

Issue #1

Proposed Regulatory Language  
Team III – Accreditation

**Origin:** HEOA

**Issue:** Definitions of distance education and correspondence education

**Statutory cites:** HEOA section 103(a)(1)  
Amends HEA section 103(7)  
See page 10 of statutory language handout

**Regulatory cites:** 34 CFR 602.3 (and 34 CFR 600.2)

**Changes to the version provided for the April 21-23 meeting:**

Changes have been made to reflect the language on which we reached tentative agreement during our discussions in April. These changes are highlighted in yellow (light shading).

**Tentative agreement:** yes

**Regulatory language (contextual format):**

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

The following definitions apply to this part:

\* \* \*

**Correspondence education means:**

**(1) Education provided through one or more "home study" 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 may not be considered 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).

#### §600.2 Definitions.

\* \* \*

*Correspondence course:* (1) A "home study" 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 ~~not physically attending classes at the institution~~ separated from the instructor. ~~When students complete a portion of the instructional materials, the students take the examinations that relate to that portion of the materials, and return the examinations to the institution for grading.~~ 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) A home study course that provides instruction in whole or in part through the use of video cassettes or video discs in an award year is a correspondence course unless the institution also delivers the instruction on the cassette or disc to students physically attending classes at the institution during the same award year.~~

(3~~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 ~~may not be considered is not~~ distance education.

Issue #2

Proposed Regulatory Language  
Team III – Accreditation

**Origin:** HEOA

**Issue:** Accreditation team members

**Statutory cites:** HEOA section 495(2)(A)  
Amends HEA section 496(c)(1)  
See page 5 of statutory language handout

**Regulatory cite:** 34 CFR 602.15

**Changes to the version provided for the April 21-23 meeting:**

For consistency in terminology, the word "education" has been added after "distance" in the last paragraph. This change is highlighted in aqua (dark shading).

**Tentative agreement:** yes

**Regulatory language (contextual format):**

**§602.15 Administrative and fiscal responsibilities.**

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

(a) The agency has--

\* \* \*

(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 its 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;

### Issue #3

#### Proposed Regulatory Language Team III – Accreditation

**Origin:** HEOA

**Issue:** Student achievement standard

**Statutory cites:** HEOA section 495(1)(B)  
Amends HEA section 496(a)(5)(A)  
See page 3 of statutory language handout

**Regulatory cites:** 34 CFR 602.16(a)(1) and (e)

#### Changes to the version provided for the April 21-23 meeting:

A change has been made reflecting the discussion during the April 21-23 meeting. This change is highlighted in yellow (light shading). In addition, the new paragraph has been designated (f) instead of (e) to reflect the restructuring in Issue # 10. This change is highlighted in aqua (dark shading).

**Tentative agreement:** yes

#### Regulatory language (contextual format):

*NOTE: The changes in §602.16 reflect the restructuring presented in issue #10.*

#### **§602.16 Accreditation and preaccreditation standards.**

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

(1) The agency's accreditation standards effectively address the quality of the institution or program in the following areas:

(i) Success with respect to student achievement in relation to the institution's mission, which may include different standards for different institutions or programs, as established by the institution, including, as appropriate, consideration of State licensing examinations, course completion, and job placement rates.

\* \* \* \* \*

(e) (f) Nothing in paragraph (a) 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, with accrediting agency approval.

Issue #4

Proposed Regulatory Language  
Team III - Accreditation

**Origin:** HEOA

**Issue:** Operating procedures – Transfer of credit

**Statutory cites:** HEOA section 495(2)(C)  
Amends HEA section 496(c)  
See page 6 of statutory language handout

**Regulatory cite:** 34 CFR 602.24

**Changes to the version provided for the April 21-23 meeting:**

To make it clear that the final regulations will contain a specific cross reference to the general provisions regulation addressing transfer of credit, an "x" has been added after §668.43. This change is highlighted in aqua (dark shading).

**Tentative agreement:** yes

**Regulatory language (contextual format):**

§602.24 Additional procedures certain institutional accreditors must have.

\* \* \* \* \*

(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.



Issue #5

Proposed Regulatory Language  
Team III - Accreditation

**Origin:** HEOA

**Issue:** Operating procedures – Teach-out plan approval

**Statutory cites:** HEOA section 495(2)(C)  
Amends HEA section 496(c) by adding a new paragraph (3)  
See page 5 of statutory language handout

**Regulatory cites:** 34 CFR 602.3 and 602.24(c)

**Changes to the version provided for the April 21-23 meeting:**

Changes have been made to reflect the suggestions, made during the April 21-23 session, with which the Department concurs. These changes are highlighted in aqua (dark shading).

**Tentative agreement:** Not yet reached

**Changes:**

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

The following definitions apply to this part:

\* \* \*

*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 ~~one of these~~ an institutions, or an institutional location that provides one hundred percent of at least one program offered, ~~stops offering~~ ceases to operate ~~one or more of its~~ an educational programs before all enrolled students ~~enrolled in that program~~ have completed their ir 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.

