

Team III – Accreditation – Amendatory Language

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

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

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

8 Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091,
9 1094, 1099b, and 1099c, unless otherwise noted.

10 x. Section 600.2 is amended by:

11 A. Revising the definition of Correspondence course.

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

14 C. Deleting the definition of Telecommunications
15 course.

16 The addition and revision read as follows:

17 §600.2 Definitions.

18 * * * * *

19 Correspondence course: (1) A course provided by an
20 institution under which the institution provides
21 instructional materials, by mail or electronic
22 transmission, including examinations on the materials, to
23 students who are separated from the instructor.

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1 Interaction between the instructor and student is limited,
2 is not regular and substantive, and is primarily initiated
3 by the student. Correspondence courses are typically self-
4 paced.

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

8 (3) A correspondence course is not distance
9 education.

10 * * * * *

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

18 (1) The internet;

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

23 (3) Audio conferencing; or

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

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

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

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

10 x. Section 602.3 is amended by:

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

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

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

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

19 E. Revising the definition of Distance education.

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

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1 G. Revising the definition of Scope of recognition by
2 adding at the end of paragraph (5) the phrase "or
3 correspondence education".

4 H. Revising the definition of Teach-out agreement.

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

7 The additions and revisions read as follows:

8 §602.3 What definitions apply to this part?

9 * * * * *

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

15 Correspondence education means:

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

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

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1 (3) Correspondence courses are typically self-paced.

2 (4) Correspondence education is not distance
3 education.

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

7 Direct assessment program means an instructional
8 program that, in lieu of credit hours or clock hours as a
9 measure of student learning, utilizes direct assessment of
10 student learning, or recognizes the direct assessment of
11 student learning by others, and meets the conditions of
12 §668.10. For title IV purposes, the institution must
13 obtain approval for the direct assessment program from the
14 Secretary under §668.10(g) or (h) as applicable. As part
15 of that approval, the accrediting agency must--

16 (1) Evaluate the program(s) and include them in the
17 institution's grant of accreditation or preaccreditation;
18 and

19 (2) Review and approve the institution's claim of
20 each direct assessment program's equivalence in terms of
21 credit or clock hours.

22 Distance education means education that uses one or
23 more of the technologies listed in paragraphs (1) through

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1 (4) to deliver instruction to students who are separated
2 from the instructor and to support regular and substantive
3 interaction between the students and the instructor, either
4 synchronously or asynchronously. The technologies may
5 include--

6 (1) The internet;

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

11 (3) Audio conferencing; or

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

16 * * * * *

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

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1 A grant of recognition to an agency as a reliable
2 authority regarding the quality of education or training
3 offered by institutions or programs it accredits remains in
4 effect for the term granted except upon a determination
5 made in accordance with subpart C that the agency no longer
6 complies with the subpart B criteria or that it has become
7 ineffective in its application of those criteria.

8 * * * * *

9 Scope of recognition or scope means the range of
10 accrediting activities for which the Secretary recognizes
11 an agency. The Secretary may place a limitation on the
12 scope of any agency's recognition for title IV, HEA
13 purposes. The Secretary's designation of scope defines the
14 recognition granted to--

15 * * *

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

18 * * * * *

19 Teach-out agreement means a written agreement between
20 institutions that provides for the equitable treatment of
21 students and a reasonable opportunity for students to
22 complete their program of study if an institution, or an
23 institutional location that provides one hundred percent of

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1 at least one program offered, ceases to operate before all
2 enrolled students have completed their program of study.

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

11 x. Section 602.15 is amended by:

12 A. Revising paragraph (a)(2).

13 B. In paragraph (b)(1), removing the word "two" in
14 the first sentence, and removing the letter "s" from the
15 word "reviews".

16 C. In paragraph (b)(2), adding the words "made
17 throughout an institution's or program's affiliation with
18 the agency" immediately after the word "decisions".

19 D. In paragraph (b)(2), adding the words "and
20 substantive changes" immediately after the word "program".

21 The revision reads as follows:

22 §602.15 Administrative and fiscal responsibilities.

