the institution or program of the finding of noncompliance;~~

~~(2) 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, the stated mission, and educational objectives of the institution or program. The timeline may include intermediate checkpoints on the way to full compliance and must not exceed the lesser of four years or 150 percent of the—~~

~~(i) Length of the program in the case of a programmatic accrediting agency; or~~

~~(ii) Length of the longest program at the institution in the case of an institutional accrediting agency;~~

~~(3) Follow its written policies and procedures for granting a good cause extension that may exceed the standard timeframe described in paragraph (a)(2) of this section when such an extension is determined by the agency to be warranted; and~~

~~(4) Have a written policy to evaluate and approve or disapprove monitoring or compliance reports it requires, provide ongoing monitoring, if warranted, and evaluate an institution's or program's progress in resolving the finding of noncompliance.~~

~~(b) Notwithstanding paragraph (a) of this section, the agency must have a policy for taking an immediate adverse action, and take such action, when the agency has determined that such action is warranted.~~

(1) Immediately initiate adverse action against the institution or program; or

(2) Require the institution or program to take appropriate action to bring itself into compliance with the agency's standards within a time period that must not exceed--

(i) Twelve months, if the program, or the **predominant length of the programs longest program** offered by the institution, is less than one year in length;

(ii) Eighteen months, if the program, or the **predominant length of the programs longest program** offered by the institution, is at least one year, but less than two years, in length; or

(iii) Two years, if the program, or the **predominant length of the programs longest program** offered by the institution, is at least two years in length.

(b) If the agency's review of an institution's or program's compliance with a standard setting forth the agency's expectations for success with respect to student achievement, as required under 34 C.F.R. § 602.16(a)(1)(i), indicates that the institution or program is not in compliance with that standard, the agency must 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, the stated mission, and the educational objectives of the institution or program. The timeline **must** include **the enforcement of intermediate checkpoints that allow the agency to ensure the institution will be on the way to full compliance by the end of the timeline.** The timeline ~~and~~ must not exceed the lesser of four years or 150 percent of the—

(1) Length of the program in the case of a programmatic accrediting agency; or

(2) Length of the ~~predominant length of the programs offered by~~ ~~longest program at~~ the institution in the case of an institutional accrediting agency.

(c) If the institution or program does not bring itself into compliance within the specified period, the agency must take immediate adverse action unless the agency, for good cause, extends the period for achieving compliance **for a maximum of one additional year**.

* * *

(h) Nothing in this part prohibits an agency from permitting the institution or program to be out of compliance with one or more of its standards, policies, and procedures adopted in satisfaction of §§ 602.16, 602.17, 602.19, 602.22, and 602.24 for a period of time, as determined by the agency annually, not to exceed ~~one~~ **three** years unless the agency determines there is good cause to extend the period of time, and if—

(1) The agency and the institution or program can show that the circumstances requiring the period of noncompliance are beyond the institution's or program's control, such as—

(i) A natural disaster or other catastrophic event significantly impacting an institution's or program's operations;

(ii) Accepting students from another institution that is implementing a teach-out or closing;

(iii) Significant and documented local or national economic changes, such as an economic recession or closure of a large local employer;

(iv) Changes **relating to** State licensure requirements;

(v) The normal application of the agency's standards creates an undue hardship on students; or

(vi) Instructors who do not meet the agency's typical faculty standards, but who are otherwise qualified by education or work experience, to teach courses within a dual or concurrent enrollment program, as defined in 20 U.S.C. 7801, or career and technical education courses;

(2) The grant of the period of noncompliance is approved by the agency's decision-making body;

(3) The agency projects that the institution or program has the resources necessary to achieve compliance with the standard, policy, or procedure within the time allotted; and

(4) The institution or program demonstrates to the satisfaction of the agency that the period of noncompliance will not—

- (i) Increase ~~Contribute to~~ the cost of the program to the student without the student's consent;
- (ii) Create any undue hardship on, or harm to, students; or
- (iii) Compromise the program's academic quality.

