

loan to a prospective borrower, concurrently provide such borrower with the information identified on the model disclosure form that the Secretary provides to the institution under section 154(a) of the HEA.

(b) In providing the information required under paragraph (a) of this section, a covered institution may use a comparable form designed by the institution instead of the model disclosure form.

(Approved by the Office of Management and Budget under control number 1845-XXXX)

(Authority:20 U.S.C. 1019c(b))

Subpart E—Lender Responsibilities

§ 601.40 Disclosure and reporting requirements for lenders.

(a) *Disclosures to borrowers.* (1) A lender must, at or prior to disbursement of a FFEL loan, provide the borrower, in writing (including through electronic means), in clear and understandable terms, the disclosures required in § 682.205(a) and (b).

(2) A lender must, for each of its private education loans, comply with the disclosure requirements under section 128(e) of the Truth in Lending Act (15 U.S.C. 1638(e)).

(b) *Reports to the Secretary.* Each FFEL lender must report annually to the Secretary—

(1) Any reasonable expenses paid or provided to any agent of a covered institution who is employed in the financial aid office or has other responsibilities with respect to education loans or other student financial aid of the institution for service on a lender advisory board, commission or group established by a lender or group of lenders; or

(2) Any similar expenses paid or provided to any agent of an institution-affiliated organization who is involved in recommending, promoting, or endorsing education loans.

(3) The report required by this paragraph must include—

(i) The amount of expenses paid or provided for each specific instance in which the lender provided expenses;

(ii) The name of any agent described in paragraph (b)(1) of this section to whom the expenses were paid or provided;

(iii) The dates of the activity for which the expenses were paid or provided; and

(iv) A brief description of the activity for which the expenses were paid or provided.

(c) *Lender certification of compliance.*

(1) Any FFEL lender participating in one or more preferred lender arrangements must annually certify to the Secretary its compliance with the Higher Education Act of 1965, as amended; and

(2) If the lender is required to submit an audit under 34 CFR 682.305(c), the lender's compliance with the requirements under this section must be reported on and attested to annually by the lender's auditor.

(3) A lender may comply with the certification requirements of this section if the certifications are provided as part of the annual audit required by 34 CFR 682.305(c).

(4) A lender who is not required to submit an audit must submit the required certification at such time and in such manner as directed by the Secretary.

(d) *Annual lender report to covered institutions.* A FFEL lender with a preferred lender arrangement with a covered institution or an institution-affiliated organization relating to FFEL loans must annually, on a date prescribed by the Secretary, provide to the covered institution or the institution-affiliated organization and to the Secretary, such information required by the Secretary in relation to the FFEL loans the lender plans to offer pursuant to that preferred lender arrangement for the next award year.

(Approved by the Office of Management and Budget under control number 1845-XXXX)

(Authority:20 U.S.C. 1019a(b) and 1019b(b))

PART 602—THE SECRETARY'S RECOGNITION OF ACCREDITING AGENCIES

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

SOURCE: 64 FR 56617, Oct. 20, 1999, unless otherwise noted.

Subpart A—General

§ 602.1 Why does the Secretary recognize accrediting agencies?

(a) The Secretary recognizes accrediting agencies to ensure that these agencies are, for the purposes of the Higher Education Act of 1965, as amended (HEA), or for other Federal purposes, reliable authorities regarding the quality of education or training offered by the institutions or programs they accredit.

(b) The Secretary lists an agency as a nationally recognized accrediting agency if the agency meets the criteria for recognition listed in subpart B of this part.

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

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

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

(b) If the Secretary denies continued recognition to a previously recognized agency, or if the Secretary limits, suspends, or terminates the agency's recognition before the end of its recognition period, the Secretary publishes a notice of that action in the **FEDERAL**

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REGISTER. The Secretary also makes the reasons for the action available to the public, on request.

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

§ 602.3 What definitions apply to this part?

(a) The following definitions are contained in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600:

- (1) Accredited.
- (2) Additional location.
- (3) Branch campus.
- (4) Correspondence course.
- (5) Direct assessment program.
- (6) Distance education.
- (7) Institution of higher education.
- (8) Nationally recognized accrediting agency.
- (9) Preaccreditation.
- (10) Religious mission.
- (11) Secretary.
- (12) State.
- (13) Teach-out.
- (14) Teach-out agreement.
- (15) Teach-out plan.

(b) The following definitions apply to this part:

Accreditation means the status of public recognition that an accrediting agency grants to an educational institution or program that meets the agency's standards and requirements.

Accrediting agency or *agency* means a legal entity, or that part of a legal entity, that conducts accrediting activities through voluntary, non-Federal peer review and makes decisions concerning the accreditation or preaccreditation status of institutions, programs, or both.

Act means the Higher Education Act of 1965, as amended.

Adverse accrediting action or *adverse action* means the denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution or program.

Advisory Committee means the National Advisory Committee on Institutional Quality and Integrity.

Compliance report means a written report that the Department requires an agency to file when the agency is found to be out of compliance to demonstrate

that the agency has corrected deficiencies specified in the decision letter from the senior Department official or the Secretary. Compliance reports must be reviewed by Department staff and the Advisory Committee and approved by the senior Department official or, in the event of an appeal, by the Secretary.

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

Final accrediting action means a final determination by an accrediting agency regarding the accreditation or preaccreditation status of an institution or program. A final accrediting action is a decision made by the agency, at the conclusion of any appeals process available to the institution or program under the agency's due process policies and procedures.

Institutional accrediting agency means an agency that accredits institutions of higher education.

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

- (i) The agency is implementing its current or corrected policies; or
- (ii) The agency, which is compliant in practice, has updated its policies to align with those compliant practices.

Program means a postsecondary educational program offered by an institution of higher education that leads to an academic or professional degree, certificate, or other recognized educational credential.

Programmatic accrediting agency means an agency that accredits specific educational programs, including those that prepare students in specific academic disciplines or for entry into a profession, occupation, or vocation.

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

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

Representative of the public means a person who is not—

(1) An employee, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that either is accredited or preaccredited by the agency or has applied for accreditation or preaccreditation;

(2) A member of any trade association or membership organization related to, affiliated with, or associated with the agency; or

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

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—

(i) Types of degrees and certificates covered;

(ii) Types of institutions and programs covered;

(iii) Types of preaccreditation status covered, if any; and

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

Senior Department official means the official in the U.S. Department of Education designated by the Secretary who has, in the judgment of the Secretary, appropriate seniority and relevant subject matter knowledge to make independent decisions on accrediting agency recognition.

Substantial compliance means the agency demonstrated to the Department that it has the necessary policies, practices, and standards in place and

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generally adheres with fidelity to those policies, practices, and standards; or the agency has policies, practices, and standards in place that need minor modifications to reflect its generally compliant practice.

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55426, Oct. 27, 2009; 84 FR 58917, Nov. 1, 2019; 85 FR 54812, Sept. 2, 2020]

§ 602.4 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

[84 FR 58918, Nov. 1, 2019]

Subpart B—The Criteria for Recognition

BASIC ELIGIBILITY REQUIREMENTS

§ 602.10 Link to Federal programs.

The agency must demonstrate that—

(a) If the agency accredits institutions of higher education, its accreditation is a required element in enabling at least one of those institutions to establish eligibility to participate in HEA programs. If, pursuant to 34 CFR 600.11(b), an agency accredits one or more institutions that participate in HEA programs and that could designate the agency as its link to HEA programs, the agency satisfies this requirement, even if the institution currently designates another institutional accrediting agency as its Federal link; or

(b) If the agency accredits institutions of higher education or higher education programs, or both, its accreditation is a required element in enabling at least one of those entities to establish eligibility to participate in non-HEA Federal programs.

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

[64 FR 56617, Oct. 20, 1999, as amended at 85 FR 58918, Nov. 1, 2019]

§ 602.11 Geographic area of accrediting activities.

The agency must demonstrate that it conducts accrediting activities within—

- (a) A State, if the agency is part of a State government;
- (b) A region or group of States chosen by the agency in which an agency provides accreditation to a main campus, a branch campus, or an additional location of an institution. An agency whose geographic area includes a State in which a branch campus or additional location is located is not required to also accredit a main campus in that State. An agency whose geographic area includes a State in which only a branch campus or additional location is located is not required to accept an application for accreditation from other institutions in such State; or
- (c) The United States.

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

[84 FR 58918, Nov. 1, 2019]

§ 602.12 Accrediting experience.