§ 602.24 Additional procedures certain institutional accreditors must have.

\* \* \* \* \*

(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, or an action to limit, suspend, or terminate an institution participating in any title IV, HEA program, in accordance with the relevant portions of subpart G of part 668.

(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 costs,

if any, and provides for notification to the students of any additional costs. ~~and does not result in duplicative or increased 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.

~~(1)~~(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 to the agency for approval.~~(2)~~ 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 closed 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 costs, if any ~~or to incur duplicative or increased charges~~.

(3) (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 ensure that students are given reasonable opportunities to complete their education without additional duplicative or increased charges.

Issue #6

Proposed Regulatory Language  
Team III - Accreditation

Origin: ED  
Issue: Definition of Recognition  
Statutory Cite: HEA section 496 (o)  
Regulatory Cites: 34 CFR 602.3

**Changes to the version provided for the April 21-23 meeting:**

The changes made during the April 21-23 session are highlighted in yellow (light shading.) No additional changes to the version redrafted during session 2, and on which tentative agreement was reached on April 23<sup>rd</sup>, have been made.

Tentative Agreement: yes

**Regulatory language (contextual format):**

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

The following definitions apply to this part:

\* \* \*

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 performance application of ~~with respect to~~ 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 ~~Recognition may be revoked at any time prior to its expiration~~ upon a determination made in accordance with subpart C that the agency no longer complies with the subpart B

criteria or that it has become ineffective in its performance  
application of with respect to those criteria.

**Issues #7 and #8**

**Proposed Regulatory Language  
Team III – Accreditation**

**Origin:** HEOA and ED

**Issues:** Recognition Procedures – Subparts C & D  
Demonstration of compliance within 12 months and recognition when not fully compliant

**Statutory Cites:** HEA Sections 496(l)(1)(B)  
HEA Sections 496(d), 496(l), and 496(m), 496(o)  
HEOA Section 106, 495(1)(A), 495(5)

**Regulatory Cites:** 34 CFR 602.3 and 602 Subparts C & D

**Changes to the version provided for the April 21-23 meeting:**

The changes to subparts C and D provided for the discussion at the April 21-23 session were in plain text, rather than a redline version. On April 23, we provided a marked-up version, to reflect the discussion to date, with deleted text struck through and added text shown in bold with underlining. Suggestions agreed to the morning of April 23 are highlighted in yellow (light shading). Technical changes made are highlighted in aqua (dark shading).

**Tentative agreement:** on all sections except §§602.36(b) and 602.37(f).

**Regulatory language (contextual format):**

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

The following definitions apply to this part:

\* \* \*

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

5  
6 \* \* \*

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

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 taken on  
9 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 under  
13 §602.31(b).

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

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

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

21  
22 **§602.31 Agency submissions to the Department.**

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

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



1 (2) Evidence, including documentation, that the agency  
2 complies with the criteria for recognition listed in subpart B  
3 of this part and ~~is effectively~~ applies ~~in its performance with~~  
4 ~~respect to~~ those criteria; and

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

10 ~~(4) Supporting documentation.~~

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

14 (1) Specify the scope requested;

15 (2) Include documentation of experience in accordance with  
16 §602.12(b); and

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

20 (c) *Compliance reports.* If an agency is required to  
21 submit a compliance report, it must do so within 30 days  
22 following the end of the period for achieving compliance, ~~not to~~  
23 ~~exceed 12 months,~~ as specified in the decision of the senior  
24 Department official or Secretary, as applicable.

25 (d) *Review following an increase in headcount enrollment.*  
26 If an agency that has notified the Secretary in writing of its  
27 change in scope to include distance education or correspondence  
28 education in accordance with §602.27(a)(5) ~~has reported~~ s an  
29 increase in headcount enrollment ~~under~~ in accordance with  
30 §602.19(f) for an institution it accredits, or if the Department  
31 notifies the agency of such an increase at one of the agency's

1 accredited institutions, the agency must, within ~~30~~ 45 days of  
2 reporting the increase or receiving notice of the increase from  
3 the Department, as applicable, submit a report ~~addressing~~  
4 explaining--

5 (1) How ~~it~~ the agency evaluates the capacity of the  
6 institutions or programs it accredits to accommodate ~~large~~  
7 ~~increases~~ significant growth in enrollment and to maintain  
8 educational quality;

9 (2) ~~The results of the evaluation in the case of the~~  
10 ~~individual~~ specific circumstances regarding the growth at the  
11 ~~institution(s) or programs(s) that triggered the review,~~ and the  
12 results of any evaluation conducted by the agency; and

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

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

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

23 (2) ~~I~~to visit locations where agency activities such as  
24 training, review and evaluation panel meetings, and decisions  
25 meetings take place, on an announced or unannounced basis;  
26 ~~throughout the application process and during any period of~~  
27 ~~recognition;~~

28 (3) ~~I~~to obtain copies of all documents the staff deems  
29 necessary to complete its review of the agency; and

30 (4) ~~I~~to gain access to agency records, personnel and  
31 facilities.