(5) An institution out of compliance as described in paragraphs (a) and (b) of this section is not permitted ~~entitled to~~ the extension provided for in this paragraph (h) unless the special circumstances described in this paragraph constitute a new and independent cause for the noncompliance, and such extension is provided at the sole discretion of the agency.

* * * *

§ 604.16 Enforcement of standards

* * *

(b) If the State approval agency's review of a program of nurse education's compliance with a standard setting forth the agency's expectations for success with respect to student achievement, as required under § 604.12(a), indicates that the program of nurse education is not in compliance with that standard, the State approval agency must provide the program of nurse education with a written timeline for coming into compliance that is reasonable, as determined by the State approval agency's decision-making body, based on the nature of the finding, the stated mission, and the educational objectives of the institution or program. The timeline ~~must~~ include the enforcement of intermediate checkpoints that allow the agency to ensure the institution will be in ~~on the way to~~ full compliance by the end of the timeline. The timeline ~~and~~ must not exceed the lesser of four years or 150 percent of the length of the program of nurse education.

* * *

(d) Nothing in this part prohibits a State approval agency from permitting the program of nurse education to be out of compliance with one or more of its standards, policies, and procedures for a period of time, as determined by the agency annually, not to exceed ~~one~~ three years unless the agency determines there is good cause to extend the period of time, and if –

* * * *

Substantive Changes (Written Arrangements)

We support and appreciate the Department's proposal to strengthen oversight of substantive changes, including with respect to written arrangements. As you know, institutions have long been required to seek

accreditor approval for written arrangements where an ineligible entity (non-Title IV-provider) will offer 25-50 percent of a program; and outsourcing of more than 50 percent is prohibited. These arrangements can include contracts with [online program management companies](#), [coding bootcamps](#), and [others](#).

As the Department noted in recent [guidance](#), however, some of these written arrangements are “not compliant” with Title IV requirements, in part because “institutions and their accrediting agencies do not always accurately account for the percentage of a program that is provided by an ineligible entity...” [Research](#) from 2021 further identified that accrediting agencies’ policies were inadequate, often with little scrutiny into the provider or the nature of the arrangement, and proposed some policy reforms to enhance oversight of these types of arrangements. We are concerned that the Department’s proposed changes do not explicitly codify that guidance, and/or remind agencies of their existing obligation to oversee the percentage of a program provided under an arrangement with an ineligible entity.

Finally, we note that in the Department’s proposed subparagraph (a)(1) of § 602.22, the Department proposed to replace a requirement for “adequate” substantive change policies with a requirement for “written” substantive change policies. We agree that such policies should be written; but we also believe the written policies should be adequate, and have suggested adding back that term.

§ 602.22 Substantive changes and other reporting requirements.

(a) (1) If the agency accredits institutions, it must maintain ~~adequate~~ ~~adequate~~ ~~written~~ substantive change policies that ensure that any substantive change, as defined in this section, 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—

- (i) 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
- (ii) The agency's definition of substantive change ~~covers high impact, high risk changes,~~ ~~including~~ ~~includes~~ at least the following:

* * *

~~(N)~~(M) Entering into a written arrangement under 34 C.F.R. § 668.5 under which an institution or organization not certified to participate in the title IV, HEA programs offers more than 25 and up to 50 percent of one or more of the accredited institution's educational programs. **The agency's evaluation of a written arrangement must be based on the agency's standards for executing a written arrangement with an ineligible institution or organization. At a minimum, those standards must include an assessment of the ineligible institution's or organization's administrative and financial capacity and expertise to deliver the portion of the program provided under the arrangement.;** The agency must also confirm that, for a written arrangement

between an eligible institution and an ineligible institution or organization, the arrangement complies with limitations on the amount of the program that the ineligible institution or organization provides as described in 34 CFR 668.5(c)(3).