- (a) An agency seeking initial recognition must demonstrate that it has—
 - (1) Granted accreditation or preaccreditation prior to submitting an application for recognition—

(i) To one or more institutions if it is requesting recognition as an institutional accrediting agency and to one or more programs if it is requesting recognition as a programmatic accrediting agency;

(ii) That covers the range of the specific degrees, certificates, institutions, and programs for which it seeks recognition; and

(iii) In the geographic area for which it seeks recognition; and

(2) Conducted accrediting activities, including deciding whether to grant or deny accreditation or preaccreditation, for at least two years prior to seeking recognition, unless the agency seeking initial recognition is affiliated with, or is a division of, an already recognized agency.

(b)(1) A recognized agency seeking an expansion of its scope of recognition must follow the requirements of §§ 602.31 and 602.32 and demonstrate that it has accreditation or preaccreditation policies in place that meet all the criteria for recognition covering the range of the specific degrees, certificates, institutions, and programs for which it seeks the expansion of scope and has engaged and can

show support from relevant constituencies for the expansion. A change to an agency's geographic area of accrediting activities does not constitute an expansion of the agency's scope of recognition, but the agency must notify the Department of, and publicly disclose on the agency's website, any such change.

(2) An agency that cannot demonstrate experience in making accreditation or preaccreditation decisions under the expanded scope at the time of its application or review for an expansion of scope may—

(i) If it is an institutional accrediting agency, be limited in the number of institutions to which it may grant accreditation under the expanded scope for a designated period of time; or

(ii) If it is a programmatic accrediting agency, be limited in the number of programs to which it may grant accreditation under that expanded scope for a certain period of time; and

(iii) Be required to submit a monitoring report regarding accreditation decisions made under the expanded scope.

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

[84 FR 58918, Nov. 1, 2019]

§ 602.13 [Reserved]

ORGANIZATIONAL AND ADMINISTRATIVE REQUIREMENTS

§ 602.14 Purpose and organization.

- (a) The Secretary recognizes only the following four categories of accrediting agencies:

(1) A State agency that—

(i) Has as a principal purpose the accrediting of institutions of higher education, higher education programs, or both; and

(ii) Has been listed by the Secretary as a nationally recognized accrediting agency on or before October 1, 1991.

(2) An accrediting agency that—

(i) Has a voluntary membership of institutions of higher education;

(ii) Has as a principal purpose the accrediting of institutions of higher education and that accreditation is used to provide a link to Federal HEA programs in accordance with § 602.10; and

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(iii) Satisfies the “separate and independent” requirements in paragraph (b) of this section.

(3) An accrediting agency that—

(i) Has a voluntary membership; and

(ii) Has as its principal purpose the accrediting of institutions of higher education or programs, and the accreditation it offers is used to provide a link to non-HEA Federal programs in accordance with § 602.10.

(4) An accrediting agency that, for purposes of determining eligibility for title IV, HEA programs—

(i)(A) Has a voluntary membership of individuals participating in a profession; or

(B) Has as its principal purpose the accrediting of programs within institutions that are accredited by another nationally recognized accrediting agency; and

(ii) Satisfies the “separate and independent” requirements in paragraph (b) of this section or obtains a waiver of those requirements under paragraph (d) of this section.

(b) For purposes of this section, “separate and independent” means that—

(1) The members of the agency’s decision-making body, who decide the accreditation or preaccreditation status of institutions or programs, establish the agency’s accreditation policies, or both, are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association, professional organization, or membership organization and are not staff of the related, associated, or affiliated trade association, professional organization, or membership organization;

(2) At least one member of the agency’s decision-making body is a representative of the public, and at least one-seventh of the body consists of representatives of the public;

(3) The agency has established and implemented guidelines for each member of the decision-making body including guidelines on avoiding conflicts of interest in making decisions;

(4) The agency’s dues are paid separately from any dues paid to any related, associated, or affiliated trade association or membership organization; and

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(5) The agency develops and determines its own budget, with no review by or consultation with any other entity or organization.

(c) The Secretary considers that any joint use of personnel, services, equipment, or facilities by an agency and a related, associated, or affiliated trade association or membership organization does not violate the “separate and independent” requirements in paragraph (b) of this section if—

(1) The agency pays the fair market value for its proportionate share of the joint use; and

(2) The joint use does not compromise the independence and confidentiality of the accreditation process.

(d) For purposes of paragraph (a)(4) of this section, the Secretary may waive the “separate and independent” requirements in paragraph (b) of this section if the agency demonstrates that—

(1) The Secretary listed the agency as a nationally recognized agency on or before October 1, 1991, and has recognized it continuously since that date;

(2) The related, associated, or affiliated trade association or membership organization plays no role in making or ratifying either the accrediting or policy decisions of the agency;

(3) The agency has sufficient budgetary and administrative autonomy to carry out its accrediting functions independently;

(4) The agency provides to the related, associated, or affiliated trade association or membership organization only information it makes available to the public.

(e) An agency seeking a waiver of the “separate and independent” requirements under paragraph (d) of this section must apply for the waiver each time the agency seeks recognition or continued recognition.

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

[84 FR 58919, Nov. 1, 2019]

§ 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—

(1) Adequate administrative staff and financial resources to carry out its accrediting responsibilities;

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

(3) Academic and administrative personnel on its evaluation, policy, and decision-making bodies, if the agency accredits institutions;

(4) Educators, practitioners, and/or employers on its evaluation, policy, and decision-making bodies, if the agency accredits programs or single-purpose institutions that prepare students for a specific profession;

(5) Representatives of the public, which may include students, on all decision-making bodies; and

(6) Clear and effective controls, including guidelines, to prevent or resolve conflicts of interest, or the appearance of conflicts of interest, by the agency's—

(i) Board members;

(ii) Commissioners;

(iii) Evaluation team members;

(iv) Consultants;

(v) Administrative staff; and

(vi) Other agency representatives; and

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

(1) Its last full accreditation or preaccreditation review 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 decision letters issued by the agency regarding the accreditation and

preaccreditation of any institution or program and any substantive changes.

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

[84 FR 58919, Nov. 1, 2019]

REQUIRED STANDARDS AND THEIR APPLICATION

§ 602.16 Accreditation and preaccreditation standards.

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

(1) The agency's accreditation standards must set forth clear expectations for the institutions or programs it accredits in the following areas:

(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.

(ii) Curricula.

(iii) Faculty.

(iv) Facilities, equipment, and supplies.

(v) Fiscal and administrative capacity as appropriate to the specified scale of operations.

(vi) Student support services.

(vii) Recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising.

(viii) Measures of program length and the objectives of the degrees or credentials offered.

(ix) Record of student complaints received by, or available to, the agency.

(x) Record of compliance with the institution's program responsibilities under title IV of the Act, based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and any other information that the Secretary may provide to the agency; and

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(2) The agency's preaccreditation standards, if offered, must—

- (i) Be appropriately related to the agency's accreditation standards; and
- (ii) Not permit the institution or program to hold preaccreditation status for more than five years before a final accrediting action is made.

(b) Agencies are not required to apply the standards described in paragraph (a)(1)(x) of this section to institutions that do not participate in title IV, HEA programs. Under such circumstance, the agency's grant of accreditation or preaccreditation must specify that the grant, by request of the institution, does not include participation by the institution in title IV, HEA programs.

(c) 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.

(d)(1) 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, correspondence courses, or direct assessment education, the agency's standards must effectively address the quality of an institution's distance education, correspondence courses, or direct assessment education in the areas identified in paragraph (a)(1) of this section.

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

(e) If none of the institutions an agency accredits participates in any title IV, HEA program, or if the agency only accredits programs within institutions that are accredited by a nationally recognized institutional accrediting agency, the agency is not required to have the accreditation standards described in paragraphs (a)(1)(viii) and (a)(1)(x) of this section.

(f) An agency that has established and applies the standards in paragraph (a) of this section may establish any additional accreditation standards it deems appropriate.

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(g) Nothing in paragraph (a) of this section restricts—

- (1) An accrediting agency from setting, with the involvement of its members, and applying accreditation standards for or to institutions or programs that seek review by the agency;
- (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; or
- (3) Agencies from having separate standards regarding an institution's or a program's process for approving curriculum to enable programs to more effectively meet the recommendations of—
 - (i) Industry advisory boards that include employers who hire program graduates;
 - (ii) Widely recognized industry standards and organizations;
 - (iii) Credentialing or other occupational registration or licensure; or
 - (iv) Employers in a given field or occupation, in making hiring decisions.
- (4) Agencies from having separate faculty standards for instructors teaching courses within a dual or concurrent enrollment program, as defined in 20 U.S.C. 7801, or career and technical education courses, as long as the instructors, in the agency's judgment, are qualified by education or work experience for that role.

