

**DEPARTMENT OF EDUCATION****34 CFR Parts 600, 602, 603, 654, 668, and 674**

RIN 1840-AD36, 1840-AD37

[Docket ID ED-2018-OPE-0076]

**Student Assistance General Provisions, the Secretary's Recognition of Accrediting Agencies, the Secretary's Recognition Procedures for State Agencies****AGENCY:** Office of Postsecondary Education, Department of Education.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations governing the recognition of accrediting agencies, certain student assistance general provisions, and institutional eligibility, as well as make various technical corrections.

**DATES:** We must receive your comments on or before July 12, 2019.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

If you are submitting comments electronically, we strongly encourage you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), we strongly encourage you to convert the PDF to print-to-PDF format or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the Department to electronically search and copy certain portions of your submissions.

- *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using [regulations.gov](http://regulations.gov), including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Help."

- *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about the proposed regulations, address them to Mr. Jean-Didier Gaina, U.S. Department of

Education, 400 Maryland Ave. SW, Mail Stop 294-20, Washington, DC 20202.

*Privacy Note:* The Department's policy is to make comments received from members of the public available for public viewing on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** For further information related to recognition of accrediting agencies, Herman Bounds at [herman.bounds@ed.gov](mailto:herman.bounds@ed.gov) or by phone at (202) 453-7615 or Elizabeth Daggett at [elizabeth.daggett@ed.gov](mailto:elizabeth.daggett@ed.gov) or (202) 453-6190. For further information related to state authorization, Scott Filter at [scott.filter@ed.gov](mailto:scott.filter@ed.gov) or (202) 453-7249 or Sophia McArdle at [sophia.mcardle@ed.gov](mailto:sophia.mcardle@ed.gov) or (202) 453-6318. For all other information related to this NPRM, Barbara Hoblitzell at [barbara.hoblitzell@ed.gov](mailto:barbara.hoblitzell@ed.gov) or (202) 453-7583 or Annmarie Weisman at [annmarie.weisman@ed.gov](mailto:annmarie.weisman@ed.gov) or by phone at (202) 453-6712. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:****Executive Summary***Purpose of This Regulatory Action*

Through this regulatory action, the U.S. Department of Education (Department) proposes to: (1) Strengthen the regulatory triad by more clearly defining the roles and responsibilities of accrediting agencies, States, and the Department in oversight of institutions participating in the Federal Student Aid programs authorized under title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs); (2) establish "substantial compliance" as the standard for agency recognition; (3) increase academic and career mobility for students by eliminating artificial regulatory barriers to work in a profession; (4) provide greater flexibility for institutions to engage in innovative educational practices more expeditiously and meet local and national workforce needs; (5) protect institutional autonomy, honor individual campus missions, and afford institutions the opportunity to build campus communities based upon shared values; (6) modify "substantive change" requirements to provide greater flexibility to institutions to innovate and respond to the needs of students and employers, while maintaining strict agency oversight in instances of more complicated or higher risk changes in

institutional mission, program mix, or level of credential offered; (7) clarify the Department's accrediting agency recognition process, including accurate recognition of the geographic area within which an agency conducts business; (8) encourage and enable accrediting agencies to support innovative practices, and provide support to accrediting agencies when they take adverse actions; and (9) modify the requirements for State authorization.

*Summary of the Major Provisions of This Regulatory Action*

The proposed regulations would—

- Revise the requirements for accrediting agencies in their oversight of member institutions and programs to be less prescriptive and provide greater autonomy and flexibility in order to facilitate agility and responsiveness and promote innovation;
- Revise the criteria used by the Secretary to recognize accrediting agencies to focus on education quality and allow competition;
- Revise the Department's process for recognition and review of accrediting agencies;
- Clarify the core oversight responsibilities among each entity in the regulatory triad—accrediting agencies, States, and the Department—to hold institutions accountable;
- Establish the roles and responsibilities of institutions and accrediting agencies in the teach-out process;
- Establish that the Department recognizes an institution's legal authorization to operate postsecondary educational programs when it is exempt from State authorization under the State constitution or by State law as a religious institution with a religious mission;
- Revise the State authorization requirements for institutions offering distance education or correspondence courses; and
- Remove the regulations related to the Robert C. Byrd Honors Scholarship Program, which has not been funded in many years.

*Costs and Benefits*

As further detailed in the Regulatory Impact Analysis, the benefits of the proposed regulations would include providing transparency and improving institutional access for students, honoring the autonomy and independence of agencies and institutions, restoring focus and clarity to the Department's agency recognition process, integrating risk-based review into the recognition process, improving

teach-outs for students at closed or closing schools, improving outcomes, and restoring public trust in the rigor of the accreditation process and the value of postsecondary education. The potential costs associated with the proposed regulations include some burden associated with required disclosures and developing policies about accreditation decision-making, enforcement of standards, and substantive change reporting requirements. While not the anticipated outcome, it is possible agencies would utilize reduced regulatory burden without redeploying resources towards greater oversight of institutions. However, the more likely scenario is that this regulation will actually reduce the need to hire outside firms to prepare materials for submission to the Department. Increased competition among accreditors could have the unintended consequence of encouraging some accreditors to lower standards. It is therefore incumbent on the Department and NACIQI to utilize new accountability and oversight tools provided for in these regulations to properly monitor agencies and mitigate these risks.

*Invitation to Comment:* We invite you to submit comments regarding these proposed regulations.

To ensure that your comment has maximum effect in developing the final regulations, we urge you to clearly identify the specific section or sections of the proposed regulations that your comment addresses, and provide relevant information and data whenever possible, even when there is no specific solicitation of data and other supporting materials in the request for comment.

We also urge you to arrange your comments in the same order as the proposed regulations. Please do not submit a comment that is outside the scope of this notice of proposed rulemaking (NPRM), as we are not required to respond to such comments.

We invite you to assist us in complying with the specific requirements of Executive Orders (E.O.) 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about the proposed regulations by accessing *regulations.gov*. You may also inspect the comments in person at 400

Maryland Ave. SW, Washington, DC, between 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays. To schedule a time to inspect comments, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

*Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record:* On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulations. To schedule an appointment for this type of accommodation or auxiliary aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

#### *Background*

Under the Higher Education Act of 1965, as amended (HEA), the Department serves an important role in ensuring that all academically ready students can attend the educational institution of their choice. However, Congress has prohibited the Department from intervening in the curricular decisions of an institution or attempting to exert control over its faculty, administration, or academic programs. The Department of Education Organization Act affirms, "No provision of a program administered by the Secretary or by any other officer of the Department shall be construed to authorize the Secretary or any such officer to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system . . . ."

Instead, Congress has assigned the role of overseeing the quality and academic sufficiency of instructional programs to accrediting agencies. Accrediting agencies are independent, membership-based organizations that rely on peer review to ensure that member institutions or programs meet certain standards for academic quality and rigor. The aim of accreditation is not to ensure that all institutions or programs accredited by a given agency are identical or that all students who attend those institutions or programs reach for the same goals or achieve the same outcomes. Instead, accrediting agencies ensure that students have access to qualified instructors, an adequate curriculum, and necessary support services to enable them to meet their personal, academic, intellectual, and career goals.

Postsecondary accreditation is a voluntary process in that a college or university need not be accredited in order to provide instruction or confer academic degrees. Generally, the permission to operate as a degree-granting institution comes from States. However, because colleges and universities may not participate in the title IV, HEA programs unless they are accredited, institutions are rarely able to attract students without this seal of approval.

Moreover, accreditation is increasingly critical to ensuring that employers and other institutions recognize and value their degrees and that students can transfer their credits to another institution or continue their education and pursue additional credentials at other institutions upon graduation.

Accrediting agencies are one important part of the regulatory triad that oversees higher education quality. The others are State authorizing agencies, which ensure compliance with State educational requirements and consumer protection laws; and the Department, which oversees adherence to rules of participation in title IV, HEA programs. Unfortunately, over time, States and the Department have shifted some of their responsibilities to accrediting agencies, which has forced accrediting agencies to devote significant resources and attention to oversight of issues outside of their core mission and expertise.

In addition, accrediting agencies and the institutions they oversee have too often been forced into regulation-induced conformity. The volume of regulatory requirements limits innovation and diversity among institutions in their approach to issues such as mission, curriculum, and instructional methods.<sup>1 2 3 4</sup> It is not simply that the sheer volume of regulatory requirements may limit innovation—though that is certainly a concern—but also that many regulatory

<sup>1</sup> Keiser, A. (March 2018). Report to the U.S. Secretary of Education: 2018 Accreditation Policy Recommendations on Regulatory Reform. Retrieved from <https://sites.ed.gov/naciqi/files/2018/02/Regulatory-Reform-Recommendations-FINAL.pdf>.

<sup>2</sup> Eaton, J. (April 2017). Position Paper: Regulatory Relief for Accreditation. Retrieved from <https://www.chea.org/sites/default/files/other-content/Regulatory-Relief.pdf>.

<sup>3</sup> Broad, M. (April 30, 2015). Comments On Accreditation White Paper, American Council on Education. Retrieved from <https://www.acenet.edu/news-room/Documents/Comments-Alexander-Accreditation.pdf>.

<sup>4</sup> Senate Task Force on Federal Regulation of Higher Education (February 28, 2015). Recalibrating Regulation of Colleges and Universities. Retrieved from [https://www.help.senate.gov/imo/media/Regulations\\_Task\\_Force\\_Report\\_2015\\_FINAL.pdf](https://www.help.senate.gov/imo/media/Regulations_Task_Force_Report_2015_FINAL.pdf).

and sub-regulatory requirements demand adherence to the orthodoxy of the day. Moreover, the growing list of administrative responsibilities conferred upon accrediting agencies reduces the time and attention they can devote to academic rigor and the student experience.

Policymakers and institutions increasingly ask accrediting agencies to give their imprimatur to educational innovations as institutions search for more efficient and effective ways to meet the academic needs of more students. Yet, the Department holds accrediting agencies accountable for ensuring that programs and institutions meet quality standards that are well-accepted among a group of qualified peers. A risk-averse, peer-oriented review process often discourages innovations that challenge the status quo in higher education. The status quo avoids risk, but innovation cannot exist without it. More must be done to determine which risks may be acceptable in order to move higher education forward.

The Department and accrediting agencies must provide reasonable assurances to students, parents, and taxpayers that investments of time and money will not go to waste at an institution that does not deliver on its promises or maintain a level of rigor appropriate to ensure that a credential from that institution provides value.

The goal of our negotiated rulemaking has been to examine the Department's accreditation regulations and processes to determine which are critical to assessing the quality of an institution and its programs and to protecting student and taxpayer investments. We believe these proposed regulations are an important first step, and we are eager to further inform and refine our recommendations through input from the public. Our goal continues to be to question why we recognize accrediting agencies the way we do, why they evaluate institutions or programs the way they do, and what alternatives might generate better results and create new efficiencies, cost savings, or improved outcomes.

When we drafted the initial regulatory proposals we presented to negotiators before they met for the first time in January 2019, we first considered the recommendations made by the National Advisory Committee on Institutional Quality and Integrity (NACIQI), the Council for Higher Education Accreditation, the American Council on Education, and the Senate Task Force on Federal Regulation of Higher Education (convened by Senator Lamar Alexander (R-TN), Senator Barbara

Mikulski (D-MD), Senator Michael Bennet (D-CO), and Senator Richard Burr (R-NC)) to understand what these leading voices considered to be important steps the Department might take to improve accreditation. Our analysis revealed some common themes among those recommendations, including the following:

- Clarify roles among the regulatory triad, and reaffirm their system of checks and balances;
- Restore focus and clarity to the Department's agency recognition process and requirements;
- Integrate risk-based review into the recognition process;
- Eliminate unnecessary minutia in the agency recognition process;
- Confine the scope of review of accrediting agencies to the express regulatory requirements;
- Simplify the recognition criteria and put a higher priority on activities directly related to the student experience;
- Honor the autonomy, independence, and mission of accrediting agencies and institutions;
- Reform substantive change requirements to enable institutions to respond more quickly to changing programmatic needs;
- Allow agencies to utilize standards that align with institution's mission and goals; and
- Clarify the issues on which the Department seeks NACIQI's policy input.

In December 2017, the Secretary convened a diverse group of stakeholders for a Rethinking Higher Education summit to learn about innovations in education delivery that can reduce cost and better prepare students for the demands of contemporary work and life. Participants highlighted opportunities currently under development and the need to leverage these innovations to serve a more diverse group of students, accelerate credential completion, and improve student learning. We also heard from many innovators that accreditation has steep barriers to entry that may serve to protect market share for established educational providers, even when these providers' student outcomes may not be impressive. The Department is concerned that accrediting agency reluctance to support or approve innovations in higher education may be the result of the Department's past tendency to dictate policies and practices to accrediting agencies and second-guess even the most measured and responsible actions that accrediting agencies have taken to support reform. For example, in 2010, the Department

changed its compliance review process to an "all-or-nothing" standard that finds an agency to either be fully compliant or fully noncompliant. This means that even when there is a minor error or omission that could be easily corrected, the agency must be found out of compliance. This approach fails to differentiate between an agency that is guilty of negligent disregard for academic rigor and an agency that is using policy language that differs slightly from the Department's regulations or is missing a document or signature. Current regulations lack the flexibility and mechanisms to fully acknowledge agencies that are substantially compliant and that can become fully compliant within a reasonable timeframe.

In performing our review and engaging in negotiated rulemaking, we asked the following questions:

- Which areas of the Department's accreditation regulations and guidance are most directly related to education quality and the student experience? Which are ambiguous, repetitive, or unnecessarily burdensome?
- How do we strengthen the triad and clarify the roles and responsibilities of each entity? How do we eliminate duplication of oversight responsibilities among two or more members of the triad to reduce burden and to ensure that the appropriate entity is held accountable when it fails to fulfill its duties?
- How can we embrace and support innovation without exposing students and taxpayers to unreasonable risk?
- How can we reduce the size of petitions for recognition or for renewals of recognition and still comprehensively review the work of an agency and ensure the consistent application of its standards?
- Can the Department provide more support and information to accrediting agencies to help them do their jobs more effectively? If so, what form should that take?
- Has the Department or NACIQI become too prescriptive regarding student achievement, despite the statutory prohibitions on prescribing accrediting standards and the ability of accrediting agencies to establish different standards for different institutions? Are there better options that we should explore?

We first posed these questions at the May 2018 NACIQI meeting, hoping to generate conversation and receive feedback on our questions and concerns. We similarly presented a summary of our concerns in remarks before the University Professional and Continuing Education Association 2018 Annual Conference, as well as in remarks

delivered at the Council for Higher Education Accreditation 2018 Federal Policy Roundtable. These early conversations helped us to gauge the relevance of our questions and to expand them to address concerns articulated by our stakeholders. Through our various outreach activities, as well as through opportunities for public comment and this negotiated rulemaking process, we have sought to question the usefulness, effectiveness, and efficiencies of all elements of the accreditation program. We further seek to leverage the experience of the community to streamline and reduce unnecessary costs associated with accreditation while improving its outcomes. Finally, we aim to restore public trust in the rigor of the accreditation process and the value of postsecondary education.

#### *Public Participation*

On July 31, 2018, we published a notice in the **Federal Register** (83 FR 36814) announcing our intent to establish a negotiated rulemaking committee to prepare proposed regulations for the title IV, HEA programs. We also announced our intention to create three subcommittees for this rulemaking effort. In addition, we announced three public hearings at which interested parties could comment on the topics suggested by the Department and could suggest additional topics that should be considered for action by the negotiating committee. The hearings were held on September 6, 2018, in Washington, DC; September 11, 2018, in New Orleans, LA; and September 13, 2018, in Sturtevant, WI. Transcripts from the public hearings are available at: [www2.ed.gov/policy/highered/reg/hearulemaking/2018/index.html](http://www2.ed.gov/policy/highered/reg/hearulemaking/2018/index.html).

We also invited parties unable to attend a public hearing to submit written comments on the proposed topics and to submit other topics for consideration. Written comments submitted in response to the July 31, 2018, **Federal Register** notice may be viewed through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov), within docket ID ED–2019–OPE–0076. Instructions for finding comments are also available on the site under “Help.”

#### *Negotiated Rulemaking*

Section 492 of the HEA, 20 U.S.C. 1098a, requires the Secretary to obtain public involvement in the development of proposed regulations affecting title IV, HEA programs. After obtaining extensive input and recommendations from the public, including individuals

and representatives of groups involved in the title IV, HEA programs, the Secretary, in most cases, must subject the proposed regulations to a negotiated rulemaking process. If negotiators reach consensus on the proposed regulations, the Department agrees to publish without alteration a defined group of regulations on which the negotiators reached consensus unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreement reached during negotiations. Further information on the negotiated rulemaking process can be found at: [www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html](http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html).

On October 15, 2018, the Department published a notice in the **Federal Register** (83 FR 51906) announcing its intention to establish a negotiated rulemaking committee—the Accreditation and Innovation Committee—to prepare proposed regulations for the title IV, HEA programs. The notice set forth a schedule for the committee meetings and requested nominations for individual negotiators to serve on the negotiating committee. We also announced the creation of three subcommittees—the Distance Learning and Educational Innovation Subcommittee, the Faith-Based Entities Subcommittee, and the TEACH Grants Subcommittee—and requested nominations for individuals with pertinent expertise to serve on the subcommittees.

The Department sought negotiators to represent the following groups for the Accreditation and Innovation Committee: Students; legal assistance organizations that represent students; financial aid administrators at postsecondary institutions; national accreditation agencies; regional accreditation agencies; programmatic accreditation agencies; institutions of higher education (IHEs) primarily offering distance education; institutions of higher education eligible to receive Federal assistance under title III, parts A, B, and F, and title V of the HEA, which include Historically Black Colleges and Universities, Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, and other institutions with a substantial enrollment of needy students as defined in title III of the HEA; two-year public institutions of higher education; four-year public institutions of higher education; faith-based institutions of higher education; private, nonprofit

institutions of higher education; private, proprietary institutions of higher education; employers; and veterans.

For the Distance Learning and Educational Innovation Subcommittee, the Department sought individuals to represent the following groups: Students; legal assistance organizations that represent students; private, nonprofit institutions of higher education, with knowledge of direct assessment programs and competency-based education; private, for-profit institutions of higher education, with knowledge of direct assessment programs and competency-based education; public institutions of higher education, with knowledge of direct assessment programs and competency-based education; accrediting agencies; associations or organizations that provide guidance to or represent institutions with direct assessment programs and competency-based education; financial aid administrators at postsecondary institutions; academic executive officers at postsecondary institutions; nonprofit organizations supporting inter-State agreements related to State authorization of distance or correspondence education programs; and State higher education executives.

The Department sought individuals to represent the following groups for the Faith-Based Entities Subcommittee: Students; faith-based entities eligible for title IV, HEA programs; officers of institution-based Gaining Early Awareness and Readiness for Undergraduate Program (GEARUP) grantees; institutions of higher education with knowledge of faith-based entities' participation in the title IV, HEA programs; institutions of higher education with knowledge of faith-based entities' participation in the title IV, HEA programs and that are eligible to receive Federal assistance under title III, parts A, B, and F, and title V of the HEA, which include Historically Black Colleges and Universities, Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Predominantly Black Institutions, and other institutions with a substantial enrollment of needy students as defined in title III of the HEA; accrediting agencies; associations or organizations that focus on issues related to faith-based entities or the participation of faith-based entities in Federal programs; and financial aid administrators at postsecondary institutions.

The Department sought individuals with expertise in teacher education programs, student financial aid, and high-need teacher education programs

to serve as members of the TEACH Grant Subcommittee: Students who are or have been TEACH Grant recipients; legal assistance organizations that represent students; financial aid administrators at postsecondary institutions; State primary and secondary education executive officers; institutions of higher education that award or have awarded TEACH grants and that are eligible to receive Federal assistance under title III, parts A, B, and F, and title V of the HEA, which include Historically Black Colleges and Universities, Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Predominantly Black Institutions, and other institutions with a substantial enrollment of needy students as defined in title III of the HEA; two-year institutions of higher education that award or have awarded TEACH grants; four-year institutions of higher education that award or have awarded TEACH grants; organizations or associations that represent the interests of students who participate in title IV, HEA programs; and organizations or associations that represent financial aid administrators.

The Accreditation and Innovation negotiating committee included the following members:

Susan Hurst, Ouachita Baptist University, and Karen McCarthy (alternate), National Association of Student Financial Aid Administrators, representing financial aid administrators at postsecondary institutions.

Robyn Smith, Legal Aid Foundation of Los Angeles, and Lea Wroblewski (alternate), Legal Aid of Nebraska, representing legal assistance organizations that represent students.

Ernest McNealey, Allen University, and Erin Hill Hart (alternate), North Carolina A&T State University, representing institutions of higher education that award or have awarded TEACH grants and that are eligible to receive Federal assistance under title III, Parts A, B, and F, and title V of the HEA, which include Historically Black Colleges and Universities, Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Predominantly Black Institutions, and other institutions with a substantial enrollment of needy students as defined in title III of the HEA.

David Dannenberg, University of Alaska, Anchorage, and Tina Falkner (alternate), University of Minnesota,

representing four-year public institutions of higher education.

Terry Hartle, American Council on Education, and Ashley Ann Reich (alternate), Liberty University, representing private, nonprofit institutions of higher education.

Jillian Klein, Strategic Education, Inc., and Fabian Fernandez (alternate), Schiller International University, representing private, proprietary institutions of higher education.

William Pena, Southern New Hampshire University, and M. Kimberly Rupert (alternate), Spring Arbor University, representing institutions of higher education primarily offering distance education.

Christina Amato, Sinclair College, and Daniel Phelan (alternate), Jackson College, representing two-year public institutions of higher education.

Barbara Gellman-Danley, Higher Learning Commission, and Elizabeth Sibolski (alternate), Middle States Commission on Higher Education, representing regional accreditation agencies.

Laura King, Council on Education for Public Health, and Janice Knebl (alternate), American Osteopathic Association Commission on Osteopathic College Accreditation, representing programmatic accreditation agencies.

Michale S. McComis, Accrediting Commission of Career Schools and Colleges, and India Y. Tips (alternate), Accrediting Bureau of Health Education Schools, representing national accreditation agencies.

Steven M. Sandberg, Brigham Young University, and David Altshuler (alternate), San Francisco Theological Seminary, representing faith-based institutions of higher education. Joseph Verardo, National Association of Graduate-Professional Students, and John Castellaw (alternate), University of Arizona, representing students.

Edgar McCulloch, IBM Corporation, and Shaun T. Kelleher (alternate), BAM Technologies, representing employers. Daniel Elkins, Director, Veterans Education Project, and Elizabeth Bejar (alternate), Florida International University, representing veterans.

Annamarie Weisman, U.S. Department of Education, representing the Department.

The negotiated rulemaking committee met to develop proposed regulations on January 14–16, 2019; February 19–22, 2019; March 25–28, 2019; and April 1–3, 2019.

During its first meeting, the negotiating committee reached agreement on its protocols and proposed agenda. The protocols provided, among other things, that the committee would

operate by consensus. Consensus means that there must be no dissent by any member for the committee to have reached agreement. Under the protocols, if the committee reached a final consensus on all issues, the Department would use the consensus-based language in its proposed regulations. Furthermore, the Department would not substantively alter the consensus-based language of its proposed regulations unless the Department reopened the negotiated rulemaking process or provided a written explanation to the committee members regarding why it decided to depart from that language.

At the first meeting, the Department received a petition for membership from David Tandberg, Vice President of Policy Research and Strategic Initiatives at the State Higher Education Executive Officers Association, to represent State Higher Education Executive Officers. The negotiated rulemaking committee voted to include Mr. Tandberg on the full committee. The Department also received petitions to add other members. The Department received a petition to add a member representing State Attorneys General to the full committee and the Distance Education and Innovation subcommittee. The committee did not agree to add a member representing this constituency to the full committee but did agree by consensus to add such a member to the subcommittee. The committee also agreed by consensus vote to add a member to the TEACH Grant subcommittee.

During the first meeting, the negotiating committee agreed to discuss an agenda of issues related to accreditation and student financial aid. Under the protocols, we placed the issues into three “buckets.” Final consensus on a bucket of issues would have to include consensus on all issues within that bucket. The first bucket included issues related to accreditation in 34 CFR parts 600, 602, 603, and 668, as well as the Robert C. Byrd Scholarship Program regulations in 34 CFR part 654. The second bucket included issues related to the TEACH grant program in 34 CFR 686 and the treatment of faith-based entities in student aid and grant programs in 34 CFR parts 674, 675, 676, 682, 685, 690, 692, and 694. The third bucket included issues related to distance learning and educational innovation in 34 CFR parts 600 and 668. The committee reached consensus on each of the three buckets.

In general, the Department plans to issue separate NPRMs and final regulations for each bucket of issues, although for purposes of coherence and in view of the interrelated nature of the

proposed regulations, a few issues will be addressed in an earlier or later NPRM than the respective buckets to which those issues were assigned throughout the negotiations. This NPRM addresses issues related to accreditation in 34 CFR parts 600, 602, 603, and 668, and the Robert C. Byrd Scholarship Program in 34 CFR part 654.

During committee meetings, the negotiators reviewed and discussed the Department's drafts of regulatory language and the committee members' alternative language and suggestions. At the final meeting on April 3, 2019, the committee reached consensus on the regulatory language in each of the three buckets. For this reason, and according to the committee's protocols, committee members and the organizations that they represent have agreed to refrain from commenting negatively on the consensus-based regulatory language. For more information on the negotiated rulemaking sessions, please visit: [www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html#info](http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/programintegrity.html#info).

#### Summary of Proposed Changes

The proposed regulations would—

- Amend in § 600.2 the definition of “branch campus”;
- Create in § 600.2 new definitions of “additional location,” “preaccreditation,” “teach-out,” “religious mission,” and remove the definition of “preaccredited”;
- Move from § 602.3 to § 600.2, and modify, the definitions of “preaccreditation,” “teach-out agreement,” and “teach-out plan”;
- Clarify in §§ 600.4, 600.5, and 600.6 that the Secretary does not recognize the accreditation or preaccreditation of an institution unless the institution agrees to submit any dispute involving an adverse action, such as the final denial, withdrawal, or termination of accreditation, to arbitration before initiating any other legal action;
- Establish in § 600.9(b) that we consider an institution to be legally authorized to operate educational programs beyond secondary education if it is exempt from State authorization under the State constitution or by State law as a religious institution;
- Amend § 600.9(c)(1), as published at 81 FR 62262 (December 19, 2016), to make the paragraph also applicable to institutions exempt from State authorization under proposed § 600.9(b); to substitute where a student is “located,” rather than where the student is residing, as a trigger for State authorization requirements; and to add provisions regarding when and how an

institution is to make determinations regarding a student's location;

- Delete § 600.9(c)(2), as published at 81 FR 62262 (December 19, 2016), regarding State processes for review of complaints from students enrolled in distance or correspondence programs who reside in a State in which the institution is not physically located;
- Establish in § 600.11 conditions under which the Secretary would prohibit a change in accrediting agencies and the utilization of multiple accrediting agencies;
- Provide clarifying edits to § 600.31(a)(1), and to the definitions of “closely-held corporation,” “parent,” and “person;”
- Rename the term “other corporations” in § 600.31(c)(3) to read “other entities,” and revise the definition of the term as renamed;
- Rename the heading “Partnership or sole proprietorship” in § 600.31(c)(4) to read “General partnership or sole proprietorship”; revise the heading “Parent corporation” in § 600.31(c)(5) read “Wholly owned subsidiary”; and revise the content of § 600.31(c)(5);
- Rename the heading “Partnership or sole proprietorship” in § 600.31(c)(4) to read “General partnership or sole proprietorship”; revise the heading “Parent corporation” in § 600.31(c)(5) read “Wholly owned subsidiary”; and revise the content of § 600.31(c)(5);
- Amend in § 600.32 the requirements for acquisitions of, or teach-outs at, additional locations of institutions that are closing;
- Eliminate a provision regarding the long-repealed transfer-of-credit alternative to recognized accreditation from § 600.41;
- Amend in § 602.3 the definitions of “compliance report,” “final accrediting action,” “programmatically accrediting agency,” “scope of recognition” or “scope,” and “senior Department official”;
- Establish in § 602.3 new definitions for “monitoring report” and “substantial compliance”;
- Add in § 602.3 new cross-references to definitions in part 600 for “accredited,” “correspondence course,” “credit hour,” “direct assessment programs,” “distance education,” “nationally recognized accrediting agency,” “Secretary,” and “State,” and otherwise eliminate definitions for these terms in § 602.3;
- Revise the “federal link” requirement in § 602.10 to permit an agency to comply by establishing that it dually accredits a program or institution that could use its accreditation to establish eligibility to participate in title IV, HEA programs;

- In proposed §§ 602.11 and 602.12, transition from the concept of an accrediting agency's “geographic scope” as determined by the Department, to one of “geographic area” as reported by the agency and reflecting all States in which main campuses, branches and locations accredited by the agency are located;

- Under proposed § 602.12, no longer require an accrediting agency that is seeking its own recognition but is affiliated with an agency that is already recognized to document it has engaged in accrediting activities for at least two years;

- Under proposed § 602.12, no longer require agencies applying for an expansion of scope to have accredited institutions or programs in the areas for which the expansion is sought, while reserving in the Department in such instances authority to establish a limitation on the agency or require a monitoring report;

- Eliminate current § 602.13, relying on other regulations to ensure the Department obtains feedback on the agency from the academic community;

- Revise § 602.14 to clarify the “separate and independent” requirement;

- In proposed § 602.15, clarify requirements regarding conflict of interest controls and reduce agencies' record-keeping requirements;

- In proposed § 602.16, require agencies that accredit direct assessment programs to ensure their standards effectively address such programs, and provide additional flexibility to agencies in setting standards for occupational and dual enrollment programs;

- Revise § 602.17 to require accredited entities to meet their objectives at the institutional and program levels;

- Further revise § 602.17 to encourage innovation, require substantiation of evidence, and provide greater flexibility to agencies in establishing requirements for verifying student identity;

- In § 602.18, establish that agencies must not use religious-based policies, decisions and practices as a negative factor in applying various of their accrediting standards, while recognizing the agencies' authority to ensure that curricula are complete;

- Also in § 602.18, acknowledge the ability of agencies in appropriate circumstances to establish alternative standards, policies and procedures, and to extend the time for complying with their standards, policies and procedures, while establishing guidelines for ensuring that agencies, institutions and programs remain accountable in such circumstances;

- Revise § 602.19 to require a review, at the next meeting of NACIQI, of any change in scope of an agency when an institution it accredits, that offers distance education or correspondence courses, increases its enrollment by 50 percent or more within any one institutional fiscal year;

- Revise § 602.20 to remove overly prescriptive timelines for agency enforcement actions;

- Revise § 602.21 to clarify that, when reviewing standards, agencies must maintain a comprehensive systematic program that involves all relevant constituencies.