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

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

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

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

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

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

29

1 **§602.32 Procedures for Department review of applications for**  
2 **recognition or for change in scope, compliance reports, and**  
3 **increases in enrollment.**

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

12 (b) The Department staff analyzes the agency's application  
13 for initial or renewal of recognition, compliance report, or  
14 report submitted under §602.31(d) to determine whether the  
15 agency satisfies the criteria for recognition, taking into  
16 account all available relevant information concerning the  
17 compliance of the agency with those criteria and in the agency's  
18 ~~performance with respect to~~ **effectiveness in applying** the  
19 ~~criteria, and any previously identified deficiencies.~~ The  
20 analysis of an application for recognition and, as appropriate,  
21 of a report required under §602.31(c) or (d), includes--

22 (1) Observations from site visit(s), on an announced or  
23 unannounced basis, to the agency or to a location where agency  
24 activities such as training, review and evaluation panel  
25 meetings, and decision meetings take place and to one or more of  
26 the institutions or programs it accredits or preaccredits;

27 (2) Review of the public comments and other third-party  
28 information the Department staff receives by the established  
29 deadline, and the agency's responses to the third-party  
30 comments, as appropriate, as well as any other information

1 Department staff assembles for purposes of evaluating the agency  
2 under this part; and

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

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

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

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

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

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

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

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

30 (2) Sends the draft analysis including any identified  
31 areas of non-compliance and a proposed recognition

1 recommendation, and all supporting documentation, including all  
2 third-party comments the Department received by the established  
3 deadline, to the agency;

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

8 (4) Reviews the response to the draft analysis the agency  
9 submits, if any, and prepares the written final analysis. The  
10 final analysis includes a recognition recommendation to the  
11 senior Department official, as the Department staff deems  
12 appropriate, including, but not limited to, a recommendation to  
13 approve, deny, limit, suspend, or terminate recognition, require  
14 the submission of a compliance report and continue recognition  
15 pending a final decision on compliance, ~~or~~ approve or deny a  
16 request for expansion of scope, **or revise or affirm the scope of**  
17 **the agency**; and

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

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

1 by the Secretary, the agency forfeits its right to request a  
2 deferral of its application.

3

4 **§602.33 Procedures for ~~Department~~ review of agencies during the**  
5 **period of recognition.**

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

9 ~~(1) On its own initiative;~~

10 ~~(2) (1)~~ At the request of the Advisory Committee; or

11 ~~(3) (2)~~ Based on any ~~other relevant~~ information received,  
12 ~~including any third party complaint that, upon analysis~~ **as**  
13 **determined by Department staff**, appears credible and raises  
14 issues relevant to recognition.

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

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

24 (1) Prepares a written draft analysis of the agency's  
25 compliance with the criteria of concern. The analysis reflects  
26 the results of the review, and includes a recommendation  
27 regarding what action to take with respect to recognition.  
28 Possible recommendations include, but are not limited to, a  
29 recommendation to limit, suspend, or terminate recognition, or  
30 require the submission of a compliance report and to continue  
31 recognition pending a final decision on compliance;

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

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

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

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

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

21 (2) Publishes a notice in the Federal Register including,  
22 if practicable, an invitation to the public to comment on the  
23 agency's compliance with the criteria in question and  
24 establishing a deadline for receipt of public comment;

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

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



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

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

7 ~~(c) If, after review of the agency's response to the draft~~  
8 ~~analysis, Department staff concludes that the agency has~~  
9 ~~demonstrated compliance with the criteria for recognition, the~~  
10 ~~staff notifies the agency of the results of the review. If the~~  
11 ~~review was requested by the Advisory Committee, staff provides~~  
12 ~~the Committee with the results of the review.~~

13  
14 REVIEW BY THE NATIONAL ADVISORY COMMITTEE ON INSTITUTIONAL  
15 QUALITY AND INTEGRITY

16 **§602.34 Advisory Committee meetings.**

17 (a) Department staff submits a proposed schedule to the  
18 Chairperson of the Advisory Committee based on anticipated  
19 completion of staff analyses.

20 (b) The Chairperson of the Advisory Committee establishes  
21 an agenda for the next meeting and, in accordance with the  
22 Federal Advisory Committee Act, presents it to the Designated  
23 Federal Official for approval.

24 (c) Before the Advisory Committee meeting, Department  
25 staff provides the Advisory Committee with--

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

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

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

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

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

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

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

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

22 (f) The written motion adopted by the Advisory Committee  
23 regarding each agency's recognition will be made available  
24 during the Advisory Committee meeting. The Department will  
25 provide each agency, upon request, with a copy of the motion on  
26 recognition at the meeting. Each agency that was reviewed will  
27 be sent an electronic copy of the motion relative to that agency  
28 as soon as practicable after the meeting.

29 (g) After each meeting of the Advisory Committee at which  
30 a review of agencies occurs, the Advisory Committee forwards to  
31 the senior Department official its recommendation with respect

1 to each agency, which may include, but is not limited to, a  
2 recommendation to approve, deny, limit, suspend, or terminate  
3 recognition, to grant or deny a request for expansion of scope,  
4 to revise or affirm the scope of the agency, or to require the  
5 agency to submit a compliance report and to continue recognition  
6 pending a final decision on compliance.