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

[84 FR 58919, Nov. 1, 2019]

§ 602.17 Application of standards in reaching accreditation decisions.

The agency must have effective mechanisms for evaluating an institution's or program's compliance with the agency's standards before reaching a decision to accredit or preaccredit the institution or program. The agency meets this requirement if the agency demonstrates that it—

- (a) Evaluates whether an institution or program—
 - (1) Maintains clearly specified educational objectives that are consistent with its mission and appropriate in light of the degrees or certificates awarded;

(2) Is successful in achieving its stated objectives at both the institutional and program levels; and

(3) Maintains requirements that at least conform to commonly accepted academic standards, or the equivalent, including pilot programs in § 602.18(b);

(b) Requires the institution or program to engage in a self-study process that assesses the institution's or program's education quality and success in meeting its mission and objectives, highlights opportunities for improvement, and includes a plan for making those improvements;

(c) Conducts at least one on-site review of the institution or program during which it obtains sufficient information to determine if the institution or program complies with the agency's standards;

(d) Allows the institution or program the opportunity to respond in writing to the report of the on-site review;

(e) Conducts its own analysis of the self-study and supporting documentation furnished by the institution or program, the report of the on-site review, the institution's or program's response to the report, and any other information substantiated by the agency from other sources to determine whether the institution or program complies with the agency's standards;

(f) Provides the institution or program with a detailed written report that assesses the institution's or program's compliance with the agency's standards, including areas needing improvement, and the institution's or program's performance with respect to student achievement;

(g) Requires institutions to have processes in place through which the institution establishes that a student who registers in any course offered via distance education or correspondence is the same student who academically engages in the course or program; and

(h) Makes clear in writing that institutions must use processes that protect student privacy and notify students of any projected additional student charges associated with the verification of student identity at the time of registration or enrollment.

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

[84 FR 58920, Nov. 1, 2019]

§ 602.18 Ensuring consistency in decision-making.

(a) The agency must consistently apply and enforce standards that respect the stated mission of the institution, including religious mission, and that ensure that the education or training offered by an institution or program, including any offered through distance education, correspondence courses, or direct assessment education is of sufficient quality to achieve its stated objective for the duration of any accreditation or preaccreditation period.

(b) The agency meets the requirement in paragraph (a) of this section if the agency—

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

(2) Has effective controls against the inconsistent application of the agency's standards;

(3) Bases decisions regarding accreditation and preaccreditation on the agency's published standards and does not use as a negative factor the institution's religious mission-based policies, decisions, and practices in the areas covered by § 602.16(a)(1)(ii), (iii), (iv), (vi), and (vii) provided, however, that the agency may require that the institution's or program's curricula include all core components required by the agency;

(4) Has a reasonable basis for determining that the information the agency relies on for making accrediting decisions is accurate;

(5) Provides the institution or program with a detailed written report that clearly identifies any deficiencies in the institution's or program's compliance with the agency's standards; and

(6) Publishes any policies for retroactive application of an accreditation decision, which must not provide for an effective date that predates either—

(i) An earlier denial by the agency of accreditation or preaccreditation to the institution or program; or

(ii) The agency's formal approval of the institution or program for consideration in the agency's accreditation or preaccreditation process.

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(c) Nothing in this part prohibits an agency, when special circumstances exist, to include innovative program delivery approaches or, when an undue hardship on students occurs, from applying equivalent written standards, policies, and procedures that provide alternative means of satisfying one or more of the requirements set forth in 34 CFR 602.16, 602.17, 602.19, 602.20, 602.22, and 602.24, as compared with written standards, policies, and procedures the agency ordinarily applies, if—

(1) The alternative standards, policies, and procedures, and the selection of institutions or programs to which they will be applied, are approved by the agency's decision-making body and otherwise meet the intent of the agency's expectations and requirements;

(2) The agency sets and applies equivalent goals and metrics for assessing the performance of institutions or programs;

(3) The agency's process for establishing and applying the alternative standards, policies, and procedures is set forth in its published accreditation manuals; and

(4) The agency requires institutions or programs seeking the application of alternative standards to demonstrate the need for an alternative assessment approach, that students will receive equivalent benefit, and that students will not be harmed through such application.

(d) Nothing in this part prohibits an agency from permitting the institution or program to be out of compliance with one or more of its standards, policies, and procedures adopted in satisfaction of §§ 602.16, 602.17, 602.19, 602.20, 602.22, and 602.24 for a period of time, as determined by the agency annually, not to exceed three years unless the agency determines there is good cause to extend the period of time, and if—

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

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

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

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

(iv) Changes relating to State licensure requirements;

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

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

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

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

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

(i) Contribute to the cost of the program to the student without the student's consent;

(ii) Create any undue hardship on, or harm to, students; or

(iii) Compromise the program's academic quality.

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

[84 FR 58920, Nov. 1, 2019]

§ 602.19 Monitoring and reevaluation of accredited institutions and programs.

(a) The agency must reevaluate, at regularly established intervals, the institutions or programs it has accredited or preaccredited.

(b) The agency must demonstrate it has, and effectively applies, monitoring and evaluation approaches that enable the agency to identify problems with an institution's or program's continued compliance with agency standards and that take into account institutional or program strengths and stability. These approaches must include periodic reports, and collection and analysis of

key data and indicators, identified by the agency, including, but not limited to, fiscal information and measures of student achievement, consistent with the provisions of § 602.16(g). This provision does not require institutions or programs to provide annual reports on each specific accreditation criterion.

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

(d) Institutional accrediting agencies must monitor the growth of programs at institutions experiencing significant enrollment growth, as reasonably defined by the agency.

(e) Any agency that has notified the Secretary of a change in its scope in accordance with § 602.27(a) must monitor the headcount enrollment of each institution it has accredited that offers distance education or correspondence courses. The Secretary will require a review, at the next meeting of the National Advisory Committee on Institutional Quality and Integrity, of any change in scope undertaken by an agency if the enrollment of an institution that offers distance education or correspondence courses that is accredited by such agency increases by 50 percent or more within any one institutional fiscal year. If any such institution has experienced an increase in head-count enrollment of 50 percent or more within one institutional fiscal year, the agency must report that information to the Secretary within 30 days of acquiring such data.

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

[84 FR 58921, Nov. 1, 2019]

§ 602.20 Enforcement of standards.

(a) If the agency's review of an institution or program under any standard indicates that the institution or program is not in compliance with that standard, the agency must—

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

(2) Provide the institution or program with a written timeline for coming into compliance that is reasonable, as determined by the agency's decision-making body, based on the nature of

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

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

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

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

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

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

(c) If the institution or program does not bring itself into compliance within the period specified in paragraph (a) of this section, the agency must take adverse action against the institution or program, but may maintain the institution's or program's accreditation or preaccreditation until the institution or program has had reasonable time to complete the activities in its teach-out plan or to fulfill the obligations of any teach-out agreement to assist students in transferring or completing their programs.

(d) An agency that accredits institutions may limit the adverse or other action to particular programs that are offered by the institution or to particular additional locations of an institution, without necessarily taking action against the entire institution and all of its programs, provided the noncompliance was limited to that particular program or location.

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(e) All adverse actions taken under this subpart are subject to the arbitration requirements in 20 U.S.C. 1099b(e).

(f) An agency is not responsible for enforcing requirements in 34 CFR 668.14, 668.15, 668.16, 668.41, or 668.46, but if, in the course of an agency's work, it identifies instances or potential instances of noncompliance with any of these requirements, it must notify the Department.

(g) The Secretary may not require an agency to take action against an institution or program that does not participate in any title IV, HEA or other Federal program as a result of a requirement specified in this part.

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

[84 FR 58922, Nov. 1, 2019]

§ 602.21 Review of standards.

(a) The agency must maintain a comprehensive systematic program of review that involves all relevant constituencies and that demonstrates that its standards are adequate to evaluate the quality of the education or training provided by the institutions and programs it accredits and relevant to the educational or training needs of students.

(b) The agency determines the specific procedures it follows in evaluating its standards, but the agency must ensure that its program of review—

(1) Is comprehensive;

(2) Occurs at regular, yet reasonable, intervals or on an ongoing basis;

(3) Examines each of the agency's standards and the standards as a whole; and

(4) Involves all of the agency's relevant constituencies in the review and affords them a meaningful opportunity to provide input into the review.