- Modify substantive change requirements in § 602.22, by requiring more restrictive oversight of institutions posing higher risk, and less of other institutions; by permitting an agency to provide more expeditious review of certain kinds of substantive change by delegating decision-making authority to agency senior staff; and by permitting agencies to provide retroactive effective dates for substantive change approvals, subject to certain requirements;

- Add to § 602.23 a requirement for public notice of the procedures and steps required by agencies, States and the Department with respect to accreditation, preaccreditation and substantive change applications and decisions.

- Also in § 602.23, add requirements related to grants of preaccreditation, and require each agency that serves as a title IV, HEA gatekeeper to use Department definitions of branch campus and additional location, as well as to notify the Department if it accredits part but not all of an institution participating the title IV programs.

- In § 602.24, streamline requirements for approvals of branch campuses, establish new requirements for teach-out plans and teach-out agreements, remove the requirement related to accrediting agency review of institutional credit hour policies during comprehensive reviews, and, with respect to institutions participating in the title IV, HEA programs, conform agency definitions of branch campuses and additional locations with the Department's.

- Remove reversal as an option available to agency appeals panels, and clarify the remand option, under § 602.25;

- Under proposed § 602.26, add a requirement for notice to the Secretary, the State, other accrediting agencies, and current and prospective students of initiation of an adverse action, and modify other notice requirements;

- Clarify in § 602.27(b) that requests from the Department for agencies to

maintain confidentiality of Departmental information requests will be based on a determination by the Department that the need for confidentiality is compelling.

- Revise §§ 602.31–602.37 to incorporate the substantial compliance standard and the use of monitoring reports; revise requirements regarding agency applications and staff review of the applications; require NACIQI involvement in any decision for initial recognition; allow greater flexibility in permitting agencies an opportunity to come into compliance; provide an opportunity for briefing by an agency and the Department staff if the senior Department official determines that a decision to deny, limit or suspend may be warranted; and make other procedural and technical changes.

- In § 603.24(c), remove the requirement for review by State approval agencies of institutional credit hour policies;

- Remove and reserve part 654, regarding the Robert C. Byrd Honors Scholarship Program;

- Add new § 668.26(e) to provide the Secretary with discretion, in specified circumstances, to permit an institution to disburse title IV, HEA funds for no more than 120 days after the end of participation to previously enrolled students for purposes of completing a teach-out.

- Replace requirements in § 668.41 for disclosure of any program placement rate calculated, along with associated timeframes and methodology, with requirements for disclosure only of any placement rate published or used in advertising;

- Revise § 668.43 to require disclosures, including direct disclosures to individual students and prospective students in certain circumstances, for each State, whether or not a program meets licensure and certification requirements, as well as any States for which the institution has not made a determination; and remove § 668.50;

- Revise § 668.43(a)(12) to clarify that disclosures of written arrangements wherein a portion of a program are to be provided by an entity other than the institution are to be included in the program description;

- Further revise § 668.43 to require disclosures of documents regarding—
- Any types of institutions or sources from which the institution will not accept transfer of credit;

- Criteria used to evaluate and award credit for prior learning experience;

- Any requirement by the accrediting agency that the institution be required to maintain a teach-out plan, and why the requirement was imposed;

- Any investigation, action or prosecution by a law enforcement agency of which the institution is aware for an issue related to academic quality, misrepresentation, fraud, or other severe matters; and

- Several matters required to be disclosed under HEA § 485, but not currently included in regulation, with the statutory requirement for disclosures of placement rates under HEA § 485(a)(1)(R) clarifies to pertain to placement rates required by an accrediting agency or State.

- Revise the “federal link” requirement in § 602.10

- Further revise § 602.17 to encourage innovation

- Revise § 602.19 to require a review, at the next meeting of NACIQI, of any change in scope of an agency when an institution it accredits, that offers distance education or correspondence courses, increases its enrollment by 50 percent or more within any one institutional fiscal year;

- Revise § 602.20 to remove overly prescriptive timelines for agency enforcement actions;

- Revise § 602.21 to clarify that, when reviewing standards, agencies must maintain a comprehensive systematic program that involves all relevant constituencies; and

- Add requirements in § 602.23 related to granting preaccreditation.

### *Significant Proposed Regulations*

We group major issues according to subject, with appropriate sections of the regulations referenced in parenthesis. We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

### **Institutional Eligibility**

#### *Definitions (§ 600.2)*

*Statute:* HEA sections 101(a)(2) and 102(a)(1), (b)(1)(B), and (c)(1)(B) require an institution of higher education to be legally authorized within a State to provide a program of education beyond secondary education. Section 495(b) requires each institution of higher education to provide evidence to the Secretary that the institution has authority to operate within a State at the time the institution is certified. Section 487(f)(2) defines “teach-out plan.” Section 101(a)(5) permits certain public and nonprofit institutions to qualify as institutionally eligible for HEA purposes if they are accredited or preaccredited by a recognized accrediting agency. Section 102(b)(1)(D) requires a

“proprietary institution of higher education” to be accredited by a nationally recognized accrediting agency. Section 496(a)(4)(A) requires that the standards of recognized accrediting agencies respect the stated mission of accredited institutions, including religious mission.

*Current Regulations:* Section 600.2 defines several terms applicable to institutional eligibility, including “branch campus,” “preaccredited,” and “teach-out plan.” Section 602.3 also defines “teach-out plan,” and “preaccreditation,” and “teach-out agreement.” There is no definition of “religious mission” or “additional location.”

*Proposed Regulations:* In § 600.2 we propose to add definitions of “additional location,” “religious mission,” “teach-out,” and “teach-out agreement,” and revise the definitions of “branch campus” and “teach-out plan.” We will remove the definitions of “teach-out plan” and “teach-out agreement” from § 602.3. We also propose to move the definition of “preaccreditation” from § 602.3 to § 600.2, revise the definition to note that this status is also referred to as “candidacy,” and remove the definition of “preaccredited” from § 600.2.

The proposed definition of “additional location” would define the term as a facility geographically apart at which the institution offers at least 50 percent of a program and would provide that an additional location may qualify as a branch campus. We propose to clarify the definition of “branch campus” and indicate that it is one type of additional location.

The proposed regulations would define a “teach-out” as a period of time during which an institution or one of its programs engages in an orderly closure or when another institution provides an opportunity for the students of the closed school to complete its program, regardless of their academic progress at the time of closure. The definition would also provide that eligible borrowers cannot be required to take a teach-out in lieu of accessing closed-school discharges and note that institutions are prohibited from misrepresenting the nature of teach-out plans, teach-out agreements, and transfer of credit.

We also propose to distinguish between a “teach-out plan” and a “teach-out agreement.” In the definition of “teach-out plan,” we propose to include situations where an institution plans to cease operating, but has not yet closed, and limit the term to situations in a closure is or will occur before all enrolled students have completed their

program of study. Under the proposed regulations, we would move the definition of “teach-out agreement” from the accreditation regulations in § 602.3 to the institutional eligibility regulations in § 600.2 and define a “teach-out agreement” as a written agreement between institutions that provides for the equitable treatment of students and a reasonable opportunity for students to complete their program of study if an institution ceases to operate or plans to cease operations before all enrolled students have completed their program of study.

We propose to define “religious mission” as a published institutional mission that is approved by the governing body of an institution of postsecondary education and that includes, refers to, or is predicated upon religious tenets, beliefs, or teachings.

The committee agreed to maintain the definition of “State authorization reciprocity agreement” as it was established in the Program Integrity and Improvement regulations published in the **Federal Register** on December 19, 2016 (81 FR 92232).

*Reasons:* The Department is adding a definition of “additional location” and revising the definition of “branch campus” to implement its current policy with respect to those terms and to avoid confusion caused by occasional inconsistent usage among the Department, States, and various accrediting agencies. We believe that a clear definition of “additional location” is necessary given the frequent use of the term elsewhere in the regulations. Under the Department’s longstanding policy, we have defined an “additional location” as a location that is geographically apart, at which the institution offers at least 50 percent of an eligible program. This definition would codify that policy. The Department has also revised the definition of “branch campus” to clearly indicate that it is one type of additional location that meets additional criteria, including permanence and autonomy with respect to faculty, administration, and budgetary and hiring authority.

The Department proposes to move the definitions of “teach-out agreement” and “preaccreditation” from the accreditation regulations in § 602.3 to the institutional eligibility regulations in § 600.2 for consistency, and because the use of those terms extends to regulations in part 600 and part 668. The Department proposes to add a definition of “teach-out” in order to clarify the types of activities that qualify as a teach-out and to clearly express that a teach-out is not intended to deny a student the ability to receive a closed-

school discharge if the student chooses not to take advantage of an institution’s teach-out option. The definition of a “teach-out” also notes that an institution may not misrepresent the nature of its teach-out plans or agreements, or the ability of students to transfer credit in general or through a teach-out agreement, in recognition of the vulnerability of students during such a process.

The Department proposes to revise the definition of “teach-out plan” to clearly distinguish a teach-out plan from a teach-out agreement, where a teach-out agreement is an actual written contract between two or more institutions and a teach-out plan is developed by an institution and may or may not include teach-out agreements with other institutions. The Department also believes that the definition of “teach-out plan” should include plans for teaching out students during orderly closures in which an institution plans to cease operating but has not yet closed. The Department believes that we serve both students and taxpayers better when an individual institution can responsibly wind down its operations or assist students in finding a transfer or teach-out institution in order to complete their program.

The Department proposes to add a definition of “religious mission” to clarify related State authorization requirements and the nature of accrediting agencies’ statutory responsibilities to ensure that their standards respect “religious mission.” The negotiators agreed upon the definition of “religious mission” following extensive exploration of the issue by the Faith-based subcommittee. We believe the definition effectively differentiates between institutions with explicit faith-based principles included in their mission and those that merely have an historical connection to a religious order that is no longer relevant to the institution’s mission. Achieving this balance is an important goal shared by many negotiators and members of the Faith-Based Entities Subcommittee. The Department intends for a religious institution to have wide latitude in carrying out its religious mission across all aspects of its academic and non-academic programs, functions, and responsibilities. The Department initially proposed listing each of those areas. However, following discussions with negotiators, we now believe it is not possible to create a list that is sufficiently comprehensive and yet avoids unintended incursions into a religious institution’s mission or mission-based policies, as well as the accrediting agencies’ authority to ensure

program quality. As discussed below, we included a non-exclusive list of categories of accrediting standards as to which accrediting agencies are not to use an agency's religious mission-based policies, decisions and practices as a negative factor in 602.18(a)(3). That list is not intended to exclude other topics or situations where a religious mission is relevant and must be respected.

*Institution of Higher Education, Proprietary Institution of Higher Education, and Postsecondary Vocational Institution (§§ 600.4, 600.5, and 600.6)*

*Statute:* HEA section 496(e) provides that the Secretary may not recognize the accreditation of any institution of higher education unless it agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration prior to any other legal action. HEA section 102(b)(1)(A)(ii) provides for eligibility of proprietary institutions of higher education that provide a program leading to a baccalaureate degree in liberal arts and have provided such a program since January 1, 2009, as long as they are also accredited by a recognized regional accrediting agency and have continuously held such accreditation since October 1, 2007 or earlier.

*Current Regulations:* Sections 600.4(c), 600.5(d), and 600.6(d) provide that the Secretary does not recognize the accreditation or preaccreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration before initiating any other legal action.

For purposes of eligibility of proprietary institutions of higher education to participate in the title IV, HEA programs, § 600.5(e) provides that a "program leading to a baccalaureate degree in liberal arts" is a program that the institution's recognized regional accrediting agency or organization determines is a general instructional program in the liberal arts subjects, the humanities disciplines, or the general curriculum, falling within one or more of the generally accepted instructional categories comprising such programs listed in § 600.5(e).

*Proposed Regulations:* We propose to clarify that institutions must agree that they will engage in arbitration prior to taking legal action against their agency in the event of an adverse action, regardless of whether the action is termed denial, withdrawal, or termination, or another term is used instead. In § 600.5(e), we propose to revise the definition of "program

leading to a baccalaureate degree in liberal arts" to delete the phrases "the institution's recognized regional accreditation agency or organization determines" and "in the liberal arts subjects, the humanities disciplines, or the general curriculum."

*Reasons:* When an institution subject to an adverse action may proceed directly to filing a lawsuit against its accrediting agency, a lengthy and costly legal battle may result. This potential consequence could serve as a deterrent to agencies taking necessary action. Arbitration allows agencies to take needed action and resolve disputes more quickly and potentially without costly litigation. Further, action that is swifter better meets the needs of students and the public. While the statutory requirement has not changed, the Department wants to increase awareness of it, in part due to a lack of clarity in the regulations, and we wish to highlight this important requirement with the proposed regulation. Moreover, although arbitration proceedings are sometimes less transparent than proceedings in court, the Department believes that existing and proposed requirements for notice to students and the public at 34 CFR 602.26 and 668.43 will ensure both are timely aware of accreditation disputes and their resolution.

In the edits to § 600.5(e), we propose to clarify the definition of "program leading to a baccalaureate degree in liberal arts" in § 600.5 to establish the Department's responsibility for determining what types of programs qualify, and to tighten up the regulatory definition of the term, while maintaining and respecting the grandfathering requirements in the statute. The requirement that an institution desiring to be covered by this provision must be accredited by a recognized regional accrediting agency and must have continuously held such accreditation since October 1, 2007 or earlier, remains in regulation at 600.5(a)(5)(i)(B).

*State Authorization (§ 600.9)*

*Statute:* In pertinent part, HEA section 101(a)(2) states that, for the purposes of the HEA, other than title IV, "institution of higher education" means an educational institution in any State that is legally authorized within such State to provide a program of education beyond secondary education.

Additionally, HEA section 102 defines an "institution of higher education" for title IV purposes. HEA section 102(a)(1) includes institutions of higher education covered by the definition in HEA section 101, as well

as proprietary institutions of higher education as defined in HEA section 102(b), and postsecondary vocational institutions as defined in HEA section 102(c). The definitions of "proprietary institution of higher education," in HEA section 102(b)(1)(B), and "postsecondary vocational institution," in HEA section 102(c)(1)(B), both reference the requirement in HEA section 101(a)(2) of being legally authorized within a State. HEA Section 495(b) requires each institution of higher education to provide evidence to the Secretary that the institution has authority to operate within a State at the time the institution is certified.

*Current Regulations:* Current § 600.9(b) provides that an institution is considered to be legally authorized to operate educational programs beyond secondary education if it is exempt from State authorization as a religious institution under the State constitution or by State law, and defines a "religious institution" for this purpose as an institution that is owned, controlled, operated and maintained by a religious organization lawfully operating as a nonprofit religious corporation, and that awards only religious degrees or certificates including, but not limited to, a certificate of Talmudic studies, an associate of Biblical studies, a bachelor of religious studies, a master of divinity, or a doctor of divinity.

In addition, regulations on State authorization of institutions offering postsecondary education through distance education or correspondence courses at § 600.9 (c)(1)(i) state that an institution of higher education that otherwise meets State authorization requirements but that offers postsecondary education through distance education or correspondence courses to students residing in a State in which the institution is not physically located, or in which the institution is otherwise subject to that State's jurisdiction, is required to meet that State's requirements for it to be legally offering postsecondary distance education or correspondence courses in that State. An institution must provide documentation of the State's approval, upon the Secretary's request.

Section 600.9(c)(1)(ii)<sup>5</sup> states that if an institution of higher education that otherwise meets State authorization

<sup>5</sup> These regulations, promulgated as part of the Program Integrity and Improvement rules published in the **Federal Register** on December 19, 2016 (81 FR 92232), initially were delayed in their effective date until July 1, 2020, published in the **Federal Register** on July 3, 2018 (83 FR 31296). Subsequently, the court in *National Education Association v. DeVos*, No. 18-cv-05173 (N.D. CA April 26, 2019) vacated the delay, effective May 26, 2019.

requirements but offers postsecondary education through distance education or correspondence courses in a State that participates in a State authorization reciprocity agreement, and the institution is covered by such agreement, the institution is considered to meet State requirements for it to be legally offering postsecondary distance education or correspondence courses in that State, subject to any limitations in the agreement and any additional requirements of that State. Again, the Secretary may require the institution to provide documentation of the approval.

Section 600.9(c)(2) requires an institution that offers postsecondary education through distance education or correspondence courses to students residing in a State in which the institution is not physically located to document that there is a State process for review of complaints from any of those enrolled students concerning the institution, in each State in which the enrolled students reside. Alternatively, under § 600.9(c)(2), such an institution may be party to a State authorization reciprocity agreement that designates for this purpose either the State in which the institution's enrolled students reside or the State in which the main campus is located as the relevant State for review of complaints.

*Proposed Regulations:* The proposed regulations would revise § 600.9(b) to delete the limiting definition of religious institution. The committee agreed to several changes to § 600.9(c), regarding legal authorization of institutions offering postsecondary education through distance education or correspondence courses. The proposed rule would apply not only to institutions that are currently authorized under § 600.9(a)(1), but also to institutions exempt from State authorization as religious institutions under proposed § 600.9(b).

Under the proposed regulations, § 600.9(c) would no longer refer to a student's residence in a State where the institution was offering distance education or correspondence courses and would instead refer to a student's location.

Section 600.9(c) would also require an institution to determine the State in which a student is located for purposes of establishing whether the institution was subject to the requirements in § 600.9(c) in that State. The proposed regulations would require an institution to determine a distance or correspondence student's location at the time of the student's initial enrollment, and upon formal receipt of information from the student in accordance with the institution's procedures that the

student's location has changed to another State. We propose to require institutions to maintain policies and procedures governing this process and to consistently apply them to all students. An institution would need to establish (or maintain) and document a process for a student to submit a change of address. This will generally entail a method for a student to log into the institution's system and indicate a new address, but it could be another process that resulted in documentation of the change. On request, the institution would need to provide the Secretary with written documentation of its determination of a student's location, and the basis for the determination.

Finally, we propose to remove the requirement for a student complaint process appearing in current § 600.9(c)(2).

*Reasons:* The Department proposes to generally maintain the definition of "State authorization reciprocity agreement" as it was established in the Program Integrity and Improvement regulations published in the **Federal Register** on December 19, 2016 (81 FR 92232), as part of the framework in § 600.9(c) requiring institutions to comply with State requirements if they enroll students located in a State through distance education or correspondence courses. The committee agreed that the requirements in § 600.9(c) are an important complement to the State's exercise of its oversight responsibilities under the program integrity triad, and that an institution's eligibility for aid under the title IV, HEA programs should be contingent on an institution abiding by State requirements for distance education and correspondence courses. The committee also agreed that reciprocity agreements among States are an important method by which institutions may comply with State requirements and reduce the burden on institutions that would otherwise be subject to numerous sets of varying requirements established by individual States.

The committee agreed to include religious institutions that are exempt from State authorization under § 600.9(b) in the framework for State authorization of distance education and correspondence courses because those institutions may also be subject to requirements for distance education or correspondence courses by States in which the institution is not physically located, and should be permitted to comply with such requirements through State authorization reciprocity agreements.

The committee agreed with the Department's proposal to remove the

concept of "residence" from the regulations under § 600.9(c) and replace it with "location." Use of the concept of "residence" has led to confusion and barriers to compliance because States have different requirements for establishing legal or permanent residence, and in many occasions require a person to live in a State for several years in order to meet such requirements. These requirements may also differ within States for purposes of voting, paying in-State tuition, or other rights and responsibilities. For this reason, many States have adopted requirements for distance education and correspondence courses that refer to a student's location, which may be more temporary than permanent residence. By referring to a student's "location" rather than his or her "residence," the Department intends to make its regulations more consistent with existing State requirements and to ensure that students who have not established legal or permanent residence in a State benefit from State requirements for an institution to offer distance education and correspondence courses in that State.

The committee agreed to regulations that would require an institution to establish consistent policies for determining the State in which a student is located for purposes of establishing whether the institution is subject to the requirements in § 600.9(c) in that State. Without such requirements, there could be confusion regarding whether an institution must abide by State requirements in a given State for purposes of complying with § 600.9(c). The committee members discussed the need to avoid subjecting an institution to unrealistic and burdensome expectations of investigating and acting upon any information about the student's whereabouts that might come into its possession. Therefore, the proposed regulations would require that an institution establish a student's location for the purposes of § 600.9(c) upon the student's initial enrollment in a program, and upon formal receipt of information from the student that the student's location has changed to another State. The committee agreed that it is important to ensure that institutions maintain equitable policies and procedures governing this process and consistently apply them to all students, and that the procedures established for purposes of complying with § 600.9(c) should be the same as those established for complying with the individualized disclosure requirements in proposed § 668.43(c).

Finally, the committee agreed to eliminate regulations regarding a student complaint process under current § 600.9(c)(2) with the understanding that current § 600.9(a)(1) addresses complaint processes and the regulations under § 668.43(b) already require institutions to disclose the complaint process in each of the States where its enrolled students are located. The change will ensure that students who are located in States without a complaint process for students enrolled in distance education or correspondence courses are not prevented from receiving title IV, HEA assistance.

*Special Rules Regarding Institutional Accreditation or Preaccreditation (§ 600.11)*

*Statute:* HEA section 101(a)(5) provides that a public or private, nonprofit institution of higher education must be accredited by a recognized accrediting agency, or be granted preaccreditation status by an agency that the Secretary recognized for the granting of preaccreditation status and the Secretary has determined that there is satisfactory assurance that the institution will meet the agency's accreditation standards within a reasonable period of time. HEA section 102(a)(1) includes in title IV eligibility institutions of higher education covered by the definition in HEA section 101, as well as proprietary institutions of higher education as defined in HEA section 102(b), and postsecondary vocational institutions as defined in HEA section 102(c). The definition of "postsecondary vocational institution," in HEA section 102(c)(1)(B), references the requirement in HEA section 101(a)(5) of accredited or preaccredited. The definition of "proprietary institution of higher education," in HEA section 102(b)(1)(B), requires such institutions to be accredited. HEA section 496(h) provides that the Secretary will not recognize the accreditation of any otherwise eligible institution if the institution is in the process of changing its accrediting agency unless the institution submits to the Secretary all materials relating to the prior accreditation, including materials demonstrating reasonable cause for changing accrediting agencies. HEA section 496(i) states that the Secretary will not recognize the accreditation of any otherwise eligible institution of higher education if the institution is accredited, as an institution, by more than one accrediting agency, unless the institution submits to each such agency and to the Secretary the reasons for accreditation by more than one such agency, demonstrates reasonable cause for its multiple accreditations, and

designates which agency's accreditation will be utilized in determining eligibility under HEA programs. HEA section 496(j) states that an institution may not be certified or recertified for title IV participation or participate in other HEA programs if it has had its accreditation withdrawn for cause within the preceding 24 months, or if it has withdrawn from accreditation under a show cause or suspension order during the preceding 24 months, unless the withdrawal or show cause or suspension order has been rescinded by the same accrediting agency.

*Current Regulations:* Section 600.11(a) provides that the Secretary does not recognize an institution's accreditation or preaccreditation if it is in the process of changing its accrediting agency, unless it provides all materials related to its prior accreditation or preaccreditation and materials demonstrating reasonable cause for changing its accrediting agency to the Secretary.

Under § 600.11(b), the Secretary does not recognize the accreditation or preaccreditation of an otherwise eligible institution if the institution is accredited or preaccredited as an institution by more than one agency, unless the institution provides the reasons for that multiple accreditation or preaccreditation; demonstrates reasonable cause for multiple accreditation or preaccreditation; and designates which agency's accreditation or preaccreditation the institution uses to establish title IV eligibility.

*Proposed Regulations:* We propose to establish conditions under which the Secretary will not determine an institution's cause for changing its accrediting agency, or the institution's cause for holding accreditation from more than one agency, to be reasonable. Under the proposed regulations, subject to specified exceptions, the Secretary will not determine a change of accrediting agency or multiple accreditation to be reasonable if the institution—

(1) Has had its accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months, unless such withdrawal, revocation, or termination has been rescinded by the same accrediting agency; or

(2) Has been subject to a probation or equivalent, show cause order, or suspension order during the preceding 24 months. Under the proposed regulations, despite a withdrawal of accreditation for cause or a voluntary withdrawal following a probation or equivalent, show cause order, or suspension order, the Secretary may,

nonetheless, determine an institution's cause for changing its accrediting agency to be reasonable if the agency did not provide the institution its due process rights, the agency applied its standards and criteria inconsistently, or if the adverse action, show cause, or suspension order was the result of an agency's failure to respect an institution's stated mission, including religious mission.

Under the proposed regulations, despite a change of accreditation resulting from or following withdrawal, revocation, termination, probation or equivalent, show cause order, or suspension order, the Secretary may determine an institution's cause for the change to be reasonable if the agency did not provide the institution its due process rights, applied its standards and criteria inconsistently, or if the adverse action or order resulted from failure to respect the institution's stated mission.

In addition, despite multiple accreditation that resulted from or followed withdrawal, revocation, termination, probation or the equivalent, show cause order, or suspension, The Secretary may determine an institution's cause for the multiple accreditation to be reasonable if the institution's primary interest in seeking multiple accreditation is based on the original accrediting agency's geographic area, program-area focus, or mission.

*Reasons:* The proposed changes in this section seek to maintain guardrails to ensure that struggling institutions cannot avoid the consequences of failing to meet their current accrediting agency's standards by attaining accreditation from another agency, while maintaining recourse for institutions that have been treated unfairly or have reasons for seeking multiple accreditation unrelated to compliance with accrediting agency quality standards.

Historically, postsecondary institutions have not sought institutional accreditation from multiple agencies for a number of reasons, including the limitations of geographic scope adopted by regional accrediting agencies, the expense and effort associated with the accreditation process, a dearth of institutional accrediting agency options that provide unique approaches to mission-based educational objectives institutions are seeking to achieve, and concern about how the statutory and regulatory restrictions in title IV on changes in accreditation and multiple accreditation will be applied. The proposed regulations seek to open the institutional accreditation system to

competition, either through expansion by current institutional accrediting agencies or from new accrediting agencies that can demonstrate the capacity to sufficiently judge institutional quality. Competition could allow for greater specialization among agencies to ensure a closer match with the mission of the institutions or programs they accredit. In addition, greater competition (or the allowance for competition where there is none today) can mean more accountability when incumbents are being insufficiently responsive to the needs of institutions or programs and their key stakeholders such as students, faculty, alumni, or employers.

The Department recognizes that an institution may want to maintain its current institutional accreditation while transitioning to a new agency in order to protect enrolled students during the transition period. Thus, it is important that the regulations that govern multiple accreditation provide for this flexibility while clarifying circumstances under which the Secretary would determine such action to be reasonable.

In addition, the Department recognizes that an institution may seek accreditation by a comprehensive institutional accrediting agency as its title IV gatekeeper but may also seek mission-based institutional accreditation to emphasize its adherence to a specialized mission, including preparing students for a career.