7  
8 **§602.35 Responding to the Advisory Committee's recommendation.**

9 (a) Within ten days ~~of the date of~~ following the Advisory  
10 Committee meeting, the agency and Department staff may submit  
11 written comments to the senior Department official on the  
12 Advisory Committee's recommendation. The agency must  
13 simultaneously submit a copy of its written comments, if any, to  
14 Department staff. Department staff must simultaneously submit a  
15 copy of its written comments, if any, to the agency.

16 (b) Comments ~~may address~~ must be limited to--

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

19 (2) ~~Any Omissions in the~~ incomplete Advisory Committee  
20 recommendation based on the agency's application; and

21 (3) ~~Disagreement with the Advisory Committee's~~  
22 ~~recommendation on recognition and, at the agency's or Department~~  
23 ~~staff's discretion, The inclusion of any recommendation or a~~  
24 ~~draft proposed decision for the senior Department official's~~  
25 ~~consideration.~~

26 (c)(1) Neither the Department staff nor the The agency may  
27 ~~not~~ submit additional documentary evidence with its comments  
28 unless the Advisory Committee's recognition recommendation  
29 proposes finding the agency noncompliant with, or ineffective in  
30 its application of ~~performance with respect to,~~ a criterion or

1 criteria for recognition not identified in the final Department  
2 staff analysis provided to the Advisory Committee.

3 (2) Within ten days of receipt by the Department staff of  
4 an agency's comments or new evidence, if applicable, or of  
5 receipt by the agency of the Department staff's comments,  
6 Department staff, the agency, or both, as applicable, may submit  
7 a response to the senior Department official. Simultaneously  
8 with submission, the agency must provide a copy of any response  
9 to the Department staff. Simultaneously with submission,  
10 Department staff must provide a copy of any response to the  
11 agency.  
12

13 REVIEW AND DECISION BY THE SENIOR DEPARTMENT OFFICIAL

14 **§602.36 Senior Department official's decision.**

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

19 (1) The materials provided to the Advisory Committee under  
20 §602.34(c);

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

22 **(3) The recommendation of the Advisory Committee;**

23 **(4)**~~(3)~~ Written comments and responses submitted under  
24 §602.35;

25 **(5)**~~(4)~~ New evidence submitted in accordance with  
26 §602.35(c)(1);

27 **(6)**~~(5)~~ A communication from the Secretary referring an  
28 issue to the senior Department official's consideration under  
29 §602.37(e).

30 (b) In the event that statutory authority or  
31 appropriations for the Advisory Committee ends, or there are

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

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

14 (d) Except with respect to decisions made under paragraphs  
15 (b), (f), or (g) of this section and matters referred to the  
16 senior Department official under §602.37(e) or (f), the senior  
17 Department official notifies the agency in writing of the senior  
18 Department official's decision regarding the agency's  
19 recognition within 90 days of the Advisory Committee meeting or  
20 conclusion of the review under paragraph (b).

21 (e) The senior Department official's decision may include,  
22 but is not limited to, approving, denying, limiting, suspending,  
23 or terminating recognition, granting or denying an application  
24 for an expansion of scope, revising or affirming the scope of  
25 the agency, or continuing recognition pending submission and  
26 review of a compliance report under §§602.32 and 602.34, and  
27 review of the report by the senior Department official under  
28 §602.35 this section.

29 (1)(i) The senior Department official approves recognition  
30 if the agency complies with the criteria for recognition listed

1 in subpart B of this part and if the agency ~~is~~ effectively  
2 applies ~~in its performance with respect to~~ those criteria.

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

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

13 (2)(i) Except as provided in paragraph (e)(3), if the  
14 agency either fails to comply with the criteria for recognition  
15 listed in subpart B of this part, or ~~is not effective in its~~  
16 ~~performance with respect to~~ apply those criteria effectively,  
17 the senior Department official denies, limits, suspends, or  
18 terminates recognition.

19 (ii) If the senior Department official denies, limits,  
20 suspends, or terminates recognition, the senior Department  
21 official specifies the reasons for this decision, including all  
22 criteria the agency fails to meet and all ~~areas in which the~~  
23 ~~agency fails to perform~~ criteria the agency has failed to apply  
24 ~~effectively with respect to the criteria.~~

25 (3)(i) Except as provided in paragraph (ii)(2), if a  
26 recognized agency fails to demonstrate compliance with or  
27 effective application of a criterion or criteria ~~performance in~~  
28 ~~one or more areas~~, but the senior Department official concludes  
29 that the agency will demonstrate or achieve compliance with the  
30 criteria for recognition and effective application of  
31 ~~performance with respect to~~ those criteria within twelve 12

1 months or less, the senior Department official may continue the  
2 agency's recognition, pending submission by the agency of a  
3 compliance report, review of the report under §§602.32 and  
4 602.34, and review of the report by the senior Department  
5 official under this section. In such a case, the senior  
6 Department official specifies the criteria the compliance report  
7 must address, and a time period, not longer than **twelve 12**  
8 months, during which the agency must achieve compliance and  
9 effectively performance **apply the criteria**. The compliance  
10 report documenting compliance and effective ~~performance~~  
11 **application of criteria** is due not later than 30 days after the  
12 end of the period specified in the senior Department official's  
13 decision.