* * * *

Complaints

We appreciate the Department's substantial improvements to the regulations governing accreditors' complaint processes. The lengthened time frame requiring agencies to accept complaints received up to five years after the date of an incident will enable much stronger protections for students and taxpayers; and the requirement for agencies to accept complaints in which the identity of the complainant remains private will ensure accreditors can review potential issues even where the individual's concern cannot be directly resolved. To further strengthen this goal, we propose adding language in § 602.23(d)(1) that would ensure complaints are accepted at least for monitoring, whether or not the complaint was first submitted to the institution; and in (d)(2) that would ensure accrediting agencies document not only their resolution of complaints received, but also their process for monitoring complaints (including anonymous complaints) to identify any potential patterns of quality concerns or misconduct by institutions. Our proposed changes would also require the agency to make publicly available complaints data on at least an annual basis, as the Department proposed to require of organizations that lead state authorization reciprocity agreements.

§ 602.23 Operating procedures all agencies must have.

* * *

(d) The accrediting agency must--

(1) Review any complaint it receives or otherwise becomes aware of against an accredited or preaccredited institution or program that is related to the agency's standards or procedures 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 ~~and may not refuse to accept a complaint on the basis that it does not identify the complainant or specify a particular accreditation standard~~ or that the complainant did not first submit the complaint to the institution or program and allow the institution or program to reach a conclusion. The agency must review complaints to determine whether they raise concerns related to possible noncompliance by the institution or program with the agency's standards, policies, and procedures. The agency's complaint procedures must include--;

(i) Clear timelines for the complaint review process, including the timely notification of the complainant regarding the status of the complaint;

(ii) Acceptance of complaints submitted within five years after the date of the incident detailed in the complaint;

(iii) Allowance for more than one complaint submission method;

(iv) A requirement that agency staff must provide feedback to a complainant who does not submit a complaint correctly under the agency's prescribed method(s), or that the agency must accept a complaint that sufficiently satisfies the agency's complaint procedures such that it can pursue the issue raised even when the complainant does not technically follow the agency's complaint procedures;

(v) Allowance for the confidentiality of the complainant, including the complainant's ability to elect to keep their personally identifiable information confidential, to the maximum extent possible, from the institution or program that is the subject of the complaint, and maintain a procedure to inform the complainant if it is necessary to share their identity with the institution to continue investigating the complaint. That procedure must include the option for the complainant to request that the resolution of the complaint not be pursued, but the agency shall be required to pursue any systemic noncompliance indicated by the content of the complaint;

(vi) A clear explanation of whether, and under what circumstances, an agency requires the complainant to first submit the complaint to the institution or program and to allow the institution or program to reach a conclusion prior to the agency pursuing a resolution of the complaint; ~~filling a complaint with the accrediting agency;~~

(vii) Clear complaint procedures, including with respect to the responsibilities and roles of agency staff in handling and responding to complaints;

(viii) A process to make information received on complaints public at least annually, including but not limited to the number and type of complaints by institution that is approved by the agency and the resolution of such complaints; and

(ix) Accessibility for individuals with disabilities;

(2) Adequately document the agency's review of, and decision concerning, any complaints it receives against accredited or preaccredited institutions and programs, including the agency's process of monitoring of all complaints (including anonymous complaints) received to identify patterns of systemic noncompliance and, if applicable, take and document follow-up action, ~~as necessary,~~ including enforcement action, ~~if necessary,~~ based on the results of its review; and

Disclosures of Accreditation Status

Accrediting agencies must require institutions to provide notice to students within seven days of a final decision to deny, withdraw, suspend, revoke, or terminate accreditation, or of any other adverse action as defined by the agency. This notice serves as a critical signal to students about concerns related to the institution where they are investing their time and money, and, since institutions must be accredited in order to access federal financial aid under the Title IV programs, a timely warning about the loss of accreditation.

However, in some cases, institutions have failed to provide accurate, timely warnings about the actions taken against their schools -- including actions like probation, as well as those that result in the loss of accreditation. In [one case](#), for example, a publicly traded institution faced serious action from its accreditor -- but reported the issue twice to its investors before it disclosed the fact directly to students. In another, a for-profit company [effectively hid](#) its loss of accreditation from students for months, but continued to tell students “we remain accredited...” even after being told by the accrediting agency that it was required to report to students that its “courses or degrees are not accredited...”