Because these items were discussed separately, the proposed rules contain different provisions for allowing multiple accreditation versus allowing a change of accrediting agency. The Department is interested in public comment on whether those requirements should be aligned.

*Change in Ownership Resulting in a Change in Control for Private Nonprofit, Private For-Profit and Public Institutions (§ 600.31)*

*Statute:* HEA section 498(i) provides that an eligible institution that has undergone a change of ownership resulting in a change in control will not qualify to participate in the title IV, HEA programs unless it establishes that it meets title IV institutional eligibility requirements and the other requirements of the section.

*Current Regulations:* Section 600.31 describes when the Department considers a change of ownership resulting in a change of control to have occurred, and processes involved in order for an institution to continue its participation in title IV, HEA programs on a provisional basis, and to reestablish

eligibility and to resume participation in title IV, HEA programs.

*Proposed Regulations:* The proposed regulations would revise, in § 600.31(b), the definitions of “closely-held corporation,” “person,” and “person.” “Closely-held corporation” would include a corporation that qualifies under the law of the State of its organization. The definition of “parent” would replace the word “corporation” with “entity.” “Person” would be defined as including a legal entity or a natural person.

In § 600.31(c)(3), the title of the paragraph would be revised from “*Other corporations*” to “*Other entities*”; the paragraph would include a definition of “other entities” to include limited liability companies, limited liability partnerships, limited partnerships, and similar types of legal entities; the language “A change in ownership and control of a corporation” would be changed to read “A change in ownership and control of an entity”; and subparagraph (iii) would be eliminated.

In § 600.31(c)(4), the title would be revised from “*Partnership or sole proprietorship*” to read “*General partnership or sole proprietorship*.” In § 600.31(c)(5), the title would be changed from “Parent corporation” to “Wholly owned subsidiary,” and the provision would be revised to read “An entity that is a wholly-owned subsidiary changes ownership and control when its parent entity changes ownership and control as described in this section.”

*Reasons:* We propose the changes to update the regulations and provide greater clarity and consistency. The current regulations use terms such as “corporation” and “person” that are too limited to address the wide variety of different entities that could purchase a postsecondary institution or location. We therefore propose to change the terminology used in various parts of § 600.31 to use terms with a broader range of meaning.

*Eligibility of Additional Locations (§ 600.32)*

*Statute:* HEA section 498(k) prescribes the treatment of teach-outs at additional locations and provides that a location of a closed postsecondary institution is eligible as an additional location of an eligible institution for the purposes of an accrediting agency–approved teach-out, in accordance with Department regulations.

*Current Regulations:* Section 600.32(b) describes circumstances in which the two-year requirement in §§ 600.5(a)(7) and 600.6(a)(6)—that proprietary institutions of higher education and postsecondary vocational

institutions respectively have been in existence for at least two years—will apply where:

- A location was a facility of another institution that closed for a reason other than a normal vacation or a natural disaster;

- The applicant institution acquired, either directly from the institution that closed or ceased to provide educational programs, or through an intermediary, the assets of that location; and

- The institution from which the applicant institution acquired the assets of the location owes a liability for a violation of an HEA program requirement and is not making payments in accordance with an agreement to repay that liability.

Section 600.32(c) specifies that an additional location is not required to satisfy the two-year requirement if the applicant institution agrees:

- To be liable for all improperly expended or unspent title IV, HEA program funds received by the institution that has closed or ceased to provide educational programs;

- To be liable for all unpaid refunds owed to students who received title IV, HEA program funds; and

- To abide by the policy of the institution that has closed or ceased to provide educational programs regarding refunds of institutional charges to students in effect before the date of the acquisition of the assets of the additional location for the students who were enrolled before that date.

Under § 600.32(d), an institution that conducts a teach-out at a site of a closed institution may apply to have that site approved as an additional location if the closed institution ceased operations and the Secretary has taken an action to limit, suspend, or terminate the institution’s participation or has taken an emergency action against the institution; the teach-out plan is approved by the closed institution’s accrediting agency; and, on request of the Secretary, payments by the institution conducting the teach-out to the owners or related parties of the closed institution are used to satisfy any liabilities owed by the closed institution to the Department. Paragraph (d)(2) explains the positive consequences of obtaining such an approval.

*Proposed Regulations:* We propose in § 600.32(c) that an additional location would not be required to satisfy the two-year requirement of § 600.5(a)(7) or § 600.6(a)(6) if the applicant institution and original institution are not related parties and there is no commonality of ownership, control, or management between the institutions, and if the

applicant institution agrees to assume certain liabilities and to abide by the closed institution's refund policies. In § 600.32(c)(1) and (2), we propose to limit the time period for which the applicant institution is liable under § 602.32(c) for improperly or unspent title IV, HEA funds, or refunds owed to students who received title IV funds, to the current academic year and up to one prior academic year.

In § 600.32(d)(1)(i) and (d)(1)(ii), we propose to allow an institution engaged in an accrediting agency-approved teach-out plan to apply for its site to be approved as an additional location, without regard to the two-year rule, if the closing institution is engaged in an orderly closure. We propose to remove the requirement for the closed institution to have a limitation, suspension, or termination action taken by the Secretary and propose to add a requirement that the Secretary evaluate and approve the plan. The proposed regulations would amend § 600.32(d)(1)(ii) and (2)(i)(B) to require approval of a teach-out plan from a closing institution's accrediting agency. We further propose that the institution that conducts a teach-out and is approved to add an additional location in accordance with this section is not responsible for any liabilities of either a closed institution or a closing institution.

*Reasons:* When an institution or one of its locations closes, educational opportunities for students in the area become more limited. An acquisition of a closed or closing institution by another postsecondary institution results in an investment in the community and additional opportunities for students to complete a postsecondary credential. Separately, institutions that close with unpaid refunds or outstanding liabilities for title IV, HEA funds are often unable to repay those liabilities, and the Department is subsequently unable to collect amounts owed. For these reasons, the Department proposes to limit the time period over which a purchasing institution is liable for improperly or unspent title IV, HEA funds, or title IV credit balances owed to students, to facilitate the purchase of that institution by an institution that is more capable of serving students and of repaying amounts owed to the Department.

The changes to paragraph (c) are intended to encourage initiatives designed to lead to an orderly transition.

Where the accrediting agency and the Secretary have approved the teach-out, revised paragraph (d) will provide opportunities for an institution to

engage in an orderly closure and minimize disruption for the student by offering a teach-out plan that enables a student to complete his or her program before the institution closes or for a partnering institution to continue to provide instruction and facilitate the student's completion of their program, or a comparable program, in the location where they initiated their studies.

We believe that in some cases, such as when an institution is ending its participation through an orderly closure, it is in the best interest of the students to have an opportunity to complete their academic program at their chosen institution. For example, disruption can occur for students who transfer or take part in a teach-out at a different institution, which could result in the loss of credits. In addition, the new institution may be less convenient for many reasons, such as the distance students must travel, availability of public transportation, and proximity to the students' home, work, or childcare facility. Also, students may prefer to complete their program with instructors, staff, and other students with whom they are already familiar.

#### *Termination and Emergency Action Proceedings (§ 600.41)*

*Statute:* HEA sections 101(a), and 102(a), (b) and (c), require nationally recognized accreditation, or pre-accreditation in the case of public or non-profit institutions, as a matter of institutional eligibility. Under HEA § 454, the William D. Ford Federal Direct Student Loan Program provides for origination of loans by institutions, rather than institutional certification of loan applications as provided under the Federal Family Education Loan Program in § HEA 428H(b).

*Current Regulations:* Section 600.41(a)(1)(ii)(B) allows for termination of an institution's eligibility under a show-cause hearing, if the institution's loss of eligibility results from the institution's having previously qualified as eligible under the transfer of credit alternative to accreditation as that alternative existed prior to July 23, 1992 under 20 U.S.C. 1085, 1088, 1141(a)(5)(B).

Section 600.41(d) precludes institutions that have been terminated from certifying applications for title IV funds, except in specified circumstances.

*Proposed Regulations:* We propose to eliminate § 600.41(a)(1)(ii)(B), and in § 600.41(d), change the word "certify" to "originate."

*Reasons:* These changes update § 600.41 to reflect the 1992 repeal of the transfer of credit eligibility alternative,

the 2011 end of the Federal Family Education Loan Program, and the 1993 enactment of the Direct Loan Program.

#### **The Secretary's Recognition of Accrediting Agencies**

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

*Statute:* HEA section 496(a) provides criteria that an accrediting agency must meet for the Secretary to recognize it as a reliable authority as to the quality of education or training offered.

*Current Regulations:* Section 602.3 provides definitions for several terms that are applicable to accreditation but that are also used in applying other HEA requirements, including "branch campus," "correspondence education," "direct assessment program," "distance education," "institution of higher education," "nationally recognized accrediting agency," "preaccreditation," "Secretary," "State," "teach-out agreement," and "teach-out plan." Section 602.3 also provides definitions for "compliance report," "final accrediting action," "programmatic accrediting agency," "scope of recognition," and "senior Department Official" that are unique to the Department's recognition of accrediting agencies. In addition, certain definitions in § 600.2—"accredited" and "credit hour"—are pertinent to accreditation as well as institutional eligibility but are not defined in § 602.3. Current regulations provide no definition for "substantial compliance" by an accrediting agency with recognition requirements, nor for "monitoring report" as part of the recognition process, nor do they define "additional location," "religious mission," or "teach-out."

*Proposed Regulations:* Proposed § 602.3(a) would cross-reference the definitions in § 600.2—including all amendments and additions to § 600.2 as proposed in this NPRM—for "accredited," "additional location," "branch campus," "institution of higher education," "nationally recognized accrediting agency," "preaccreditation," "religious mission," "Secretary," "State," "teach-out," "teach-out agreement," and "teach-out plan," rather than include these definitions in full in § 602.3.

Proposed § 602.3(b) would define the terms "monitoring report" and "substantial compliance," and would revise the definitions for "compliance report," "final accrediting action," "programmatic accrediting agency," "scope of recognition," and "senior Department official."

*Reasons:* The Department proposes to include or continue to include the definitions of “accredited,” “additional location,” “branch campus,” “correspondence course,” “credit hour,” “direct assessment program,” “distance education,” “institution of higher education,” “nationally recognized accrediting agency,” “preaccreditation,” “religious mission,” “Secretary,” “State,” “teach-out,” “teach-out agreement,” and “teach-out plan” in 34 CFR part 600. These terms are referenced throughout chapter VI of title 34 of the Code of Federal Regulations.

The Department proposes to add paragraph (a) to § 602.3 to make clear where the definitions of these terms can be found in 34 CFR part 600. Proposed paragraph (a) will help the public easily find definitions of terms that directly impact the Secretary’s recognition of accrediting agencies and help ensure that the definitions are consistently applied.

We propose to remove “branch campus,” “correspondence course,” “distance education,” “direct assessment program,” “preaccreditation,” “nationally recognized accrediting agency,” “Secretary,” “State,” “teach-out agreement,” and “teach-out plan” from proposed § 602.3(b). These terms apply to several sections of part 34 of the Code of Federal Regulations. The Department believes that it is more efficient to define the terms in one place and not replicate them in multiple places. This would help eliminate confusion by the public and ensure these terms are applied consistently.

We propose to amend the definition in § 602.3(b) of “compliance report” to clarify that a compliance report must only be required when “that agency is found to be out of compliance” with the regulatory requirements contained within the criteria for recognition (proposed subpart B) and to clarify that, in such an instance, the agency must show it has “corrected” any deficiencies as opposed to simply having addressed the deficiencies. We propose to add that compliance reports are reviewed by Department staff and the Advisory Committee and approved by the senior Department official or the Secretary, solely to add clarity to a practice that is already a requirement under current regulation.

The Department proposes to add a definition of “monitoring report,” which is a new concept in the Secretary’s recognition of accrediting agencies. We propose a new definition because we want to afford accrediting agencies that are in substantial

compliance with the criteria for recognition the opportunity to implement corrected policies or update policies to align with compliant practices. We propose that the monitoring report be used as an oversight tool to ensure integrity in accreditation, in cases where the accrediting agency deficiency does not rise to the level of a compliance report. For example, a monitoring report may be required if required documentation is not complete, but the agency in practice complies with subpart B. Department staff would review monitoring reports and, unlike the compliance report, NACIQI would not review a monitoring report unless the response does not satisfy Department staff. See the discussion related to proposed § 602.33 for more information on the monitoring report process.

The Department proposes to amend the definition of “final accrediting action” to clarify that the final determination of an accrediting agency regarding an institution or program can only be made after the institution or program has exhausted its appeals process, as per the accrediting agency’s policies and procedures. The clarification would not change current practice.

The Department proposes to amend the definition of “programmatic accrediting agency” to clarify that these agencies can accredit programs that prepare students in specific academic disciplines. The clarification would not change current practice.

The Department proposes to remove “(1) geographic area of accrediting activities” from the definition of “scope of recognition or scope.” We believe that the current practice of limiting an accrediting agency’s recognized scope to a certain geographic area is outdated, because regional agencies now accredit branch campuses and additional locations in States outside of their stated geographic scopes. Also, we seek to clarify that even if an agency includes a State in its geographic area, this does not discourage another agency from also including that State or territory in its accrediting area. With the removal of geographic area from the definition of “scope” we hope to allow for additional competition so that an institution or program may select an agency that best aligns with the institution’s mission and to improve transparency about the States in which each agency accredits campuses.

The Department proposes to add a new definition of “substantial compliance.” The term would signify that an agency has demonstrated to the Department that it has the necessary

policies, practices, and standards in place and generally adheres with fidelity to those policies practices and standards, or has policies, practices, and standards that need minor modifications to reflect its generally compliant practices. In the Department’s view, Department staff can use monitoring reports to ensure an agency that has made such a showing achieves full compliance, without expending the public and agency resources on NACIQI, senior Department official, and Secretarial, review. Agencies that achieve this status are in compliance except with respect to minor technicalities and in the Department’s view warrant recognition for that level of achievement. As discussed below, the proposed regulations provide mechanisms for Department staff to reinstate NACIQI, senior Department official, and Secretarial review during the recognition period if the deficiencies noted escalate or if the agency does not address them.

Finally, the non-Federal negotiators recommended amendments to the definition of “senior Department official.” The committee wanted to ensure that the Secretary selects an individual with adequate subject matter knowledge to make independent decisions on accrediting agency recognition. One committee member was especially concerned that without this clarification, the Secretary could assign anyone at the Department the duties of the senior Department official, even an individual without knowledge of the accrediting agency recognition process. As the proposed language states, the adequacy of the senior Department official’s subject matter knowledge would be a matter committed to the judgment of the Secretary.

#### *Link to Federal Programs (§ 602.10)*

*Statute:* HEA section 496(a)(2) outlines the types of accrediting agencies that the Secretary may recognize according to the types of roles the various agencies may serve in establishing eligibility of accredited institutions and programs to participate in Federal programs. HEA section 496(m) provides that the Secretary may only recognize accrediting agencies that either accredit institutions for the purpose of enabling such institutions to establish eligibility to participate in one or more of the HEA programs, or that accredit institutions or programs for the purpose of enabling them to establish eligibility to participate in other Federal programs.

*Current Regulations:* Section 602.10(a) requires an accrediting agency

to demonstrate that, 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. In the alternative, § 602.10(b) requires that 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.

*Proposed Regulations:* We propose to allow in § 602.10(a) that, if an agency accredits one or more institutions that could designate the agency as its link to the title IV, HEA programs, the agency satisfies the Federal link requirement, even if the institution currently designates another institutional accrediting agency as its Federal link.

*Reasons:* The Department's proposed changes in this section are designed to decrease barriers to entry and enable new agencies to more easily enter the marketplace. Until a new agency is recognized, it is highly unlikely that an accredited institution would relinquish its current accreditation that enables it to meet title IV institutional eligibility requirements in order to attain accreditation from that new agency, even though the new agency may be better suited to the institution's mission.

#### *Geographic Area of Accrediting Activities (§ 602.11)*

*Statute:* HEA section 496(a) states that an accrediting agency must be a State, regional, or national agency and that it must demonstrate the ability and experience to operate as an accrediting agency within the State, region, or nationally, as appropriate.

*Current Regulations:* Section 602.11, currently titled "Geographic scope of accrediting activities," requires that an accrediting agency demonstrate that its activities cover a State, if the agency is part of a State government; a region of the United States that includes at least three States that are reasonably close to one another; or the United States.

*Proposed Regulations:* We propose to amend the title of § 602.11 to read "Geographic area of accrediting activities," and to amend § 602.11(b) so that an agency's geographic area on record with the Department would include not only the States in which the main campuses of its accredited institutions are located but also any State in which an accredited location or branch may be found. We further propose to provide that we do not require an agency whose geographic area includes a State in which a branch

campus or additional location is located to also accredit a main campus in that State. Additionally, we would not require an agency whose geographic area includes a State in which only a branch campus or additional location is located to accept an application for accreditation from other institutions in that State.

*Reasons:* We intend for these changes to accurately convey the geographic range of a recognized agency's accrediting activities, to include not only States in which the agency accredits main campuses but also States in which it accredits only locations, branches, or both. The Department does not grant an exclusive geographic area or scope to any agency, just as the Department does not grant an exclusive right to a programmatic accrediting agency to accredit programs in a certain academic discipline or programs that prepare students for work in a certain career. Agencies that accredit main campuses only in selected States do so of their own choosing rather than as a result of any Departmental mandate or regulation. An agency whose geographic area includes a State in which only a branch campus or additional location exists is neither required to accept nor prohibited from accepting an application for accreditation from other institutions in such State. The Department respects the autonomy of accrediting agencies and encourages these agencies to conduct their business in whichever areas are most suitable for them.

The proposed change is intended, in part, to provide transparency and improved access to higher level educational programs, and transfer of credit for students, while honoring the autonomy and independence of agencies and institutions. We seek to simplify the labeling of accrediting agencies to reflect their scope more accurately (e.g., institutional agencies, programmatic agencies, specialty agencies). We also aim to remove labels that facilitate inaccurate beliefs about differences among accrediting agencies, since the Department holds all to the same set of standards. Disparate treatment of students based on which agency accredits an institution or program is unwarranted given that all agencies adhere to the same Department requirements, and this practice harms students and adds cost for students and taxpayers. In some instances, the unjustified differentiation of agencies based on the geographic area in which they operate has created barriers to entry for certain occupations and has made it difficult for those who complete programs to continue their education

and earn a higher-level credential. The Department does not believe, for example, that rejecting transfer credits, an application for admission to graduate school, or a request to sit for a State occupational licensing exam on the basis of the type of Department recognized accreditation is justified . . . . We seek to increase academic and career mobility for students by eliminating artificial boundaries between institutions due to the credential levels they offer or the agency that accredits the institution or program.

#### *Accrediting Experience (§ 602.12)*

*Statute:* HEA section 496(a)(1) requires that an accrediting agency demonstrate the ability and experience to operate as an accrediting agency within a State, region, or nationally. HEA section 496(n) provides that the Secretary must conduct a comprehensive review and evaluation of the performance of all accrediting agencies and associations that seek recognition by the Secretary in order to determine whether the accrediting agencies meet the criteria established by this section. Evaluation of the accrediting agency must include solicitation of third-party information concerning the performance of the accrediting agency.

*Current Regulations:* Section 602.12(a)(1) requires that an accrediting agency that is seeking initial recognition must demonstrate that it has granted accreditation or preaccreditation to one or more institutions (for an institutional accrediting agency) and to one or more programs (for a programmatic accrediting agency). The accreditation or preaccreditation that the agency has granted must cover the range of the specific degrees, certificates, institutions, and programs for which the agency seeks recognition and in the geographic area for which it seeks recognition.

Section 602.12(a)(2) requires the agency to have conducted accrediting activities for at least two years prior to seeking recognition.

Section 602.12(b) requires a recognized agency seeking an expansion of its scope of recognition to demonstrate that it has granted accreditation or preaccreditation covering the range of the specific degrees, certificates, institutions, and programs for which the agency seeks the expansion of scope.

*Proposed Regulations:* We propose to eliminate the "two-year rule" in § 602.12(a)(2) when an agency seeking initial recognition is affiliated with, or is a division of, a recognized agency. We further propose to state in § 602.12(b)(1)

that a recognized agency seeking an expansion of its scope must follow the requirements of §§ 602.31 and 602.32, demonstrate that it has policies in place that meet all recognition criteria with respect to the expansion, and demonstrate that it can show support for the expansion from relevant constituencies. The agency would not be required, however, to have accredited institutions or programs in the area(s) of expanded scope at the time it applies, although in such a case the Department may impose a limitation on the grant of the expansion of scope or require a monitoring report. Finally, we propose to state in this section that the Department does not consider a change to an agency's geographic area to be an expansion of the agency's scope but does require that the agency notify the Department and disclose the change to the public on its website.

*Reasons:* In the changes to paragraph 602.12(a)(2), the Department is acknowledging that recognized accrediting agencies sometimes reorganize or spin off a portion of their accrediting business by setting up a separate agency for it. In such cases, the new entity has substantial accrediting experience obviating the need for a demonstration of two years of accrediting experience even though it has not previously submitted its own application for recognition.

In proposing revisions to paragraph (b), the Department seeks to solve the problem that arises when an agency is required to accredit an institution or program in the area of the expanded scope in order to be approved for an expansion of scope, while at the same time, institutions or programs may be unwilling to seek accreditation from the agency in the area of the expanded scope until the expansion of scope has been approved by the Department. These conflicting criteria make it difficult for an agency to expand its scope.

Non-Federal negotiators expressed concern that not requiring two years of experience for changes in scope could create risk, as the increase in scope may be unwarranted. The Department modified its initial proposed changes to the regulations in this section to create access for agencies that seek an appropriate and necessary expansion of scope, while mitigating risk by adding additional requirements to ensure agencies meet appropriate quality standards.

Non-Federal negotiators also expressed concern that the Department's initial proposal was unduly restrictive for agencies seeking an expansion of scope to accredit graduate programs.

The Department is concerned about the growth of graduate programs, in particular those that may significantly increase student debt without improving earnings outcomes. The Department is also concerned about the growing practice of elevating the level of the credential required to satisfy occupational licensure requirements. Credential inflation adds significant cost to postsecondary education and may reduce opportunities for low-income students to pursue careers in those occupations<sup>6 7 8</sup>. However, the Department also recognizes the importance of graduate education and proposes to mitigate credential inflation through revisions in other sections.

The Department proposes to exclude changes in the geographic area of an agency's accrediting activities from consideration as an expansion of scope, but to require notice to the Department and the public by the agency of such changes, for the reasons discussed above with respect to § 602.11.

#### **Acceptance of the Agency by Others (§ 602.13)**

*Statute:* HEA section 496(n)(1)(A) provides that the evaluation of the accrediting agency must include solicitation of third-party information concerning the performance of the accrediting agency.

*Current Regulations:* Section 602.13 requires an accrediting agency to demonstrate that its standards, policies, procedures, and decisions to grant or deny accreditation are widely accepted in the United States by educators and educational institutions, as well as by licensing bodies, practitioners, and employers in the fields for which the educational institutions or programs within the agency's jurisdiction prepare their students.

*Proposed Regulations:* We propose to remove and reserve § 602.13.

*Reasons:* Non-Federal negotiators proposed, and the Department agrees, that the provisions of this section of the regulations are duplicative of requirements in other sections of the regulations.

The Department is also concerned that the current regulations impose a "widely-accepted" standard that statute does not require, is too vaguely defined, and has been enforced inconsistently in

the past. Such requirements could benefit incumbents at the expense of equally well-qualified new entrants and could leave even well-established institutions reasonably believing that a promising new program or method of delivery would run afoul of this requirement simply by being different than what most of its peers do today.

#### *Purpose and Organization (§ 602.14)*

*Statute:* HEA section 496(a)(2) defines the four categories of accrediting agencies the Department is authorized to recognize. HEA section 496(b)(1) defines "separate and independent" for the purpose of the section. Specifically, section 496(b) provides that the members of the governing body are not elected by the board or chief officer of any related, associated or affiliated trade association or membership organization, and contains other requirements regarding public members, avoiding conflicts of interest, and independence of agency dues and budgets. Sections 496(a)(3)(A) and (C) identify two categories of accrediting agencies which are subject to the separate and independent requirement and define the circumstances in which the requirement can be waived for agencies in one of those two categories.

*Current Regulations:* Section 602.14(a) identifies the four categories of accrediting agencies recognized by the Secretary, in table format.

Section 602.14(b) defines the term "separate and independent" for purposes of this section of the regulations. One element of the definition, at § 602.14(b)(1), provides that 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 or membership organization. Another element, at § 602.14(b)(3), requires the agency to establish and implement guidelines for each decision-maker to avoid conflicts of interest.

Section 602.14(c) specifies the conditions under which certain activities do not violate the "separate and independent" requirements. Section 602.14(d) identifies circumstances under which the Secretary may waive the "separate and independent" requirements for one type of accrediting agency. Section 602.14(e) stipulates that an accrediting agency that is seeking a waiver of the "separate and independent" requirements must apply for the waiver each time the

<sup>6</sup> <https://www.nature.com/articles/s41599-017-0001-8>, [http://ijse.padovauniversitypress.it/system/files/papers/2011\\_2\\_12.pdf](http://ijse.padovauniversitypress.it/system/files/papers/2011_2_12.pdf).

<sup>7</sup> [http://ijse.padovauniversitypress.it/system/files/papers/2011\\_2\\_12.pdf](http://ijse.padovauniversitypress.it/system/files/papers/2011_2_12.pdf), <https://www.nature.com/articles/s41599-017-0001-8>.

<sup>8</sup> <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.199.1569&rep=rep1&type=pdf>.

agency seeks recognition or continued recognition.

*Proposed Regulations:* We propose to convert the table in § 602.14(a) to regulatory text. In § 602.14(b), we propose to clarify the reach of the definition of “separate and independent”, where it applies, to preclude the members of the agency’s decision-making bodies from being elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association, professional organization, or membership organization or from being staff of such a related, associated, or affiliated association or organization. We also propose to revise § 602.14(b)(3) so that the requirement pertains to establishing and implementing guidelines on avoiding conflicts of interest rather than to avoiding such conflicts.

*Reasons:* We believe that the table format of the current § 602.14(a) is confusing. Additionally, we seek to clarify the broader reach of the concept of “separate and independent,” which is designed to prevent undue influence on an accrediting body by an outside organization. Such influence can allow individuals or groups to use the agency to gain a competitive advantage in the marketplace, by requiring the use of a particular exam or specific path to entry in a profession. The Department believes the current language is insufficiently specific about the types of organizations and agency personnel that may stand to benefit, at the expense of students and institutions, by limiting access to a profession or taking other anticompetitive steps. We also propose to clarify that an accrediting agency is responsible for establishing and implementing guidelines on avoiding conflicts of interests, even though it cannot by itself ensure conflicts are avoided.

#### *Administrative and Fiscal Responsibilities (§ 602.15)*

*Statute:* HEA section 496(c)(1) requires an accrediting agency that wishes to be recognized by the Secretary as a reliable authority as to the quality of education or training offered by an institution to ensure accreditation team members are well trained and knowledgeable with respect to their responsibilities. Section 496(b)(2) requires that an accrediting agency include at least one member of the public among its board members and that guidelines are established for members to avoid conflicts of interest. Section 496(c)(7)(A) requires accrediting agencies and associations to make available to the public and State

agencies, and submit to the Secretary, summaries of agency actions including the award of accreditation or reaccreditation of an institution.

*Current Regulations:* Under § 602.15(a), an agency demonstrates that it has the administrative and fiscal capability to grant accreditation if the agency demonstrates that it has—

- Adequate staff and resources to execute its responsibilities;
- Competent and knowledgeable individuals, regarding the agency’s standards, policies, and procedures, to conduct accreditation and preaccreditation activities;
- Academic and administrative personnel on its evaluation, policy, and decision-making bodies, if the agency accredits institutions;
- Educators and practitioners on its evaluation, policy, and decision-making bodies, if the agency accredits programs or single-purpose institutions that prepare students for a specific profession;
- Representatives of the public on all decision-making bodies; and
- Clear and effective controls against conflicts of interest, or the appearance of such conflicts.

Section 602.15(b) requires an accrediting agency to maintain complete and accurate records of its last full accreditation or preaccreditation review of each institution or program and of all decisions made throughout an institution’s or program’s affiliation with the agency regarding the accreditation and preaccreditation of any institution or program and substantive changes.

*Proposed Regulations:* In § 602.15(a)(2), we propose to require that an agency have individuals qualified by either education “or” experience, rather than by both education “and” experience. We also propose in this section to make a conforming change (as identified earlier) by using the term “correspondence courses” rather than “correspondence education.” We further propose in § 602.15(a)(4) to include, as an option, employers as part of accrediting agency evaluation, policy, and decision-making bodies. Additionally, in this subsection, we propose to specifically include the option for including students as possible public representatives on agency decision-making bodies. The Department notes that the time commitment required for such activity may not be feasible for many students. However, negotiators felt it was important to acknowledge that students could serve in this capacity as a member of the public. We also propose to specify in this subsection that clear and

effective controls against conflicts of interest include guidelines to prevent or resolve such conflicts. Finally, we propose to clarify in § 602.15(b)(2) that agencies must retain decision letters regarding an institution or program’s accreditation or preaccreditation and its substantive changes; agencies do not have to retain every record of conversations or interim decisions when superseded by a final decision or determination.