14 (ii) If, ~~following submission of~~ **the record includes** a  
15 compliance report, **and** the senior Department official determines  
16 that an agency has not complied with the criteria for  
17 recognition, or has not ~~demonstrated~~ effectively performance  
18 ~~with respect to~~ **applied** those criteria, during the time period  
19 specified by the senior Department official in accordance with  
20 paragraph (3)(i), the senior Department official denies, limits,  
21 suspends, or terminates recognition, except, in extraordinary  
22 circumstances, upon a showing of good cause for an extension of  
23 time as determined by the senior Department official and  
24 detailed in the senior Department official's decision. If the  
25 senior Department official determines good cause for an  
26 extension has been shown, the senior Department official  
27 specifies the length of the extension and what the agency must  
28 do during it to merit a renewal of recognition.

29 (f) If the senior Department official determines, based on  
30 the record, that a decision to deny, limit, suspend, or  
31 terminate an agency's recognition may be warranted based on a

1 finding that the agency is noncompliant with, or ineffective in  
2 its ~~performance with respect to~~ application of, a criterion or  
3 criteria of recognition not identified earlier in the  
4 proceedings as an area of noncompliance, the senior Department  
5 official provides--

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

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

10 (g) If relevant information ~~regarding an agency,~~  
11 pertaining to an agency's compliance with recognition criteria,  
12 but not contained in the record, comes to the senior Department  
13 official's attention while a decision regarding the agency's  
14 recognition is pending before the senior Department official,  
15 and if the senior Department official concludes the recognition  
16 decision should not be made without consideration of the  
17 information, the senior Department official either--

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

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

23 (2)(i) Provides ~~a copy or summary of~~ the information to  
24 the agency and Department staff;

25 (ii) Permits the agency to respond to the senior  
26 Department official and the Department staff in writing, and to  
27 include additional evidence relevant to the issue, and specifies  
28 a deadline;

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



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

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

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

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

15  
16 APPEAL RIGHTS AND PROCEDURES

17 **§602.37 Appealing the senior Department official's decision to**  
18 **the Secretary.**

19 (a) The agency may appeal the senior Department official's  
20 decision to the Secretary. Such appeal stays the decision of  
21 the senior Department official until final disposition of the  
22 appeal. If an agency wishes to appeal, the agency must--

23 (1) Notify the Secretary and the senior Department  
24 official in writing of its intent to appeal the decision of the  
25 senior Department official, no later than ten days after receipt  
26 of the decision;

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

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

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

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

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

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

12 (d) On appeal, the Secretary makes a recognition decision,  
13 as described in §602.36(e). ~~7 except that any required~~ **If the**  
14 **decision requires a** compliance report, **the report** is due within  
15 30 days after the end of the period specified in the Secretary's  
16 decision. The Secretary renders a final decision after taking  
17 into account the senior Department official's decision, the  
18 agency's written submissions on appeal, the senior Department  
19 official's response to the appeal, if any, and the entire record  
20 before the senior Department official. The Secretary notifies  
21 the agency in writing of the Secretary's decision regarding the  
22 agency's recognition.

23 (e) ~~If the~~ **The** Secretary **may** determines, based on the  
24 record, that a decision to deny, limit, suspend or terminate an  
25 agency's recognition may be warranted based on a finding that  
26 the agency is noncompliant with, or ineffective in its  
27 ~~performance~~ **application** with respect to, a criterion or criteria  
28 for recognition not identified as an area of noncompliance  
29 earlier in the proceedings. ~~7~~ **In that case,** the Secretary,  
30 without further consideration of the appeal, refers the matter  
31 to the senior Department official for consideration of the issue

1 under §602.36(f). After the senior Department official makes a  
2 decision, the agency may, if desired, appeal that decision to  
3 the Secretary.

4 (f) If relevant information pertaining to an agency's  
5 compliance with recognition criteria regarding an agency, but  
6 not contained in the record, comes to the Secretary's attention  
7 while a decision regarding the agency's recognition is pending  
8 before the Secretary, and if the Secretary concludes the  
9 recognition decision should not be made without consideration of  
10 the information, the Secretary either--

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

13 (ii) Refers the matter to Department staff for review and  
14 analysis under §§602.32 or 602.33, as appropriate, and review by  
15 the Advisory Committee under §602.34; and consideration by the  
16 senior Department official under §602.36; or

17 (2)(i) Provides ~~a copy or summary of~~ the information to  
18 the agency and the senior Department official;

19 (ii) Permits the agency to respond to the Secretary and  
20 the senior Department official in writing, and to include  
21 additional evidence relevant to the issue, and specifies a  
22 deadline;

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

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

28 (g) No agency may submit information to the ~~senior~~  
29 ~~Department official~~ Secretary, or ask others to submit  
30 information on its behalf, for purposes of invoking paragraph  
31 (f).