23 * * * * *

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1 (a) * * *

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

11 x. Section 602.16 by amended by:

12 A. Redesignating paragraphs (c) and (d) as (d) and
13 (e).

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

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

16 The additions and revision read as follows:

17 §602.16 Accreditation and preaccreditation standards.

18 (a) * * *

19 (1) * * *

20 (i) Success with respect to student achievement in
21 relation to the institution's mission, which may include
22 different standards for different institutions or programs,
23 as established by the institution, including, as

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1 appropriate, consideration of State licensing examinations,
2 course completion, and job placement rates.

3 * * * * *

4 (c) If the agency has or seeks to include within its
5 scope of recognition the evaluation of the quality of
6 institutions or programs offering distance education or
7 correspondence education, the agency's standards must
8 effectively address the quality of an institution's
9 distance education or correspondence education in the areas
10 identified in paragraph (a)(1). The agency is not required
11 to have separate standards, procedures, or policies for the
12 evaluation of distance education or correspondence
13 education.

14 * * * * *

15 (f) Nothing in paragraph (a) restricts--

16 (1) An accrediting agency from setting, with the
17 involvement of its members, and applying accreditation
18 standards for or to institutions or programs that seek
19 review by the agency; or

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

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1 x. Section 602.17 is amended by adding a new
2 paragraph (g) as follows:

3 §602.17 Application of standards in reaching an
4 accrediting decision.

5 * * * * *

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

14 (1) Requires institutions to verify the identity of a
15 student who participates in class or coursework by using
16 methods such as--

17 (i) A secure login and pass code or proctored
18 examinations; and

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

21 (2) Makes clear in writing that institutions must use
22 processes that protect student privacy and notify students,

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1 before enrollment, of additional costs, if any, associated
2 with verification.

3 x. Section 602.18 is amended by:

4 A. Revising the introductory text.

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

7 C. Adding new paragraphs (a) and (e).

8 The additions and revision read as follows:

9 §602.18 Ensuring consistency in decision-making.

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

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

23 * * * * *

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1 (e) Provides the institution or program with a
2 detailed written report that clearly identifies any
3 deficiencies in the institution's or program's compliance
4 with the agency's standards.

5 x. Section 602.19 is amended by:

6 A. Revising paragraph (b).

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

8 The revision and additions read as follows:

9 §602.19 Monitoring and reevaluation of accredited
10 institutions and programs.

11 * * * * *

12 (a) * * *

13 (b) The agency must monitor institutions or programs
14 throughout their accreditation or preaccreditation period
15 by requiring periodic reports and conducting evaluations or
16 site visits, as necessary.

17 (c) The agency must monitor the growth of programs at
18 institutions experiencing significant enrollment growth, as
19 reasonably defined by the agency.

20 (d) The agency must monitor overall growth of the
21 institutions it accredits and, no less frequently than
22 annually, collect headcount enrollment data from those
23 institutions.

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1 (e) For the purposes of determining the need for
2 agency review of the status of the institution or program,
3 the agency must regularly collect and analyze key data and
4 performance indicators, including but not limited to
5 financial information and measures of student success.

6 (f) The agency must demonstrate it has, and
7 effectively applies, a set of monitoring and evaluation
8 approaches that enables the agency to identify potential
9 problems with an institution's or program's continued
10 compliance with agency standards and that takes into
11 account institutional or program strengths and stability.
12 This provision does not require institutions or programs to
13 provide annual reports on each specific accreditation
14 criterion.

15 (g) Any agency that has notified the Secretary of a
16 change in its scope in accordance with §602.27(a)(5) must
17 monitor the headcount enrollment of each institution it has
18 accredited that offers distance education or correspondence
19 education. If any institution has experienced an increase
20 in headcount enrollment of 50 percent or more within one
21 institutional fiscal year, the agency must report that
22 information to the Secretary within 30 days of acquiring
23 such data.

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1 * * * * *

2 x. Section 602.22 is amended by:

3 A. In paragraph (a)(2)(iii), removing the words "in
4 either content" immediately before the words "or method"
5 and adding in their place the words "from the existing
6 offerings of educational programs".