*Reasons:* In certain occupations, especially vocational occupations, education or experience may qualify an individual for their role with an accrediting agency and to carry out its functions. We propose to revise the text to allow individuals to demonstrate their qualifications through either experience or education. We also propose to include employers as possible members of evaluation, policy, and decision-making bodies in recognition of the expertise that employers may bring to these processes, in particular the entry-level requirements for employment in related fields. To highlight the voice of students, at the request of several negotiators including those representing students, we propose to specifically note that they are included as members of the public who may serve on decision-making bodies of accrediting agencies.

To reduce administrative burden, we propose to amend the types of documentation that agencies must retain to decision letters related to accreditation, preaccreditation, and substantive change actions.

#### *Accreditation and Preaccreditation Standards (§ 602.16)*

*Statute:* HEA section 496(a)(5) contains accreditation standards that an accreditation agency must use to assess an institution or program. Section 496(p)(1) establishes that section 496(a)(5) does not restrict the ability of an accreditation agency to set, with the involvement of its members, and to apply, accreditation standards for institutions or programs that seek review by the agency. Section 496 (p)(2) states that Section 496(a)(5) does not prevent 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 review. Section 496(a)(4)(B)(i) requires an agency that wishes to include distance education or correspondence education within its scope of accreditation to demonstrate that its standards effectively address the quality of distance education at an institution.

This section does not, however, require separate standards, procedures, or policies for the evaluation of such programs.

Section 496(g) and (o) prevent the Secretary from establishing criteria for an accrediting agency beyond what statute requires or from specifying, defining or prescribing, accrediting standards, including standards for assessment of an institution's student achievement. Under § 496(g), the Department cannot prohibit an accrediting agency from establishing additional standards.

*Current Regulations:* Section 602.16(a)(1) identifies the areas in which an agency's accreditation standards must address the quality of the institutions or programs accredited by the agency.

Under § 602.16(a)(2), an agency's preaccreditation standards must be appropriately related to the agency's accreditation standards and must not permit an institution or program to hold preaccreditation status for more than five years.

Section 602.16(c) requires an accrediting agency that seeks to include within its scope the evaluation of the quality of institutions offering distance or correspondence education to have standards that effectively address the quality of the institutions or programs accredited by the agency, and provides that the agency is not required to have separate standards, procedures, or policies for the evaluation of distance education or correspondence education.

Section 602.16(d) states that an accrediting agency that does not accredit any institutions that participate in the title IV, HEA programs, or that accredits only programs within institutions that are accredited by a nationally recognized institutional accrediting agency, is not required to have accreditation standards for program length and objectives of the degrees or credentials offered; or related to an institution's compliance with program responsibilities under title IV of the HEA.

Section 602.16(e) provides that an agency that has established and applies the standards in § 602.16(a) may establish any additional accreditation standards that it deems appropriate.

Section 602.16(f)(1) provides that nothing in § 602.16 restricts 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.

Section 602.16(f)(2) provides that nothing in § 602.16 restricts an institution from developing and using

institutional standards to show its success with respect to student achievement, which we may consider as part of any accreditation review.

*Proposed Regulations:* Throughout § 602.16, we propose conforming changes to the earlier proposed change to refer to "correspondence education" as "correspondence courses."

In § 602.16(a)(1), we propose to clarify that agencies establish clear expectations across a number of critical factors.

In § 602.16(a)(2)(ii), we propose to specify that the five-year limit on the duration of preaccreditation status applies to the time period before the agency makes a final accreditation decision.

In § 602.16(b), we propose to clarify that we do not require agencies to apply accrediting standards required by the HEA to institutions that do not participate in HEA programs if the agency clarifies that its grant of accreditation or preaccreditation, by request of the institution, does not include participation by the institution in title IV, HEA programs.

In § 602.16(d)(1), we propose to add direct assessment to the types of education which an agency's standards must effectively address if the agency accredits such programs.

We propose adding new § 602.16(f)(3), which would permit accrediting agencies to have separate standards regarding an institution's process for approving curriculum to enable programs to more effectively meet the recommendations of—

- (1) Industry advisory boards that include employers who hire program graduates;
- (2) Widely recognized industry standards and organizations;
- (3) Credentialing or other occupational registration or licensure; or
- (4) Employers who make hiring decisions in a given field or occupation.

Additionally, under proposed § 602.16(f)(4), nothing would prohibit agencies from having separate faculty standards for instructors teaching courses within a dual or concurrent enrollment program, or career and technical education courses, if the instructors are qualified by education or work experience for that role.

*Reasons:* In § 602.16(a)(1), the Department seeks to move from the vague description of accreditation standards that "effectively address" factors that contribute to quality to a more specific requirement for agencies to set forth "clear expectations" in these areas for the institutions and programs it accredits.

In § 602.16(a)(2)(ii), the Department wishes to clarify that, after the five-year limit on preaccreditation has expired, an agency must make a final accrediting action and must not place an institution or program on another type of temporary status.

In § 602.16(b), we seek to clarify that, while the HEA lists specific accrediting standards all agencies recognized by the Department must have, those standards do not need to be applied to all institutions accredited by an agency. The Department does not maintain it is always appropriate for an agency to apply federally required standards to institutions that choose not to participate in title IV, HEA programs. In such cases, however, the Department and negotiators agreed that transparency is important. Accordingly, we propose that the agency must designate institutions that they accredit for non-title IV purposes only.

In § 602.16(d)(1), the Department seeks to ensure that, as more institutions add direct assessment education programs, accrediting agencies are equipped to evaluate and approve such programs. The Department also wants to ensure that agencies evaluating such programs first receive Department approval for the addition of direct assessment programs to their scope of recognition so that the Department can provide proper oversight. In § 602.16(f)(3) and (4), the Department proposes to clarify that a traditional faculty governance process for approving curriculum and setting faculty standards, while widely used, is not the only governance process currently in use by institutions or allowed by the HEA, and in some instances it may be inappropriate to give faculty a stronger voice than employers. Institutions and programs must also have full autonomy, in conformance with their agency's standards, to make faculty and curriculum decisions that align with stakeholder recommendations, including the hiring requirements of employers.

The Department also seeks to clarify that agencies may have separate faculty standards for courses such as those offered through dual enrollment or in the area of career and technical education. The Department does not believe an agency should have to choose between setting rigorous standards for faculty that may be appropriate, for example, at comprehensive or research institutions, and allowing other kinds of institutions to hire the faculty that will provide students with the best opportunities possible, including in rural locations where faculty with specific kinds of degrees are not

plentiful. In addition, the Department recognizes that, in many instances, dual enrollment programs are provided at the high school location due to unreasonable travel distances to a local college. In those instances, the high school teacher may have a different kind of academic credential but may have years of experience teaching college-level courses that are relevant to the dual enrollment opportunity. Also, the credential of choice may be very different for career and technical education instructors, where workforce experience may be far more important than the academic credential an instructor holds.

*Application of Standards in Reaching an Accrediting Decision (§ 602.17)*

*Statute:* HEA section 496(a)(4) provides that an agency must consistently apply and enforce standards that respect the stated mission of the institution, including religious missions, and ensure that the courses or programs offered, including distance education or correspondence courses, are of sufficient quality to achieve, for the duration of the accreditation period, the objectives for which the courses or the programs are offered. Section 496(a)(5) provides that the standards for accreditation by an accrediting agency or a State must assess an institution's success with respect to student achievement and identifies the items that the agency or State must assess. Section 496(a)(6) requires an accrediting agency to establish due process procedures that include allowing for an institution's written response to any finding of deficiency. Section 496(c) outlines operating procedures an accrediting agency must follow to include on-site evaluation of an institution. Section 496(a)(4)(B)(ii) requires that an accrediting agency that has distance education in its scope ensure that the institution offering distance or correspondence education has processes to ensure that the same student who enrolls in a distance education course or program is the student who participates in and completes the program.

*Current Regulations:* Section 602.17(a) requires an agency to demonstrate that it evaluates whether an institution or a program maintains educational objectives that are clear, consistent with the institution's or program's mission, and appropriate in light of the credentials offered; if the institution or program is successful in achieving its stated objectives; and if the institution or program maintains degree and certificate requirements that at least

conform to commonly accepted standards.

Section 602.17(b) requires an agency to demonstrate that it requires an institution or program to prepare an in-depth self-study that includes the assessment of education quality and the institution's or program's continuing efforts to improve educational quality.

Section 602.17(c) requires an agency to demonstrate that it conducts at least one on-site review of the institution or program to determine if it complies with the agency's standards.

Section 602.17(d) requires an agency to demonstrate that it allows the institution or program the opportunity to respond in writing to the report of the on-site review.

Section 602.17(e) requires an agency to demonstrate that it conducts its own analysis of the self-study and supporting documentation; the on-site review report and the institution's or program's response to the report; and any other appropriate information to determine whether the institution or program complies with the agency's standards.

Section 602.17(f) requires an agency to demonstrate that it provides the institution or program with a detailed written report that assesses its compliance with the agency's standards and the institution's or program's performance with respect to student achievement.

§ 602.17(g) requires an agency to demonstrate that it requires institutions that offer distance education or correspondence education to have processes in place to establish that a student who registers for a distance education or correspondence education course or program is the same student who participates and completes the course or program and receives academic the credit. It lists specific methods an institution could use to verify identity.

Section 602.17(g)(2) requires an agency to make clear, in writing, that institutions must use processes that protect student privacy and must notify students of any projected additional student charges associated with the verification of student identity at the time of registration or enrollment.

*Proposed Regulations:* Proposed § 602.17(a)(2) would require an agency to be successful at achieving its stated objectives "at the institutional and program levels."

Proposed § 602.17(a)(3) would replace the requirement that an agency maintain degree and certificate requirements that at least conform to commonly accepted standards with a requirement that the agency maintain degree and certificate requirements that at least conform to

commonly accepted academic standards "or the equivalent, including pilot programs in [proposed] § 602.18(b)."

Proposed § 602.17(b) clarifies that the self-study process must assess educational quality and success in meeting the institution's or program's mission and objectives, highlight opportunities for improvement, and include a plan for making the improvements.

Proposed § 602.17(e) would replace "any other appropriate information from other sources" with "any other information substantiated by the agency from other sources" as a basis for evaluating whether the institution or program complies with the agency's standards.

In proposed § 602.17(g) we would remove the list of specific methods by which an accrediting agency might require institutions to verify the identity of a student who participates in class or coursework.

*Reasons:* We propose changes to § 602.17(a)(2) to clarify that we expect institutional accrediting agencies to evaluate both an institution broadly and individual programs within that institution against rigorous standards for meeting stated objectives consistent with its mission and appropriate given the credentials awarded.

In § 602.17(a)(3), the Department proposes to clarify that it expects agencies to hold institutions and programs to basic, commonly accepted academic standards (e.g., the approximate number of credits in a bachelor's degree) in order to protect against diploma mills and to ensure transfer of credit opportunities. This is not, however, meant to replicate the more stringent "widely accepted" standard in existing § 602.13. As noted above, we intend to delete the "widely accepted" requirement. Instead, the Department proposes to add a reference in § 602.17(a)(3) to provisions in § 602.18(b), which provide flexibility for pilot programs, in order to clarify that adherence to foundational standards is not a prohibition against innovation or experimentation with new delivery models or types of programs or credentials.

In § 602.17(b), the Department proposes to refine the regulation to focus on continuous improvement rather than strict, and often bureaucratic, requirements for a self-study. Assessment models that employ the use of complicated rubrics and expensive tracking and reporting software further add to the cost of accreditation. The Department does not maintain that assessment regimes should be so highly prescriptive or

technical that institutions or programs should feel required to hire outside consultants to maintain accreditation. Rather than a “one-size-fits-all” method for review, the Department maintains that peer reviewers should be more open to evaluating the materials an institution or program presents and considering them in the context of the institution’s mission, students served, and resources available.

In § 602.17(e), while the agency should have discretion to include information from other sources to determine whether the institution or program complies with the agency’s standards, the agency must be able to substantiate the information. This provision would allow the agency significant autonomy to ensure accountability while excluding findings against institutions or programs based on unsubstantiated allegations in the press, in court filings, or elsewhere.

In § 602.17(g), the Department proposes to remove redundant or unclear language, provide flexibility to agencies to approve verification methods, and avoid circumstances under which the regulations would quickly become out-of-date as technology changes.

#### *Ensuring Consistency in Decision-Making (§ 602.18)*

*Statute:* HEA section 496(4)(A) provides that an accrediting agency consistently applies and enforces standards that respect the stated mission of the institution of higher education, including religious missions, and that ensure that the courses or programs of instruction, training, or study offered by the institution of higher education, including distance education or correspondence courses or programs, are of sufficient quality to achieve, for the duration of the accreditation period, the stated objective for which the courses or the programs are offered.

*Current Regulations:* Section 602.18 requires accrediting agencies to consistently apply and enforce standards that respect the stated mission of the institution, including religious mission. The agencies must also ensure that the institution or program provides an education that is of sufficient quality to achieve the institution or program’s stated objective. The agency meets this requirement if it—

- (1) Has written accreditation and preaccreditation requirements and clear standards;
- (2) Has effective controls against the inconsistent application of agency standards;

(3) Uses its published standards to make accreditation and preaccreditation decisions;

(4) Has a reasonable basis for determining the accuracy of information used to make accrediting decisions; and

(5) Clearly identifies in writing to the institution or program any deficiencies in meeting agency standards.

*Proposed Regulations:* We propose in § 602.18 to provide more direction to agencies on what the statutory requirement for accrediting agencies to respect the mission of an institution comprises. In the event that an institution believes their mission has been used as a negative factor by an agency, the institution could submit a complaint to the Department, which we would investigate under the process outlined in § 602.33. In § 602.18(b)(3), we propose to provide that agencies may not use as a negative factor the institution’s religious-based policies, decisions, and practices in the areas of curricula, faculty, facilities, equipment, supplies, student support services, recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising, among others, provided that the agency may require that the institution’s or program’s curricula include all core components required by the agency.

Additionally, in § 602.18(b)(6), we propose to require agencies to publish their policies for retroactive application of an accreditation decision, and to provide that such policies must not provide for an effective date that predates either an earlier denial of accreditation or preaccreditation, or the agency’s formal approval of the institution or program for consideration for accreditation or preaccreditation.

In proposed § 602.18(c), we note that nothing in the Department’s recognition regulations prohibits an agency from having alternate standards, policies, and procedures to satisfy recognition requirements in the interests of innovation or addressing undue hardship to students, provided that the alternative measures, and selection of participants, are approved by the agency’s decision-making body; equivalent goals and metrics are set and applied; the process for establishing and applying the alternative standards, policies, and procedures is published; and the agency requires the institution or program to demonstrate a need for the alternative approach, as well as that students will receive equivalent benefit and will not be harmed.

In proposed § 602.18(d), we would establish that nothing in the recognition regulations prevents an agency from permitting an institution or program to

remain out of compliance with policies, standards, and procedures otherwise required by those regulations, for a period of up to three years, and longer for good cause shown, where there are circumstances beyond the institution’s or program’s control requiring this forbearance. The proposed language gives as examples a natural disaster, a teach-out of another institution’s students, significant and documented local or national economic changes, changes in licensure requirements, undue hardship on students, and the availability of instructors who do not meet the agency’s faculty standards but are qualified by education or work experience to teach courses within a dual or concurrent enrollment program.

*Reasons:* We believe it is necessary to provide more direction to agencies regarding respect for an institution’s religious mission. Under the proposed consensus language, we would remind agencies of the pervasive impact an institution’s or program’s religious mission may properly have on its operations, while acknowledging the right of an agency to require a comprehensive curriculum. For example, committee members used health care programs as examples with respect to the issue of curricula. An agency may require its accredited institution or program to provide instruction on a range of treatment included in that area of health care while also providing instruction on religious tenets against use of those types of treatment.

We believe that the proposed change related to retroactive effective dates is also important. Many accrediting agencies already have standards that include the retroactive application of an effective date of accreditation. Those standards allow students in the cohorts that were the subject of the accreditation review—and the subsequent approval—benefit from the positive accreditation decision. We propose appropriate guardrails to ensure that the agency does not backdate accreditation or preaccreditation to a time prior to when the institution or program substantially complied with the agency’s standards and procedures.

We intend for paragraphs (c) and (d) to provide safe harbors for agencies to exercise responsibly their ability to support innovation and address hardship, without jeopardizing their recognition. Again, the Department has included guardrails to ensure careful consideration and monitoring of this flexibility and that it contains appropriate protections for students.

*Monitoring and Reevaluation of Accredited Institutions and Programs (§ 602.19)*

*Statute:* HEA section 496(a)(6) provides that an accrediting agency must establish and apply review procedures throughout the accrediting process that give adequate written specification of requirements, including clear standards for an accredited institution or program, and identify deficiencies at the institution or program examined.

Section 496(c)(2) requires agencies to monitor growth of programs at institutions that are experiencing significant enrollment growth.

Section 496(q) provides that the Secretary requires a review at the next NACIQI meeting of any change in scope undertaken by an agency under section 496(a)(4)(B)(i)(II) if the enrollment of an institution offering distance education or correspondence education accredited by such agency increases by 50 percent or more within any one institutional fiscal year.

*Current Regulations:* Section 602.19(a) provides that an accrediting agency must regularly reevaluate the institutions or programs it accredits or preaccredits.

Section 602.19(b) requires that the agency must also show that has, and effectively applies, its required monitoring and evaluation approaches that allow the agency to identify problems with an institution's or program's continued compliance with agency standards and that consider institutional or program strengths and stability. These approaches must include periodic reports, and collection and analysis of key data and indicators, including fiscal information and measures of student achievement.

Section 602.19(c) further provides that each agency must monitor the growth of the institutions or programs it accredits and collect enrollment data from institutions or programs at least annually.

Additionally, § 602.19(d) requires institutional accrediting agencies to monitor the program growth at institutions experiencing significant enrollment growth, as the agency defines it.

Section 602.19(e) requires additional enrollment monitoring of institutions by any agency that expands its scope of recognition to include distance education or correspondence courses through notice to the Secretary of the expansion. The agency must report information to the Secretary within 30 days about any such institution that has experienced an increase in enrollment

of 50 percent or more in one year. We use the institution's fiscal year as the one-year period outlined in this subsection.

*Proposed Regulations:* We propose in § 602.19(e) to echo the statutory requirement for a review at the next NACIQI meeting of any change in scope accepted by an agency when the enrollment increases by 50 percent or more at an institution that offers distance education or correspondence courses.

*Reasons:* We believe that the statutory language clearly outlines the requirements for the specific review needed in this circumstance.

*Enforcement of Standards (§ 602.20)*

*Statute:* HEA section 496 contains the criteria the Secretary uses to determine that an accrediting agency is a reliable authority regarding education quality. This section further specifies areas for which the accrediting agency must evaluate its institutions and provides that the agency will establish and apply procedures for review throughout the accreditation process, including for evaluation and withdrawal proceedings, that comply with "due process" criteria specified in Section (a)(6).

Section 496(a)(4) requires that a recognized agency must consistently apply and enforce standards that respect the stated mission of the institution, including religious missions, and ensure that the courses or programs offered, including distance education or correspondence courses, are of sufficient quality to achieve, for the duration of the accreditation period, the stated objective for which the courses or the programs are offered.

*Current Regulations:* Section 602.20(a) provides that if an agency's review of an institution or program indicates that the institution or program is not in compliance with any standard, the agency must either immediately initiate adverse action against the institution or program, or require the institution or program to bring itself into compliance in no later than—

- Twelve months, if the program, or the longest program offered by the institution, is less than a year in length;
- Eighteen months, if the program, or the longest program offered by the institution, is at least a year, but less than two years, in length; or
- Two years, if the program, or the longest program offered by the institution, is at least two years in length.

Under § 602.20(b), if the institution or program does not bring itself into compliance within the specified period, the agency must take immediate adverse

action unless the agency extends the period for achieving compliance for good cause.

*Proposed Regulations:* In § 602.20(a) we propose to require that, in the event of noncompliance with any agency standard, the agency must—

- Notify the institution or program of the noncompliance;
- Provide the institution or program with a reasonable written timeline for coming into compliance based on the nature of the finding, the stated mission, and educational objectives of the institution or program;
- Follow its written policies and procedures for granting a good cause extension that may exceed the standard timeframe when it determines such an extension is warranted; and
- Have a written policy to evaluate and approve or disapprove monitoring or compliance reports it requires and evaluate an institution's or program's progress in resolving the finding of noncompliance.

We propose to allow the agency to include intermediate compliance checkpoints in the timeline as long as the agency provides notice to the institution concerning its compliance checkpoints. Additionally, the timeline must not exceed the lesser of four years, or 150 percent of the length of the program for a programmatic accrediting agency, or 150 percent of the length of the longest program for an institutional accrediting agency.

We further propose to amend § 602.20(b) to state that the agency must have a policy for taking an immediate adverse action and take such action when it determines that such action is appropriate.

In § 602.20(c), we propose to require that if the institution or program does not bring itself into compliance within the prescribed time period, the agency must take adverse action against the institution or program but may maintain the accreditation or preaccreditation until the institution or program has had reasonable time to complete its teach-out agreement.

We propose to add in § 602.20(d) that an agency that accredits institutions may limit the adverse or other action to specific programs or additional locations of an institution, without taking action against the entire institution and all of its programs, provided the noncompliance was limited to the particular programs or locations. We also propose to reiterate in new § 602.20(e) that all adverse actions taken under this subpart are subject to the arbitration requirements in statute.

We also propose in new § 602.20(f) that an agency would not be responsible for enforcing requirements in §§ 668.14, 668.15, 668.16, 668.41, or 668.46, but that if it identifies instances or potential instances of noncompliance with any of these requirements, it must notify the Department.

Finally, we propose in new § 602.20(g) that the Secretary may not require an agency to take action against an institution or program under part 602 if the institution or program does not participate in any title IV, HEA or other Federal program.

*Reasons:* We propose changes in § 602.20(a), (b), and (c) to remove overly prescriptive timelines for taking action that often require agencies to place a greater importance on acting swiftly than acting in the best interest of students. In the case of a revocation of accreditation that is likely to lead to institutional closure, institutions or programs may serve students best if they have time to implement a teach-out plan, enter into teach-out agreements with other institutions or programs, and help students move to a new institution to complete their programs. For students near completion, it may be preferable to complete the program prior to the implementation of the adverse action. Institutions often lose accreditation due to financial instability, which may or may not reflect insufficient academic quality or institutional integrity. In such cases, an institution's precipitous closure would likely cause unnecessary harm to students and taxpayers.

Even in the case of less serious findings of noncompliance, current regulations do not allow adequate time for an institution to implement curricular or other changes to allow it to come into compliance with standards. There are also instances in which the finding of noncompliance is due to economic conditions outside of the institution's control, in which case the institution may require additional time to adjust to the underlying challenge or for the economic condition to change. Therefore, the Department wishes to provide discretion to the agency to decide on the timing of an adverse action, based on the nature of the deficiency and the condition of the institution and its academic programs. We also propose new provisions in this section to ensure that any discretion the agency exercises is balanced by strong protections for students, clear timelines for coming into compliance, and proper oversight by the agency for meeting those timelines.

We propose adding § 602.20(d) to give institutional accrediting agencies more tools to hold programs within

institutions accountable. The Department believes that a major barrier to greater institutional accountability is the lack of targeted actions agencies (and the Department) can take to promote compliance and continuous improvement. When faced with program-level noncompliance, agencies may believe they are limited to a rather blunt institution-level instrument that may not effectively address the source of the noncompliance. Agencies may not wish to impose sanctions that negatively affect an institution when only one program is out of compliance since the collateral damage of broad sanctions can be significant and unwarranted. For example, this provision would encourage an agency to work with an institution that otherwise meets the agency's standards but address an outlier program that is not compliant with those standards and is unlikely to be able to become compliant in a reasonable time period.

We propose adding § 602.20(e) to address another barrier to agency action: The risk of costly and time-consuming litigation. The Department is aware that some agency decisions have resulted in lawsuits by sanctioned institutions or programs without regard to the arbitration requirements in 20 U.S.C. 1099b(e). The Department emphasizes this requirement to ensure that agencies, as well as the programs and institutions they oversee, can quickly and affordably address areas of disagreement.

We also propose adding § 602.20(f) to clarify agency enforcement obligations. We believe this would resolve what the Department believes to be a blurring of the lines that divide oversight responsibilities among the members of the regulatory triad (the Department, accrediting agencies, and States). At times, accrediting agencies may have been asked to perform or duplicate the work that should be carried out by States or the Department. This duplication is costly to agencies and institutions, and results in overreach by agencies due to a fear that they may face negative consequences during their own recognition review if they do not act. Perhaps more importantly, these perceived responsibilities distract accrediting agencies, which have limited resources, from their core obligation to oversee academic and institutional quality. By explicitly allowing agencies to leave Department responsibilities to the Department, we believe agencies would be better able to focus on enforcing their own standards and procedures and ensuring academic rigor.

The proposed addition of § 602.20(g) is related to § 602.16(b). In the latter

section, we would not require agencies to apply standards required by the HEA to institutions that do not participate in title IV, HEA programs. Proposed § 602.20(g) would go further to protect the institutional autonomy of such institutions.

#### *Review of Standards (§ 602.21)*

*Statute:* HEA section 496(a)(4)(A) requires that an agency's standards ensure that the courses or programs offered by an institution are of sufficient quality to achieve the stated objectives for which they are offered for the duration of the accreditation period.

*Current Regulations:* Section 602.21(a) requires an agency to maintain a systematic program of review that demonstrates the adequacy of its standards to evaluate the education quality of the institution or program in a way that is relevant to the educational or training needs of the student population.

Sections 602.21(b) and (c) contain the required procedures for an agency when evaluating its standards and if that determines that it needs to make changes to its standards.

*Proposed Regulations:* We propose to require in § 602.21(a) that an agency maintain a "comprehensive" systematic program of review and that such review would include all relevant constituencies, such as educators, educational institutions (and their students and alumni as appropriate), licensing bodies, practitioners, and employers in the fields for which the educational institutions or programs within the agency's jurisdiction prepare their students. Additionally, we propose in § 602.21(d)(3) that, in addition to considering timely comments on proposed changes made by relevant constituencies and other parties, agencies must also be responsive to any such comments.

*Reasons:* The Department proposes to emphasize that an agency's system of review of its standards should be comprehensive and involve all constituencies, while maintaining responsiveness to comments received.

#### *Substantive Change (§ 602.22)*

*Statute:* HEA section 496(a)(4)(A) provides that an accrediting agency consistently applies and enforces standards that respect the stated mission of the institution of higher education, including a religious mission, and that ensure that the courses or programs of instruction, training, or study offered by the institution, including distance education or correspondence courses or programs, are of sufficient quality to achieve the stated objective for which

the courses or the programs are offered for the duration of the accreditation period.

Section 496(c)(1) and (2) require that agencies perform, at regularly established intervals, on-site inspections and reviews with a focus on education quality and program effectiveness and monitor the growth of programs. Section 496(c)(4) states that as part of an accrediting agency's operating procedures, the agency must require an institution to submit plans to establish a branch campus prior to opening the branch. Section 496(c)(5) requires an accrediting agency to conduct an on-site review of a new branch campus or an institution that has undergone a change in ownership within six months of the establishment of the branch or the change in ownership.

*Current Regulations:* Under § 602.22(a), if an agency accredits institutions, it must maintain adequate substantive change policies. These policies must ensure that any substantive change to the institution's educational mission or programs after the agency has granted accreditation or preaccreditation does not adversely affect its capacity to continue to meet the agency's standards.

Under § 602.22(a)(1), an agency must require the institution to obtain the agency's approval of a substantive change before the agency includes the change in the scope of accreditation or preaccreditation it previously granted to the institution.

Section 602.22(a)(2) requires an agency to include the following in its definition of "substantive change":

- Any change in the institution's established mission or objectives.
- Any change in the institution's legal status, form of control, or ownership.
- The addition of courses or programs that represent a significant departure from the existing offerings of educational programs, or method of delivery, from those offered when the agency last evaluated the institution.
- The addition of programs of study at a credential level different from the level approved in the institution's current accreditation or preaccreditation.
- A change from clock hours to credit hours.
- A substantial increase in the number of clock or credit hours awarded for successful program completion.
- The acquisition of any other institution or any program or location of another institution.
- The addition of a permanent location at a site at which the institution

is conducting a teach-out for students of another institution.