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

6

7 **§602.38 Contesting the Secretary's final decision to deny,**  
8 **limit, suspend, or terminate an agency's recognition.**

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

*[ Note: subpart D is being removed ]*

Issue #9

Proposed Regulatory Language  
Team III – Accreditation

Origin: ED  
Issue: Direct Assessment Program  
Statutory Cite: HEA section 481(b)(4)  
Regulatory Cites: 34 CFR 602.3

**Changes to the version provided for the April 21-23 meeting:**

The changes made during the April 21-23 session are highlighted in yellow (light shading.) No additional changes to the version redrafted during session 2, and on which tentative agreement was reached on April 23<sup>rd</sup>, have been made. A technical made is highlighted in aqua (dark shading).

Tentative Agreement: yes

**Regulatory language (contextual format):**

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

The following definitions apply to this part.

\* \* \*

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 §668.10. For title IV purposes, the institution must obtain approval for the direct assessment program from the Secretary under §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 ~~the~~ each direct assessment program's equivalence in terms of credit or clock hours.

**Issue #10**

**Proposed Regulatory Language  
Team III – Accreditation**

**Origin:** HEOA

**Issue:** Distance education and correspondence education

**Statutory cites:** HEOA sections 495(1)(A) and (5)  
Amends HEA section 496(a)(4)(B) and (q)  
See pages 2-3 and 9 of statutory language handout

**Regulatory cites:** 34 CFR 602.03, 602.16, 602.17, 602.18, and 602.27

**Changes to the version provided for the April 21-23 meeting:**

Changes have been made to reflect the suggestions, made during the April 21-23 session, with which the Department concurs. These changes are highlighted in aqua (dark shading).

**Tentative agreement:** Not yet reached

**Regulatory language (contextual format):**

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

The following definitions apply to this part:

\* \* \*

*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.

**§602.16 Accreditation and preaccreditation standards.**

\* \* \* \* \*

(b) If the agency only accredits programs and does not serve as an institutional accrediting agency for any of those programs, its accreditation standards must address the areas in paragraph (a)(1) of this section in terms of the type and level of the program rather than in terms of the institution.

(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). The agency is not required to have separate standards, procedures, or policies for the evaluation of distance education or correspondence education;

Reorder current (c) and (d) as (d) and (e)

**§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 such methods such as--

(i) A secure login and pass code, randomly generated personal questions, or proctored examinations; and

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

(2) Makes clear in writing that institutions must use processes that protect should not use or rely on technologies that interfere with student privacy and notify students, before enrollment, of additional costs, if any, associated with verification.

§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 to 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--

\* \* \* \* \*

*NOTE: The changes in §602.27 reflect the restructuring of the section presented in issue #14.*

§602.27 Other information an agency must provide the Department.

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

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

~~(b)~~ **(2)** A copy, updated annually, of its directory of accredited and preaccredited institutions and programs.

~~(c)~~ **(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;

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

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

**(2)**(ii) Compliance with the criteria for recognition;

**(5) Notification that the agency is expanding its scope of recognition to include distance education or correspondence education, as applicable as provided for 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.**

\* \* \* \* \*

Issues #11 and #12

Proposed Regulatory Language  
Team III - Accreditation

**Origin:** HEOA and ED

**Issue:** Monitoring of Institutions and Programs Throughout Period;  
Operating Procedure – Growth Monitoring

**Statutory Cite:** Section 496(c)(1), (c)(2), (q)

**Regulatory Cite:** 34 CFR 602.19

**Changes to the version provided for the April 21-23 meeting:**

Changes have been made to reflect the suggestions, made during the April 21-23 session, with which the Department concurs. These changes are highlighted in aqua (dark shading). Yellow highlighting (light shading) indicates those changes made and agreed to during the April 21-23 session.

**Tentative Agreement:** Not yet reached

**Regulatory language (contextual format):**

**§602.19 Monitoring and reevaluation of accredited institutions and programs.**

\* \* \* \* \*

(b) The agency must monitor institutions or programs throughout their accreditation or preaccreditation period **by requiring periodic reports and** ~~to ensure that they remain in compliance with the agency's standards. This includes conducting special~~ evaluations or site visits, as necessary.

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

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

(e) For the purposes of determining the need for agency review of the status of the institution or program, the agency must regularly collect and analyze key data and performance indicators, including but not limited to financial information and measures of student success. These may include but are not limited to--

- ~~(1) Financial audits or other financial information;~~
- ~~(2) Retention rates, completion or graduation rates, and job placement rates; and~~
- ~~(3) State licensing examination pass rates or other measures of student success.~~

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

(f)(g) 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 the any institution has experienced an increase in headcount enrollment of fifty 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.