As we did in Session One, we propose to enhance oversight of these types of disclosures to students. Specifically, we have included our prior suggestion in proposed subparagraph (f)(2) of § 602.23 that agencies must take action against a school that fails to update its accreditation status to students in a timely and prominent manner after a serious action like probation, show cause, or adverse actions. We also suggest several additional changes, including disclosures of negative actions and the reasons for such actions (in subparagraph (e)) and related changes in § 602.26(c)(3), (d), and a new subparagraph (f) that would require disclosure to the Department and the public of negative actions, not just adverse actions.

§ 602.23 Operating procedures all agencies must have.

* * *

(de) An institution must make a public disclosure of a negative action by an accrediting agency. If an institution or program **makes such a disclosure, or** elects to make a public disclosure of **another 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, **the reason(s) for the action**, and the name and contact information for the agency.

(ef) The accrediting agency must--

(1) provide for the public correction of incorrect or misleading information an accredited or preaccredited institution or program releases about--

(i1) The accreditation or preaccreditation status of the institution or program;

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

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

(2) take action against any institution that fails to update its accreditation status to students, including the reason(s) for the action and any consequences and timeline associated with any action, in a timely and prominent manner following an action of probation or equivalent status, a show cause order, or an adverse action.

* * * *

§ 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--

(a) Provides written notice of the following types of decisions to the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and the public no later than 30 days after it makes the decision:

(1) A decision to award initial accreditation or preaccreditation to an institution or program.

(2) A decision to renew an institution's or program's accreditation or preaccreditation;

(b) Provides the decision letter for written notice of a final decision of a probation or equivalent status or an initiated adverse action to the Secretary, the appropriate State licensing or authorizing agency, and the appropriate accrediting agencies at the same time it notifies the institution or program of the decision and requires the institution or program to disclose such an action within seven business days of receipt to all current and prospective students;

(c) Provides written notice of the following types of decisions to the Secretary, the appropriate State licensing or authorizing agency, and the appropriate accrediting agencies at the same time it notifies the institution or program of the decision, but no later than 30 days after it reaches the decision:

(1) A final decision to deny, withdraw, suspend, revoke, or terminate the accreditation or preaccreditation of an institution or program.

(2) A final decision to take any other adverse action, as defined by the agency, not listed in paragraph (c)(1) of this section; or

(3) A final decision to take another negative action (such as a warning, accreditation with conditions, or similar action) or a decision to defer an institution's renewal of accreditation;

(d) Provides prominent written notice, including in the agency's directory of institutions, to the public of the decisions listed in paragraphs (b) and (c) of this section within one business day of its notice to the institution or program;

(e) For any decision listed in paragraphs (c)(1) or (2) of this section, requires the institution or program to disclose the decision to current and prospective students within seven business days of receipt and makes available to the Secretary, the appropriate State licensing or authorizing agency, and the public, no later than 60 days after the decision, the agency's decision letter 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;

(f) For any decision listed in paragraph (c)(3) of this section, requires the institution or program to disclose the decision to current and prospective students within seven business days of receipt and consistent with the requirements in § 602.23(e);

(gf) 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 10 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 10 business days of the date on which accreditation or preaccreditation lapses. ~~(Approved by the Office of Management and Budget under control number 1845-0003); and~~

(hg) Notifies the Secretary, the appropriate State licensing or authorizing agency, and the appropriate accrediting agencies, if the agency grants an extension for good cause under § 602.20 and provides a brief description of the reasons for the extension, within 10 days of approval of the extension by the agency's decision-making body.

* * * *

Teach-Out Plans and Agreements

When institutions are at risk of closure, one of accrediting agencies' obligations is to ensure continuity for students by requiring teach-out plans or agreements of those institutions. Under a teach-out plan, a college provides a light sketch of how a closure could be managed; under an agreement, a more formal arrangement or contract to ensure that closure plan can be executed.