(c) If the agency determines, at any point during its systematic program of review, that it needs to make changes to its standards, the agency must initiate action within 12 months to make the changes and must complete that action within a reasonable period of time.

(d) Before finalizing any changes to its standards, the agency must—

(1) Provide notice to all of the agency's relevant constituencies, and other

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parties who have made their interest known to the agency, of the changes the agency proposes to make;

(2) Give the constituencies and other interested parties adequate opportunity to comment on the proposed changes; and

(3) Take into account and be responsive to any comments on the proposed changes submitted timely by the relevant constituencies and other interested parties.

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

[64 FR 56617, Oct. 20, 1999, as amended at 84 FR 58922, Nov. 1, 2019]

REQUIRED OPERATING POLICIES AND PROCEDURES

§ 602.22 Substantive changes and other reporting requirements.

(a)(1) If the agency accredits institutions, it must maintain adequate substantive change policies that ensure that any substantive change, as defined in this section, after the agency has accredited or preaccredited the institution does not adversely affect the capacity of the institution to continue to meet the agency's standards. The agency meets this requirement if—

(i) The agency requires the institution to obtain the agency's approval of the substantive change before the agency includes the change in the scope of accreditation or preaccreditation it previously granted to the institution; and

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

(A) Any substantial change in the established mission or objectives of the institution or its programs.

(B) Any change in the legal status, form of control, or ownership of the institution.

(C) The addition of programs that represent a significant departure from the existing offerings or educational programs, or method of delivery, from those that were offered or used when the agency last evaluated the institution.

(D) The addition of graduate programs by an institution that previously offered only undergraduate programs or certificates.

(E) A change in the way an institution measures student progress, including whether the institution measures progress in clock hours or credit-hours, semesters, trimesters, or quarters, or uses time-based or non-time-based methods.

(F) A substantial increase in the number of clock hours or credit hours awarded, or an increase in the level of credential awarded, for successful completion of one or more programs.

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

(H) 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.

(I) The addition of a new location or branch campus, except as provided in paragraph (c) of this section. The agency's review must include assessment of the institution's fiscal and administrative capability to operate the location or branch campus, the regular evaluation of locations, and verification of the following:

(1) Academic control is clearly identified by the institution.

(2) The institution has adequate faculty, facilities, resources, and academic and student support systems in place.

(3) The institution is financially stable.

(4) The institution had engaged in long-range planning for expansion.

(J) Entering into a written arrangement under 34 CFR 668.5 under which an institution or organization not certified to participate in the title IV, HEA programs offers more than 25 percent but less than 50 percent of one or more of the accredited institution's educational programs.

(K) Addition of each direct assessment program.

(2)(i) For substantive changes under only paragraph (a)(1)(ii)(C), (E), (F), (H), or (J) of this section, the agency's decision-making body may designate agency senior staff to approve or disapprove the request in a timely, fair, and equitable manner; and

(ii) In the case of a request under paragraph (a)(1)(ii)(J) of this section,

the agency must make a final decision within 90 days of receipt of a materially complete request, unless the agency or its staff determine significant circumstances related to the substantive change require a review by the agency's decision-making body to occur within 180 days.

(b) Institutions that have been placed on probation or equivalent status, have been subject to negative action by the agency over the prior three academic years, or are under a provisional certification, as provided in 34 CFR 668.13, must receive prior approval for the following additional changes (all other institutions must report these changes within 30 days to their accrediting agency):

(1) A change in an existing program's method of delivery.

(2) An aggregate change of 25 percent or more of the clock hours, credit hours, or content of a program since the agency's most recent accreditation review.

(3) The development of customized pathways or abbreviated or modified courses or programs to—

(i) Accommodate and recognize a student's existing knowledge, such as knowledge attained through employment or military service; and

(ii) Close competency gaps between demonstrated prior knowledge or competency and the full requirements of a particular course or program.

(4) Entering into a written arrangement under 34 CFR 668.5 under which an institution or organization not certified to participate in the title IV, HEA programs offers up to 25 percent of one or more of the accredited institution's educational programs.

(c) Institutions that have successfully completed at least one cycle of accreditation and have received agency approval for the addition of at least two additional locations as provided in paragraph (a)(1)(ii)(I) of this section, and that have not been placed on probation or equivalent status or been subject to a negative action by the agency over the prior three academic years, and that are not under a provisional certification, as provided in 34 CFR 668.13, need not apply for agency approval of subsequent additions of locations, and must report these changes

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to the accrediting agency within 30 days, if the institution has 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—

- (1) Clearly identified academic control;
- (2) Regular evaluation of the locations;
- (3) Adequate faculty, facilities, resources, and academic and student support systems;
- (4) Financial stability; and
- (5) Long-range planning for expansion.

(d) The agency must have an effective mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations approved under paragraphs (a)(1)(ii)(H) and (I) of this section.

(e) The agency may determine the procedures it uses to grant prior approval of the substantive change. However, these procedures must specify an effective date, on which the change is included in the program's or institution's grant of accreditation or preaccreditation. The date of prior approval must not pre-date either an earlier agency denial of the substantive change, or the agency's formal acceptance of the application for the substantive change for inclusion in the program's or institution's grant of accreditation or preaccreditation. 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 paragraphs (d) and (f) of this section, an agency may require a visit before granting such an approval.

(f) Except as provided in paragraph (c) of this section, if the agency's accreditation of an institution enables the institution to seek eligibility to participate in title IV, HEA programs, the agency's procedures for the approval of an additional location that is not a branch campus where at least 50 percent of an educational program is offered must include—

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(1) A visit, within six months, to each additional location the institution establishes, if the institution—

- (i) Has a total of three or fewer additional locations;
- (ii) Has not demonstrated, to the agency's satisfaction, that the additional location is meeting all of the agency's standards that apply to that additional location; or

(iii) Has been placed on warning, probation, or show cause by the agency or is subject to some limitation by the agency on its accreditation or preaccreditation status;

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

(3) A mechanism, which may, at the agency's discretion, include visits to additional locations, for ensuring that accredited and preaccredited institutions that experience rapid growth in the number of additional locations maintain education quality.

(g) The purpose of the visits described in paragraph (f) of this section is to verify that the additional location has the personnel, facilities, and resources the institution claimed it had in its application to the agency for approval of the additional location.

(h) 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.

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

[84 FR 58922, Nov. 1, 2019, as amended at 87 FR 63692, Oct. 20, 2022]

§ 602.23 Operating procedures all agencies must have.

(a) The agency must maintain and make available to the public 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, preaccreditation, or substantive changes and the sequencing of those steps relative to any applications or decisions required by States or the Department relative to the

agency's preaccreditation, accreditation, or substantive change decisions;

(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) A list of 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.

(b) In providing public notice that an institution or program subject to its jurisdiction is being considered for accreditation or preaccreditation, the agency must provide an opportunity for third-party comment concerning the institution's or program's qualifications for accreditation or preaccreditation. At the agency's discretion, third-party comment may be received either in writing or at a public hearing, or both.

(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;

(2) Take follow-up action, as necessary, including enforcement action, if necessary, based on the results of its review; and

(3) Review in a timely, fair, and equitable manner, and apply unbiased judgment to, any complaints against itself and take follow-up action, as appropriate, based on the results of its review.

(d) If an institution or program elects to make a public disclosure of its ac-

creditation or preaccreditation status, the agency must ensure that the institution or program discloses that status accurately, including the specific academic or instructional programs covered by that status and the name and contact information for the agency.

(e) The accrediting agency must provide for the public correction of incorrect or misleading information an accredited or preaccredited institution or program releases about—

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

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

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

(f)(1) If preaccreditation is offered—

(i) The agency's preaccreditation policies must limit the status to institutions or programs that the agency has determined are likely to succeed in obtaining accreditation;

(ii) The agency must require all preaccredited institutions to have a teach-out plan, which must ensure students completing the teach-out would meet curricular requirements for professional licensure or certification, if any, and which must include a list of academic programs offered by the institution and the names of other institutions that offer similar programs and that could potentially enter into a teach-out agreement with the institution;

(iii) An agency that denies accreditation to an institution it has preaccredited may maintain the institution's preaccreditation for currently enrolled students until the institution has had a reasonable time to complete the activities in its teach-out plan to assist students in transferring or completing their programs, but for no more than 120 days unless approved by the agency for good cause; and

(iv) The agency may not move an accredited institution or program from accredited to preaccredited status unless, following the loss of accreditation, the institution or program applies for initial accreditation and is awarded preaccreditation status under the new

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application. Institutions that participated in the title IV, HEA programs before the loss of accreditation are subject to the requirements of 34 CFR 600.11(c).