Issue # 13

Proposed Regulatory Language  
Team III - Accreditation

**Origin:** ED  
**Issue:** Substantive Change  
**Statutory Cites:** HEA section 496(a)(1), (a)(4), (c)(1), (c)(2), (c)(4), (c)(5), 498(i)  
**Regulatory Cite:** 34 CFR 602.22

**Changes to the version provided for the April 21-23 meeting:**

Changes have been made to reflect the suggestions made to simplify and clarify the language on which we reached tentative agreement during our discussion. These changes are highlighted in yellow (light shading). Changes based on the discussions at the table with which the Department concurs are highlighted in aqua (dark shading).

**Tentative agreement:** Not yet reached

**Regulatory language (contextual format):**

**§ 602.22 Substantive change.**

(a) \* \* \*

(2) The agency's definition of a substantive change includes at least the following types of change:

\* \* \*

(iii) The addition of courses or programs that represent a significant departure ~~in either content~~ from the academic content of existing offerings of educational programs, or method of delivery, from those that were offered when the agency last evaluated the institution.

(iv) The addition of courses or programs at a degree or credential level different from ~~above~~ that which is included in the institution's current accreditation or preaccreditation.

\* \* \*

~~(vii) The establishment of an additional location geographically apart from the main campus at which the institution offers at least 50 percent of an educational program.~~

(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 programs offers more than 25 percent of one or more of the accredited institution's educational programs.

~~(vii)(viii)(A) For institutions that operate with a main campus.~~ 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 geographically apart from the main campus at which the institution offers at least 50 percent of an educational program.~~

(ix) For institutions that operate as a distributed enterprise. (A) If the agency's accreditation of the institution enables it to seek eligibility to participate in title IV HEA programs, the establishment of an additional location where at least 50 percent of an educational program is offered. 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 multiple an additional locations, pursuant to (viii)(ix)(A), must require timely reporting to the agency of every additional location established under this approval.

(C) Each agency determination or redetermination to preapprove the addition of multiple an additional locations under (viii)(ix)(A) must be of limited duration and may not exceed five years.

(D) The agency may not preapprove an institution's addition of multiple addition of a locations under (viii)(ix)(A) 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 multiple an additional locations described in this paragraph.

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

(\*) (xi) 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 prospective 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, ~~the agency's procedures for approval of multiple locations~~ these ~~procedures~~ may, but need not, require a visit by the agency.

(c) 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 described in paragraph (a)(2)(~~vii~~)(viii) of this section must provide for a determination ~~determine if~~ of the institution's ~~has~~ the fiscal and administrative capacity to operate the additional location. In addition, the agency's procedures must include--

\* \* \*

(2) An effective mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations of institutions that operate more than three additional locations; and \* \* \* \* \*



**Issue #14**

**Proposed Regulatory Language  
Team III - Accreditation**

**Origin:** ED

**Issue:** Record Keeping and Confidentiality

**Statutory Cites:** HEA sections 496(a)(1), (a)(7), (a)(8), (c)(7), (c)(8), (c)(9), (n) and (o)

**Regulatory Cites:** 34 CFR 602.15 (b), 602.27(f), and 602.31 (g)

**Change to the version provided for the April 21-23 meeting:**

The changes made during the April 21-23 session are highlighted in yellow (light shading.) The only additional changes to the version redrafted during session 2, and on which tentative agreement was reached on April 23<sup>rd</sup>, that have been made are to change “such” to “that” in §602.27(b). These changes are highlighted in aqua (dark shading).

**Tentative Agreement:** yes

**Regulatory language (contextual format):**

**§602.15 Administrative and fiscal responsibilities.**

\* \* \* \* \*

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

-

(1) Its last ~~two~~ full accreditation or preaccreditation reviews—of each institution or program, including on-site evaluation team reports, the institution's or program's responses to on-site reports, periodic review reports, any reports of special reviews conducted by the agency between regular reviews, and a copy of the institution's or program's most recent self-study; and

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

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

\* \* \* \* \*

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

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

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

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

~~(c)~~ **(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;

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

~~(1)~~ **(i)** Scope of recognition, **except as provided in paragraph (5);** or

~~(2)~~ **(ii)** Compliance with the criteria for recognition;

*[NOTE: The addition of (5) below reflects a change made in issue #10 and conforms with the restructure of §602.27]*

**(5) Notification that the agency has expanded its scope of recognition to include distance education or correspondence education as provided for in section 496(a)(4)(B)(i)(I) of the HEA, as applicable;-. Such an expansion of scope is effective on the date the Department receives the notification;**

~~(e)~~**(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

~~(f)(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. ~~The Secretary may ask for this information to assist the Department in resolving problems with the institution's participation in the Title IV, HEA programs.~~

~~(b) An agency must not establish or maintain a policy of providing notification to an institution of the agency's contact with the Department under paragraphs (a)(6) or (a)(7). The agency must comply with a request from the Department to consider such contact confidential. 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 such that contact. Upon a specific request by the Department, the agency must consider such that contact confidential.~~

\* \* \* \* \*

§602.31(g) Agency submissions to the Department.

[NOTE: this section reflects the restructuring in issues # 7 and # 8.]

\* \* \* \* \*

(f) Public availability of agency records to the Department.