Under § 602.22(a)(2)(vii), if the agency's accreditation of an institution enables the institution to seek eligibility to participate in title IV, HEA programs, the definition of "substantive change" must include entering into a contract under which an ineligible institution or organization offers more than 25 percent of one or more of the accredited institution's educational programs.

Under § 602.22(a)(2)(viii), if the agency's accreditation of an institution enables it to seek eligibility to participate in the title IV, HEA programs, the definition of "substantive change" must include the establishment of an additional location at which the institution offers at least 50 percent of an educational program. The accrediting agency must approve the addition of such a location in accordance with § 602.22(c) unless it determines that the institution has—

- Successfully completed at least one cycle of accreditation of maximum length offered by the agency and one renewal, or has been accredited for at least 10 years;
- At least three additional locations that the agency has approved; and
- Met acceptable agency criteria indicating enough capacity to add additional locations without individual prior approvals.

Under § 602.22(a)(2)(viii)(B), if the agency determines under procedures consistent with the requirements of § 602.22(a)(2)(viii) that an institution may add locations without individual approvals by the agency, the agency must require timely reporting of every additional location established under that agency approval.

Under § 602.22(a)(2)(viii)(C), an agency determination to preapprove an institution's addition of locations may not exceed five years.

Under § 602.22(a)(2)(viii)(D), the agency may not preapprove an institution's addition of locations after the institution undergoes a change in ownership resulting in a change in control until the institution demonstrates that it meets the conditions for the agency to preapprove additional locations described in § 602.22(a)(2)(viii).

Under § 602.22(a)(2)(viii)(E), the agency must have an effective mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations.

Under § 602.22(a)(3), the agency's substantive change policy must define when the changes made or proposed by an institution are or would be

sufficiently extensive to require the agency to conduct a new comprehensive evaluation of that institution.

Under § 602.22(b), an agency may determine the procedures that it uses to grant prior approval for substantive changes. However, the procedures must specify an effective date for the change, which is not retroactive, except that the agency may designate the date of a change of ownership as the effective date of its approval of the change if it makes the decision within 30 days of the change of ownership.

Section 602.22(c) pertains to institutions participating in the title IV programs that have not been pre-approved by the agency under § 602.22(a)(2)(viii) for adding additional locations. In such circumstances, § 602.22(c) requires that the agency's procedures for approval of an additional location at which an institution offers at least 50 percent of an educational program must provide for a determination of the institution's fiscal and administrative capacity to operate the additional location, as well as for the conducting of site visits in specified circumstances.

Section 602.22(d) states that the purpose of site visits described in § 602.22(c)(1) are to verify that the additional location has the personnel, facilities, and resources it claimed to have in its application for approval of the additional location.

*Proposed Regulations:* We propose to change the title of § 602.22 to "Substantive changes and other reporting requirements." Proposed § 602.22(a)(2) would require an agency's definition of "substantive change" to cover "high-impact, high-risk changes," and would identify required elements of an agency's definition of "substantive change."

We propose in § 602.22(a)(2)(i) to limit substantive changes regarding mission to "substantial" changes, but to include substantial changes to the established mission or objectives of an institution's programs.

Proposed § 602.22(a)(2)(iv) would limit the substantive changes requiring approval regarding the addition of programs to the addition of graduate programs by an institution that previously offered only undergraduate programs or certificates.

Under proposed § 602.22(a)(2)(v), substantive changes would include changes in the way an institution measures student progress, including not only changes in clock or credit hours but changes in semesters, trimesters, or quarters, and changes to non-time-based methods.

Proposed § 602.22(a)(vi) would identify as an additional substantive change an increase in the level of credential awarded.

Proposed § 602.22(a)(2)(ix) would require agency approval of the addition of each new location or branch, except if the institution meets the criteria in proposed paragraph (c), and would add additional criteria for agency consideration in such reviews.

We propose to move to proposed § 602.22(a)(2)(x) the requirements for approval of written arrangements under which an institution or organization not certified to participate in the title IV, HEA programs offers more than 25 and up to 50 percent of one or more of the institution's programs.

Proposed § 602.22(a)(2)(xi) identifies the addition of each direct assessment program as a substantive change.

Proposed § 602.22(a)(3)(i) provides that for substantive changes identified in proposed § 602.22(a)(2)(iii) (addition of programs that represent a significant departure from prior offerings), (v) (change in the way the institution monitors student progress), (viii) (addition of a permanent location at which the institution is conducting a teach-out), or (x) (written arrangements for ineligible entities to offer between 25 and 50 percent of a program), an agency may designate senior agency staff to approve or disapprove the request in a timely, fair, and equitable matter. Proposed § 602.22(a)(3)(ii) would require senior staff reviewing a request for approval of a written arrangement under § 602.22(a)(3)(i) to make a final decision within 90 days of receipt of a materially complete request, unless the agency or its staff determines significant related circumstances require a review of the request by the agency's decision-making body within 180 days.

Proposed § 602.22(b) identifies additional changes that institutions must report to their accrediting agency. However, institutions on probation or equivalent status with the agency, on provisional certification with the Department, or those subject to negative agency action over the prior three academic years must receive prior approval for these changes in addition to those in § 602.22(a).

Proposed § 602.22(c) would maintain most of the current language in § 602.22(a)(2)(viii) relating to the preapproval of additional locations. Agency approval is not required for an institution that has successfully completed at least one cycle of accreditation, has received agency approval for the addition of at least two additional locations as provided in § 602.22(a)(2)(ix), and has not been

placed on probation or equivalent status, been subject to a negative action by the agency over the prior three academic years, or been provisionally certified, as provided in 34 CFR 668.13. Where approval is not required, an institution must report the additional location within 30 days. The proposed provision would eliminate existing prerequisites that either the institution's successful completion of a cycle of accreditation have been of maximum length or that the institution has been accredited for at least 10 years. Proposed § 602.22(c) would also eliminate the current requirement that each agency determination that an institution is qualified to add locations, without a location-by-location application, expires after five years.

Proposed § 602.22(d) would require the agency to have an effective mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations approved under proposed § 602.22(a)(2)(viii) and (ix).

Proposed § 602.22(e) would specify minimum requirements for the procedures an agency uses to grant prior approval for substantive changes. It also would provide that agencies must set effective dates for their approvals that cannot pre-date either an earlier agency denial, or the agency's formal approval of the substantive change for consideration for inclusion in the institution's preaccreditation.

Proposed § 602.22(f) would specify requirements for site visits of additional locations that are not a branch campus and where an institution offers at least 50 percent of an educational program.

*Reasons:* In § 602.22, the Department proposes to revise its substantive change regulations to provide accrediting agencies more flexibility while maintaining proper agency oversight of high-risk changes. Substantive change requests are not only burdensome for agencies to review, but also often require an institution to pay costly fees and wait many months for a decision. Costs for agency review of substantive changes can be as high as \$66,000 plus the expenses associated with any required site visit. In addition, agency boards generally meet infrequently, meaning that an institution's application may be held for several months before it can be reviewed and approved. This can discourage and delay changes in programs that could otherwise be beneficial to students.

The Department also seeks to streamline approval of other institutional or programmatic changes by dividing them into those that the agency must approve and those that the

institution or program must simply report to the agency. In addition, we seek to focus the regulations on the types of changes that we believe pose the greatest risk to students and taxpayers.

Specifically, we propose modifications to § 602.22(a)(2) to reduce unnecessary burden associated with, for example, requiring an institution to seek an agency's approval for insubstantial changes to its mission or objectives, or adding programs at a new credential level, other than the addition of graduate programs. Other proposed changes to this section would clarify language or conform to other changes, such as different ways institutions may measure student progress.

The Department also believes it is important in § 602.22(a)(2) to designate certain changes as substantive that the regulations did not previously consider as such because they represent unique risks to students and taxpayers. We propose to include the addition of a direct assessment program and moving a program to a higher credential level for this reason. Additionally, we propose the latter change to restrict credential inflation.

Most significantly, the Department proposes to add provisions in § 602.22(a)(3) to allow an agency to utilize its senior staff to review certain substantive change requests in order to reduce burden on its decision-making body and allow that body to focus on more significant and potentially risky changes. This change would represent a middle ground between removing items from substantive change entirely and preserving existing regulations. The proposed change also recognizes the evolution of agencies into increasingly complex organizations with diverse expertise that they can apply to specialized tasks with more informed and timely results that benefit all parties.

Requests for approvals of written arrangements under which non-traditional providers offer between 25 and 50 percent of a program are among the types of substantive changes for which approval by senior agency staff would be permitted under proposed § 602.22(a)(3)(i). In proposed § 602.22(a)(3)(ii), we propose other changes to the process for approving written arrangements to encourage timelier approvals. Such agreements often create programs that are responsive to local or national workforce needs, and delays under the existing approval process have made achieving this important goal more difficult. With undue delay, educational innovations, especially those that

require large investments in state-of-the-art tools and technologies, can be beyond the reach of some institutions due to high start-up costs or the inability to commit multiyear funds to seeing such a project through to full implementation. It can also be challenging to evaluate the effectiveness of a given innovation if tested on a single campus since limited sample sizes or certain selection bias may mask or confound results. There may be economies of scale that enable an outside educational provider to develop and test technologies, and provide instruction using those technologies, for several institutions.

Written arrangements can also allow institutions to partner with organizations like building and trade unions to allow students to earn direct academic credit for the learning they do at nonaccredited, state-of-the-art teaching facilities that such organizations operate. In such a case, under a written arrangement, students could receive academic credit for learning that an institution otherwise may not recognize through prior learning assessment (PLA). Written arrangements with museums, theaters, and hospitals could also provide students with additional expanded learning opportunities. Although institutions may award credit for the learning activities described above through PLA, there is less certainty regarding how much credit an institution will award. Also, if a student transfers, the receiving institution may not accept PLA credits. Written arrangements allow students to earn direct college credit for learning that takes place through the nonaccredited provider, which benefits students and may reduce the cost of postsecondary education to students and institutions.

In order to encourage written arrangements, proposed § 602.22(a)(3)(ii) sets deadlines for processing of these requests. The Department recognizes that some requests will be more complex than others and so we propose a bifurcated process whereby agency staff can approve the less complex requests and the agency's decision-making body can approve the more complex requests with more time for consideration.

Section 602.22(b) reflects our view that risk is particularly acute if the Department or the institution's accrediting agency has recently sanctioned an institution, and that such institutions accordingly warrant greater scrutiny. For such cases, the Department proposes to add requirements to § 602.22(b) for additional approvals that may present risk at a distressed

institution but would be far less risky at an institution in good standing.

Proposed changes to § 602.22(c) clarify that an additional location that is not a branch campus in appropriate circumstances may be approved through a streamlined process. This streamlined process is similar to the existing regulations but ensures that the institutions to which it applies have a degree of experience and have not been under recent sanction by the Department or their accrediting agency.

We propose to remove other aspects of the existing regulations relating to additional locations because they are overly prescriptive and do not allow agencies to develop processes for approving additional locations that balance accountability and responsiveness to institutions' requests.

High quality simulators or genuine equipment used in the field (*e.g.*, computer numerical control machines used in advanced manufacturing, virtual reality technology to simulate medical procedures, or aircraft for flight training and maintenance programs) can be of immense value to students, but immense cost to institutions. Finally, in proposed § 602.22(e) the Department wishes to address its prior regulatory prohibition on retroactive substantive changes, which led to difficult and risky scenarios for students, institutions, and taxpayers. For example, institutions will often launch new programs and then have them reviewed for approval under the substantive change requirements. Unfortunately, even after those programs receive approval, students who completed them before that approval process are considered to have graduated from an unaccredited program with potential implications for future employment prospects, including occupational licensure. For this reason, the Department wishes to codify as an acceptable practice awarding retroactive approval of a substantive change with proper safeguards to ensure approvals are not backdated to a time prior to when the institution's or program's proposed substantive change was substantially compliant with the agency's standards and procedures.

#### *Operating Procedures All Accrediting Agencies Must Have (§ 602.23)*

*Statute:* HEA sections 496(a)(6) through (8) and (c) establish required operating procedures that a recognized accrediting agency must include in its processes. HEA section 101(a)(5) provides that a public or nonprofit degree-granting institution that is not yet fully accredited by a recognized accrediting agency may nonetheless qualify as an HEA-eligible institution of

higher education if it has been granted preaccreditation status by an agency that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency within a reasonable time.

*Current Regulations:* Section 602.23(a)(2) requires agencies to maintain and make available to the public written materials describing the procedures that institutions or programs must follow in applying for accreditation or preaccreditation. Section 602.23(a)(5) requires an accrediting agency to maintain and make available to the public written materials describing the names, academic and professional qualifications, and relevant employment and organizational affiliations of the members of the agency's policy and decision-making bodies and the agency's principal administrative staff.

Section 602.23(d) requires an accrediting agency to ensure that if an institution or program elects to disclose its accreditation or preaccreditation status, it must do so accurately, including the specific programs covered by that status and agency's name, address, and telephone number.

*Proposed Regulations:* We propose to add to § 602.23(a)(2) a requirement that accrediting agencies make available to the public written materials describing the procedures that institutions or programs must follow regarding approval of substantive changes and the sequencing of steps relative to any applications or decisions required by States or by the Department relative to the agency's preaccreditation, accreditation, or substantive change decisions.

In proposed § 602.23(a)(5), we would clarify that agencies must provide a list of the names, academic and professional qualifications, and relevant employment and organizational affiliations of members of the agency's decision-making bodies and principal administrative staff.

In proposed § 602.23(d), we would replace the reference to the address and telephone number of an agency with a reference to "contact information for the agency."

We propose adding a new § 602.23(f) that would specify that, if an accrediting agency offers preaccreditation—

- 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;

- The agency must require all preaccredited institutions to have a teach-out plan that ensures that students completing the teach-out would meet curricular requirements for professional licensure or certification, if any, and that includes 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;

- If it denies accreditation to an institution it has preaccredited, the agency 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

- 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 receives preaccreditation status under the new application. Institutions that participated in the title IV, HEA programs before the loss of accreditation are subject to the loss of accreditation or preaccreditation requirements of 34 CFR 600.11(c).

Proposed § 602.23(f)(2) requires that the Secretary consider all credits and degrees earned and issued by an institution or program holding preaccreditation from a nationally recognized agency to be from an accredited institution or program.

*Reasons:* We propose changes to § 602.23(a)(2) to clarify the sequencing of approvals in instances where more than one member of the triad must approve a change or request. This will ensure that institutions and programs do not experience unnecessary delays and that agencies do not receive information absent decisions from other members of the triad, when the approval of one member of the triad (*e.g.*, States) is necessary for another member (*e.g.*, the Department) to perform its review.

We propose the changes to § 602.23(a)(5) to clarify that a list of the names, academic and professional qualifications, and relevant employment and organizational affiliations of members of the agency's decision-making bodies and principal administrative staff, rather than curriculum vitae and other documentation, adequately satisfy this requirement, in order to reduce administrative burden.

We propose the change to § 602.23(d) to ensure that institutions include the most appropriate contact information, which may be an email address or other method, rather than only a mailing address and telephone number.

We propose to add a new § 602.23(f) to provide greater specificity and safeguards when agencies offer preaccreditation.

The Department seeks to mitigate the additional risk to students and taxpayers posed by a preaccredited program or institution. Accordingly, we want to ensure that agencies limit those offerings to serious candidates for full accreditation only. We also propose to require that preaccredited institutions and programs have a plan in place to help students complete their program or transfer elsewhere if the institution or program fails to reach full accreditation. Furthermore, we propose to prevent the use of preaccreditation as a form of quasi-accreditation except in the case of initial candidacy.

Finally, we propose these changes, along with others discussed in § 602.22, to prevent harm to students who attend preaccredited institutions or programs. The Department seeks to clarify its position that a student who completes a preaccredited program should have the same benefits as a student who has completed an accredited program. We propose to codify this current practice to protect students who attend preaccredited institutions or programs that the accrediting agencies have granted such status with the expectation that the institutions or programs would meet the requirements for full accreditation. Preaccreditation status allows otherwise-eligible students the opportunity to receive title IV, HEA program funds; we want their time and money, as well as taxpayer funds, to be well spent. We further want to support students completing preaccredited programs to be able to meet State occupational licensing requirements.

*Additional Procedures Certain Institutional Accreditors Must Have (§ 602.24)*

*Statute:* HEA section 496(c)(3) requires an institution to submit for approval to the accrediting agency a teach-out plan when any of the following events occur:

(a) The Department notifies the accrediting agency of an action against the institution pursuant to section 487(f).

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

(c) The institution notifies the accrediting agency that the institution intends to cease operations.

HEA section 496(c)(4) provides that an accrediting agency's operating procedures must require an institution to submit plans to establish a branch campus prior to its opening.

Section 496(c)(5) requires an accrediting agency to conduct an on-site review at an institution within six months of it opening a new branch campus or when it has undergone an ownership change.

Section 496(c)(6) requires that teach-out agreements among institutions are subject to approval by the accrediting agency consistent with standards promulgated by such agency.

Section 496(c)(9) requires that, as a part of the agency's review for accreditation or reaccreditation, the institution must have transfer of credit policies that (i) it publicly discloses and (b) include a statement of the criteria it established for evaluating and approving for transfer credits earned at another institution of higher education.

*Current Regulations:* Section 602.24 requires an institutional accrediting agency to establish and follow procedures relating to branch campuses; change in ownership; teach-outs; closed institutions; transfer of credit policies; and credit-hour policies as specified in § 602.24(a) through (f).

Under § 602.24(a)(1)(iii), the agency must require an institution that plans to establish a branch campus to provide the agency with a business plan that describes the operation, management, and physical resources at the branch campus.

Under § 602.24(a)(2), an agency may extend accreditation to a branch campus only after it evaluates the business plan and takes whatever other actions it deems necessary to determine that the branch campus has sufficient educational, financial, operational, management, and physical resources to meet the agency's standards.

Sections 602.24(a)(3) and (b) require an agency to conduct a site visit as soon as practicable but no later than six months after the establishment of a branch campus or, if the institution has undergone a change of ownership that resulted in a change of control, no later than six months after the change of ownership.

Under § 602.24(c), an agency must require an institution to submit a teach-out plan for approval if—

- The Department notifies the agency that the Department has initiated emergency action against the institution, or an action to limit, suspend, or

terminate an institution's participation in the title IV, HEA programs;

- The agency acts to withdraw, terminate, or suspend accreditation or preaccreditation of the institution;
- The institution notifies the agency that it intends to cease operations or close a location that provides 100 percent of at least one program; or
- A State licensing or authorizing agency notifies the agency that it has or will revoke the institution's license or legal authorization to provide an education.

Section 602.24(c)(2) requires the agency to evaluate the teach-out plan to ensure that it provides for the equitable treatment of students; specifies additional charges, if any; and provides notification to the students of any additional charges.

Section 602.24(c)(3) requires an agency that approves a teach-out plan that includes a program accredited by another recognized accrediting agency to notify that accrediting agency of its approval.

Under § 602.24(c)(4) an agency may require an institution to enter into a teach-out agreement as part of its teach-out plan.

Under § 602.24(c)(5), an agency must require an institution that enters into a teach-out agreement to submit that teach-out agreement for approval. The agency may only approve the teach-out agreement if the agreement is between institutions that are accredited or pre-accredited by a nationally recognized accrediting agency, is consistent with applicable standards and regulations, and provides for the equitable treatment of students in specified ways. Current § 602.24(f) also requires agency review of institutional credit hour policies and specifies how an agency meets the requirements for such review.

*Proposed Regulations:* Under proposed § 602.24(a) agencies would not have to require an institution to include in its branch campus business plan a description of the operation, management, and physical resources of the branch campus. Proposed § 602.24(a) would also remove the requirement that an agency may only extend accreditation to a branch campus after the agency evaluates the business plan and takes whatever other actions it deems necessary to determine that the branch campus has enough educational, financial, operational, management, and physical resources to meet the agency's standards.

Proposed § 602.24(c) would establish new requirements for teach-out plans and teach-out agreements, including with respect to when an agency must

require them and what elements must be included.

Paragraph (c)(1)(i) would require submission of a teach-out plan by a non-profit or proprietary institution if 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 material weakness finding related to financial stability.

Paragraphs (c)(1)(ii)–(iii) would require a teach-out plan to be submitted if the agency puts the institution on probation or show cause, or if the Secretary notifies the agency that the institution has been required to submit a teach-out plan as a condition of provisional certification.

Proposed paragraph (c)(2) would require both a teach-out plan and, if practicable, a teach-out agreement if the institution is placed on reimbursement or heightened cash management under 34 CFR 668.162(d)(2), or if the Department has taken an emergency action or an action to limit, suspend or terminate participation, or the agency acts to withdraw, terminate, or suspend accreditation or preaccreditation, or 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 closed by the Department), or if the institution's license or legal authorization to provide an educational program has been or will be revoked.

Proposed paragraph (c)(3) would add requirements that the teach-out plan include a list of currently enrolled students, academic programs offered, the names of other institutions that offer similar programs and could potentially enter into a teach-out agreement.

Proposed paragraph (c)(6) would require teach-out agreements to include a complete list of enrolled students and the program requirements each has completed, a plan to provide all potentially eligible students with closed school discharge and State refund information, a record retention plan to be provided to all students, information on the number and types of credits the teach-out institution will accept prior to the student's enrollment, and a clear statement of tuition and fees.

Proposed paragraph (c)(7) would modify requirements regarding teach-out agreements by providing that a teach-out by an alternative delivery modality is not sufficient unless an option via the same delivery modality as the original educational program is also provided; by substituting a requirement

that the teach-out institution have the capacity to carry out its mission and meet all obligations, in lieu of the existing requirement that the teach-out institution remain stable; and by providing that students should not be required to move or travel for substantial distances or durations.

Proposed paragraph (c)(8) would prohibit an institution from serving as a teach-out institution if it is under investigation or facing an action or prosecution for an issue related to academic quality, misrepresentation, fraud, or other severe matters, or if it is subject to the conditions that would require submission of a teach-out plan under proposed § 602.24(c)(1) or (2).

Proposed paragraph (c)(9) would permit an agency approving a written-teach-out agreement to waive requirements regarding the percentage of credits which must be earned at the institution awarding the educational credential for the benefit of students completing the program under the agreement.

Proposed paragraph (c)(10) would require the agency to obtain from the closing institution all notifications from the institution about the closure or teach-out options to ensure that the communications are accurate.

Proposed § 602.24(f) would remove the requirement that an agency conduct an effective review and evaluation of the reliability and accuracy of the institution's assignment of credit hours. Instead, the section would require that an accrediting agency—

- Adopt and apply the definitions of “branch campus” and “additional location” in 34 CFR 600.2;
- On the Secretary's request, conform its designations of an institution's branch campuses and additional locations with the Secretary's designations if it learns the designations diverge; and
- Ensure that it does not accredit or preaccredit fewer than all of the programs (except those losing accreditation under § 602.20(d)), 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.

*Reasons:* We propose the changes in § 602.24(a) to remove requirements that go beyond statutory requirements and are unnecessarily prescriptive or that duplicate requirements in proposed § 602.22.

Changes proposed in § 602.24(c) would provide additional specificity and clarity to requirements regarding teach-out plans and agreements considering the Department's recent

experience with school closures. The Department believes there is substantial confusion in the field about the nature of teach-outs, which is why it has added clearer definitions in other sections related to teach-out agreements, teach-out plans, and the actual execution of a teach-out. The changes would also clarify the responsibilities of the Department and accrediting agencies; protect taxpayers from unnecessary expenditures associated with closed schools, including loan discharges and Pell grant lifetime eligibility, for courses that may need to be repeated when institutions are forced to close precipitously; and provide consumer protections to students related to the accuracy and completeness of information regarding the teach-out and other options, as well as to the quality and convenience of the teach-out offered.

We propose to remove the provisions in § 602.24(f) prescribing a specific type of review of an institution's credit hour policies, and how those policies are applied, that accrediting agencies are required to conduct each time the institution is considered for renewal of accreditation. We believe the requirements are unnecessarily prescriptive and administratively burdensome without adding significant assurance that the agency review will result in improved accountability or protection for students or taxpayers. We propose to replace this section with a requirement designed to ensure the Department's greater specificity and clarity around the definitions of "branch campus" and "additional location" in § 600.2 are not in conflict with definitions used by agencies. As discussed during the negotiated rulemaking, the Department learned that some agencies use the terms "additional location" and "branch campus" differently than the Department, which leads to confusion. By standardizing the use of these terms, there will be fewer instances of misunderstanding or conflict. The changes to this section will also help ensure that an institution does not receive title IV funds for any offerings by an institution that are outside of the scope of the accreditation or preaccreditation granted.

#### *Due Process (§ 602.25)*

*Statute:* HEA section 496(a)(6) provides that an agency must establish and apply review procedures throughout the accrediting process, including evaluation and withdrawal proceedings, which comply with due process procedures as outlined in that section.

*Current Regulations:* Section 602.25(f) requires an accrediting agency to demonstrate the procedures it uses to satisfy due process throughout the accreditation process, including providing an opportunity for an institution or program to appeal any adverse action before the appeal becomes final. Under § 602.25(f)(1)(iv), the appeal must take place at a hearing before an appeals panel that affirms, amends, reverses, or remands the adverse action. In a decision to remand, the appeals panel must identify specific issues that the original decision-making body must address.

*Proposed Regulations:* We propose in § 602.25(f)(1)(iii) and (iv) to remove reversal as an option available to an appeals panel. We also propose to require that the appeals panel explain the basis for a decision to remand if it differs from the original decision-making body's decision, rather than providing for the appeals panel to identify specific issues that the original decision-making body must address in the remand. We further propose to retain the requirement that the original decision-making body must act in a manner that is consistent with the decisions or instructions from the appeal body in the case of a remand.

*Reasons:* The proposed changes in this section clarify the due process requirements for agencies when an institution or program appeals any adverse action prior to that action becoming final. Moreover, the elimination of an appeals panel's option to reverse the original decision-making body's decision ensures that an agency board is able to fully re-evaluate its original decision upon remand, whereas a reversal prohibits that re-evaluation. The Department proposes that, when the agency's appeals panel decides to remand the adverse action to the original decision-making body, the appeals panel must provide the institution or program with an explanation for any determination that differs from that of the original decision-making body. We intend for these changes to assure that institutions or programs are fully informed regarding the decisions being made pertaining to their accreditation status and that the original decision-making body speaks for the agency in addressing concerns raised in a remand.

#### *Notification of Accrediting Decisions (§ 602.26)*

*Statute:* HEA section 496(a)(7) provides that an agency must notify the Secretary and the appropriate State licensing or authorizing agency within 30 days of the final denial, withdrawal,

suspension, or termination of accreditation. The agency must also notify these parties when it places an institution on probation, or the equivalent, as well as any other adverse action it takes against the institution.

Section 496(a)(7) also requires an agency to make available to the public and the State licensing authority, and submit to the Secretary, a summary of agency actions, including final denial, withdrawal, suspension, or termination of accreditation of an institution, and any findings made in connection with the action taken, together with the official comments of the affected institution, as well as any other adverse action taken with respect to an institution or placement on probation.

Section 496(a)(8) further requires an agency to make available to the public, upon request, and to the Secretary and State licensing authority, a summary of any review resulting in a final accrediting decision involving denial, termination, or suspension of accreditation together with comments from the affected institution.

Section 496(a)(8) further requires an agency to make available to the public, upon request, and to the Secretary and State licensing authority, a summary of any review resulting in a final accrediting decision involving denial, termination, or suspension of accreditation together with comments from the affected institution.

*Current Regulations:* Under § 602.26, an accrediting agency must demonstrate that it has established and follows written procedures requiring the agency to provide written notice of accrediting decisions to the Secretary, the appropriate State licensing or authorizing agency, appropriate accrediting agencies, and the public.

Section 602.26(a) requires an accrediting agency to provide written notice to the Department, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and the public no later than 30 days after the agency decides to award or renew an institution's or program's accreditation or preaccreditation status.

Section 602.26(b) requires an accrediting agency to provide written notice to the Department, the appropriate State licensing or authorizing agency, and the appropriate accrediting agencies when it notifies the institution or program, but no later than 30 days after it makes the final decision to—

- Place an institution or program on probation or an equivalent status;

- Deny, withhold, suspend, revoke, or terminate an accreditation or preaccreditation status; or
- Take any other adverse action, as defined by the agency.

Section 602.26(c) requires an accrediting agency to provide the notices described in § 602.26(b) to the public within 24 hours of its notice to the institution or program.

For a decision to deny, withdraw, suspend, revoke, or terminate an accreditation or preaccreditation status, § 602.26(d) requires an accrediting agency to make available a brief statement summarizing the reasons for the agency's decision and the official comments that the affected institution or program may make with regard to that decision or evidence that the affected institution has been offered the opportunity to provide official comment, no later than 60 days after making the decision.

Section 602.26(e) requires an accrediting agency to provide notification to the Secretary, the State licensing authority, and, on request, the public, if an institution or program decides to withdraw from accreditation or preaccreditation, or lets its accreditation or preaccreditation lapse, within 30 days of receiving notification from the institution of the withdrawal or lapse of accreditation status.