7 B. In paragraph (a)(2)(iv), removing the word "above"
8 immediately before the words "that which" and adding in its
9 place the words "different from".

10 C. Removing paragraph (a)(2)(vii).

11 D. Adding new paragraphs (a)(2)(vii), (a)(2)(viii),
12 (a)(2)(ix), (a)(2)(x), and (a)(2)(xi).

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

14 F. Revising paragraph (b).

15 G. Revising the paragraph (c) introductory text.

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

19 The additions and revisions read as follows:

20 §602.22 Substantive change.

21 (a) * * *

22 (2) * * *

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

8 (viii) For institutions that operate with a main
9 campus. If the agency's accreditation of an institution
10 enables it to seek eligibility to participate in title IV
11 HEA programs, the establishment of an additional location
12 geographically apart from the main campus at which the
13 institution offers at least 50 percent of an educational
14 program.

15 (ix) For institutions that operate as a distributed
16 enterprise. (A) If the agency's accreditation of the
17 institution enables it to seek eligibility to participate
18 in title IV HEA programs, the establishment of an
19 additional location where at least 50 percent of an
20 educational program is offered. The addition of such a
21 location must be approved by the agency in accordance with
22 paragraph (c) of this section unless the accrediting agency

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1 determines, and issues a written determination stating that
2 the institution has--

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

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

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

13 (i) Clearly identified academic control;

14 (ii) Regular evaluation of the locations;

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

17 (iv) Financial stability; and

18 (v) Long-range planning for expansion.

19 (B) The agency's procedures for approval of an
20 additional location, pursuant to (ix)(A), must require
21 timely reporting to the agency of every additional location
22 established under this approval.

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1 (C) Each agency determination or redetermination to
2 preapprove an additional location under (ix)(A) must be of
3 limited duration and may not exceed five years.

4 (D) The agency may not preapprove an institution's
5 addition of a location under (ix)(A) after the institution
6 undergoes a change in ownership resulting in a change in
7 control as defined in 34 CFR 600.31 until the institution
8 demonstrates that it meets the conditions for the agency to
9 preapprove an additional location described in this
10 paragraph.

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

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

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

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

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1 However, these procedures must specify an effective date,
2 which is not retroactive, on which the change is included
3 in the program's or institution's accreditation. An agency
4 may designate the date of a change in ownership as the
5 effective date of its approval of that substantive change
6 if the accreditation decision is made within 30 days of the
7 change in ownership. Except as provided in paragraph (c)
8 of this section, these procedures may, but need not,
9 require a visit by the agency.

10 (c) If the agency's accreditation of an institution
11 enables the institution to seek eligibility to participate
12 in title IV, HEA programs, the agency's procedures for the
13 approval of an additional location described in paragraph
14 (a)(2)(viii) of this section must provide for a
15 determination of the institution's fiscal and
16 administrative capacity to operate the additional location.
17 In addition, the agency's procedures must include--

18 * * * * *

- 19 x. Section 602.23 is amended by:
- 20 A. Revising the paragraph (a) introductory text.
- 21 B. Revising paragraph (c)(1).

22 The revisions read as follows:

23 §602.23 Operating procedures all agencies must have.

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

3 * * * * *

4 (c) * * *

5 (1) Review in a timely, fair, and equitable manner
6 any complaint it receives against an accredited institution
7 or program that is related to the agency's standards or
8 procedures. The agency may not complete its review and
9 make a decision regarding a complaint unless, in accordance
10 with published procedures, it ensures that the institution
11 or program has sufficient opportunity to provide a response
12 to the complaint.

13 * * * * *

14 x. Section 602.24 is amended by:

15 A. Redesignating paragraph (c)(3) as new paragraph
16 (d).

17 B. Revising paragraph (c).

18 C. Adding a new paragraph (e)

19 The addition and revision read as follows:

20 §602.24 Additional procedures certain institutional
21 accreditors must have.