(2) All credits and degrees earned and issued by an institution or program holding preaccreditation from a nationally recognized agency are considered by the Secretary to be from an accredited institution or program.

(g) The agency may establish any additional operating procedures it deems appropriate. At the agency's discretion, these may include unannounced inspections.

(Approved by the Office of Management and Budget under control number 1845-0003)

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

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55428, Oct. 27, 2009; 84 FR 58923, Nov. 1, 2019]

§ 602.24 Additional procedures certain institutional agencies must have.

If the agency is an institutional accrediting agency and its accreditation or preaccreditation enables those institutions to obtain eligibility to participate in title IV, HEA programs, the agency must demonstrate that it has established and uses all of the following procedures:

(a) *Branch campus.* The agency must require the institution to notify the agency if it plans to establish a branch campus and to submit a business plan for the branch campus that describes—

(1) The educational program to be offered at the branch campus; and

(2) The projected revenues and expenditures and cash flow at the branch campus.

(b) *Site visits.* The agency must undertake a site visit to a new branch campus or following a change of ownership or control as soon as practicable, but no later than six months, after the establishment of that campus or the change of ownership or control.

(c) *Teach-out plans and agreements.* (1) The agency must require an institution it accredits to submit a teach-out plan as defined in 34 CFR 600.2 to the agency for approval upon the occurrence of any of the following events:

(i) For a nonprofit or proprietary institution, the Secretary notifies the agency of a determination by the institution's independent auditor expressing doubt about the institution's ability to operate as a going concern or indicating an adverse opinion or a finding of material weakness related to financial stability.

(ii) The agency acts to place the institution on probation or equivalent status.

(iii) The Secretary notifies the agency that the institution is participating in title IV, HEA programs under a provisional program participation agreement and the Secretary has required a teach-out plan as a condition of participation.

(2) The agency must require an institution it accredits or preaccredits to submit a teach-out plan and, if practicable, teach-out agreements (as defined in 34 CFR 600.2) to the agency for approval upon the occurrence of any of the following events:

(i) The Secretary notifies the agency that it has placed the institution on the reimbursement payment method under 34 CFR 668.162(c) or the heightened cash monitoring payment method requiring the Secretary's review of the institution's supporting documentation under 34 CFR 668.162(d)(2).

(ii) The Secretary notifies the agency that the Secretary has initiated an emergency action against an institution, in accordance with section 487(c)(1)(G) of the HEA, or an action to limit, suspend, or terminate an institution participating in any title IV, HEA program, in accordance with section 487(c)(1)(F) of the HEA.

(iii) The agency acts to withdraw, terminate, or suspend the accreditation or preaccreditation of the institution.

(iv) 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, including if the location is being moved and is considered by the Secretary to be a closed school.

(v) 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.

(3) The agency must evaluate the teach-out plan to ensure it includes a

list of currently enrolled students, academic programs offered by the institution, and the names of other institutions that offer similar programs and that could potentially enter into a teach-out agreement with the institution.

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

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

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

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

(ii) A plan to provide all potentially eligible students with information about how to obtain a closed school discharge and, if applicable, information on State refund policies;

(iii) A record retention plan to be provided to all enrolled students that delineates the final disposition of teach-out records (e.g., student transcripts, billing, financial aid records);

(iv) Information on the number and types of credits the teach-out institution is willing to accept prior to the student's enrollment; and

(v) A clear statement to students of the tuition and fees of the educational program and the number and types of credits that will be accepted by the teach-out institution.

(7) The agency must require an institution it accredits or preaccredits that enters into a teach-out agreement, either on its own or at the request of the agency, to submit that teach-out agreement for approval. The agency may approve the teach-out agreement only if the agreement meets the requirements of 34 CFR 600.2 and this section, is consistent with applicable standards and regulations, and provides for the equitable treatment of students being served by ensuring that the teach-out institution—

(i) Has the necessary experience, resources, and support services to pro-

vide an educational program that is of acceptable quality and reasonably similar in content, delivery modality, and scheduling to that provided by the institution that is ceasing operations either entirely or at one of its locations; however, while an option via an alternate method of delivery may be made available to students, such an option is not sufficient unless an option via the same method of delivery as the original educational program is also provided;

(ii) Has the capacity to carry out its mission and meet all obligations to existing students; and

(iii) Demonstrates that it—

(A) Can provide students access to the program and services without requiring them to move or travel for substantial distances or durations; and

(B) Will provide students with information about additional charges, if any.

(8) Irrespective of any teach-out plan or signed teach-out agreement, the agency must not permit an institution to serve as a teach-out institution under the following conditions:

(i) The institution is subject to the conditions in paragraph (c)(1) or (2) of this section.

(ii) The institution is under investigation, subject to an action, or being prosecuted for an issue related to academic quality, misrepresentation, fraud, or other severe matters by a law enforcement agency.

(9) The agency is permitted to waive requirements regarding the percentage of credits that must be earned by a student at the institution awarding the educational credential if the student is completing his or her program through a written teach-out agreement or transfer.

(10) The agency must require the institution to provide copies of all notifications from the institution related to the institution's closure or to teach-out options to ensure the information accurately represents students' ability to transfer credits and may require corrections.

(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

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State agency, to the extent feasible, to assist students in finding reasonable opportunities to complete their education without additional charges.

(e) *Transfer of credit policies.* The accrediting agency must confirm, as part of its review for initial accreditation or preaccreditation, or renewal of accreditation, that the institution has transfer of credit policies that—

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

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

(f) *Agency designations.* In its accrediting practice, the agency must—

(1) Adopt and apply the definitions of “branch campus” and “additional location” in 34 CFR 600.2;

(2) On the Secretary’s request, conform its designations of an institution’s branch campuses and additional locations with the Secretary’s if it learns its designations diverge; and

(3) Ensure that it does not accredit or preaccredit an institution comprising fewer than all of the programs, branch campuses, and locations of an institution as certified for title IV participation by the Secretary, except with notice to and permission from the Secretary.

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

[84 FR 58924, Nov. 1, 2019]

§ 602.25 Due process.

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

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

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

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

(d) Provides sufficient opportunity for a written response by an institution

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or program regarding any deficiencies identified by the agency, to be considered by the agency within a timeframe determined by the agency, and before any adverse action is taken.

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

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

(1) The appeal must take place at a hearing before an appeals panel that—

(i) May not include current members of the agency’s decision-making body that took the initial adverse action;

(ii) Is subject to a conflict of interest policy;

(iii) Does not serve only an advisory or procedural role, and has and uses the authority to make the following decisions: To affirm, amend, or remand adverse actions of the original decision-making body; and

(iv) Affirms, amends, or remands the adverse action. A decision to affirm or amend the adverse action is implemented by the appeals panel or by the original decision-making body, at the agency’s option; however, in the event of a decision by the appeals panel to remand the adverse action to the original decision-making body for further consideration, the appeals panel must explain the basis for a decision that differs from that of the original decision-making body and the original decision-making body in a remand must act in a manner consistent with the appeals panel’s decisions or instructions.

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

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

(h)(1) The agency must provide for a process, in accordance with written

procedures, through which an institution or program may, before the agency reaches a final adverse action decision, seek review of new financial information if all of the following conditions are met:

(i) The financial information was unavailable to the institution or program until after the decision subject to appeal was made.

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

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

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

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

[74 FR 55429, Oct. 27, 2009, as amended at 84 FR 58925, Nov. 1, 2019]

§ 602.26 Notification of accrediting decisions.

The agency must demonstrate that it has established and follows written procedures requiring it to provide written notice of its accrediting decisions to the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and the public. The agency meets this requirement if the agency, following its written procedures—

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

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

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

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

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

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

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

(d) Provides written notice to the public of the decisions listed in paragraphs (b) and (c) of this section within one business day of its notice to the institution or program;

(e) For any decision listed in paragraph (c) of this section, requires the institution or program to disclose the decision to current and prospective students within seven business days of receipt and makes available to the Secretary, the appropriate State licensing or authorizing agency, and the public, no later than 60 days after the decision, a brief statement summarizing the reasons for the agency's decision and the official comments that the affected institution or program may wish to make with regard to that decision, or evidence that the affected institution has been offered the opportunity to provide official comment;

(f) Notifies the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and, upon request, the public if an accredited or preaccredited institution or program—

(1) Decides to withdraw voluntarily from accreditation or preaccreditation,

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within 10 business days of receiving notification from the institution or program that it is withdrawing voluntarily from accreditation or preaccreditation; or

(2) Lets its accreditation or preaccreditation lapse, within 10 business days of the date on which accreditation or preaccreditation lapses.

