

Team III – Accreditation – Amendatory Language for Proposed Regulations as Negotiated

At the request of several accrediting agencies, we are posting below the amendatory language for proposed regulations as negotiated in the recent negotiated rulemaking. Amendatory language from the negotiated rulemaking session will be published as proposed rules in the Federal Register but that has not yet been done. The Federal Register will contain the official version of the proposed rules and may differ in some respects from the amendatory language posted below. Furthermore, the proposed rules, when published in the Federal Register, will not be final, and will be subject to additional change, in response to written comments received during the comment period and otherwise. The Department plans to publish final rules in the Federal Register before November 1, 2009. The final rules, however, will not be effective until July 1, 2010, except at the option of recognized accrediting agencies. The provisions regarding recognition contained in the Higher Education Opportunity Act, P.L. 110-315, 122 Stat. 3078, on which many of the proposed regulations are based, have been effective since their enactment on August 14, 2008.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 600 and 602 of title 34 of the Code of Federal Regulations as follows:

PART 600--INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED.

1. The authority citation for part 600 continues to read as follows:

AUTHORITY: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

x. Section 600.2 is amended by:

A. Revising the definition of Correspondence course.

B. Adding in alphabetical order a new definition of Distance education.

C. Removing the definition of Telecommunications course.

The addition and revision read as follows:

§600.2 Definitions.

* * * * *

Correspondence course: (1) A course provided by an institution under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are separated from the instructor. Interaction between the instructor and student is limited, is not regular and substantive, and is primarily initiated by the student. Correspondence courses are typically self-paced.

(2) If a course is part correspondence and part residential training, the Secretary considers the course to be a correspondence course.

(3) A correspondence course is not distance education.

* * * * *

Distance education means education that uses one or more of the technologies listed in paragraphs (1) through (4) to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between the students and the instructor, either synchronously or asynchronously. The technologies may include--

(1) The internet;

(2) One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;

(3) Audio conferencing; or

(4) Video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in paragraphs (1) through (3).

* * * * *

PART 602--THE SECRETARY'S RECOGNITION OF ACCREDITING AGENCIES

x. The authority citation for part 602 continues to read as follows:

AUTHORITY: 20 U.S.C. 1099b, unless otherwise noted.

x. Section 602.3 is amended by:

A. Adding in alphabetical order a new definition of Compliance report.

B. Adding in alphabetical order a new definition of Correspondence education.

C. Adding in alphabetical order a new definition of Designated Federal Official.

D. Adding in alphabetical order a new definition of Direct assessment program.

E. Revising the definition of Distance education.

F. Adding in alphabetical order a new definition of Recognition.

G. Revising the definition of Scope of recognition.

H. Revising the definition of Teach-out agreement.

I. Adding in alphabetical order a new definition of Teach-out plan.

The additions and revisions read as follows:

§602.3 What definitions apply to this part?

* * * * *

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

Correspondence education means:

(1) Education provided through one or more courses by an institution under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are separated from the instructor.

(2) Interaction between the instructor and the student is limited, is not regular and substantive, and is primarily initiated by the student.

(3) Correspondence courses are typically self-paced.

(4) Correspondence education is not distance education.

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, and meets the conditions of 34 CFR 668.10. For title IV, HEA purposes, the institution must obtain approval for the direct assessment program from the Secretary under 34 CFR 668.10(g) or (h) as applicable. As part of that approval, the accrediting agency must--

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

Distance education means education that uses one or more of the technologies listed in paragraphs (1) through (4) to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between the students and the instructor, either synchronously or asynchronously. The technologies may include--

- (1) The internet;

(2) One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;

(3) Audio conferencing; or

(4) Video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in paragraphs (1) through (3).

* * * * *

Recognition means an unappealed determination by the senior Department official under §602.36, or a determination by the Secretary on appeal under §602.37, that an accrediting agency complies with the criteria for recognition listed in subpart B of this part and that the agency is effective in its 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.

* * * * *

Scope of recognition or scope means the range of accrediting activities for which the Secretary recognizes an

agency. The Secretary may place a limitation on the scope of an agency's recognition for title IV, HEA purposes. The Secretary's designation of scope defines the recognition granted according to--

* * *

(5) Coverage of accrediting activities related to distance education or correspondence education.

* * * * *

Teach-out agreement means a written agreement between institutions that provides for the equitable treatment of students and a reasonable opportunity for students to complete their program of study if an institution, or an institutional location that provides one hundred percent of at least one program offered, ceases to operate before all enrolled students have completed their program of study.