22 * * * * *

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1 (c) Teach-out plans and agreements. (1) The agency
2 must require an institution it accredits or preaccredits to
3 submit a teach-out plan to the agency for approval upon the
4 occurrence of any of the following events:

5 (i) The Secretary notifies the agency that the
6 Secretary has initiated an emergency action against an
7 institution, or an action to limit, suspend, or terminate
8 an institution participating in any title IV, HEA program,
9 in accordance with the relevant portions of subpart G of
10 part 668.

11 (ii) The agency acts to withdraw, terminate, or
12 suspend the accreditation or preaccreditation of the
13 institution.

14 (iii) The institution notifies the agency that it
15 intends to cease operations entirely or close a location
16 that provides one hundred percent of at least one program.

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

21 (2) The agency must evaluate the teach-out plan to
22 ensure it provides for the equitable treatment of students
23 under criteria established by the agency, specifies

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1 additional costs, if any, and provides for notification to
2 the students of any additional costs.

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

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

10 (5) The agency must require an institution it
11 accredits or preaccredits that enters into a teach-out
12 agreement, either on its own or at the request of the
13 agency, to submit that teach-out agreement for approval.
14 The agency may approve the teach-out agreement only if the
15 agreement is between institutions that are accredited or
16 preaccredited by a nationally recognized accrediting
17 agency, is consistent with applicable standards and
18 regulations, and provides for the equitable treatment of
19 students by ensuring that--

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

22 (A) Provide an educational program that is of
23 acceptable quality and reasonably similar in content,

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1 structure, and scheduling to that provided by the
2 institution that is ceasing operations, either entirely or
3 at one of its locations; and

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

6 (ii) The teach-out institution demonstrates that it
7 can provide students access to the program and services
8 without requiring them to move or travel substantial
9 distances and that it will provide students with
10 information about additional costs, if any.

11 (d) Closed institution. If an institution the agency
12 accredits or preaccredits closes without a teach-out plan
13 or agreement, the agency must work with the Department and
14 the appropriate State agency, to the extent feasible, to
15 ensure that students are given reasonable opportunities to
16 complete their education without additional charge.

17 (e) Transfer of credit policies. The accrediting
18 agency must confirm, as part of its review for initial
19 accreditation or preaccreditation, or renewal of
20 accreditation, that the institution has transfer of credit
21 policies that--

22 (1) Are publicly disclosed in accordance with
23 §668.43(x); and

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

4 x. Section 602.25 is amended to read as follows:
5 §602.25 Due process.

6 The agency must demonstrate that the procedures it
7 uses throughout the accrediting process satisfy due
8 process. The agency meets this requirement if the agency
9 does the following:

10 (a) Provides adequate written specification of its
11 requirements, including clear standards, for an institution
12 or program to be accredited or preaccredited;

13 (b) Uses procedures that afford an institution or
14 program a reasonable period of time to comply with the
15 agency's requests for information and documents.

16 (c) Provides written specification of any
17 deficiencies identified at the institution or program
18 examined.

19 (d) Provides sufficient opportunity for a written
20 response by an institution or program regarding any
21 deficiencies identified by the agency, to be considered by
22 the agency within a timeframe determined by the agency, and
23 before any adverse action is taken.

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1 (e) Notifies the institution or program in writing of
2 any adverse accrediting action or an action to place the
3 institution or program on probation or show cause. The
4 notice describes the basis for the action.

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

9 (1) The appeal must take place at a hearing before a
10 decision-making appeals panel that--

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

13 (ii) Is subject to a conflict of interest policy.

14 (2) The agency must recognize the right of the
15 institution or program to employ counsel to represent the
16 institution or program during its appeal, including to make
17 any presentation--that the agency permits the institution or
18 program to make on its own during the appeal.

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

22 (h)(1) The agency must provide for a process, in
23 accordance with written procedures, through which an

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1 institution or program may, before the agency reaches a
2 final adverse action decision, seek review of new financial
3 information if all of the following conditions are met:

4 (i) The financial information was unavailable to the
5 institution or program until after the conclusion of the
6 fact-finding phase of the action.