(Approved by the Office of Management and Budget under control number 1845-0003)

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

[64 FR 56617, Oct. 20, 1999, as amended at 74 FR 55429, Oct. 27, 2009; 84 FR 58924, Nov. 1, 2019]

§ 602.27 Other information an agency must provide the Department.

(a) The agency must submit to the Department—

(1) A list, updated annually, of its accredited and preaccredited institutions and programs, which may be provided electronically;

(2) 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;

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

(i) Scope of recognition, except as provided in paragraph (a)(4) of this section; or

(ii) Compliance with the criteria for recognition;

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

(5) 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

(6) If the Secretary requests, information that may bear upon an accredited or preaccredited institution's compliance with its title IV, HEA program

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responsibilities, including the eligibility of the institution or program to participate in title IV, HEA programs.

(b) If an agency has a policy regarding notification to an institution or program of contact with the Department in accordance with paragraph (a)(5) or (6) of this section, it must provide for a case-by-case review of the circumstances surrounding the contact, and the need for the confidentiality of that contact. When the Department determines a compelling need for confidentiality, the agency must consider that contact confidential upon specific request of the Department.

[84 FR 58926, Nov. 1, 2019]

§ 602.28 Regard for decisions of States and other accrediting agencies.

(a) If the agency is an institutional accrediting agency, it may not accredit or preaccredit institutions that lack legal authorization under applicable State law to provide a program of education beyond the secondary level.

(b) Except as provided in paragraph (c) of this section, the agency may not grant initial or renewed accreditation or preaccreditation to an institution, or a program offered by an institution, if the agency knows, or has reasonable cause to know, that the institution is the subject of—

(1) A pending or final action brought by a State agency to suspend, revoke, withdraw, or terminate the institution's legal authority to provide postsecondary education in the State;

(2) A decision by a recognized agency to deny accreditation or preaccreditation;

(3) A pending or final action brought by a recognized accrediting agency to suspend, revoke, withdraw, or terminate the institution's accreditation or preaccreditation; or

(4) Probation or an equivalent status imposed by a recognized agency.

(c) The agency may grant accreditation or preaccreditation to an institution or program described in paragraph (b) of this section only if it provides to the Secretary, within 30 days of its action, a thorough and reasonable explanation, consistent with its standards, why the action of the other body does

not preclude the agency's grant of accreditation or preaccreditation.

(d) If the agency learns that an institution it accredits or preaccredits, or an institution that offers a program it accredits or preaccredits, is the subject of an adverse action by another recognized accrediting agency or has been placed on probation or an equivalent status by another recognized agency, the agency must promptly review its accreditation or preaccreditation of the institution or program to determine if it should also take adverse action or place the institution or program on probation or show cause.

(e) The agency must, upon request, share with other appropriate recognized accrediting agencies and recognized State approval agencies information about the accreditation or preaccreditation status of an institution or program and any adverse actions it has taken against an accredited or preaccredited institution or program.

(Approved by the Office of Management and Budget under control number 1845-0003)

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

§ 602.29 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

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

[84 FR 58926, Nov. 1, 2019]

Subpart C—The Recognition Process

SOURCE: 74 FR 55430, Oct. 27, 2009, unless otherwise noted.

APPLICATION AND REVIEW BY DEPARTMENT STAFF

§ 602.30 [Reserved]

§ 602.31 Agency applications and reports to be submitted to the Department.

(a) *Applications for recognition or renewal of recognition.* An accrediting agency seeking initial or continued recognition must submit a written ap-

plication to the Secretary. Each accrediting agency must submit an application for continued recognition at least once every five years, or within a shorter time period specified in the final recognition decision, and, for an agency seeking renewal of recognition, 24 months prior to the date on which the current recognition expires. The application, to be submitted concurrently with information required by § 602.32(a) and, if applicable, § 602.32(b), must consist of—

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

(2) Documentation that the agency complies with the criteria for recognition listed in subpart B of this part, including a copy of its policies and procedures manual and its accreditation standards; and

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

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

(1) Specify the scope requested;

(2) Provide copies of any relevant standards, policies, or procedures developed and applied by the agency for its use in accrediting activities conducted within the expansion of scope proposed and documentation of the application of these standards, policies, or procedures; and

(3) Provide the materials required by § 602.32(j) and, if applicable, § 602.32(l).

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

(d) *Review following an increase in headcount enrollment.* If an agency that has notified the Secretary in writing of its change in scope to include distance education or correspondence courses in accordance with § 602.27(a)(4) reports an

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increase in headcount enrollment in accordance with § 602.19(e) for an institution it accredits, or if the Department notifies the agency of such an increase at one of the agency's accredited institutions, the agency must, within 45 days of reporting the increase or receiving notice of the increase from the Department, as applicable, submit a report explaining—

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

(2) The specific circumstances regarding the growth at the institution or program that triggered the review and the results of any evaluation conducted by the agency; and

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

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

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

(2) To visit locations where agency activities such as training, review and evaluation panel meetings, and decision meetings take place, on an announced or unannounced basis;

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

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

(f) *Public availability of agency records obtained by the Department.*

(1) The Secretary's processing and decision-making on requests for public disclosure of agency materials reviewed under this part are governed by the Freedom of Information Act, 5 U.S.C. 552; the Trade Secrets Act, 18 U.S.C. 1905; the Privacy Act of 1974, as amended, 5 U.S.C. 552a; the Federal Advisory Committee Act, 5 U.S.C. Appdx. 1; and all other applicable laws. In recognition proceedings, agencies must, before submission to the Department—

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(i) Redact the names and any other personally identifiable information about individual students and any other individuals who are not agents of the agency or of an institution or program the agency is reviewing;

(ii) Redact the personal addresses, personal telephone numbers, personal email addresses, Social Security numbers, and any other personally identifiable information regarding individuals who are acting as agents of the agency or of an institution or program under review;

(iii) 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; and

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

(2) The agency may, but is not required to, redact the identities of institutions or programs that it believes are not essential to the Department's review of the agency and may 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 public disclosure.

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

(4) Upon request by Department staff, the agency must disclose to Department staff any specific material the agency has redacted that Department staff believes is needed to conduct the staff review. Department staff will make any arrangements needed to ensure that the materials are not made public if prohibited by law.

(g) *Length of submissions.* The Secretary may publish reasonable, uniform limits on the length of submissions described in this section.

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

[84 FR 58926, Nov. 1, 2019]

§ 602.32 Procedures for submitting an application for recognition, renewal of recognition, expansion of scope, compliance reports, and increases in enrollment.

(a) An agency preparing for renewing recognition will submit, 24 months prior to the date on which the current recognition expires, and in conjunction with the materials required by § 602.31(a), a list of all institutions or programs that the agency plans to consider for an award of initial or renewed accreditation over the next year or, if none, over the succeeding year, as well as any institutions or programs currently subject to compliance report review or reporting requirements. An agency that does not anticipate a review of any institution or program for an initial award of accreditation or renewed accreditation in the 24 months prior to the date of recognition expiration may submit a list of institutions or programs it has reviewed for an initial award of accreditation or renewal of accreditation at any time since the prior award of recognition or leading up to the application for an initial award of recognition.

(b) An agency seeking initial recognition must follow the policies and procedures outlined in paragraph (a) of this section, but in addition must also submit—

(1) Letters of support for the agency from at least three accredited institutions or programs, three educators, and, if appropriate, three employers or practitioners, explaining the role for such an agency and the reasons for their support; and

(2) Letters from at least one program or institution that will rely on the agency as its link to a Federal program upon recognition of the agency or intends to seek multiple accreditation which will allow it in the future to designate the agency as its Federal link.

(c) Department staff publishes a notice of the agency's submission of an application in the FEDERAL REGISTER

inviting the public to comment on the agency's compliance with the criteria for recognition and establishing a deadline for receipt of public comment.

(d) The Department staff analyzes the agency's application for initial or renewal of recognition, to determine whether the agency satisfies the criteria for recognition, taking into account all available relevant information concerning the compliance of the agency with those criteria and the agency's consistency in applying the criteria. The analysis of an application may include and, after January 1, 2021, will include—

(1)(i) Observations from site visits, on an announced or unannounced basis, to the agency or to a location where the agency conducts activities such as training, review and evaluation panel meetings, or decision meetings;

(ii) Observations from site visits, on an announced or unannounced basis, to one or more of the institutions or programs the agency accredits or preaccredits;

(iii) A file review at the agency of documents, at which time Department staff may retain copies of documents needed for inclusion in the administrative record;

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

(v) Review of complaints or legal actions involving the agency; and

(2) Review of complaints or legal actions against an institution or program accredited or preaccredited by the agency, which may be considered but are not necessarily determinative of compliance.