*Proposed Regulations:* Proposed § 602.26(b) would require an accrediting agency to provide 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 would require the institution or program to disclose such an action within seven business days of receipt to all current and prospective students.

Proposed § 602.26(c) would eliminate the requirement to provide written notice of a final decision to place an institution or program on probation within 30 days.

We propose § 602.26(d) to replace the current requirement that the agency notify the public of a final probation or adverse action within 24 hours of its notice to the institution or program, with a requirement to notify the public within one business day.

We propose to redesignate current § 602.26(d) as § 602.26(e) and, in that paragraph, add the requirement that an institution or program subject to a final adverse action must disclose such an action within seven business days of receipt to all current and prospective students.

We propose to redesignate current § 602.26(e) as § 602.26(f) and, in that paragraph, replace the 30-day timeframes for a notification of an institution's or program's decision to withdraw voluntarily from accreditation or preaccreditation or to allow accreditation or preaccreditation to lapse with timeframes of 10 business days.

*Reasons:* Several committee members proposed to add an additional requirement in proposed § 602.26(b) to increase transparency and communication from the accrediting agency to the Secretary, State licensing or authorizing agency, appropriate accrediting agencies, and students regarding final decision of a probation or equivalent status, or an initiated adverse action. Current § 602.26(b) requires an agency to report final decisions of probation or equivalent or adverse actions in writing to stakeholders no later than 30 days after making that decision and does not address initiated adverse actions. Proposed § 602.26(b), revised to pertain to initiated adverse actions as well as final probation decisions, would use a different time frame, because it may take longer than 30 days for an agency to prepare the written decision regarding probation or equivalent status, or to initiate an adverse action (such as denying, withdrawing, suspending, revoking, or terminating the accreditation or preaccreditation of an institution or program), and to have it reviewed for accuracy and legal sufficiency before issuing it to an institution or program. To solve this issue, a committee member proposed that the accrediting agency must provide notification to the Secretary, State licensing body, and appropriate accrediting agencies of such decisions simultaneously with its notification to the institution or program. In addition, to make such actions more transparent, the accrediting agency must require the institution or program to disclose such actions to current and prospective students within seven business days of receiving the agency's notification.

The proposed language continues to require accrediting agencies to provide the Secretary, the State, and appropriate accrediting agencies notice of any adverse action at the same time the agency notifies the institution or program, but no later than 30 days after reaching the decision, with notice to the public of final probation decisions, initiated adverse actions, and final adverse actions due within one business day of notice to the institution or program.

The Department proposed a technical change to replace "24 hours" with "one business day," which does not change current practice but clarifies that we do not require agencies to make notifications on weekends or holidays.

Finally, to decrease timeliness and protect students, the Department proposed to reduce the amount of time, from 30 days to 10 business days, in which an accrediting agency must notify the Secretary if an institution or program decides to voluntarily withdraw from accreditation or preaccreditation or allows either to lapse.

*Other Information an Agency Must Provide the Department (§ 602.27)*

*Statute:* HEA section 496(c)(7) provides that an accrediting agency will make available to the public and submit to the State authorizing agency and the Secretary, a summary of agency actions, including the award of accreditation or preaccreditation of an institution. HEA section 487(a)(15) provides that institutions participating in the title IV, HEA programs must acknowledge in their program participation agreements the authority of the Secretary, guaranty agencies, lenders, accrediting agencies, the Secretary of Veterans Affairs, and State approval agencies to share with each other any information pertaining to the institution's eligibility to participate in the title IV programs and any information on fraud and abuse.

*Current Regulations:* Under § 602.27(a)(1) and (2), an accrediting agency must submit to the Department a copy of any annual report it prepares and a copy, updated annually, of its directory of accredited and preaccredited institutions and programs.

Under § 602.27(b), if an accrediting agency has a policy regarding notification to an institution or program of contact with the Department, it must provide for a case-by-case review of the circumstances surrounding the contact and the need for the confidentiality of that contact. Upon a specific request by the Department, the agency must consider that contact confidential.

*Proposed Regulations:* Proposed § 602.27(a)(1) would replace the requirements that an agency provide to the Department a copy of any annual report and a copy of its directory of accredited and preaccredited institutions and programs with a requirement that an agency provide a list, updated annually, of its accredited and preaccredited institutions and programs. Proposed § 602.27(a)(1) would specify that the agency may provide the list electronically.

Proposed § 602.27(b) would replace the requirement that an agency must consider a contact with the Department confidential “upon the request of the Department” with a requirement that the contact must be considered confidential if “the Department determines a compelling need for confidentiality.”

*Reasons:* We propose to eliminate the requirement in current § 602.27(a)(1) that an agency submit to the Department a copy of any annual report it prepares. Instead we propose that § 602.27(a)(1) require the accrediting agency to submit an annually updated list of its accredited and preaccredited institutions and programs. We believe this will allow the agency to provide needed information to the Department more efficiently. The change from the currently required “directory” to the proposed “list” would not change current practice, but it may reduce administrative burden and the size of agency submissions.

The Department proposes to clarify § 602.27(b) to state that the Department can on a case-by-case basis require that contact with the accrediting agency about an institution or program remain confidential. The Department can only make this request in accordance with proposed § 602.27(a)(5) and (6). The proposed clarification does not change current practice, but it attempts to address a concern raised by the Task Force on Federal Regulation of Higher Education and ensures the Department has a compelling need for confidentiality.

#### *Activities Covered by Recognition Procedures (§ 602.30)*

*Statute:* HEA section 496(o) authorizes the Secretary to develop regulations that provide procedures for the recognition of accrediting agencies and for administrative appeals. HEA section 496(l) specifies the process for an accrediting agency that has failed to effectively apply the criteria established by the Secretary. HEA section 496(d) stipulates that the period of recognition not exceed five years. HEA section 496(a) instructs the Secretary to establish criteria to determine if an agency may be determined to be a reliable authority as to the quality of education or training offered by an institution of higher education. This section also allows the Secretary, after notice and opportunity for a hearing, to establish criteria for such determinations. HEA section 114 governs operations of NACIQI.

*Current Regulations:* Section 602.30 provides that recognition proceedings are administrative actions taken on

applications for recognition; applications for expansion of scope; compliance reports; reviews of agencies that have expanded their scope of recognition by notice; and staff analyses identifying areas of noncompliance.

*Proposed Regulations:* We propose to remove and reserve § 602.30.

*Reasons:* The Department proposes to remove this section because the recognition procedures outlined in other sections of this part cover these activities.

#### *Agency Submissions to the Department (§ 602.31)*

*Statute:* HEA section 496(o) authorizes the Secretary to develop regulations that provide procedures for the recognition of accrediting agencies and for administrative appeals. HEA section 496(l) describes the process for an accrediting agency that has failed to effectively apply the criteria established by the Secretary. HEA section 496(d) provides that the period of recognition may not exceed five years. HEA section 114, as amended by the HEOA, governs operations of NACIQI. Additionally, the Department must comply with the requirements in the Freedom of Information Act (FOIA), 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, Appendix 1, and all other applicable laws.

*Current Regulations:* Section 602.31(a) contains the application requirements for an accrediting agency seeking initial or continued recognition.

Section 602.31(b) contains the application requirements for an accrediting agency seeking an expansion of scope.

Section 602.31(c) contains the requirements for an accrediting agency to submit a compliance report.

Section 602.31(d) identifies the requirements for a review following an increase in headcount enrollment of distance education students at any institution accredited by an agency that has notified the Secretary of a change in scope to include distance education or correspondence education.

Section 602.31(e) provides that if an accrediting agency requests recognition from the Department, the agency consents to share information and authorizes Department staff to observe site visits conducted by the agency visit locations where agency activities occur; obtain copies of documents deemed necessary by the Department to complete the review of the agency; and gain Departmental access to agency records, personnel, and facilities.

Section 602.31(f) explains that the Department’s processing and decision-

making on requests for public disclosure of agency materials are governed by FOIA, the Trade Secrets Act, the Privacy Act of 1974, the Federal Advisory Committee Act, and other applicable laws and specifies the agency’s involvement in meeting the public disclosure requirements.

*Proposed Regulations:* We propose to change the title of § 602.31 to “Agency applications and reports to be submitted to the Department.” Proposed § 602.31(a) would contain the application requirements for an accrediting agency seeking initial or continued recognition. In § 602.31(a), the Department proposes to require that an agency seeking renewal of recognition submit a written application to the Department 24 months prior to the date on which the current recognition expires. We also propose to remove the word “evidence” in § 602.31(a)(2) and (3), in reference to the application that an accrediting agency submits when seeking renewal of recognition.

Proposed § 602.31(b) contains the application requirements for an accrediting agency seeking an expansion of scope.

Proposed § 602.31(c) specifies the requirements for submitting a compliance or monitoring report, for an agency that must submit such a report.

Proposed technical changes to § 602.31(d) provide consistency in the reference to “correspondence courses.”

Proposed § 602.31(f) contains requirements pertaining to agency documentary submissions to the Department considering the public availability of agency records obtained by the Department. In § 602.31(f)(1)(i), we propose to require accrediting agencies to redact personally identifiable information (PII) and other sensitive information prior to sending the documents to the Department to protect sensitive information from public disclosure. In § 602.31(f)(1)(ii), we propose to require accrediting agencies to redact names, personal addresses, telephone numbers, email addresses, Social Security numbers, information about proprietary business practices, and any other personally identifiable information about individual students and any other individuals who are not agents of the agency or an institution the agency is reviewing.

In addition to the redactions required of agencies under proposed § 602.31(f)(1), proposed § 602.31(f)(2) would permit agencies to redact the identities of institutions that it believes are not essential to the Department’s review.

The Department proposes in § 602.31(f)(4) to reserve the right to request that the agency disclose any specific material that the accrediting agency redacted, and the Department will ensure that upon such request we do not provide the materials to the public if prohibited by law in the event of a FOIA request. Under proposed § 602.31(g), we propose to allow the Secretary to publish reasonable, uniform limits on the length of submissions submitted under § 602.31.

*Reasons:* Currently an agency seeking renewal of recognition must submit a written application to the Secretary at least once every five years. The Department currently does not have a timeframe for when the agency must submit its written application. Generally, the Department will contact the accrediting agency one year in advance of the expiration of recognition requesting an application for renewal of recognition and the agency will submit the application six months in advance of the expiration date. The Department believes adding a timeframe for submission in § 602.31(a) will allow more time for the Department and the accrediting agency seeking renewal of recognition to work together collaboratively if an agency's policies and procedures are out of compliance, especially following changes in the Department's regulations or requirements. This longer lead time would allow Department staff to observe accrediting agency actions throughout the entire process of reviewing a select number of representative institutions or programs, including observing a site visit and the agency's decision based on that visit. This additional time would also allow an agency to complete its process for updating its standards and procedures, if necessary, during the review process.

Regarding changes to § 602.31(a)(2) and (3), the committee noted that the word "documentation" more appropriately described what an accrediting agency compiles and submits to the Department than does "evidence."

The Department proposes to remove the language in current § 602.31(b)(2) requiring documentation of experience, because we have added a cross-reference to this section in § 602.32(j), which outlines additional documentation an agency must submit when seeking an expansion of scope.

Currently, an agency must submit a written application for the expansion of scope to the Secretary. In proposed § 602.31(b)(2), consistent with a committee member's suggestion, we would clarify that an agency must

submit copies of relevant standards, policies, or procedures in the expansion of scope application only in relation to the activities conducted within the proposed expansion of scope in addition to documentation of the application of such standards, policies and procedures.

Members of the public may request accrediting agency records that the Department obtained. The Secretary processes requests and makes the records available pursuant to statutory requirements. The changes we propose to § 602.31(f) respond to the increased number of FOIA requests the Department is receiving for recognition materials. The proposed change would require agencies to redact recognition materials rather than allow agencies to make redactions. While the Department bears ultimate responsibility for complying with FOIA's non-disclosure requirements, agencies have knowledge the Department does not as to whether there is possible proprietary business information in the records they are submitting. In addition, agency submissions are often voluminous, and given agencies' greater familiarity with what they propose to submit, it is appropriate for the Department to require agencies responsibility in the first instance for removing information that would compromise individuals' privacy if released to the public before they submit the documentation to the Department. In addition to making redactions mandatory, the proposed changes provide greater specificity as to the types of information requiring redaction as a matter of personal privacy. The proposed changes would serve the public interest in effective administration of FOIA. Proposed § 602.31(f)(4) would help ensure that agency redactions do not compromise the effectiveness of the Department's review of agency compliance with the recognition criteria. In the proposed changes to § 602.31(g) we do not establish limits on the length of submissions; however, in the future the Department may establish those limits through a **Federal Register** notice. The Department has seen an increase in applications that are tens of thousands of pages long, which is unnecessary. The Department proposes adding a site visit to the agency's offices as part of the recognition process, which means that Department staff will review documents on-site and record their findings accordingly.

*Procedures for Department Review of Applications for Recognition or for Change of Scope, Compliance Reports, and Increases in Enrollment (§ 602.32)*

*Statute:* HEA section 496(n) directs the Secretary to conduct a comprehensive review and evaluation of the performance of all accrediting agencies that seek recognition by the Secretary in order to determine whether such accrediting agencies meet the criteria established by the Secretary. This independent evaluation must include the solicitation of third-party information concerning the performance of the agency and site visits, including unannounced site visits, as appropriate, at accrediting agencies and, at the Secretary's discretion, at representative member institutions. The Secretary must place a priority for review of agencies on those that accredit institutions of higher education that participate most extensively in programs authorized under title IV of the HEA, or on those agencies that have been the subject of the most complaints or legal actions. The Secretary must also consider all available relevant information concerning the compliance of the accrediting agency, including any complaints or legal actions against the agency. In cases where the Secretary identifies deficiencies in the performance of an accreditation agency with respect to the established requirements, the Secretary will consider those deficiencies in the recognition process. Additionally, the Secretary must determine the agency's scope of recognition when deciding to recognize the agency. When the Secretary recognizes an accrediting agency, the Secretary will determine the agency's scope of recognition. HEA section 496(o) authorizes the Secretary to develop regulations that provide procedures for the recognition of accrediting agencies and for administrative appeals. HEA section 496(l) specifies the process for an accrediting agency that has failed to effectively apply the criteria established by the Secretary. HEA section 496(d) provides that the period of recognition may not exceed five years. HEA section 114 governs the operations of NACIQI.

*Current Regulations:* Under § 602.32(a), the Department publishes a notice in the **Federal Register** requesting public comment after receipt of an accrediting agency's application for recognition, change in scope, compliance report, or increase in head-count enrollment report.

Under § 602.32(b), Department staff analyzes applications and reports submitted by an accrediting agency to

determine whether the agency meets the criteria for recognition, considering all available relevant information concerning the compliance of the agency with those criteria and in the agency's effectiveness in applying the criteria.

Under § 602.32(c), Department staff analyzes the materials submitted in support of an application for expansion of scope to ensure that the agency has the requisite experience, policies, capacity, and performance record to support the request.

Section 602.32(d) provides that Department staff 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.

Under § 602.32(e), if Department staff determine that an agency applying for initial recognition fails to demonstrate compliance with basic eligibility requirements, the Department returns the application with an explanation of the deficiencies and recommends that the agency withdraw its application.

Under § 602.32(f), except for an application returned to or withdrawn by the agency, when Department staff complete their evaluation of the agency, the staff:

- Prepares a written draft analysis of the agency;
- Sends the draft analysis, a proposed recognition recommendation, and all supporting documents to the agency;
- Invites the agency to provide a written response to the draft analysis, specifying a deadline that provides at least 30 days for the agency's response;
- Reviews the response to the draft analysis and prepares the written final analysis and recommendation; and
- Provides the agency the final staff analysis and other information provided to the Advisory Committee no later than seven days before the Advisory Committee meeting.

Under § 602.32(g) the agency may request that the Advisory Committee defer acting on an application at the scheduled Advisory Committee meeting if the Department has failed to provide the required materials within the specified timeframes, unless the failure to provide the required information is due to the agency not responding to the Department's request for a response from the agency within the timeframes established by the Department.

*Proposed Regulations:* We propose to revise the title for § 602.32 to read: "Procedures for recognition, renewal of

recognition, or for expansion of scope, compliance reports, and increases in enrollment."

Proposed § 602.32(a) would require agencies preparing for a renewal of recognition to submit a list of all institutions or programs that it will review over the next year, whether for initial or renewed accreditation, on a compliance report, or with respect to other reporting requirements. If there are no institutions or programs scheduled for an accreditation decision in the upcoming year, the list would include institutions or programs scheduled for review for accreditation in the succeeding year. If the agency does not anticipate a review of any institution or program for initial or renewal of accreditation in the 24 months prior to the date recognition expires, it may submit a list of institutions or programs it has reviewed at any time since the prior award of recognition or leading up to that award.

Proposed § 602.32(b) would specify submissions an agency seeking initial recognition must make, in addition to following the policies and procedures specified in § 602.32(a). These submissions comprise letters of support from specified constituencies.

Proposed § 602.32(c) updates the current requirement in § 602.32(a) for the Department to publish a notice of the agency's submission of an application in the **Federal Register**, inviting the public to comment.

Under proposed § 602.32(d), in addition to current practice where Department staff would analyze the agency's application for initial or renewal of recognition, to include observations of site visits to institutions or programs accredited or preaccredited by the agency; observations of site visits to training, decision meetings or other accreditation activities; public comments and other third-party information; and complaints or legal actions involving the agency, the Department staff review would also include a file review at the agency, during which Department staff would be able to retain copies of documents needed for inclusion in the administrative record.

Proposed § 602.32(d) specifies that reviews of complaints or legal actions may be considered but are not necessarily determinative of compliance.

Proposed § 602.32(e) would allow Department staff to 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 an institution's religious mission, the qualifications necessary for a student to sit for a licensure or certification examination, or the ability for a student to otherwise be eligible for entry into a profession.

Proposed § 602.32(f) would retain the authority for Department staff to review 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 would add a requirement to make all materials relied upon in the evaluation available to the agency for review and comment.

Proposed § 602.32(g) would provide that, 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, the staff would require, rather than recommend, the agency to withdraw the application.

Proposed § 602.32(h) would revise the procedures for Department staff to complete its evaluation of the agency. In contrast to current regulations, under proposed § 602.32(h)(2), the staff draft analysis would include any identified areas of potential non-compliance, as well as all third party complaints and other materials the Department received by the established deadline or included in its review; would not include a recommendation in its draft analysis; and would provide the agency with at least 180 days, rather than 30 days, to respond to the draft. Under proposed § 602.32(h)(4)(i), the staff's final written analysis would indicate whether the agency is in full compliance, substantial compliance, or noncompliance with each of the criteria for recognition. Under proposed § 602.32(h)(4)(ii), the final written analysis would include a recommendation from the staff that the senior Department official either approve, renew with compliance reporting requirements due in 12 months, renew with compliance reporting requirements with a deadline in excess of 12 months based on a finding of good cause and extraordinary circumstances, approve with monitoring or other reporting requirements, or deny, limit, suspend, or terminate recognition.

Under proposed § 602.32(h)(5), Department staff would provide the agency with its final written analysis at least 30 days before the NACIQI meeting, rather than only seven.

Proposed § 602.32(j) would contain procedures for an agency requesting an expansion of scope. These procedures

cross-reference the requirements of §§ 602.12(a) and 602.31(b), require a statement of the reason for an expansion of scope, require letters of support of at least three institutions or programs seeking accreditation under the expansion, require the agency to explain how it will expand capacity to support the expansion, and designate §§ 602.32(c)–(h) as the procedures to be used by the Department in considering the request.

Proposed § 602.32(k), like proposed § 602.32(e), provides that the Department may view as a negative factor in considering issues of scope any evidence that the agency was part of a concerted effort to unnecessarily restrict an institution's religious mission, the qualifications necessary for a student to sit for licensure or certification, or the ability for a student to otherwise be eligible for entry into a profession.

Proposed § 602.32(l) would add procedures for Department staff evaluation of a compliance report.

Under proposed § 602.32(m), if an agency is required to be reviewed by the Advisory Committee, the Department would follow the process outlined in §§ 602.32(c)–(h).

*Reasons:* Please see preamble discussion in § 602.31 for rationale on proposed § 602.32(a) requiring agencies to submit applications for renewal of recognition 24 months prior to the date on which the current recognition expires.

During negotiated rulemaking session, the Department proposed to delete the requirements in current § 602.13. Currently, we require an agency to be widely accepted by educators and educational institutions, among others. The Department is concerned that it has been unable to develop metrics that ensure equitable review of agencies regarding wide acceptance. In some instances, agencies provide just a few letters of support and are deemed to meet the requirement, and in other instances, agencies provide multiple letters substantiating wide acceptance, and they have been deemed insufficient. The Department also fears that the widely accepted standard could block competition or prevent innovative practices since the standard favors the status quo. However, the committee wanted to add a guardrail for the initial recognition of an agency to ensure that new agencies are responding to a legitimate need and proposed to incorporate the themes of current § 602.13 into the proposal of an initial application for recognition. Proposed § 602.32(b) requires an agency seeking initial recognition to submit letters of support from educators, accredited

institutions or programs and, if appropriate, employers and practitioners. The change effectively streamlines the current wide acceptance requirement under § 602.13, but it would only apply to accrediting agencies seeking initial recognition.

Proposed § 602.32(c) is a clarifying technical update noting that the Department will publish a notice in the **Federal Register** of submission of the accrediting agency's application. This would not change current practice.

We propose to eliminate discussion of a Department staff review of the compliance report in § 602.32(d), because we propose to add a new § 602.32(m) addressing this topic. In proposed § 602.32(m), we state that the Department staff will review public comments solicited by the Department staff in the **Federal Register** regarding the accrediting agency's compliance report. The Department does not contemplate a change to current practice regarding review of compliance reports. Proposed §§ 602.32(d)(1)(i), (ii), (iv), and (v) are clarifying technical updates and would codify current practice into regulation.

Proposed § 602.32(d)(1)(iii) requires Department staff to conduct a file review of documents at the agency. This new provision responds to recommendations made by the Office of the Inspector General in their June 27, 2018, report, U.S. Department of Education's Recognition and Oversight of Accrediting Agencies. The report includes a recommendation to review more agency decisions and member institution or program files, and for the Department to select a representative sample of institutions or programs and decisions it wishes to review as part of the recognition process, rather than relying only on the examples the agency provides in its application. We believe this will increase collaboration and transparency between the Department and accrediting agencies, as well as integrate a risk-based review into the process.

We propose to eliminate current § 602.32(c) because we outline the requirements for an agency seeking an expansion of scope in proposed § 602.32(j).

Section § 602.32(d)(2) reflects the view of the Department and expressed by several committee members that legal actions against an accredited or preaccredited institution or program should not necessarily determine compliance.

We propose adding §§ 602.32(e) and (l) because we want to ensure that the Department's existing regulations do not encourage accrediting agencies to work

with licensing bodies or States to unnecessarily increase the qualifications necessary for a student to sit for a licensure or certification examination. We believe the qualifications a student needs for licensure or certification examinations may increase as a result of demands of multiple stakeholders. This would lead to more coursework required by the student and possibly a higher cost of education and other opportunity costs.

We propose to amend § 602.32(f) to clarify that the Department must make all materials used in the Department staff's review available to the accrediting agency. We believe this will increase transparency between accrediting agencies and the Department.

In § 602.32(g), we propose to enable Department Staff to require an agency that is seeking initial recognition to withdraw its application upon a finding that the agency fails to demonstrate compliance with the basic eligibility requirements for recognition, rather than merely permitting staff to recommend withdrawal. We propose this change to serve administrative efficiency and recognize that an agency that cannot establish eligibility will not succeed in obtaining recognition even if it were permitted to go forward with the hearing process.

Proposed changes to §§ 602.32(h)(1) and (2) are technical in nature. The proposal in § 602.32(h)(3) to increase the time for an agency to respond to a draft staff analysis from 30 days to 180 days reflects the Department's determination that the accrediting agency should have more time to develop and submit a response to the draft analysis. Recognition applications are complex, and the Department believes increasing the time for response will make the process fairer and more efficient in the long run. The Department proposes under § 602.32(h)(5) to provide its final staff analyses to agencies at least 30 days before the NACIQI meeting, rather than only seven, for much the same reasons.

Proposed § 602.32(h)(4) reflects the Department's desire to include a determination of substantial compliance as a permissible outcome in recognition proceedings. The Department believes that with the introduction of this concept, here and elsewhere in the recognition procedures, the Department will be able to acknowledge and convey the reliability of an agency that has achieved compliance in all but a technical sense, increase the efficiency of the recognition process, and conserve resources by leaving such technicalities to the staff to follow through on via

monitoring reports, understanding that § 602.33, discussed below, will allow the staff unfettered ability to re-escalate an issue should it prove more serious than initially determined.

Proposed § 602.32(h)(4)(ii) attempts to align the recommendations available to Department staff with the corresponding options available to the senior Department official under proposed § 602.36(e), including allowing an agency more than 12 months to submit a compliance report based on a finding of good cause and extraordinary circumstances. The Department believes this change reflects the fact that some areas of non-compliance require more than 12 months to address, and that, in light of the good cause mechanism, the Department should not bind itself to reflexively de-recognizing otherwise dependable agencies. We note that while § 602.32(d)(4)(ii) characterizes outcomes involving compliance reports as a “renewal” of recognition, these outcomes are termed a “continuation” under § 602.36(e). The Department believes “continuation” is more accurate and contemplates revising § 602.32(d)(4)(ii) in this respect in the final rule.

Proposed § 602.32(j), describing the process for an agency seeking an expansion of scope, either as a part of the regular renewal of recognition process or during a period of recognition, largely reflects current practice. As noted in the discussion of § 602.32(b), the new provisions in 602.32(j), requiring an agency to explain the reasons for the expansion of scope request, submit three letters from institutions or programs seeking accreditation under one or more of the elements of the expansion of scope, and submit an explanation of how the agency must expand capacity in order to support the expansion of scope, are intended as guardrails to ensure that agencies are responding to a legitimate need and have the ability to do so. We intend for proposed § 602.32(m) and (n) to reflect that we will review compliance reports and agencies subject to review under § 602.19(e) in accordance with current practice and procedure.

*Procedures for Review of Agencies During the Period of Recognition (§ 602.33)*

*Statute:* HEA section 496(n) instructs the Secretary to conduct a comprehensive review and evaluation of the performance of all accrediting agencies that seek recognition by the Secretary in order to determine whether such accrediting agencies meet the criteria established by the Secretary.

This independent evaluation must include the solicitation of third-party information concerning the performance of the agency and site visits, including unannounced site visits as appropriate, at accrediting agencies, and, at the Secretary’s discretion, at representative member institutions. The Secretary must place a priority for review of agencies on those that accredit institutions of higher education that participate most extensively in programs authorized under title IV of the HEA, as amended, or on those agencies that have been the subject of the most complaints or legal actions. The Secretary must also consider all available relevant information concerning the compliance of the accrediting agency, including any complaints or legal actions against the agency. In cases where the Secretary notes deficiencies in the performance of an accreditation agency with respect to the requirements established, the Secretary will consider those deficiencies during the recognition process. Additionally, the Secretary must determine the agency’s scope of recognition when deciding to recognize the agency. When the Secretary decides to recognize an accrediting agency, the Secretary will determine the agency’s scope of recognition. HEA section 496(o) authorizes the Secretary to develop regulations that provide procedures for the recognition of accrediting agencies and for administrative appeals. HEA section 496(l) describes the process for an accrediting agency that has failed to effectively apply the criteria established by the Secretary. HEA section 496(d) stipulates that the period of recognition not exceed five years. HEA section 496(a) instructs the Secretary to establish criteria to determine if an agency may be determined to be a reliable authority as to the quality of education or training offered by an institution of higher education. This section also allows the Secretary, after notice and opportunity for a hearing, to establish criteria for such determinations. HEA section 114 governs the operations of the NACIQI.

*Current Regulations:* Under § 602.33(a), Department staff may review the compliance of a recognized agency against the criteria for recognition at any time at the request of the Advisory Committee or based on credible information that raises issues relevant to recognition. The review may include activities described under §§ 602.32(b) and (d).

Under § 602.33(c), if Department staff notes that one or more deficiencies may exist in the agency’s compliance

with or application of the criteria for recognition, Department staff provides a written draft analysis to the agency and invites the agency to provide a written response by a specified deadline that provides at least 30 days for the agency’s response.

Under § 602.33(d), if Department staff concludes that the agency has demonstrated compliance with the criteria for recognition, staff notifies the agency, and if applicable the Advisory Committee, of the results of the review.

Under § 602.33(e), if Department staff determine that the agency has not demonstrated compliance, staff notifies the agency, publishes a notice in the **Federal Register**, provides the agency with a copy of all public comments received and, if applicable, invites a written response from the agency regarding the comment, finalizes the staff analysis, and provides the analysis to the agency and the Advisory Committee no later than seven days before the Advisory Committee meeting. Under § 602.33(f), the Advisory Committee reviews the matter.