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

11 (iii) The only remaining deficiency cited by the
12 agency in support of a final adverse action decision is the
13 institution's or program's failure to meet an agency
14 standard pertaining to finances.

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

19 x. Section 602.26 is amended by:

20 A. Adding a new paragraph (b)(3).

21 B. In paragraph (c), adding a comma after (b)(1),
22 removing "and" before (b)(2), adding a comma after (b)(2),
23 and adding "and (b)(3)" before "of this section".

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1 C. In paragraph (d), removing the words "upon
2 request" after the word "public", the commas after the word
3 "comments" and before the word "that" and the words "if
4 any" after the word "comments".

5 D. In paragraph (d), adding the word "official"
6 before the word "comments" and adding after the words "with
7 regard to that decision" a comma and the words "or evidence
8 that the affected institution has been offered the
9 opportunity to provide official comment;"

10 The addition reads as follows:

11 * * * * *

12 (b) * * *

13 (3) A final decision to take any other adverse
14 action, as defined by the agency, not listed in paragraph
15 (b)(2).

16 x. Section 602.27 is amended by:

17 A. In the lead-in sentence adding the paragraph
18 designation of "(a)" immediately before the word "The".

19 B. Redesignating paragraphs (a), (b), (c), and (d) as
20 (1), (2), (3), and (4).

21 C. In newly redesignated paragraph (4), redesignating
22 paragraphs (1) and (2) as paragraphs (i) and (ii).

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1 D. In newly redesignated paragraph (i), adding a
2 comma and the words "except as provided in paragraph (5)"
3 after the word "recognition".

4 E. In newly redesignated paragraph (a), adding a new
5 paragraph (5).

6 F. Redesignating paragraphs (e) and (f) as paragraphs
7 (6) and (7).

8 G. Adding a new paragraph (b).

9 The additions read as follows:

10 §602.27 Other information an agency must provide the
11 Department.

12 (a) * * *

13 (5) Notification that the agency has expanded its
14 scope of recognition to include distance education or
15 correspondence education as provided for in section
16 496(a)(4)(B)(i)(I) of the HEA. Such an expansion of scope
17 is effective on the date the Department receives the
18 notification.

19 (b) If an agency has a policy regarding notification
20 to an institution or program of contact with the Department
21 in accordance with paragraphs (a)(6) or (a)(7), it must
22 provide for a case by case review of the circumstances
23 surrounding the contact, and the need for the

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1 confidentiality of that contact. Upon a specific request
2 by the Department, the agency must consider that contact
3 confidential.

4 x. Subpart C is revised to read as follows:

5 Subpart C--The Recognition Process

6 APPLICATION AND REVIEW BY DEPARTMENT STAFF

7 §602.30 Activities covered by recognition procedures.

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

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

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

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

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

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

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

22 §602.31 Agency submissions to the Department.

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

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

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

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

21 (b) Applications for expansions of scope. An agency
22 seeking an expansion of scope by application must submit a

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1 written application to the Secretary. The application
2 must--

3 (1) Specify the scope requested;

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

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

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

15 (d) Review following an increase in headcount
16 enrollment. If an agency that has notified the Secretary
17 in writing of its change in scope to include distance
18 education or correspondence education in accordance with
19 §602.27(a)(5) reports an increase in headcount enrollment
20 in accordance with §602.19(f) for an institution it
21 accredits, or if the Department notifies the agency of such
22 an increase at one of the agency's accredited institutions,
23 the agency must, within 45 days of reporting the increase

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1 or receiving notice of the increase from the Department, as
2 applicable, submit a report explaining--

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

7 (2) The specific circumstances regarding the growth
8 at the institution(s) or programs(s) that triggered the
9 review and the results of any evaluation conducted by the
10 agency; and

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

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

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

22 (2) To visit locations where agency activities such
23 as training, review and evaluation panel meetings, and

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1 decision meetings take place, on an announced or
2 unannounced basis;

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

5 (4) To gain access to agency records, personnel and
6 facilities.