Teach-out plan means a written plan developed by an institution that provides for the equitable treatment of students if an institution, or an institutional location that provides one hundred percent of at least one program, ceases to operate before all students have completed their program of study, and may include, if required by the institution's accrediting agency, a teach-out agreement between institutions.

* * * * *

x. Section 602.15 is amended by:

A. Revising paragraph (a) (2).

B. In paragraph (b) (1), removing the word "two" and removing the letter "s" from the word "reviews" the first time it appears.

C. Revising paragraph (b) (2)

The revisions read as follows:

§602.15 Administrative and fiscal responsibilities.

* * * * *

(a) * * *

(2) Competent and knowledgeable individuals, qualified by education and experience in their own right and trained by the agency on their responsibilities, as appropriate for their roles, regarding the agency's standards, policies, and procedures, to conduct its on-site evaluations, apply or establish its policies, and make its accrediting and preaccrediting decisions, including, if applicable to the agency's scope, their responsibilities regarding distance education and correspondence education;

* * * * *

(b) * * *

(2) All decisions made throughout an institution's or program's affiliation with the agency regarding the accreditation and preaccreditation of any institution or program

and substantive changes, including all correspondence that is significantly related to those decisions.

* * * * *

x. Section 602.16 by amended by:

A. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively.

B. Revising paragraph (a)(1)(i).

C. Adding new paragraphs (c) and (f).

The additions and revision read as follows:

§602.16 Accreditation and preaccreditation standards.

(a) * * *

(1) * * *

(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.

* * * * *

(c) If the agency has or seeks to include within its scope of recognition the evaluation of the quality of institutions or programs offering distance education or correspondence education, the agency's standards must effectively address the quality of an institution's distance education or correspondence

education in the areas identified in paragraph (a)(1) of this section. The agency is not required to have separate standards, procedures, or policies for the evaluation of distance education or correspondence education.

* * * * *

(f) 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; or

(2) An institution from developing and using institutional standards to show its success with respect to student achievement, which achievement may be considered as part of any accreditation review.

* * * * *

x. Section 602.17 is amended by:

A. In paragraph (e), removing the word "and" at the end of the paragraph.

B. In paragraph (f), removing the punctuation "." and adding, in its place, the words "; and".

C. Adding a new paragraph (g).

The addition reads as follows:

§602.17 Application of standards in reaching an accrediting decision.

* * * * *

(g) Requires institutions that offer distance education or correspondence education to have processes in place through which the institution establishes that the student who registers in a distance education or correspondence education course or program is the same student who participates in and completes the course or program and receives the academic credit. The agency meets this requirement if it--

(1) Requires institutions to verify the identity of a student who participates in class or coursework by using, at the option of the institution, methods such as--

(i) A secure login and pass code;

(ii) Proctored examinations; and

(iii) New or other technologies and practices that are effective in verifying student identification; 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.

* * * * *

x. Section 602.18 is amended by:

A. Revising the introductory text.

B. Redesignating paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d), respectively.

C. In newly redesignated paragraph (c), removing the word "and" at the end of the paragraph.

D. In newly redesignated paragraph (d), removing the punctuation "." and adding, in its place, the words "; and".

E. Adding new paragraphs (a) and (e).

The additions and revision read as follows:

§602.18 Ensuring consistency in decision-making.

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

-

(a) Has written specification of the requirements for accreditation and preaccreditation that include clear standards for an institution or program to be accredited;

* * * * *

(e) 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.

* * * * *

x. Section 602.19 is amended by:

A. Revising paragraph (b).

B. Adding new paragraphs (c), (d), and (e).

The revision and additions read as follows:

§602.19 Monitoring and reevaluation of accredited institutions and programs.

(a) * * *

(b) The agency must demonstrate it has, and effectively applies, a set of monitoring and evaluation approaches that enables the agency to identify problems with an institution's or program's continued compliance with agency standards and that takes 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)(5) must monitor the headcount enrollment of each institution it has accredited that offers distance education or correspondence education. 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.

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x. Section 602.22 is amended by:

A. In paragraph (a)(2)(iii), removing the words ", in either content" and adding, in their place, the words "from the existing offerings of educational programs,".

B. In paragraph (a)(2)(iv), removing the words "courses or" and adding the words "of study" after the word "programs" the first time it appears, and removing the word "above" and adding, in its place, the words "different from".