(e) The Department may view as a negative factor when considering an application for initial, or expansion of scope of, recognition as proposed by an agency, among other factors, any evidence that the agency was part of a concerted effort to unnecessarily restrict the qualifications necessary for a

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student to sit for a licensure or certification examination or otherwise be eligible for entry into a profession.

(f) Department staff's evaluation of an agency may also include a review of information directly related to institutions or programs accredited or preaccredited by the agency relative to their compliance with the agency's standards, the effectiveness of the standards, and the agency's application of those standards, but must make all materials relied upon in the evaluation available to the agency for review and comment.

(g) If, at any point in its evaluation of an agency seeking initial recognition, Department staff determines that the agency fails to demonstrate compliance with the basic eligibility requirements in §§ 602.10 through 602.15, the staff—

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

(2) Requires that the agency withdraw its application and instructs the agency that it may reapply when the agency is able to demonstrate compliance.

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

(1) Prepare a written draft analysis of the agency's application;

(2) Send to the agency the draft analysis including any identified areas of potential noncompliance and all third-party comments and complaints, if applicable, and any other materials the Department received by the established deadline or is including in its review;

(3) Invite the agency to provide a written response to the draft analysis and third-party comments or other material included in the review, specifying a deadline that provides at least 180 days for the agency's response;

(4) Review the response to the draft analysis the agency submits, if any, and prepares the written final analysis—

(i) Indicating that the agency is in full compliance, substantial compli-

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ance, or noncompliance with each of the criteria for recognition; and

(ii) Recommending that the senior Department official approve, continue recognition with a compliance report to be submitted to the Department within 12 months, continue recognition with a compliance report to be submitted to the Department with a deadline in excess of 12 months based on a finding of good cause and extraordinary circumstances, approve with monitoring or other reporting requirements, or deny, limit, suspend, or terminate recognition; and

(5) Provide to the agency, no later than 30 days before the Advisory Committee meeting, the final staff analysis and any other available information provided to the Advisory Committee under § 602.34(c).

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

(j) An agency seeking an expansion of scope, either as part of the regular renewal of recognition process or during a period of recognition, must submit an application to the Secretary, separately or as part of the policies and procedures outlined in paragraph (a) of this section, that satisfies the requirements of §§ 602.12(b) and 602.31(b) and—

(1) States the reason for the expansion of scope request;

(2) Includes letters from at least three institutions or programs that would seek accreditation under one or more of the elements of the expansion of scope; and

(3) Explains how the agency must expand capacity to support the expansion

of scope, if applicable, and, if necessary, how it will do so and how its budget will support that expansion of capacity.

(k) The Department may view as a negative factor when considering an application for initial or expansion of scope of recognition as proposed by an agency, among other factors, any evidence that the agency was part of a concerted effort to unnecessarily restrict the qualifications necessary for a student to sit for a licensure or certification examination or otherwise be eligible for entry into a profession.

(l) Department staff's evaluation of a compliance report includes review of public comments solicited by Department staff in the FEDERAL REGISTER received by the established deadline, the agency's responses to the third-party comments, as appropriate, other third-party information Department staff receives, and additional information described in paragraphs (d) and (e) of this section, as appropriate.

(m) The Department will process an application for an expansion of scope, compliance report, or increase in enrollment report in accordance with paragraphs with paragraphs (c) through (h) of this section.

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

[84 FR 58927, Nov. 1, 2019, as amended at 87 FR 63692, Oct. 20, 2022]

§ 602.33 Procedures for review of agencies during the period of recognition, including the review of monitoring reports.

(a) Department staff may review the compliance of a recognized agency with the criteria for recognition at any time—

(1) Based on the submission of a monitoring report as directed by a decision by the senior Department official or Secretary; or

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

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

(c) If, in the course of the review, and after providing the agency the documentation concerning the inquiry and consulting with the agency, Depart-

ment staff notes that one or more deficiencies may exist in the agency's compliance with the criteria for recognition or in the agency's effective application of those criteria, Department staff—

(1) Prepares a written draft analysis of the agency's compliance with the criteria of concern;

(2) Sends to the agency the draft analysis including any identified areas of noncompliance and all supporting documentation;

(3) Invites the agency to provide a written response to the draft analysis within 90 days; and

(4) Reviews any response provided by the agency, including any monitoring report submitted, and either—

(i) Concludes the review;

(ii) Continues monitoring of the agency's areas of deficiencies; or

(iii)(A) Notifies the agency, in the event that the agency's response or monitoring report does not satisfy the staff, that the draft analysis will be finalized for presentation to the Advisory Committee;

(B) Publishes a notice in the FEDERAL REGISTER with an invitation for the public to comment on the agency's compliance with the criteria in question and establishing a deadline for receipt of public comment;

(C) Provides the agency with a copy of all public comments received and invites a written response from the agency;

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

(E) Provides to the agency, no later than 30 days before the Advisory Committee meeting, the final staff analysis and a recognition recommendation and any other information provided to the Advisory Committee under § 602.34(c); and

(F) Submits the matter for review by the Advisory Committee in accordance with § 602.34.

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

[84 FR 58928, Nov. 1, 2019]

§ 602.34

REVIEW BY THE NATIONAL ADVISORY COMMITTEE ON INSTITUTIONAL QUALITY AND INTEGRITY

§ 602.34 Advisory Committee meetings.

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

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

(c) Before the Advisory Committee meeting, Department staff provides the Advisory Committee with—

(1) The agency's application for recognition, renewal of recognition, or expansion of scope when Advisory Committee review is required, or the agency's compliance report and supporting documentation submitted by the agency;

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

(3) The agency's response to the draft analysis;

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

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

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

(d) At least 30 days before the Advisory Committee meeting, the Department publishes a notice of the meeting in the *FEDERAL REGISTER* inviting interested parties to make oral presentations before the Advisory Committee.

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

(f) The written motion adopted by the Advisory Committee regarding each agency's recognition will be made available during the Advisory Com-

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mittee meeting. The Department will provide each agency, upon request, with a copy of the motion on recognition at the meeting. Each agency that was reviewed will be sent an electronic copy of the motion relative to that agency as soon as practicable after the meeting.

(g) After each meeting of the Advisory Committee, the Advisory Committee forwards to the senior Department official its recommendation with respect to each agency, which may include, but is not limited to—

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

(ii) Continue recognition with a required compliance report to be submitted to the Department within 12 months from the decision of the senior Department official;

(iii) In conjunction with a finding of exceptional circumstances and good cause, continue recognition for a specified period in excess of 12 months pending submission of a compliance report;

(iv) In the case of substantial compliance, grant initial recognition or renewed recognition and recommend a monitoring report with a set deadline to be reviewed by Department staff to ensure that corrective action is taken, and full compliance is achieved or maintained (or for action by staff under § 602.33 if it is not); or

(v) Deny, limit, suspend, or terminate recognition;

(2) Grant or deny a request for expansion of scope; or

(3) Revise or affirm the scope of the agency.

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

[84 FR 58929, Nov. 1, 2019]

§ 602.35 Responding to the Advisory Committee's recommendation.

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

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copy of its written comments, if any, to the agency.

(b) Comments must be limited to—

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

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

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

(c)(1) Neither the Department staff nor the agency may submit additional documentation with its comments unless the Advisory Committee's recognition recommendation proposes finding the agency noncompliant with, or ineffective in its application of, a criterion or criteria for recognition not identified in the final Department staff analysis provided to the Advisory Committee.

(2) Within ten business days of receipt by the Department staff of an agency's comments or new evidence, if applicable, or of receipt by the agency of the Department staff's comments, Department staff, the agency, or both, as applicable, may submit a response to the senior Department official. Simultaneously with submission, the agency must provide a copy of any response to the Department staff. Simultaneously with submission, Department staff must provide a copy of any response to the agency. No additional comments or new documentation may be submitted after the responses described in this paragraph are submitted.

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

[74 FR 55430, Oct. 27, 2009, as amended at 84 FR 58929, Nov. 1, 2019]

REVIEW AND DECISION BY THE SENIOR DEPARTMENT OFFICIAL**§ 602.36 Senior Department official's decision.**

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

(1) The materials provided to the Advisory Committee under § 602.34(c).