7 (f) Public availability of agency records obtained by
8 the Department. (1) The Secretary's processing and
9 decision making on requests for public disclosure of agency
10 materials reviewed under this part are governed by the
11 Freedom of Information Act, 5 U.S.C. §552; the Trade
12 Secrets Act, 18 U.S.C. §1905; the Privacy Act of 1974, as
13 amended, 5 U.S.C §552a; the Federal Advisory Committee Act,
14 5 U.S.C. Appdx. 1, and all other applicable laws. In
15 recognition proceedings, agencies
16 may--

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

20 (ii) Make a good faith effort to designate all
21 business information within agency submissions that the
22 agency believes would be exempt from disclosure under
23 exemption 4 of the Freedom of Information Act (FOIA), 5

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1 U.S.C. §552(b)(4). A blanket designation of all
2 information contained within a submission, or of a category
3 of documents, as meeting this exemption will not be
4 considered a good faith effort and will be disregarded;

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

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

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

16 (Authority: 20 U.S.C. 1099b)
17 §602.32 Procedures for Department review of applications
18 for recognition or for change in scope, compliance reports,
19 and increases in enrollment.

20 (a) After receipt of an agency's application for
21 initial or continued recognition, or change in scope, or an
22 agency's compliance report, or an agency's report submitted
23 under §602.31(d), Department staff publishes a notice of

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1 the agency's application or report in the Federal Register
2 inviting the public to comment on the agency's compliance
3 with the criteria for recognition and establishing a
4 deadline for receipt of public comment.

5 (b) The Department staff analyzes the agency's
6 application for initial or renewal of recognition,
7 compliance report, or report submitted under §602.31(d) to
8 determine whether the agency satisfies the criteria for
9 recognition, taking into account all available relevant
10 information concerning the compliance of the agency with
11 those criteria and in the agency's effectiveness in
12 applying the criteria. The analysis of an application for
13 recognition and, as appropriate, of a report required under
14 §602.31(c) or (d), includes--

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

21 (2) Review of the public comments and other third-
22 party information the Department staff receives by the
23 established deadline, and the agency's responses to the

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1 third-party comments, as appropriate, as well as any other
2 information Department staff assembles for purposes of
3 evaluating the agency under this part; and

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

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

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

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

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

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

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

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

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

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

22 (4) Reviews the response to the draft analysis the
23 agency submits, if any, and prepares the written final

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1 analysis. The final analysis includes a recognition
2 recommendation to the senior Department official, as the
3 Department staff deems appropriate, including, but not
4 limited to, a recommendation to approve, deny, limit,
5 suspend, or terminate recognition, require the submission
6 of a compliance report and continue recognition pending a
7 final decision on compliance, approve or deny a request for
8 expansion of scope, or revise or affirm the scope of the
9 agency; and

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

14 (g) The agency may request that the Advisory
15 Committee defer acting on an application at that Advisory
16 Committee meeting if Department staff fails to provide the
17 agency with the materials described, and within the
18 timeframes provided, in paragraphs (f)(3) and (f)(5) of
19 this section. If the Department staff's failure to send
20 the materials in accordance with the timeframe described in
21 paragraph (f)(3) or (f)(5) of this section is due to the
22 failure of the agency to submit reports to the Department,
23 other information the Secretary requested, or its response

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1 to the draft analysis, by the deadline established by the
2 Secretary, the agency forfeits its right to request a
3 deferral of its application.

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

5 §602.33 Procedures for review of agencies during the
6 period of recognition.

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

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

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

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

16 (c) If, in the course of the review, and after
17 provision to the agency of the documentation concerning the
18 inquiry and consultation with the agency, Department staff
19 notes that one or more deficiencies may exist in the
20 agency's compliance with the criteria for recognition or in
21 the agency's effective application of those criteria, it--

22 (1) Prepares a written draft analysis of the agency's
23 compliance with the criteria of concern. The analysis

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1 reflects the results of the review, and includes a
2 recommendation regarding what action to take with respect
3 to recognition. Possible recommendations include, but are
4 not limited to, a recommendation to limit, suspend, or
5 terminate recognition, or require the submission of a
6 compliance report and to continue recognition pending a
7 final decision on compliance;

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

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

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

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

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

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

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

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

17 (5) Provides to the agency, no later than seven days
18 before the Advisory Committee meeting, the final staff
19 analysis and a recognition recommendation and any other
20 information provided to the Advisory Committee under
21 §602.34(c).