*Proposed Regulations:* We propose to rename § 602.33 to include procedures for the review of monitoring reports. Section 602.33(a)(1) proposes to expand the circumstances under which the Department may review an agency for compliance. Section 602.33(c)(1) proposes to change the timeframe for a written response from 30 days to 90 days.

*Reasons:* The Department wishes to introduce the use of a monitoring report that will allow the Department to review actions taken by an agency that is otherwise in substantial compliance with the criteria for recognition to resolve areas of minor noncompliance. By allowing a monitoring report as a method to consider areas of compliance, the Department can ensure resolution of minor problems without requiring a full compliance review, which burdens both staff and agencies. The Department believes that adding monitoring reports as an enforcement tool will increase the likelihood of identifying and correcting minor problems before they become larger problems. Since proposed § 602.33(c)(4)(ii), like current regulations, will permit staff to pursue any issue pertinent to recognition before NACIQI, the senior Department official, and, as applicable, to the Secretary at any point throughout the recognition period, staff will be able to escalate issues arising as a result of a monitoring report if and when needed.

*Advisory Committee Meetings (§ 602.34)*

*Statute:* HEA section 114 governs the operations of NACIQI and tasks the

group with advising the Department regarding the recognition of specific accrediting agencies. HEA section 114(d) establishes the meeting procedures for NACIQI, including that the committee will meet at least twice a year and publish the dates and locations of meetings in the **Federal Register**. Additionally, this section requires that we submit an agenda to the committee upon notification of the meeting and provides for the opportunity for public comment. Section 114(d)(3) requires the Secretary to designate an employee of the Department to serve as the Secretary's designee to the committee.

*Current Regulations:* Under § 602.34(c), before a scheduled Advisory Committee meeting, Department staff provide the Advisory Committee with materials on each agency's recognition matter, including, at the request of the agency, the agency's response to the staff's draft analysis. Under § 602.34(d), the Department provides notice of the upcoming meeting in the **Federal Register** at least 30 days before the Advisory Committee meeting. Section 602.34(e) provides that NACIQI considers the materials provided by staff at a public meeting inviting testimony from Department staff, the agency, and interested parties. Section 602.34(g) outlines the recommendations NACIQI may make.

*Proposed Regulations:* Proposed § 602.34(c)(3) would include in the materials provided to the Advisory Committee prior to meetings, the agency's response to the Department staff's draft written analysis, without the need for the agency to request this documentation. Proposed 602.34(g), which enumerates the types of recommendations NACIQI makes to the Department, would reflect the Department's proposed new provisions for monitoring reports, findings and determinations of substantial compliance, and continuation of recognition for longer than 12 months for good cause in extraordinary circumstances, and would conform with proposed to § 602.36(e), regarding the Senior Department official's decision.

*Reasons:* The automatic forwarding to NACIQI of agency responses to draft staff analyses proposed in 602.34(c)(3) would codify current practice. The revisions to subsection (g) reflect the proposed considerations discussed above with respect to proposed § 602.32(h)(4) and therefore expands the range of recommendations for the Advisory Committee.

*Responding to the Advisory Committee's Recommendations (§ 602.35)*

*Statute:* HEA section 496(o) authorizes the Secretary to develop regulations that provide procedures for the recognition of accrediting agencies and for administrative appeals.

*Current Regulations:* Section 602.35(a) provides that the agency and Department staff may submit written comments to the senior Department official on the Advisory Committee's recommendation within 10 days following the Advisory Committee meeting. The agency and Department staff must also simultaneously provide a copy of any written comments to each other.

Section 602.35(b) limits the comments submitted to the senior Department official to:

- Any Advisory Committee recommendation that the agency or Department staff believe the record does not support;
- Any incomplete Advisory Committee recommendation based on the agency's application; and
- Any recommendation or draft proposed decision for the senior Department official's consideration.

Section 602.35(c) describes procedures for the Department and the accrediting agency to provide new evidence and comments.

Department staff and the agency may only submit additional evidence if the Advisory Committee 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. The agency and the Department must also provide a copy of any response to each other when it submits them to the senior Department official. Department staff and/or the agency may submit a response to the senior Department official within 10 days of receipt of such comments or new evidence.

*Proposed Regulations:* We propose to clarify that, when a 10-day timeline is established in § 602.35, we mean 10 business days. We further propose changing what we previously referred to as "documentary evidence" in (§ 602.36(c)(1)) to "documentation." Finally, we propose to add that, after the responses permitted in this section are submitted, neither Department staff nor the accrediting agency may submit additional comments or documentation.

*Reasons:* We propose to revise this section for clarity and, in order to streamline the review of the Advisory Committee's recommendation, to add a

limitation regarding submission of additional documentation after the stated timeline.

*Senior Department Official's Decision (§ 602.36)*

*Statute:* HEA section 496(n) instructs the Secretary to conduct a comprehensive review and evaluation of the performance of all accrediting agencies seeking the Secretary's recognition to determine whether such agencies meet the Secretary's criteria. This independent evaluation must solicit third-party information concerning the agency's performance. The evaluation must also include announced and unannounced site visits, as appropriate, at agencies and, at the Secretary's discretion, at representative member institutions. The Secretary must prioritize the review of agencies that accredit institutions of higher education that participate most extensively in programs authorized under title IV of the HEA, or on those agencies that have been the subject of the most complaints or legal actions. The Secretary must also consider all available relevant information concerning the compliance of the accrediting agency, including any complaints or legal actions against the agency. In cases where we note deficiencies in the performance of an accreditation agency with respect to the Department requirements, the Secretary will consider those deficiencies during the recognition process.

Additionally, the Secretary must determine the agency's scope of recognition when deciding to recognize the agency. The Secretary will determine the agency's scope of recognition when it recognizes an accrediting agency.

*Current Regulations:* Under § 602.36(a)(5), 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, if applicable, new evidence submitted in accordance with § 602.35(c)(1).

Under § 602.36(b), if the statutory authority or appropriations for the Advisory Committee ends, or there are fewer duly appointed committee members to constitute a quorum, and under extraordinary circumstances when there are serious concerns about an agency's compliance, the senior Department official may make a decision in a recognition proceeding based on the record compiled under §§ 602.32 and 602.33 after providing the agency an opportunity to respond to the final staff analysis.

In § 602.36(e), (f) and (g), the regulations discuss the senior Department official's procedural options and the recognition decisions the senior Department official may make.

Section 602.36(h) precludes agencies from continuing to supplement the administrative record while a recognition matter is pending before the senior Department official. Section 602.36(i) provides for recognition to continue if the period of recognition previously granted expires before the Senior Department Official has made the recognition determination.

Section 602.36(j) establishes that the senior Department official's decision is final unless an administrative appeal is taken to the Secretary.

*Proposed Regulations:* We propose to replace the word "evidence" with the word "documentation" in § 602.36(a)(5). In § 602.36(a)(5), we propose to replace the words "in a recognition proceeding" with the words "application for renewal of recognition or compliance report."

We propose revising § 602.36(e) to include, among the types of decisions the senior Department official may make, approving for recognition and approving with a monitoring report.

Under proposed § 602.36(e), the senior Department official approves recognition if the agency has demonstrated "substantial compliance" with the criteria for recognition of an accrediting agency. The proposed regulations in this section would stipulate that the senior Department official may determine that the agency has demonstrated compliance or substantial compliance if the agency has a compliant policy or procedure in place but has not had the opportunity to apply the policy or procedure. This section would also provide for the senior Department official to continue recognition for up to 12 months to enable the agency to submit a compliance report, or, upon a finding of exceptional circumstances and good cause, for a period of time longer than 12 months if necessary, to establish full compliance.

Under proposed § 602.36(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 Department staff review and approve.

Under proposed § 602.36(g), where the senior Department official determines that a decision to deny, limit or suspend recognition may be

warranted, or where the agency does not hold institutions or programs accountable for complying with one or more of the agency's standards in instances not identified earlier in the proceedings as noncompliance, the senior Department official provides the agency with an opportunity to submit a written response and documentation addressing the finding, and the staff with an opportunity to present its analysis in writing.

*Reasons:* Throughout part 602 we propose to change the word "evidence" to "documents" or "documentation." We made that conforming change to 602.36(a)(5), as the term "evidence" is more often used in legal proceedings.

The committee proposed to limit the senior Department official's decision-making authority under § 602.36(b), concerning recognition without input from NACIQI, to an application for renewal of recognition or a compliance report. While it is necessary to have this procedure available for decision-making on renewals and compliance reports in the event NACIQI's statutory authority or appropriation ends, or if NACIQI lacks a quorum of appointed members, the committee saw no need for a senior Department official to conduct proceedings on initial applications for recognition without input from NACIQI.

For the reasons discussed with respect to the provisions in § 602.32 regarding Department staff analyses and in § 602.34 regarding NACIQI recommendations on recognition, proposed § 602.32(e) and (f) include revisions to incorporate the concepts of substantial compliance, monitoring reports, and recognition continued beyond 12 months in extraordinary circumstances for good cause shown. The intent is to make these options available at all levels of the recognition process.

With respect to the additional change to proposed Section 602.36(e)(1)(i) allowing the Department official to determine that the agency has demonstrated compliance or substantial compliance when an agency has the necessary policies and procedures, but has not had the opportunity to apply them, we propose the additional flexibility because accrediting agencies should not be penalized when implementing new policies and procedures.

The Department proposes to clarify in § 602.36(e)(1)(iii) that this provision refers to the senior Department official's decision regarding changes to scope of recognition, and not the length of the period of recognition, as the Department's procedures do not provide

for agencies to apply for a period of recognition of a specific length.

The proposed regulations would remove the phrase "or to apply those criteria effectively" from the provision in § 602.36(e)(2)(i) for decisions to deny, limit, suspend or terminate recognition because that subparagraph by its terms already applies to an agency that "fails to comply" with the criteria for recognition, and because the Department believes failure to comply sets a workable and sufficient standard. The Department views the deleted phrase as too vague that may invite inconsistency or conflict with the proposed standard of "substantial compliance."

We propose to add § 602.36(f) to emphasize the senior Department official's authority to determine compliance or substantial compliance because we should afford accrediting agencies the opportunity to make minor modifications to reflect progress toward full compliance through monitoring reports.

Proposed § 602.36(g) would provide agencies whom the senior Department official may deny, limit, suspend, or terminate an additional opportunity to submit a written response and documentation.

#### *Appealing the Senior Department Official's Decision to the Secretary (§ 602.37)*

*Statute:* HEA section 496(o) authorizes the Secretary to develop regulations that provide procedures for the recognition of accrediting agencies and administrative appeals. HEA section 496(l) specifies the process for an accrediting agency that has failed to effectively apply the criteria established by the Secretary.

HEA section 496(n) instructs the Secretary to conduct a comprehensive review and evaluation of the performance of all accrediting agencies that seek recognition by the Secretary in order to determine whether such accrediting agencies meet the criteria established by the Secretary. This evaluation must include the solicitation of third-party information and site visits at accrediting agencies and associations, and, at the Secretary's discretion, at representative member institutions. The Secretary must prioritize the review of agencies on those that accredit institutions of higher education that participate most extensively in programs authorized under title IV of the HEA, or on those agencies which have been the subject of the most complaints or legal actions. The Secretary must also consider all available relevant information

concerning the compliance of the accrediting agency, including any complaints or legal actions against the agency. In cases where we note deficiencies in the performance of an accreditation agency, the Secretary must take those deficiencies into account in the recognition process. Additionally, the Secretary must determine the agency's scope of recognition when deciding to recognize the agency. When the Secretary decides to recognize an accrediting agency, the Secretary will determine the agency's scope of recognition.

HEA section 496(l) specifies the process for an accrediting agency that has failed to effectively apply the Secretary's established criteria.

*Current Regulations:* Under § 602.37(a)(1), if an agency wishes to appeal a decision of the senior Department official to the Secretary, the agency must notify the Secretary and the senior Department official no later than 10 days after receipt of the decision.

*Proposed Regulations:* We propose to clarify that where we express a 10-day timeline in § 602.37(a)(1), we mean 10 business days. We further propose to refer to records that we previously referred to as "evidence" in §§ 602.36(d) and 602.36(g)(1)(ii) as "documentation." Finally, we propose to add in § 602.37(c) that after the agency's appeal and the senior Department official's response, neither party may submit additional information.

*Reasons:* We propose to add § 602.37(c) to strengthen the point made in current regulations that once an accrediting agency appeals and the senior Department official responds to the appeal, neither party may submit additional written comments. The Department proposes to add this new language to ensure timely resolution of appeals based on initial filings and determinations by the Department.

We propose to change "evidence" to "documentation" throughout § 602.37 because the term "evidence" is more common in legal proceedings. Changes regarding timelines are for clarity and to align with other similar timelines in these regulations.

#### **Secretary's Recognition Procedures for State Agencies**

##### *Criteria for State Agencies (§ 603.24)*

*Statute:* HEA section 487(c)(4) requires the Secretary to publish a list of State agencies that the Secretary determines to be a reliable authority regarding the quality of public postsecondary vocational education in their respective States for the purpose of

determining eligibility for all Federal student assistance programs.

*Current Regulations:* Section 603.24 includes criteria for State agencies that serve as accrediting agencies. The Secretary uses these criteria in designating a State agency as a reliable authority to assess the quality of public postsecondary vocational education in its State.

*Proposed Regulations:* We propose to delete the provisions for review of policies related to credit hours and application of those policies from § 603.24(c) and redesignate existing § 603.24(d) as § 603.24(c).

*Reasons:* The language in current § 603.24(c) mirrors language in § 602.24 that the Department also proposes to delete. The Department believes that the current requirements in § 603.24(c) are overly prescriptive and that the State agency serving as an accrediting agency should have autonomy and flexibility to work with institutions in developing and applying credit-hour policies.

#### **Robert C. Byrd Honors Scholarship Program**

##### *Part 654, Subparts A–G (§§ 654.1–654.60)*

*Statute:* Part A, subpart 6 of the HEA establishes the terms and conditions of the Robert C. Byrd Honors Scholarship Program.

*Current Regulations:* Sections 654.1 through 654.60 provide general information about the Robert C. Byrd Honors Scholarship Program, the process for States and students to apply to participate in the program, the process for providing program funds to State and students, and post-award requirements applicable to States that received program funds.

*Proposed Regulations:* We propose to remove and reserve part 654.

*Reasons:* Congress has not funded this program since passing the Continuing Appropriations Act of 2011, which provided funding for fiscal year 2012. There is no indication that Congress will restore funding to this program in the future.

#### **Standards for Participation in the Title IV, HEA Programs**

##### *End of an Institution's Participation (§ 668.26)*

*Statute:* HEA section 487 requires that an eligible institution must enter into a program participation agreement with the Secretary to be eligible to participate in title IV, HEA programs.

Section 487(c)(1)(F) provides for the Secretary to promulgate regulations to provide for the limitation, suspension,

or termination of an institution's participation in any title IV program.

Section 487(c)(1)(G) provides for the Secretary to establish regulations to provide for an emergency action against an institution under which funds are withheld from the institution or its students and the institution's authority to obligate funds under any title IV, HEA program is withdrawn. The Secretary may do this if the Secretary (1) receives reliable information that the institution is violating any title IV provision, any regulation prescribed under title IV, or any applicable special arrangement, agreement, or limitation; (2) determines that immediate action is necessary to prevent misuse of Federal funds; and (3) determines that the likelihood of loss outweighs the importance of the procedures prescribed for limitation, suspension, or termination.

HEA section 495(a)(3) requires that each State will notify the Secretary promptly whenever the State has credible evidence that an institution of higher education within the State has committed fraud in the administration of the student assistance programs authorized by title IV or has substantially violated a provision of title IV.

*Current Regulations:* Section 668.26(d) identifies the conditions under which an institution that has ended its participation in the title IV, HEA programs may use funds that it has received under programs that include the Federal Pell Grant, TEACH Grant, campus-based, and Direct Loan programs. This Section also outlines the process for such an institution to request additional funds from the Department if the institution does not have enough funds to satisfy an unpaid commitment made to a student under that Title IV, HEA program.

*Proposed Regulations:* We propose adding a new § 668.26(e) under which the Secretary may, in certain circumstances, with agreement from an institution's accrediting agency and State, permit the institution to continue to originate, award, or disburse funds under a title IV, HEA program for no more than 120 days following the end of the institution's participation in the title IV, HEA programs. The institution would be required to notify the Secretary of its plans to conduct an orderly closure and teach-out in accordance with accrediting agency requirements; the requirements of the program participation agreement would continue to apply; and we would limit the disbursements to previously enrolled students who could complete the program within the 120 days. In

addition, the institution would need to present the Secretary with acceptable written assurances that the health and safety of students are not at risk; that the institution has adequate financial resources; and that the institution is not subject to probation or the equivalent or adverse action by its accrediting agency or state authorizing body.

*Reasons:* The Department wishes to ensure that an institution that has voluntarily withdrawn from the title IV, HEA programs or lost its eligibility to participate may, when the Department determines it is appropriate, teach-out its own students and continue to receive title IV funds for a limited time to allow students to complete their academic program. This would allow students who are near completion of their academic program to finish their program at their chosen institution rather than requiring them to relocate to another institution. This provision aligns with other changes to teach-out in order to protect students and taxpayers for reasons outlined in sections related to teach-out in Part 602.

## Disclosures

### *Reporting and Disclosure of Information (§ 668.41)*

*Statute:* HEA section 485(a)(1) requires that each eligible institution participating in a title IV, HEA program disseminate information to prospective and enrolled students regarding the institution. The institution must be produced this information and make it readily available upon request, through appropriate publications, mailings, and electronic media. The institution is required to accurately describe student financial assistance programs available to students, the methods by which that aid is distributed to students, any application materials for financial aid, the cost of attending the institution, any refund policies with which the institution is required to comply, information on the academic programs of the institution, the names of agencies which accredit, approve, or license the institution and its programs, and other information. These provisions also require an institution to disclose information about the institution's accreditation and State authorization. They also require the disclosure of the placement in employment of, and types of employment obtained, by graduates of the institution's degree or certificate programs, gathered from such sources as alumni surveys, student satisfaction surveys, the National Survey of Student Engagement, the Community College Survey of Student Engagement, State data systems, or other relevant sources.

HEA section 485(a)(2) defines the term "prospective student" as any individual who has contacted an eligible institution requesting information concerning admission to that institution.

*Current Regulations:* Section 668.41(d) requires that institutions make available specified information concerning the institution, financial assistance available to students enrolled at the institution, the institution's retention rate, and completion rate or graduation rate. Additionally, the institution must disclose the placement of, and types of employment obtained by, graduates of the institution's degree or certificate programs, and the types of graduate and professional education in which graduates of the institution's four-year degree programs enroll.

*Proposed Regulations:* The Department proposes to revise § 668.41(d)(5)(i)(A) and (iii) to eliminate the requirement for an institution to disclose any placement rate that it calculates and replace it with a requirement that an institution disclose any placement rate that it publishes or uses in advertising. The Department also proposes to remove the requirement that an institution identify the source of the information provided in compliance with paragraph 668.41(d)(5), as well as any timeframes and methodology associated with it.

*Reasons:* The Department believes that the existing requirement that an institution disclose any placement rate that it calculates, even those rates that it calculates for internal purposes, is overly burdensome, unhelpful to students, and limits an institution's ability to evaluate its own programs if the methods used for internal analysis do not meet the standard of rigor required for published placement rates. An institution should be permitted to use any methodology it chooses to evaluate the placement success of its graduates and act upon that information internally, but there are many occasions when its methods for performing such calculations may not be complete or accurate enough to inform a student decision.

Requirements to disclose to the public any calculated placement rate therefore incentivize an institution to avoid calculating any placement rates whatsoever. On the other hand, if an institution advertises a placement rate as a means of attracting students, it must clearly disclose that rate and be prepared to support it, since advertised rates are what students rely on when making decisions about where to attend.

### *Institutional Information (§ 668.43)*

*Statute:* HEA section 485(a)(1) requires that each eligible institution participating in a title IV, HEA program disseminate information to prospective and enrolled students regarding the institution. The institution must produce this information and make it readily available upon request, through appropriate publications, mailings, and electronic media. Among other things, the institution is required to accurately describe student financial assistance programs available to students, the methods by which that aid is distributed to students, any application materials for financial aid, the cost of attending the institution, any refund policies with which the institution is required to comply, information on the academic programs of the institution, the names of agencies which accredit, approve, or license the institution and its programs, and other information. Institutions must also disclose special facilities and services available to students with disabilities, that enrollment in a program of study abroad approved for credit by the home institution may be considered enrollment in the home institution for the purposes of applying for Federal student aid, and institutional policies and sanctions related to copyright infringement.

*Current Regulations:* Section 668.43(a) requires an institution to make institutional information readily available to enrolled and prospective students that includes:

- The cost of attendance;
- Any refund policy for the return of unearned tuition and fees or other refundable portions of costs paid to the institution;
- The requirements and procedures for officially withdrawing;
- A summary of the requirements for the return of title IV grant or loan assistance;
- The academic program of the institution;
- The names of associations, agencies or governmental bodies that accredit, approve, or license the institution and its programs and the procedures by which documents describing the activity may be reviewed;
- A description of the services and facilities available to students with disabilities;
- The titles of persons designated to be available to assist enrolled or prospective students in obtaining information relating to financial aid, institutional information, completion or graduation rates, institutional security policies, and crime statistics, and how those persons may be contacted;

- A statement that a student's enrollment in a program of study abroad approved for credit by the home institution may be considered enrolled at the home institution for title IV purposes;

- Institutional policies and sanctions related to copyright infringement;
- Transfer of credit policies; and
- Written arrangements with other institutions or organizations that are providing a portion of the educational program offered by the institution.

*Proposed Regulations:* The Department proposes to add a new subparagraph (v) to the requirements under § 668.43(a)(5) relating to academic programs. The proposed regulations would require an institution to disclose whether the program would fulfill educational requirements for licensure or certification if the program is designed to or advertised as meeting such requirements. Institutions would be required to disclose, for each State, whether the program did or did not meet such requirements, or whether the institution had not made such a determination.

The Department proposes to revise § 668.43(a)(11) regarding an institution's transfer of credit policies to require that the institution disclose any types of institutions from which the institution will not accept transfer credits. We would also require institutions to disclose any written criteria used to evaluate and award credit for prior learning experience including through service in the armed forces, employment, or other demonstrated competency or learning.

The Department proposes to revise § 668.43(a)(12) to provide that disclosures regarding written arrangements under which an entity other than the institution itself provides all or part of a program will be included in the institution's description of that program.

The Department proposes to add paragraphs § 668.43(a)(13) through (18), which would add disclosure requirements that exist in statute but that are not currently reflected in the regulations, including:

- The percentage of the institution's enrolled students who are Pell Grant recipients, disaggregated by race, ethnicity, and gender;
- If the institution's accrediting agency or State requires the institution to calculate and report a placement rate, the institution's placement in employment of, and types of employment obtained by, graduates of the institution's degree or certificate programs;

- The types of graduate and professional education in which graduates of the institution's four-year degree programs enrolled;
- The fire safety report prepared by the institution pursuant to § 668.49;
- The retention rate of certificate- or degree-seeking, first-time, full-time, undergraduate students; and
- Institutional policies regarding vaccinations.

The Department proposes to add paragraph (a)(19) to require an institution to notify students if its accrediting agency requires it to maintain a teach-out plan under § 602.24(c)(1), and to indicate the reason why the accrediting agency required such a plan. The Department also proposes to add paragraph (a)(20), which would require an institution to notify students if it is aware that it is under investigation, action or prosecution by a law enforcement agency for an issue related to academic quality, misrepresentation, fraud, or other severe matters.

Finally, the Department proposes to add a new paragraph (c) that would require an institution to make direct disclosures to individual students in certain circumstances. We would require an institution to disclose to a prospective student before enrollment that the program in which the prospective student intended to enroll did not meet the educational requirements for licensure in the State in which the student was located, or if the institution had not determined whether the program met the licensure requirements in that State. We would also require an institution to make a similar disclosure if the program in which a student was enrolled ceased to meet the educational requirements for licensure in which the student was enrolled. We would require the institution to make the latter disclosure within 14 days of making such a determination. The institution would be responsible for establishing and consistently applying policies for determining the State in which each of its students is located. It would have to make such a determination at the time of initial enrollment, and upon receipt of information from the student, in accordance with institutional policies, that his or her location had changed to another State. The proposed regulations require institutions to provide the Secretary, on request, with written documentation of its determination regarding a student's location.

*Reasons:* The Department proposes to amend § 668.43(a)(11) to ensure that an institution provides adequate information for students to understand

its transfer-of-credit policy, especially when that policy excludes credits from certain types of institutions. The Department also believes that disclosures relating to an institution's prior learning assessment policies are important to students, especially those who have not attended college before or who are returning to college after many years of experience or training in other fields. While the Department is prohibited from regulating on the content of institutions' credit transfer policies, we believe transparency about such policies that are anticompetitive, discriminatory, or not based on a determination of academic quality is especially important for the benefit of students and the public.

The Department proposes to add paragraphs (a)(13) through (19) to ensure that the regulations incorporate all of the relevant statutory requirements for disclosures, and to limit the occasions when an institution is required to disclose a placement rate to cases where the institution has been required to calculate such a rate by its State or accrediting agency.

As part of an agreement with the committee, the Department also agreed to move some provisions from § 668.50, which had only applied to programs offered through distance education or correspondence courses. These requirements include proposed §§ 668.43(a)(19) and (20), which, respectively, relate to requirements to maintain a teach-out plan or agreement imposed by an accrediting agency and investigations by a State regarding academic quality, misrepresentation, fraud, or other severe matters. We intended these requirements to replace requirements under §§ 668.50(b)(4) and (5), which relate to disclosures of any "adverse actions" taken against an institution by an accrediting agency or State, respectively. The existing requirements relating to adverse actions in § 668.50(b) are either unnecessary, in the case of adverse actions taken by accrediting agencies, since those actions generally strip an institution of its eligibility for title IV, HEA funds and disclosures of that fact would come too late for students to act upon, or are unclear, as in the case of adverse actions taken by a State, a term which was left undefined in § 668.50(b)(5). The Department intends that these new provisions would ensure that students have clear information about serious problems at their institutions and believes that this is most likely to occur when those institutions must have a teach-out plan in place or are under investigation by a State or other agency.

In consensus with the non-Federal negotiators, the Department agreed to incorporate requirements for general disclosures about an institution's awareness of whether its program meets educational requirements for licensure in each State under § 668.43(a)(5), and requirements under proposed § 668.43(c) for direct disclosures to students when the institution is aware that a program in which a student was enrolled, or was planning to enroll, did not meet educational requirements for licensure in the State where the student is located. The Department would also require institutions to inform a prospective student when the institution had not yet determined whether the program met educational requirements for licensure in the student's State. The Department believes that it is vitally important that students have as much information as the institution at which they are enrolling regarding whether their educational program will meet State licensure requirements. We intend for these requirements to encourage institutions to conduct research regarding whether its programs would fulfill requirements for State licensure in the fields for which the programs prepare students. We believe these regulations impose minimal burden on institutions that lack the resources to evaluate the requirements for licensure in every State. While some negotiators and subcommittee members suggested that an institution should be able to find relevant information for each State, the Department and other negotiators noted the practical difficulties of such determinations. Among them, States often do not publish requirements online at all or, if they do, they do not provide regular updates. In addition, many State licensing boards operate independently of one another while some municipalities add their own requirements, and so disclosure even within States can vary.

Finally, the Department proposes requirements under § 668.43(c)(3) that would establish a process by which the institution would determine the State in which each of its students is located. We intended this process to mirror the State authorization requirements under § 600.9(c), we intend that it be equitable, consistent, and not unreasonably burdensome for institutions to implement.

*Institutional Disclosures for Distance or Correspondence Programs (§ 668.50)*

*Statute:* HEA section 485(a)(1) requires that each eligible institution participating in a title IV, HEA program disseminate information to prospective

and enrolled students regarding the institution. An institution must produce this information and make it readily available upon request, through appropriate publications, mailings, and electronic media. The institution is required to accurately describe, among other things, student financial assistance programs available to students, the methods by which that aid is distributed to students, any application materials for financial aid, the cost of attending the institution, and any refund policies with which the institution is required to comply; information on the academic programs of the institution; and the names of agencies that accredit, approve, or license the institution and its programs, as well as copies of the documents describing the institution's accreditation, approval or licensing.