(1) The Secretary's processing and decision making on requests for public disclosure of agency material 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. ~~does not make available to the public any confidential agency materials a Department employee reviews during the evaluation of either the agency's application for recognition or the agency's compliance with the criteria for recognition.~~ In recognition proceedings, agencies ~~must~~ 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 National Advisory Committee on Institutional Quality and Integrity available to the public.

## Issue #15

### Proposed Regulatory Language Team III - Accreditation

**Origin:** HEOA

**Issue:** Due process and appeals

**Statutory cites:** HEOA section 495(1)(C)  
Amends HEA 496(a)  
See pages 3-4 of statutory language handout

**Regulatory cites:** 34 CFR 602.18, 602.23(a) and 602.25

#### Changes to the version provided for the April 21-23 meeting:

Changes have been made to reflect the suggestions, made during the April 21-23 session, with which the Department concurs. These changes are highlighted in aqua (dark shading).

**Tentative agreement:** Not yet reached

#### Regulatory language (contextual format):

##### §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 to 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;

~~(a)~~ (b) Has effective controls against the inconsistent application of the agency's standards;

~~(b)~~ (c) Bases decisions regarding accreditation and preaccreditation on the agency's published standards; and

~~(c)~~ (d) Has a reasonable basis for determining that the information the agency relies on for making accrediting decisions is accurate.

(e) Provides the institution or program with a detailed written report that assesses clearly identifies any deficiencies in the institution's or program's compliance with the agency's standards, including any deficiencies identified by the agency.

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

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

(1) Each type of accreditation and preaccreditation it grants;

(2) The procedures that institutions or programs must follow in applying for accreditation or preaccreditation;

(3) The standards and procedures it uses to determine whether to grant, reaffirm, reinstate, restrict, deny, revoke, terminate, or take any other action related to each type of accreditation and preaccreditation that the agency grants;

(4) The institutions and programs that the agency currently accredits or preaccredits and, for each institution and program, the year the agency will next review or reconsider it for accreditation or preaccreditation; and

(5) The names, academic and professional qualifications, and relevant employment and organizational affiliations of--

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

(ii) The agency's principal administrative staff.

\* \* \* \* \*

(c) The accrediting agency must--

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

The agency may not complete its review and make a decision regarding a complaint unless, in accordance with published procedures, it ensures that the institution or program has sufficient opportunity to provide a response to the complaint.

\* \* \* \* \*

**§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;

~~-(a)The agency uses~~ (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.

~~(b)~~ (e) ~~The agency n~~ 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.

~~(c) The agency permits the institution or program the opportunity to appeal an adverse action and the right to be represented by counsel during that appeal. If the agency allows institutions or programs the right to appeal other types of actions, the agency has the discretion to limit the appeal to a written appeal.~~

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

(1) The appeal must take place at a hearing before an decision-making 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.

(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, orally or in writing, at the option of the institution, that the agency permits the institution or program to make on its own during the appeal.

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

~~(3)(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 conclusion of the fact-finding phase of the action prior to the determination described under paragraph (e) .

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

~~(iii) The financial information meets the criteria of significance and materiality, as defined by the agency.~~

~~(iv) (iii) The only remaining deficiency cited by the agency in support of a final adverse action decision is In the absence of such new financial information, the appeals panel would affirm a final adverse action based solely remaining deficiency is upon 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 (1) only once and any determination by the agency made with respect to that review does not provide a basis for an appeal.

~~(4) Any determination by the agency made with respect to the new financial information described in paragraph (3) is not separately appealable by the institute~~

**Issue #16**

**Proposed Regulatory Language  
Team III – Accreditation**

**Origin:** HEOA

**Issue:** Operating procedures – Summary of agency actions

**Statutory cites:** HEOA section 495(2)(D)  
Amends HEA section 496(c)(7)  
See page 6 of statutory language handout

**Regulatory cite:** 34 CFR 602.26

**Changes to the version provided for the April 21-23 meeting:**

The changes made during the April 21-23 session are highlighted in yellow (light shading.) No additional changes to the version redrafted during session 2, and on which tentative agreement was reached, have been made.

**Tentative agreement:** yes

**Regulatory language (contextual format):**

**§ 602.26 Notification of accrediting decisions.**

\* \* \* \* \*

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

(1) A final decision to place an institution or program on probation or an equivalent status.

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

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

(c) Provides written notice to the public of the decisions listed in paragraphs (b)(1), ~~and (b)(2)~~, **and (b)(3)** of this section within 24 hours of its notice to the institution or program

1 (d) For any decision listed in paragraph (b)(2) of this  
2 section, makes available to the Secretary, the appropriate State  
3 licensing or authorizing agency, and the public ~~upon request~~, no  
4 later than 60 days after the decision, a brief statement  
5 summarizing the reasons for the agency's decision and the  
6 **official** comments ~~,if any,~~ that the affected institution or  
7 program may wish to make with regard to that decision, **or**  
8 **evidence that the affected institution has been offered the**  
9 **opportunity to provide official comment;**