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

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

2 REVIEW BY THE NATIONAL ADVISORY COMMITTEE ON INSTITUTIONAL
3 QUALITY AND INTEGRITY

4 §602.34 Advisory Committee meetings.

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

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

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

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

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

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

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

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

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

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

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

19 (f) The written motion adopted by the Advisory
20 Committee regarding each agency's recognition will be made
21 available during the Advisory Committee meeting. The
22 Department will provide each agency, upon request, with a
23 copy of the motion on recognition at the meeting. Each

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1 agency that was reviewed will be sent an electronic copy of
2 the motion relative to that agency as soon as practicable
3 after the meeting.

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

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

15 §602.35 Responding to the Advisory Committee's
16 recommendation.

17 (a) Within ten days following the Advisory Committee
18 meeting, the agency and Department staff may submit written
19 comments to the senior Department official on the Advisory
20 Committee's recommendation. The agency must simultaneously
21 submit a copy of its written comments, if any, to
22 Department staff. Department staff must simultaneously

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1 submit a copy of its written comments, if any, to the
2 agency.

3 (b) Comments must be limited to--

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

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

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

12 (c)(1) Neither the Department staff nor the agency
13 may submit additional documentary evidence with its
14 comments unless the Advisory Committee's recognition
15 recommendation proposes finding the agency noncompliant
16 with, or ineffective in its application of, a criterion or
17 criteria for recognition not identified in the final
18 Department staff analysis provided to the Advisory
19 Committee.

20 (2) Within ten days of receipt by the Department
21 staff of an agency's comments or new evidence, if
22 applicable, or of receipt by the agency of the Department
23 staff's comments, Department staff, the agency, or both, as

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1 applicable, may submit a response to the senior Department
2 official. Simultaneously with submission, the agency must
3 provide a copy of any response to the Department staff.
4 Simultaneously with submission, Department staff must
5 provide a copy of any response to the agency.

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

7 REVIEW AND DECISION BY THE SENIOR DEPARTMENT OFFICIAL

8 §602.36 Senior Department official's decision.

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

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

15 (2) The transcript of the Advisory Committee meeting;

16 (3) The recommendation of the Advisory Committee;

17 (4) Written comments and responses submitted under
18 §602.35;

19 (5) New evidence submitted in accordance with
20 §602.35(c)(1);

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

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

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

17 (d) Except with respect to decisions made under
18 paragraphs (f) or (g) of this section and matters referred
19 to the senior Department official under §602.37(e) or (f),
20 the senior Department official notifies the agency in
21 writing of the senior Department official's decision
22 regarding the agency's recognition within 90 days of the

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1 Advisory Committee meeting or conclusion of the review
2 under paragraph (b).

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

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

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

22 (iii) If the scope or period of recognition is less
23 than that requested by the agency, the senior Department

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1 official explains the reasons for approving a lesser scope
2 or recognition period.

3 (2)(i) Except as provided in paragraph (e)(3), if the
4 agency either fails to comply with the criteria for
5 recognition listed in subpart B of this part, or to apply
6 those criteria effectively, the senior Department official
7 denies, limits, suspends, or terminates recognition.

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

14 (3)(i) Except as provided in paragraph (ii), if a
15 recognized agency fails to demonstrate compliance with or
16 effective application of a criterion or criteria, but the
17 senior Department official concludes that the agency will
18 demonstrate or achieve compliance with the criteria for
19 recognition and effective application of those criteria
20 within 12 months or less, the senior Department official
21 may continue the agency's recognition, pending submission
22 by the agency of a compliance report, review of the report
23 under §§602.32 and 602.34, and review of the report by the

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1 senior Department official under this section. In such a
2 case, the senior Department official specifies the criteria
3 the compliance report must address, and a time period, not
4 longer than 12 months, during which the agency must achieve
5 compliance and effectively apply the criteria. The
6 compliance report documenting compliance and effective
7 application of criteria is due not later than 30 days after
8 the end of the period specified in the senior Department
9 official's decision.