C. Revising paragraph (a)(2)(vii).

D. Adding new paragraphs (a) (2) (viii), (a) (2) (ix), and (a) (2) (x).

E. Adding a new paragraph (a) (3).

F. Revising paragraph (b).

G. Revising paragraph (c), introductory text.

H. In paragraph (c) (2), adding the words "a representative sample of" immediately after the words "visits to".

The additions and revisions read as follows:

§602.22 Substantive change.

(a) * * *

(2) * * *

(vii) If the agency's accreditation of an institution enables the institution to seek eligibility to participate in title IV, HEA programs, the entering into a contract under which an institution or organization not certified to participate in the title IV, HEA programs offers more than 25 percent of one or more of the accredited institution's educational programs.

(viii) (A) If the agency's accreditation of an institution enables it to seek eligibility to participate in title IV, HEA programs, the establishment of an additional location at which the institution offers at least 50 percent of an educational program. The addition of such a location must be approved by the agency in accordance with paragraph (c) of this section

unless the accrediting agency determines, and issues a written determination stating that the institution has--

(1) Successfully completed at least one cycle of accreditation of maximum length offered by the agency and one renewal, or has been accredited for at least ten years;

(2) At least three additional locations that the agency has approved; and

(3) Met criteria established by the agency indicating sufficient capacity to add additional locations without individual prior approvals, including at a minimum satisfactory evidence of a system to ensure quality across a distributed enterprise that includes--

(i) Clearly identified academic control;

(ii) Regular evaluation of the locations;

(iii) Adequate faculty, facilities, resources, and academic and student support systems;

(iv) Financial stability; and

(v) Long-range planning for expansion.

(B) The agency's procedures for approval of an additional location, pursuant to paragraph (a) (2) (viii) (A) of this section, must require timely reporting to the agency of every additional location established under this approval.

(C) Each agency determination or redetermination to preapprove an institution's addition of locations under

paragraph (a) (2) (viii) (A) of this section may not exceed five years.

(D) The agency may not preapprove an institution's addition of locations under paragraph (a) (2) (viii) (A) of this section after the institution undergoes a change in ownership resulting in a change in control as defined in 34 CFR 600.31 until the institution demonstrates that it meets the conditions for the agency to preapprove additional locations described in this paragraph.

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

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

(x) The addition of a permanent location at a site at which the institution is conducting a teach-out for students of another institution that has ceased operating before all students have completed their program of study.

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

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

(c) Except as provided in paragraph (a) (2) (viii) (A) of this section, 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 where at least 50 percent of an educational program is offered must provide for a determination of the institution's fiscal and administrative capacity to operate the additional location. In addition, the agency's procedures must include--

* * * * *

x. Section 602.23 is amended by:

- A. Revising paragraph (a), introductory text.
- B. Revising paragraph (c) (1).

The revisions read as follows:

§602.23 Operating procedures all agencies must have.

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

* * * * *

(c) * * *

(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;

* * * * *

x. Section 602.24 is amended by:

A. Revising paragraph (c).

B. Adding new paragraphs (d) and (e).

The addition and revision read as follows:

§602.24 Additional procedures certain institutional accreditors must have.

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(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.

(iv) A State licensing or authorizing agency notifies the agency that an institution's license or legal authorization to provide an educational program has been or will be revoked.

(2) The agency must evaluate the teach-out plan to ensure it provides for the equitable treatment of students under criteria established by the agency, specifies additional charges, if any, and provides for notification to the students of any additional charges.

(3) If the agency approves a teach-out plan that includes a program that is accredited by another recognized accrediting agency, it must notify that accrediting agency of its approval.

(4) The agency may require an institution it accredits or preaccredits to enter into a teach-out agreement as part of its teach-out plan.

(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 between institutions that are accredited or preaccredited by a nationally recognized accrediting agency, is consistent with applicable standards and regulations, and provides for the equitable treatment of students by ensuring that--

(i) The teach-out institution has the necessary experience, resources, and support services to--

(A) Provide an educational program that is of acceptable quality and reasonably similar in content, structure, and scheduling to that provided by the institution that is ceasing operations either entirely or at one of its locations; and

(B) Remain stable, carry out its mission, and meet all obligations to existing students; and

(ii) The teach-out institution demonstrates that it can provide students access to the program and services without requiring them to move or travel substantial distances and that

it will provide students with information about additional 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--

(1) Are publicly disclosed in accordance with §668.43(x);
and

(2) Include a statement of the criteria established by the institution regarding the transfer of credit earned at another institution of higher education.

* * * * *

x. Section 602.25 is amended to read as follows:

§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; and

(iii) Affirms, amends, or reverses the adverse action, which will be implemented by the appeals panel or by the original decision-making body, at the agency's option. If the original decision-making body is responsible for implementing the appeals panel's decision, that body must act regarding the institution's or program's accreditation status in a manner consistent with the appeals panel's decision.