Unfortunately, however, accrediting agencies have often failed to seek or obtain an actual agreement; and these plans have fallen far short of what students deserve. As the Department noted in [regulations](#) last year, "We have seen numerous examples of institutional closures that harmed students, their families, and taxpayers." [Research](#) shows that between the 2009 and 2017 school years, over 300 degree-granting institutions shut down, including [many](#) where students -- particularly marginalized students and students of color -- were left unaware and without options to continue their education. [Additional recent research](#) has shown that a large proportion of students attending a college when it abruptly closed are likely to never complete their college education as a result.

We strongly support the Department's proposed changes to require all institutions to maintain a teach-out plan, and to require accrediting agencies to seek a teach-out agreement following certain high-risk events. We also support the Department's proposal to establish the possibility of additional student and taxpayer protections for institutions that fail to submit a required teach-out agreement. These changes are common-sense and essential to protect students from the possibility of a poorly planned closure of their institution.

We also propose a small additional change to § 602.24(c)(8), as proposed, to ensure that the school teaching out the program offers the same program as the student's current course of study, and that it must have been in existence prior to entering into the agreement. Such institutions should not be under negative actions by a member of the triad, so we similarly propose to require assurances that a teaching-out institution is in good standing and not under negative action(s) by an accrediting agency, state, or the federal government.

§ 602.24 Additional procedures certain institutional agencies must have.

(c) Teach-out plans and agreements.

* * *

(86) The agency must require a **an closing** institution to include in its teach-out agreement—

(i) A complete list of students currently enrolled in each program at the institution and the program requirements each student has completed;

- (ii) A plan to provide all potentially eligible students with information about how to obtain a closed school discharge and, if applicable, information on State refund policies;
- (iii) A record retention plan to be provided to all enrolled students that delineates the final disposition of teach-out records (e.g., student transcripts, billing, financial aid records);
- (iv) Information on the number and types of credits the teach-out institution is willing to accept prior to the student's enrollment; ~~and~~
- (v) A clear statement to students of the tuition and fees of the educational program and the number and types of credits that will be accepted by the teach-out institution; ~~and~~
- (vi) An assurance that the institution that would offer the program of study under the agreement has operated affected students' current program of study for at least two years, and is not under a negative action by an institutional accrediting agency, State authorizing agency, or the Secretary.

* * *

Credit Transfer

Millions of students who enroll in higher education attend more than one institution, including hundreds of thousands of community college students each year who hope to ultimately transfer to and earn a bachelor's degree. Yet in the process, students often [lose many of their credits](#), adding to the costs of earning a degree and often derailing students' academic pathways so they don't earn a credit. Accrediting agencies do too little to oversee institutions' transfer of credit policies, failing to ensure students have reliable access to transfer pathways.

We appreciate the Department's proposed addition of several key data points, including the share of transfer students at the school, the average time to completion, and the average transfer rate. To further strengthen this section, we propose to clarify that the accreditor evaluate the efficacy of an institution's transfer of credit policies, including by using several of those data points, and that it establish expectations for institutional performance. We believe the share of transfer students enrolled at the institution will be useful information for students considering enrolling at the school about the institution's commitment to serving transfer students, so we propose to retain that data point as something required of institutions' publicly disclosed transfer policies. We also recommend requiring institutions to explore credit transfer specifically with other institutions accredited by the same agency, and to explain cases in which they do not accept any credits; given that credit transfer was a core reason for the development of accrediting agencies from the beginning, this is an important measure of the degree to which accrediting agencies truly are serving as arbiters of quality and the extent to which institutions rely on those measures.

§ 602.24 Additional procedures certain institutional agencies must have.