10 (ii) If the record includes a compliance report, and
11 the senior Department official determines that an agency
12 has not complied with the criteria for recognition, or has
13 not effectively applied those criteria, during the time
14 period specified by the senior Department official in
15 accordance with paragraph (3)(i), the senior Department
16 official denies, limits, suspends, or terminates
17 recognition, except, in extraordinary circumstances, upon a
18 showing of good cause for an extension of time as
19 determined by the senior Department official and detailed
20 in the senior Department official's decision. If the
21 senior Department official determines good cause for an
22 extension has been shown, the senior Department official

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1 specifies the length of the extension and what the agency
2 must do during it to merit a renewal of recognition.

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

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

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

16 (g) If relevant information pertaining to an agency's
17 compliance with recognition criteria, but not contained in
18 the record, comes to the senior Department official's
19 attention while a decision regarding the agency's
20 recognition is pending before the senior Department
21 official, and if the senior Department official concludes
22 the recognition decision should not be made without

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1 consideration of the information, the senior Department
2 official either--

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

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

8 (2)(i) Provides the information to the agency and
9 Department staff;

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

14 (iii) Provides Department staff with an opportunity
15 to respond in writing to the agency's submission under
16 paragraph (ii), specifying a deadline; and

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

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

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

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

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

11 APPEAL RIGHTS AND PROCEDURES

12 §602.37 Appealing the senior Department official's
13 decision to the Secretary.

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

19 (1) Notify the Secretary and the senior Department
20 official in writing of its intent to appeal the decision of
21 the senior Department official, no later than ten days
22 after receipt of the decision;

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

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

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

9 (1) Submit a response to the Secretary no later than
10 30 days after receipt of a copy of the appeal; and

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

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

17 (d) On appeal, the Secretary makes a recognition
18 decision, as described in §602.36(e). If the decision
19 requires a compliance report, the report is due within 30
20 days after the end of the period specified in the
21 Secretary's decision. The Secretary renders a final
22 decision after taking into account the senior Department
23 official's decision, the agency's written submissions on

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1 appeal, the senior Department official's response to the
2 appeal, if any, and the entire record before the senior
3 Department official. The Secretary notifies the agency in
4 writing of the Secretary's decision regarding the agency's
5 recognition.

6 (e) The Secretary may determine, based on the record,
7 that a decision to deny, limit, suspend or terminate an
8 agency's recognition may be warranted based on a finding
9 that the agency is noncompliant with, or ineffective in its
10 application with respect to, a criterion or criteria for
11 recognition not identified as an area of noncompliance
12 earlier in the proceedings. In that case, the Secretary,
13 without further consideration of the appeal, refers the
14 matter to the senior Department official for consideration
15 of the issue under §602.36(f). After the senior Department
16 official makes a decision, the agency may, if desired,
17 appeal that decision to the Secretary.

18 (f) If relevant information pertaining to an agency's
19 compliance with recognition criteria, but not contained in
20 the record, comes to the Secretary's attention while a
21 decision regarding the agency's recognition is pending
22 before the Secretary, and if the Secretary concludes the

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1 recognition decision should not be made without
2 consideration of the information, the Secretary either--

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

5 (ii) Refers the matter to Department staff for review
6 and analysis under §§602.32 or 602.33, as appropriate, and
7 review by the Advisory Committee under §602.34; and
8 consideration by the senior Department official under
9 §602.36; or

10 (2)(i) Provides the information to the agency and the
11 senior Department official;

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

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

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

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

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

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

10 §602.38 Contesting the Secretary's final decision to deny,
11 limit, suspend, or terminate an agency's recognition.

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

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

19 x. Subpart D is removed in its entirety.

20 x. Current subpart E is redesignated as subpart D.