(2) The transcript of the Advisory Committee meeting.

(3) The recommendation of the Advisory Committee.

(4) Written comments and responses submitted under § 602.35.

(5) New documentation submitted in accordance with § 602.35(c)(1).

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

(b) In the event that statutory authority or appropriations for the Advisory Committee ends, or there are fewer duly appointed Advisory Committee members than needed to constitute a quorum, and under extraordinary circumstances when there are serious concerns about an agency's compliance with subpart B of this part that require prompt attention, the senior Department official may make a decision on an application for renewal of recognition or compliance report on the record compiled under § 602.32 or § 602.33 after providing the agency with an opportunity to respond to the final staff analysis. Any decision made by the senior Department official under this paragraph from the Advisory Committee may be appealed to the Secretary as provided in § 602.37.

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

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

(e) The senior Department official's decision may include, but is not limited to, approving for recognition; approving with a monitoring report; denying, limiting, suspending, or terminating recognition following the procedures in paragraph (g) of this section; granting or denying an application for

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an expansion of scope; revising or affirming the scope of the agency; or continuing recognition pending submission and review of a compliance report under §§ 602.32 and 602.34 and review of the report by the senior Department official under this section.

(1)(i) The senior Department official approves recognition if the agency has demonstrated compliance or substantial compliance with the criteria for recognition listed in subpart B of this part. The senior Department official may determine that the agency has demonstrated compliance or substantial compliance with the criteria for recognition if the agency has a compliant policy or procedure in place but has not had the opportunity to apply such policy or procedure.

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

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

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

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

(3)(i) If the senior Department official concludes an agency is noncompliant, the senior Department official may continue the agency's recognition, pending submission of a compliance report that will be subject to review in the recognition process, provided that—

(A) The senior Department official concludes that the agency will demonstrate compliance with, and effective

application of, the criteria for recognition within 12 months from the date of the senior Department official's decision; or

(B) The senior Department official identifies a deadline more than 12 months from the date of the decision by which the senior Department official concludes the agency will demonstrate full compliance with, and effective application of, the criteria for recognition, and also identifies exceptional circumstances and good cause for allowing the agency more than 12 months to achieve compliance and effective application.

(ii) In the case of a compliance report ordered under paragraph (e)(3)(i) of this section, the senior Department official specifies the criteria the compliance report must address, and the time period for achieving compliance and effective application of the criteria. The compliance report documenting compliance and effective application of criteria is due not later than 30 days after the end of the period specified in the senior Department official's decision.

(iii) If the record includes a compliance report required under paragraph (e)(3)(i) of this section, and the senior Department official determines that an agency has not complied with the criteria for recognition, or has not effectively applied those criteria, during the time period specified by the senior Department official in accordance with paragraph (e)(3)(i) of this section, the senior Department official denies, limits, suspends, or terminates recognition, except, in extraordinary circumstances, upon a showing of good cause for an extension of time as determined by the senior Department official and detailed in the senior Department official's decision. If the senior Department official determines good cause for an extension has been shown, the senior Department official specifies the length of the extension and what the agency must do during it to merit a renewal of recognition.

(f) If the senior Department official determines that the agency is substantially compliant, or is fully compliant but has concerns about the agency maintaining compliance, the senior Department official may approve the

agency's recognition or renewal of recognition and require periodic monitoring reports that are to be reviewed and approved by Department staff.

(g) If the senior Department official determines, based on the record, that a decision to deny, limit, suspend, or terminate an agency's recognition may be warranted based on a finding that the agency is noncompliant with one or more criteria for recognition, or if the agency does not hold institutions or programs accountable for complying with one or more of the agency's standards or criteria for accreditation that were not identified earlier in the proceedings as an area of noncompliance, the senior Department official provides—

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

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

(h) If relevant and material information pertaining to an agency's compliance with recognition criteria, but not contained in the record, comes to the senior Department official's attention while a decision regarding the agency's recognition is pending before the senior Department official, and if the senior Department official concludes the recognition decision should not be made without consideration of the information, the senior Department official either—

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

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

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

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

(iii) Provides Department staff with an opportunity to respond in writing to the agency's submission under paragraph (h)(2)(ii) of this section, specifying a deadline; and

(iv) Issues a recognition decision based on the record described in para-

graph (a) of this section, as supplemented by the information provided under this paragraph (h).

(i) No agency may submit information to the senior Department official, or ask others to submit information on its behalf, for purposes of invoking paragraph (h) of this section. Before invoking paragraph (h) of this section, the senior Department official will take into account whether the information, if submitted by a third party, could have been submitted in accordance with § 602.32(a) or § 602.33(e)(2).

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

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

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

[84 FR 58929, Nov. 1, 2019]

APPEAL RIGHTS AND PROCEDURES

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

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

(1) Notify the Secretary and the senior Department official in writing of its intent to appeal the decision of the senior Department official, no later than 10 business days after receipt of the decision;

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

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

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

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

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

(c) Once the agency's appeal and the senior Department official's response, if any, have been provided, no additional written comments may be submitted by either party.

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

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

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

(g) If relevant and material information pertaining to an agency's compliance with recognition criteria, but not contained in the record, comes to the Secretary's attention while a decision regarding the agency's recognition is pending before the Secretary, and if

the Secretary concludes the recognition decision should not be made without consideration of the information, the Secretary either—

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

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

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

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

(iii) Provides the senior Department official with an opportunity to respond in writing to the agency's submission under paragraph (g)(2)(ii) of this section, specifying a deadline; and

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

(h) No agency may submit information to the Secretary, or ask others to submit information on its behalf, for purposes of invoking paragraph (g) of this section. Before invoking paragraph (g) of this section, the Secretary will take into account whether the information, if submitted by a third party, could have been submitted in accordance with § 602.32(a) or § 602.33(c).

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

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

[84 FR 58931, Nov. 1, 2019]

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

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

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

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

§ 602.39 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

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

[84 FR 58931, Nov. 1, 2019]

Subpart D—Department Responsibilities

SOURCE: 64 FR 56617, Oct. 20, 1999. Redesignated at 74 FR 55435, Oct. 27, 2009, unless otherwise noted.

§ 602.50 What information does the Department share with a recognized agency about its accredited institutions and programs?

(a) If the Department takes an action against an institution or program accredited by the agency, it notifies the agency no later than 10 days after taking that action.

(b) If another Federal agency or a State agency notifies the Department that it has taken an action against an institution or program accredited by the agency, the Department notifies the agency as soon as possible but no later than 10 days after receiving the written notice from the other Government agency.

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

PART 603—SECRETARY'S RECOGNITION PROCEDURES FOR STATE AGENCIES**Subpart A [Reserved]****Subpart B—Criteria for State Agencies**

Sec.

- 603.20 Scope.
- 603.21 Publication of list.
- 603.22 Inclusion on list.
- 603.23 Initial recognition, and reevaluation.
- 603.24 Criteria for State agencies.
- 603.25 Severability.

AUTHORITY: 20 U.S.C. 1001, 1002, 1094(c)(4); 38 U.S.C. 3675, unless otherwise noted.

Subpart A [Reserved]**Subpart B—Criteria for State Agencies**

AUTHORITY: Sec. 438 (b) of the Higher Education Act of 1965 Pub. L. 89-329 as amended by Pub. L. 92-318, 86 Stat. 235, 264 (20 U.S.C. 1087-1(b)), unless otherwise noted.

SOURCE: 39 FR 30042, Aug. 20, 1974, unless otherwise noted. Redesignated at 45 FR 77369, Nov. 21, 1980.

§ 603.20 Scope.

(a) Pursuant to section 438(b) of the Higher Education Act of 1965 as amended by Pub. L. 92-318, the Secretary is required to publish a list of State agencies which he determines to be reliable authorities as to the quality of public postsecondary vocational education in their respective States for the purpose of determining eligibility for Federal student assistance programs administered by the Department.

(b) Approval by a State agency included on the list will provide an alternative means of satisfying statutory standards as to the quality of public postsecondary vocational education to be undertaken by students receiving assistance under such programs.

(Authority: 20 U.S.C. 1087-1(b))

§ 603.21 Publication of list.

Periodically the Secretary will publish a list in the FEDERAL REGISTER of the State agencies which he determines to be reliable authorities as to the quality of public postsecondary vocational education in their respective States.

(Authority: 20 U.S.C. 1087-1(b))

§ 603.22 Inclusion on list.

Any State agency which desires to be listed by the Secretary as meeting the criteria set forth in § 603.24 should