* * *

(e) *Transfer of credit policies.* The accrediting agency must--

(1) Confirm, as part of its review for initial accreditation or preaccreditation, or renewal of accreditation, that the institution has transfer of credit policies that—

(i) Are publicly disclosed in accordance with § 668.43(a)(11);

(ii) Include a statement of the criteria established by the institution regarding the transfer of credit earned at another institution; and

(iii) Include information on the share of transfer students enrolled at the institution; and

(2) Ensure the institution's transfer of credit policies are effective in ensuring the success of the institution's transfer student subgroup, including setting forth clear minimum expectations of performance and by using consistent and reliable data, including --

(i) Include information on the average time to completion for transfer students;

(ii) Include information on the share of transfer students enrolled at the institution; and

(iii) Include information on credit transfer acceptance rates toward general education credits and toward requirements for the program of study; and

(3) Assess the institution's credit transfer acceptance rates from institutions also approved by the institution's accrediting agency, and require the institution to provide an explanation for any such institutions from which it does not accept any credits.

* * * *

Transparency of Accreditor Recognition Decisions

Though a small change, we propose that the Department commit to providing information on an action to deny, limit, suspend, or terminate the recognition of an accrediting agency on the Department's website, including the reasons for such action. This change would ensure greater public availability of information and more transparency into Secretarial actions to deny, limit, suspend, or terminate recognition of an agency.

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

(a) Periodically, the Secretary publishes a list of recognized agencies in the Federal Register, together with each agency's scope of recognition. You may obtain a copy of the list from the Department at any time. The list is also available on the Department's web site.

(b) If the Secretary denies continued recognition to a previously recognized agency, or if the Secretary limits, suspends, or terminates the agency's recognition before the end of its recognition period, the

Secretary publishes a notice of that action, including the reasons for the action, in the Federal Register and on the Department's website. The Secretary also makes the reasons for the action available to the public, on request.

* * * *

Accreditor Application Procedures

We strongly support the Department's proposed changes to accrediting agencies' procedures for submitting an application for recognition or renewal. This change will help the Department to maintain a clear focus on the highest-risk agencies -- including those with the greatest connection to or volume in the Title IV, HEA programs, as well as those with the greatest track record of compliance concerns. By carefully allocating its resources this way, the Department's efforts to oversee accrediting agencies will be more effective and efficient.

We propose a small change to require that all agencies, even those not required to submit a comprehensive application, address two additional areas of the criteria: § 602.27(a)(6) is a requirement that agencies submit to the Department the name of any institution or program it accredits that the agency has reason to believe is failing to meet its Title IV obligations or is engaged in fraud or abuse; and § 602.28 requires agencies to respond to negative actions/decisions by other accreditors and (as proposed by the Department this session) by state/federal agencies. Both are significant in their importance to students and taxpayers, and should be standard areas for review of any agency during recognition proceedings.

§ 602.31 Procedures for submitting applications for recognition and renewal of recognition

§ 602.31~~2~~ Procedures for submitting ~~an~~ applications for recognition, ~~and~~ renewal of recognition, ~~expansion of scope, compliance reports, and increases in enrollment.~~

(a) An agency ~~must submit~~ ~~submitting~~ an application for initial or renewal of recognition and meet the submission deadline set by the Department. ~~preparing for renewing recognition will submit, 24 months prior to the date on which the current recognition expires, and in conjunction with the materials required by § 602.31(a), a list of all institutions or programs that the agency plans to consider for an award of initial or renewed accreditation 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 or program for an initial award of accreditation or renewed accreditation 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.~~ ~~The type of application that must be submitted, and the scope and priority of the Department's review, is determined by the Department as follows:~~

(1) If an institutional accrediting agency accredits institutions that participate extensively in title IV, HEA programs, the agency must submit a comprehensive application that addresses the agency's compliance with all criteria in subpart B of this part.;

(2) If an institutional accrediting agency is not identified for review under paragraph (a)(1) of this section, the agency must submit an application that addresses the agency's compliance with §§ 602.15, 602.16, 602.17, 602.19, and 602.20, 602.27(a)(6), and 602.28, and any other criteria as directed by Department staff. The agency must also attest that, since its last comprehensive review, the agency's policies and practices have remained in compliance with all criteria in subpart B of this part not addressed in its application.

(3) If an agency has been the subject of a significant number of legal actions, complaints, or other compliance issues, the agency must submit a comprehensive application that addresses the agency's compliance with all criteria in subpart B of this part.