(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)

x. Section 602.26 is amended by:

A. In paragraph (b)(2), removing the punctuation ";" and adding, in its place, the punctuation ".".

B. Adding a new paragraph (b)(3).

C. In paragraph (c), removing the words "(b)(1) and (b)(2)" and adding, in their place, the words "(b)(1), (b)(2), and (b)(3)".

D. Revising paragraph (d).

The addition and revision read as follows:

§602.26 Notification of accrediting decisions.

* * * * *

(b) * * *

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

* * * * *

(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;

* * * * *

x. Section 602.27 is amended to read as follows:

§602.27 Other information an agency must provide the Department.

(a) The agency must submit to the Department--

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

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

(3) A summary of the agency's major accrediting activities during the previous year (an annual data summary), if requested by the Secretary to carry out the Secretary's responsibilities related to this part;

(4) Any proposed change in the agency's policies, procedures, or accreditation or preaccreditation standards that might alter its--

(i) Scope of recognition, except as provided in paragraph (5); or

(ii) Compliance with the criteria for recognition;

(5) Notification that the agency has expanded its scope of recognition to include distance education or correspondence education 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;

(6) The name of any institution or program it accredits that the agency has reason to believe is failing to meet its title IV, HEA program responsibilities or is engaged in fraud or abuse, along with the agency's reasons for concern about the institution or program; and

(7) If the Secretary requests, information that may bear upon an accredited or preaccredited institution's compliance with its title IV, HEA program responsibilities, including the eligibility of the institution or program to participate in title IV, HEA programs.

(b) If an agency has a policy regarding notification to an institution or program of contact with the Department in accordance with paragraphs (a)(6) or (a)(7), it must provide for

a case by case review of the circumstances surrounding the contact, and the need for the confidentiality of that contact. Upon a specific request by the Department, the agency must consider that contact confidential.

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

x. Subpart C is revised to read as follows:

Subpart C--The Recognition Process

Application and Review by Department Staff

§602.30 Activities covered by recognition procedures.

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

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

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

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

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

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

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

§602.31 Agency submissions to the Department.

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

(1) A statement of the agency's requested scope of recognition;

(2) Evidence, including documentation, that the agency complies with the criteria for recognition listed in subpart B of this part and effectively applies those criteria; and

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

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

(1) Specify the scope requested;

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

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

(c) Compliance reports. If an agency is required to submit a compliance report, it must do so within 30 days following the end of the period for achieving compliance as specified in the decision of the senior Department official or Secretary, as applicable.

(d) Review following an increase in headcount enrollment. If an agency that has notified the Secretary in writing of its change in scope to include distance education or correspondence education in accordance with §602.27(a)(5) 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 or that the Department may require.

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

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

(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 may--

(i) Redact information that would identify individuals or institutions that is not essential to the Department's review of the agency;

(ii) Make a good faith effort to designate all business information within agency submissions that the agency believes would be exempt from disclosure under exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. §552(b)(4). A blanket designation of all information contained within a submission, or of a category of documents, as meeting this exemption will not be considered a good faith effort and will be disregarded;

(iii) Identify any other material the agency believes would be exempt from public disclosure under FOIA, the factual basis for the request, and any legal basis the agency has identified for withholding the document from disclosure; and

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

(2) The Secretary processes FOIA requests in accordance with 34 CFR part 5 and makes all documents provided to the Advisory Committee available to the public.

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

§602.32 Procedures for Department review of applications for recognition or for change in scope, compliance reports, and increases in enrollment.

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

(b) The Department staff analyzes the agency's application for initial or renewal of recognition, compliance report, or report submitted under §602.31(d) to determine whether the agency satisfies the criteria for recognition, taking into account all available relevant information concerning the compliance of the agency with those criteria and in the agency's effectiveness in applying the criteria. The analysis of an application for recognition and, as appropriate, of a report required under §602.31(c) or (d), includes--

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

meetings, and decision meetings take place and to one or more of the institutions or programs it accredits or preaccredits;

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

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

(c) The Department staff analyzes the materials submitted in support of an application for expansion of scope to ensure that the agency has the requisite experience, 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.