(4) If an agency is only a programmatic accrediting agency and is not identified for review under paragraph (a)(3) of this section, the agency must submit an application that addresses the agency's compliance with the criteria in §§ 602.10, 602.16, 602.17, 602.19, and 602.20, 602.27(a)(6), and 602.28 and any other criteria as directed by Department staff. The agency must also attest that, since its last comprehensive review, the agency's policies and practices have remained in compliance with all criteria subpart B of this part not addressed in its application.

* * * *

Limitation Actions for Accrediting Agencies

In general, the Department has the authority to limit, suspend, or terminate the recognition of an accrediting agency that is out of compliance with the standards. However, as evidenced by the multi-year, litigation-heavy [process](#) that the Department experienced in withdrawing the recognition of one notoriously low-caliber accrediting agency, terminating recognition is not always easy. Nor is it always appropriate; some lesser non-compliance warrants a severe action, but may also warrant additional time for the accrediting agency to come back into compliance, under appropriate conditions and with adequate safeguards in place.

However, the Department rarely uses its limitation authority, including with respect to accrediting agencies. We propose changes throughout the accreditation regulations that would provide additional clarity about the Department's existing authority to limit the recognition of an accreditor. While this language does not extend or change the authority the Department already has, our hope is that by providing some illustrative examples in the rules about how the Department may use this authority, it may be more likely to do so when appropriate.

§ 602.31 Procedures for submitting applications for recognition and renewal of recognition

§ 602.31~~2~~ Procedures for submitting ~~an~~ applications for recognition, ~~and~~ renewal of recognition, ~~expansion of scope, compliance reports, and increases in enrollment.~~

* * *

(~~h~~f) Except with respect to an application that has been returned and is withdrawn under paragraph (~~e~~g) of this section, when Department staff completes its evaluation of the agency, the staff ~~may and, after July 1, 2021,~~ will —

* * *

(5) Review 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 noncompliance with each of the criteria for recognition; and

(ii) Recommending that the senior Department official approve, ~~renew-continue recognition~~ with compliance reporting requirements due in 12 months, ~~renew-continue recognition~~ with compliance reporting requirements with a deadline in excess of 12 months based on a finding of good cause and extraordinary circumstances, approve with monitoring or other reporting requirements, or deny, limit (including by limiting the scope of accreditation or number of institutions an accreditor may approve), suspend, or terminate recognition; and

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§ 602.32 Procedures for review of an expansion of scope, compliance report, or increase in headcount enrollment.

* * *

(~~b~~) For the review of a compliance report, Department staff--

* * *

(6) 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 noncompliance with each of the criteria for recognition under review; and

(ii) Including a recognition recommendation to the senior Department official, including, but not limited to a recommendation that the senior Department official approve, continue recognition

with compliance reporting requirements due in 12 months, continue recognition with compliance reporting requirements with a deadline in excess of 12 months based on a finding of good cause and extraordinary circumstances, approve with monitoring or other reporting requirements, or deny, limit (including by limiting the scope of accreditation or number of institutions an accreditor may approve), suspend, or terminate recognition; and

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§602.34 Advisory Committee meetings.

* * *

(e) The Advisory Committee considers the materials provided under paragraph (c) of this section and other materials or information relevant to an agency's compliance 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.

* * *

(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—

(1)

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

(ii) In the case of non-compliance--

(A) Continue recognition with a required compliance report to be submitted to the Department within ~~12 months from~~ 30 days after the end of the period specified in the decision of the senior Department official, which may not exceed 12 months;

(B) 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; or

(C) Deny, limit (including by limiting the scope of accreditation or number of institutions an accreditor may approve), suspend, or terminate recognition;

* * * *

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

* * *

(f) The Secretary may determine, based on the record, that a decision to deny, limit (including by limiting the scope of accreditation or number of institutions an accreditor may approve), 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(g). After the senior Department official makes a decision, the agency may, if desired, appeal that decision to the Secretary.

* * * *