(e) If, at any point in its evaluation of an agency seeking initial recognition, Department staff determines that

the agency fails to demonstrate compliance with the basic eligibility requirements in §§602.10 through 602.13, the staff--

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

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

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

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

(2) Sends the draft analysis including any identified areas of non-compliance and a proposed recognition recommendation, and all supporting documentation, including all third-party comments the Department received by the established deadline, to the agency;

(3) Invites the agency to provide a written response to the draft analysis and proposed recognition recommendation and third-party comments, specifying a deadline that provides at least 30 days for the agency's response;

(4) Reviews the response to the draft analysis the agency submits, if any, and prepares the written final analysis. The final analysis includes a recognition recommendation to the

senior Department official, as the Department staff deems appropriate, including, but not limited to, a recommendation to approve, deny, limit, suspend, or terminate recognition, require the submission of a compliance report and continue recognition pending a final decision on compliance, approve or deny a request for expansion of scope, or revise or affirm the scope of the agency; and

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

(g) The agency may request that the Advisory Committee defer acting on an application at that Advisory Committee meeting if Department staff fails to provide the agency with the materials described, and within the timeframes provided, in paragraphs (f)(3) and (f)(5) of this section. If the Department staff's failure to send the materials in accordance with the timeframe described in paragraph (f)(3) or (f)(5) of this section is due to the failure of the agency to submit reports to the Department, other information the Secretary requested, or its response to the draft analysis, by the deadline established by the Secretary, the agency forfeits its right to request a deferral of its application.

(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-

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

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

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

(c) If, in the course of the review, and after provision to the agency of the documentation concerning the inquiry and consultation with the agency, Department staff 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. The analysis reflects the results of the review, and includes a recommendation regarding what action to take with respect to recognition. Possible recommendations include, but are not limited to, a recommendation to limit, suspend, or terminate recognition, or

require the submission of a compliance report and to continue recognition pending a final decision on compliance;

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

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

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

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

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

(2) Publishes a notice in the Federal Register including, if practicable, an invitation to the public to comment on the

agency's compliance with the criteria in question and establishing a deadline for receipt of public comment;

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

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

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

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

(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) The agency's application for recognition or for expansion of scope, the agency's compliance report, or the agency's report submitted under §602.31(d), and supporting documentation;

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

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

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

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

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

(d) At least 30 days before the Advisory Committee meeting, the Department publishes a notice of the meeting in the Federal Register inviting interested parties, including those who submitted third-party comments concerning the agency's compliance with the criteria for recognition, to make oral presentations before the Advisory Committee.

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

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

§602.35 Responding to the Advisory Committee's recommendation.

(a) Within ten 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 documentary evidence 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 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.

(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 absent a recommendation from the Advisory Committee may be appealed to the Secretary as provided in §602.37.

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

(d) Except with respect to decisions made under paragraphs (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, denying, limiting, suspending, or terminating recognition, granting or denying an application for an expansion of scope, revising or affirming the scope of the agency, or continuing recognition pending submission and review of a compliance report under §§602.32 and 602.34 and review of the report by the senior Department official under this section.

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

(ii) If the senior Department official approves recognition, the recognition decision defines the scope of recognition and the recognition period. The recognition period does not exceed five years, including any time during which recognition was continued to permit submission and review of a compliance report.

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

(2) (i) Except as provided in paragraph (e) (3) of this section, if the agency either fails to comply with the criteria

for recognition listed in subpart B of this part, or to apply those criteria effectively, the senior Department official denies, limits, suspends, or terminates recognition.

(ii) If the senior Department official denies, limits, suspends, or terminates recognition, the senior Department official specifies the reasons for this decision, including all criteria the agency fails to meet and all criteria the agency has failed to apply effectively.

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

later than 30 days after the end of the period specified in the senior Department official's decision.

(ii) If the record includes a compliance report, and the senior Department official determines that an agency has not complied with the criteria for recognition, or has not 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, 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 of, a criterion or criteria of recognition not identified earlier in the proceedings as an area of noncompliance, the senior Department official provides--

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

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

(g) If relevant 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.

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

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

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

(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 ten days after receipt of the decision;

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

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

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

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

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

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

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

(e) 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.

(f) 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 (f) (2) (ii) of this section, specifying a deadline; and

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

(g) No agency may submit information to the Secretary, or ask others to submit information on its behalf, for purposes of invoking paragraph (f) of this section. Before invoking paragraph (f) 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).

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

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

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

An agency may contest the Secretary's decision under this part in the Federal courts as a final decision in accordance with applicable Federal law. Unless otherwise directed by the court, a decision of the Secretary to deny, limit, suspend, or

terminate the agency's recognition is not stayed during an appeal in the Federal courts.

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

- x. Subpart D is removed in its entirety.
- x. Subpart E is redesignated as subpart D.