*Current Regulations:* Section 668.50(a) requires an institution to provide additional disclosures if the institution offers an educational program that is provided, or can be completed solely, through distance education or correspondence courses, except internships and practicums. Under § 668.50(b), the institution must provide enrolled and prospective students:

- Information regarding State authorization of the institution;
- An explanation of the consequences for a student who changes his or her State of residence to a State where the institution or program does not meet State, licensure or certification requirements;
- Information on the process for submitting complaints, including contact information for the receipt of consumer complaints by the appropriate State authorities or a description of the process for submitting complaints that was established through a reciprocity agreement;
- A description of the process for submitting consumer complaints in each State in which the program's enrolled students reside;
- Information on any adverse action a State entity or an accrediting agency has initiated during the past five years related to postsecondary programs offered solely through distance education or correspondence courses at the institution;
- Refund policies that the institution is required to comply by any State in which enrolled students reside; and
- Information on applicable educational prerequisites for professional licensure or certification for the occupation that the program prepares students to enter, including State by State determinations by the

institution of whether the program does or does not meet those licensure or certification requirements or if the institution has not made such a determination.

If an institution's distance or correspondence program does not meet licensure and certification requirements in a State in which a prospective student resides, Paragraph (c) of § 668.50(c) requires the institution to directly disclose that fact to the student prior to enrollment, and to obtain written acknowledgement from the student.

If an institution's distance or correspondence program does not meet licensure and certification requirements in a State in which a prospective student resides, § 668.50(c) requires the institution to directly disclose that fact to the student prior to enrollment, and to obtain written acknowledgement from the student. Paragraph (c) also requires individual disclosures to each enrolled and prospective student of any adverse action initiated by a State or an accrediting agency related to the institution's distance or correspondence programs and any determination by the institution that the program ceases to meet a State's licensure or certification prerequisites.

*Proposed Regulations:* We propose to remove and reserve this section.

*Reasons:* We moved a number of the disclosures required in § 668.50 to § 668.43 to consolidate the number of sections in the regulations containing similar requirements. In addition, several disclosures contained in § 668.50 duplicate of requirements already contained in § 668.43. We did not include additional requirements in those cases. Section 668.43(a)(6) requires the disclosure of the names of associations, agencies, or governmental bodies that accredit, approve, or license the institution and its programs, which duplicates the requirements in § 668.50(b)(1). Additionally, the requirement to disclose refund policies in § 668.50(b)(6) is duplicative of the requirement § 668.42(a)(2). The disclosure of any adverse action a State entity or accrediting agency has initiated as required in § 668.50(b)(4), (5) and (c)(1)(ii) has been moved to proposed § 668.43(a)(20). Additionally, we moved disclosure requirements related to professional licensure or certification in § 668.50(b)(7) and (c)(1) to proposed § 668.43(c), along with requirements to make those disclosures directly to students, which was in § 668.50(c)(2).

## Regulatory Impact Analysis

*Executive Orders 12866, 13563, and 13771*

### Regulatory Impact Analysis

#### Introduction

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether a regulatory action is “significant” and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an “economically significant” rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles stated in the Executive order.

The Department believes this proposed regulatory action will have an annual effect on the economy of more than \$100 million because the proposed changes to the accreditation process could increase student access, improve student mobility, and allow for the establishment of more innovative programs, including direct assessment programs, that may attract new students. According to the Department’s FY 2020 Budget Summary,<sup>9</sup> Federal Direct Loans and Pell Grants accounted for almost \$124 billion in new aid available in 2018. Given this scale of Federal student aid amounts disbursed yearly, even small percentage changes could produce transfers between the Federal government and students of more than \$100 million on an annualized basis. Therefore, OMB has determined that this proposed action is “economically significant” and subject to review by OMB under section 3(f)(1) of Executive Order 12866. The Department has assessed the potential costs and benefits, both quantitative and

qualitative, of this proposed regulatory action and has determined that the benefits would justify the costs.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. These proposed regulations are a deregulatory action under E.O. 13771 and therefore the two-for-one requirements of E.O. 13771 do not apply.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological

innovation or anticipated behavioral changes.”

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In this regulatory impact analysis, we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as the regulatory alternatives we considered.

#### Need for Regulatory Action

The proposed regulations address several topics, primarily related to accreditation and innovation. The Department proposes this regulatory action primarily to update the Department’s accreditation recognition process to reflect only those requirements that are critical to assessing the quality of an institution and its programs and to protect student and taxpayer investments in order to reduce unnecessary burden on institutions and accrediting agencies and allow for greater innovation and educational choice for students.

In addition, the proposed regulations are needed to strengthen the regulatory triad by more clearly defining the roles and responsibilities of accrediting agencies, States, and the Department in oversight of institutions participating in title IV, HEA programs.

#### Costs, Benefits, and Transfers

As discussed in this NPRM, the Department proposes to amend regulations governing the recognition of accrediting agencies, certain student assistance general provisions, and institutional eligibility as well as make various technical corrections. The proposed regulations would affect students, institutions of higher education, accrediting agencies, and the Federal government. The Department expects students, institutions, accrediting agencies, and the Federal government would benefit as the proposed regulations would provide transparency and increased autonomy and independence of agencies and institutions. The proposed regulations

<sup>9</sup> Available at <https://www2.ed.gov/about/overview/budget/budget20/summary/20summary.pdf>.

are also intended to increase student access to postsecondary education, improve teach-outs for students at closed or closing schools, restore focus and clarity to the Department's agency recognition process, and integrate risk-based review into the accreditation recognition process.

The Department of Education Organization Act of 1979 (Pub. L. 96–88) prohibits the Department from intervening in institutional decisions regarding curriculum, faculty, administration, or academic programs of an institution of higher education. Instead, Congress assigned accrediting agencies the role of overseeing the quality of institutions and academic sufficiency of instructional programs. The Secretary recognized 53 accrediting agencies as of April 2019 as shown on the Department's financial aid accreditation websites.<sup>10</sup> In addition, there were four State approval agencies that are also identified as title IV gatekeepers for the approval of postsecondary vocational education and five State approval agencies for the approval of nurse education (for non-title IV, HEA purposes).

The 53 accrediting agencies are independent, membership-based organizations that oversee students' access to qualified faculty, appropriate curriculum, and other support services. Of the 53 accrediting agencies recognized by the Secretary, 36 accredit institutions for title IV, HEA purposes and 17 solely accredit programs. While postsecondary accreditation is voluntary, accreditation from either a nationally recognized accrediting agency or State approval agency is required for an institution to participate in the title IV, HEA programs.

One goal of our negotiated rulemaking was to examine the Department's accreditation regulations and processes to determine which are critical to assessing the quality of an institution and its programs and to protecting student and taxpayer investments. In negotiating the proposed regulations, negotiators reached consensus on the processes that accrediting agencies should follow and understood that certain tradeoffs would be inevitable. Providing greater flexibility in how agencies approach the accrediting process and promoting innovative practices while reducing administrative burden and streamlining operations are

key objectives of the proposed regulations.

The regulatory impact on the economy of the proposed regulations centers on the benefits of, and the tradeoffs associated with, (1) streamlining and improving the Department's process for recognition and review of accrediting agencies and (2) enabling accrediting agencies to exercise greater autonomy and flexibility in their oversight of member institutions and programs in order to facilitate agility and responsiveness and promote innovation. Although we estimate here the marketplace reaction by accrediting agencies, students, institutions, and governmental entities to such regulatory changes, generally, there is little critical data published on which to base estimates of how the proposed regulations, which primarily promote flexibility in accrediting processes, would impact various market segments. The Department is interested in receiving comments or data that would support such an analysis.

#### Accrediting Agencies

The proposed regulations would allow accrediting agencies the opportunity to exercise a greater degree of choice in how they operate. One key change in the proposed regulations pertains to the concept of not limiting an agency's accrediting activities to a particular geographic region. The proposed regulations would remove the "geographic area of accrediting activities" from the definition of "scope of recognition or scope." The current practice of recognizing geographic scope of an accrediting agency may discourage multiple agencies from also including the same State or territory in their geographic scope. By removing this potential obstacle and acknowledging that many agencies already operate outside their recognized geographic scope, the Department seeks to provide increased transparency and introduce greater competition and innovation that could allow an institution or program to select an accrediting agency that best aligns with the institution's mission, program offerings, and student population.

Under the proposed regulations, accrediting agencies would no longer be required to apply to the Department to change the geographic region in which the agencies accredit institutions, which occurs about once a year. However,

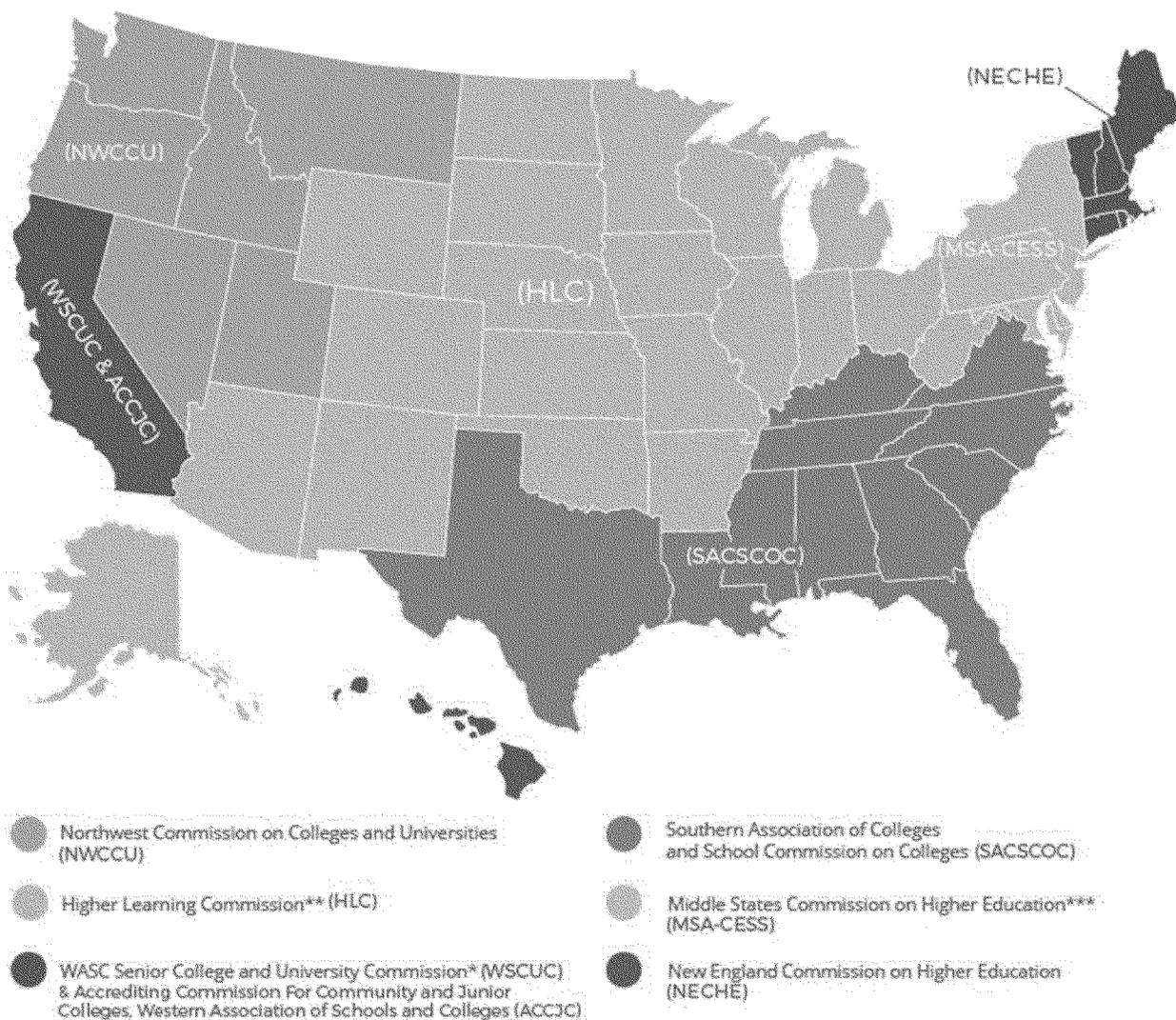
accrediting agencies would be required to include in public disclosures of the States in which they conduct their accrediting activities not only those States in which they accredit main campuses but also the States in which the agencies accredit branch campuses or additional locations. This would promote greater transparency and clarity for students while eliminating burden on agencies and the Department of recognition proceedings focusing on geographic scope as well as the anti-competitive impact of the Department appearing to endorse allocation among individual agencies of discrete geographic territories.

In general, the proposed regulations would simplify the labeling of accrediting agencies to better reflect their focus. Therefore, the Department would no longer categorize agencies as regional or national; we would instead include them under a combined umbrella identified as "institutional." The Department's use of the terms "regionally accredited" and "nationally accredited" related to institutional accreditation would no longer apply in recognition proceedings, although agencies would not be prohibited from identifying themselves as they deem appropriate. Programmatic agencies that currently accredit particular programs would retain that distinction under the proposed regulations.

As a result of these proposed changes, the Department expects that the landscape of institutional accrediting agencies may change over time from one where some agencies only accredit institutions headquartered in particular regions (as shown on the map in Chart 1) to one where institutional accrediting agencies accredit institutions throughout many areas of the United States based more on factors such as institutional mission rather than geography. This could lead to some accrediting agencies capturing a larger share of the market while simultaneously allowing for agencies that specialize in niche areas to enjoy strong demand. The Department wishes to emphasize, however, that we would not require any institution or program to change to a different accrediting agency as a result of these regulatory changes, nor would we require an agency to accept a new institution or program for which it did not have capacity or interest to accredit.

**BILLING CODE 4000-01-P**

<sup>10</sup> Available at <https://www.ed.gov/accreditation?src=accred>.

Chart 1: Regional Accrediting Agency Coverage Map<sup>11</sup>**BILLING CODE 4000-01-C**

Under the proposed regulations, accrediting agencies could realize burden reduction, streamlined operations, and an increase in autonomous control. For example, under the current regulations, an agency found to have a minor deficiency (such as a missing document) would be required to submit a compliance report, of which there were 17 submitted between 2014 and 2018. Agencies required to prepare compliance reports need to invest a significant amount of time and resources. Additionally, compliance reports require extensive review by Department staff, NACIQI, and the senior Department official, at a minimum. Under the proposed

regulations, the Department could find an agency to be substantially compliant and require it to submit a less burdensome monitoring report to address the concern without requiring NACIQI or senior Department official review, saving the agency and the Department time and money while maintaining ample oversight and preserving the same opportunity to require the more extensive review if the agency's shortcomings prove to be not as readily remediated as anticipated. Another example of a proposed change to the regulations that would reduce burden would allow accrediting agencies to use senior staff instead of the agency's accrediting commission to approve substantive changes proposed by accredited institutions or programs. This would allow accrediting agencies to structure their work more efficiently and permit the accredited entities to

obtain agency approval more expeditiously where appropriate.

Under the proposed regulations, for institutions to receive recognition of preaccreditation or accreditation by the Secretary, they would have to agree to submit any dispute with the accrediting agency to arbitration before bringing any other legal action. We propose adding this requirement to highlight the existing statutory requirement, enable agencies to pursue adverse actions without an immediate threat of a lawsuit, and potentially minimize litigation costs for accrediting agencies and institutions. The relative costs of litigation and arbitration can vary depending upon the nature of the dispute, the parties involved, varied costs in different states, and several other factors. According to the Forum, previously known as the National Arbitration Forum, total arbitration

<sup>11</sup> Council for Higher Education Accreditation, Regional Accrediting Organizations web page. Available at <https://www.chea.org/regional-accrediting-organizations-accreditor-type>.

costs can amount to only 25 percent of the cost to bring the same action to court.<sup>12</sup> Another article entitled “The Iceberg: The True Cost of Litigation Versus Arbitration”<sup>13</sup> cites the average cost of arbitration for a business as approximately \$70,000 while the average litigation costs for a given business could total over \$120,000.

The Department does not receive information about the number of disputes between accreditors and institutions that go to litigation or arbitration or data about the costs associated with both those actions. An initial review indicates a range of lawsuits and outcomes involving accrediting agencies and institutions.<sup>14</sup> The Department would welcome additional information to better understand the effect of the initial arbitration requirement.

The likelihood is that from a cost perspective, arbitration would be considerably less expensive for the accrediting agencies and schools than litigation in the first instance and the assumption is outcomes would not vary greatly according to the process pursued. It should be noted however, that the proposed regulation would not preclude an institution from pursuing a legal remedy—as provided for in statute—after going to arbitration. Therefore, the proposed arbitration requirement might not ultimately change institutional behavior.

Under the proposed regulations, accrediting agencies would be required

to report a number of items to the Department, institutions, or the public, as shown in the *Paperwork Reduction Act* section of this preamble. Accrediting agencies would have to, among other items: (1) Notify the Department and publish on its website any changes to the geographic scope of recognition; (2) publish policies for any retroactive application of an accreditation decision; (3) provide institutions with written timelines for compliance and a policy for immediate adverse action when warranted; (4) provide notice to the Department and students of the initiation of an adverse action; (5) update and publish requirements related to teach-out plans and teach-out agreements; and (6) redact personally identifiable and other sensitive information prior to sending documents to the Department.

We estimate the burden for all accrediting agencies would be 6,562 hours and \$297,652 annually at a \$45.36 wage rate. There are also some provisions expected to reduce burden on accrediting agencies, including: (1) Allowing decisions to be made by a senior staff member; (2) using Senior Department Official determination and monitoring reports and reducing preparation and attendance at NACIQI meetings, and (3) removing existing requirements related to evaluating credit hours. These changes are estimated to reduce burden for all accrediting agencies by 2,655 hours and \$120,431 at a \$45.36 wage rate. The net annual burden for all accrediting agencies would be estimated at 3,907 hours and \$177,222. These estimates were based on the 2018 median hourly wage for postsecondary education administrators in the Bureau of Labor Statistics Occupational Outlook handbook.<sup>15</sup>

#### Institutions

The proposed regulations would also affect institutions. Institutions could benefit from a more efficient process to establish new programs and the opportunity to seek out alternate accrediting agencies that specialize in evaluating their type of institution. Other changes that could benefit

institutions relate to the option of using alternative standards for accreditation under § 602.18, provided that the institution demonstrates the need for such an alternative and that students will not be harmed. Institutions would also benefit from accrediting agencies having the authority permit the institution to be out of compliance with policies, standards, and procedures otherwise required by those regulations, for a period of up to three years, and longer for good cause shown, where there are circumstances beyond the institution’s or program’s control requiring this forbearance. This gives institutions flexibility in the event of a natural disaster, a teach-out of another institution’s students, significant and documented local or national economic changes, changes in licensure requirements, undue hardship on students, and the availability of instructors who do not meet the agency’s faculty standards but are qualified by education or work experience to teach courses within a dual or concurrent enrollment program.

Decisions about changing accrediting agencies would have to balance the expense of maintaining existing accreditation while working with new agencies and the possible reputational effects of appearing to shop for accreditation. On the other hand, if accrediting agencies do realign over time, some institutions may need to seek out alternate accreditation as their current agency may elect to specialize in a different market segment.

The following table, based on Federal Student Aid (FSA) information as of April 2019, summarizes data related to title IV eligible institutions and their distribution according to type of primary accrediting agency, also known as the title IV gatekeeper accrediting agency.

As currently configured, both public and private non-profit institutions overwhelmingly use regional accrediting agencies as their primary agency for title IV participation, whereas proprietary institutions almost exclusively use national agencies. We do not require foreign schools to report accreditation information, although they may do so. We show foreign schools simply to provide context for how many are participating.

<sup>12</sup> [www.ffiec.gov/press/comments/nationalarbforum.pdf](http://www.ffiec.gov/press/comments/nationalarbforum.pdf).

<sup>13</sup> <https://landwehrlawmn.com/cost-litigation-arbitration/>.

<sup>14</sup> See, e.g. *Wards Corner Beauty Academy v. National Accred. Comm’n of Arts & Sciences*, 922 F.3d 568 (4th Cir. 2019) (affirming denial of relief to institution challenging withdrawal of accreditation); *Professional Massage Training Center, Inc. v. Accreditation Alliance of Career Schools and Colleges*, 781 F.3d 161 (4th Cir. 2015) (reversing district court’s decision to order reinstatement of accreditation and to award damages); *Escuela de Medicina San Juan Bautista, Inc. v. Liaison Committee on Medical Education*, 820 F. Supp. 2d 317 (D.P.R. 2011) (granting preliminary injunction vacating accrediting agency’s appeal decision and requiring agency to conduct a new appeal); *St. Andrews Presbyterian College v. Southern Ass’n of Colleges and Schools, Inc.*, 679 F. Supp. 2d 1320 (N.D. Ga. 2009) (upholding withdrawal of accreditation after 2 years of litigation); *Western State University of Southern California v. American Bar Ass’n*, 301 F. Supp. 2d 1129 (C.D. Calif. 2004) (granting preliminary injunction against withdrawal of provisional accreditation)

<sup>15</sup> Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Postsecondary Education Administrators, on the internet at <https://www.bls.gov/ooh/management/postsecondary-education-administrators.htm> (visited May 21, 2019).

**Table 1: Summary of Title IV Gatekeeper Agencies by Type and Institutional Sector**

Primary Agency Type	Public	Private, Non-profit	Proprietary	Foreign	Total
Regional	<u>1,554</u>	<u>1,230</u>	<u>91</u>	<u>0</u>	<u>2,875</u>
National	<u>306</u>	<u>474</u>	<u>1,692</u>	<u>0</u>	<u>2,472</u>
N/A				<u>396</u>	<u>396</u>
<u>Total</u>	<u>1,860</u>	<u>1,704</u>	<u>1,783</u>	<u>396</u>	<u>5,743</u>

As stated earlier, under the proposed regulations, the Department would consider regional and national accrediting agencies under one overall “institutional” umbrella. One objective of this policy is to increase students’ academic and career mobility, by making it easier for students to transfer credits to continue or attain an additional degree at a new institution, by eliminating artificial boundaries between institutions due in part to reliance on a reputation associated with certain types of accrediting agencies. While this change would primarily result in some realignment of accrediting agencies and institutions, there is potential that certain postsecondary students could benefit and be enabled to transfer and continue their education at four-year institutions where previously they could not do so. This circumstance could result in greater access and increased educational mobility for students coming from proprietary institutions that use national accrediting agencies. It also could result in the award of increased financial aid, such as Federal Direct Student Loans and Pell Grants, on behalf of students pursuing additional higher education.

From an impact perspective, there may be several outcomes. The likelihood in the near term is that the status quo—where schools, especially four-year institutions, maintain their distinction under institutional accreditation—prevails, and the impact remains essentially zero or neutral. The Department is prohibited from dictating an institution’s credit transfer or

acceptance policy, though it strongly discourages anticompetitive practices or those that deny students the ability to continue their education without an evaluation of that student’s academic ability or prior achievement. The Department is hopeful that changes in these regulations will make it easier for institutions to voluntarily set policies that promote competition, support strong academic rigor, and allow qualified credits to transfer. Nevertheless, other practices would not be prohibited by the proposed regulations and certain institutions may initially resist the changes intended by the proposed regulations.

However, a shift from strictly geographic orientation may occur over time, probably measured in years, as the characterization of “institutional” in terms of accreditation becomes more prevalent and greater competition occurs, spurring an evolving dynamic marketplace. Accrediting agencies may align in different combinations that coalesce around specific institutional dimensions or specialties, such as school size, specialized degrees, or employment opportunities. If access to higher-level educational programs by students improves, the Department anticipates some modest increase in financial aid, through Federal sources such as Direct Loans and Pell Grants. Private loans, which typically require substantial credit scores or co-signers, would be less likely to have a material impact and are not considered as part of this analysis. However, the Department welcomes comments as to whether this

proposed change would affect the private loan marketplace.

The Department approaches estimates for increased financial aid in terms of a range of low, medium, and high impacts based on student risk groups and school sectors. This analysis appears in the section on *Net Budget Impacts*. A factor that could increase the Federal aid received by institutions is the proposed extension of time for achieving compliance in § 602.20, which may reduce the likelihood a school will be dropped by its accreditor.

Additionally, some institutions would benefit from the proposed changes related to State authorization in § 600.9 that would generally maintain State reciprocity agreements for distance education and correspondence programs as an important method by which institutions may comply with State requirements and reduce the burden on institutions that would otherwise be subject to numerous sets of varying requirements established by individual States. The proposed regulations would allow religious institutions exempt from State authorization under § 600.9(b) to comply with requirements for distance education or correspondence courses by States in which the institution is not physically located through State authorization reciprocity agreements. Another proposed change that would make the administration of distance education programs more efficient is replacing the concept of a student’s residence to that of the student’s location. As noted in the State Authorization section of this preamble, residency requirements may differ

within States for purposes of voting, paying in-State tuition, and other rights and responsibilities. By using a student's location instead of residence, the Department intends to make its regulations more consistent with existing State requirements, make it easier for institutions to administer, and ensure that students who have not established legal or permanent residence in a State benefit from State requirements for an institution to offer distance education and correspondence courses in that State. Finally, the proposed regulations would eliminate student complaint process requirements under current § 600.9(c)(2) as the regulations under § 668.43(b) already require institutions to disclose the complaint process in each of the States where its enrolled students are located.

Institutions would be required to make some new or revised disclosures to students and the Department, as shown in the *Paperwork Reduction Act* section of this preamble. Institutions would be required to (1) update their policies and procedures to ensure consistent determination of a student's location for distance education and correspondence course students, and, upon request, to provide written documentation from the policies and procedure manual of its method and basis for such determinations to the Secretary; (2) inform the Secretary of the establishment of direct assessment programs after the first; (3) inform the Secretary of written arrangements for an ineligible program to provide more than 25 percent of a program; and (4) provide disclosures to students about whether programs meet licensure requirements, acceptance of transfer credits, policies on prior learning assessment, and written arrangements for another entity to provide all or part of a program. We estimate the cost of these disclosures to institutions would be a burden increase of 581,980 hours annually, totaling \$26,398,613 (581,980 \* \$45.36). This wage is based on the 2018 median hourly wage for postsecondary education administrators in the Bureau of Labor Statistics Occupational Outlook handbook.<sup>16</sup> The Department welcomes commenters to provide insight on the reasonableness of these disclosure costs.

While institutions will incur some increased costs for these disclosures and notifications, we do think there will be time and cost savings from the consolidation of reporting requirements

and several provisions in the proposed regulations. With the proposed changes to the State Authorization provisions in § 668.50, institutions would no longer have a separate disclosure related to the complaints process for distance education or correspondence programs. Those students would receive the general complaints process disclosure provided to all students. As detailed in the *Paperwork Reduction Act* section of this preamble, these consolidations are expected to save 152,405 hours for a total estimated reduction in burden of \$6,913,091 at the hourly wage of \$45.36 described above. Together, the expected net impact of the changes to disclosures is estimated to be an increase of 429,575 hours totaling \$19,485,522 at the hourly wage of \$45.36. The proposed changes to the substantive change requirements could reduce the time and expense to institutions by streamlining approval of institutional or programmatic changes by dividing them into those that the agency must approve and those the institution must simply report to the agency, and also by permitting some changes to be approved by accrediting agency senior staff rather than by the entire accrediting commission, as well as by setting deadlines for agency approvals of written arrangements. The Department welcomes comments from institutions about the anticipated effects of the proposed regulations on their accreditation-related costs and will consider any such data received when evaluating the final regulations.

#### Students

As discussed earlier, the proposed regulations would provide various benefits to students by improving access to higher education and mobility and promoting innovative ways for employers to partner with accrediting agencies in establishing appropriate quality standards that focus on clear expectations for success. One possible outcome of the proposed regulation would be to make it easier for students to transfer credits to continue or attain an additional degree at a new institution. Such an outcome could potentially affect students from proprietary institutions seeking additional education at four-year public or private nonprofit institutions. If institutions are better able to work with employers or communities to set up programs that efficiently respond to local needs, students could benefit from programs designed for specific in-demand skills. Students would have to consider if choosing a program in a preaccreditation status or one that takes an innovative approach provides a high quality opportunity. The Department

believes programs added in response to the proposed regulations will maintain the quality of current offerings because institutions are still required to obtain accreditor approval when they want to add "programs that represent a significant departure from the existing offerings or educational programs, or method of delivery, from those that were offered when the agency last evaluated the institution" and when they want to add graduate programs. Lower level programs that are related to what they are already offering are expected to leverage the strengths of the existing programs.

The Department does not believe many students rely on the distinction between regional and national accrediting agencies when deciding between programs or institutions but instead base their choice on other factors such as location, cost, programs offerings, campus, and career opportunities. Therefore, we do not think there are costs to students from the proposed change to institutional versus regional accreditation, especially since institutions would be allowed to use whatever terms accurately reflect their accreditation to the extent it is useful for informing the audience of particular communications. Additionally, if the accreditation market transforms over time and certain agencies develop strong reputations in specialized areas over time, that may be more informative for students interested in those outcomes.

The changes to the institutional disclosures in the proposed regulations are also aimed at simplifying the disclosures and providing students more useful information. As detailed in the Disclosures section of this NPRM, the proposed regulations would require disclosures to ensure that an institution provides adequate information for students to understand its transfer-of-credit policy, especially when that policy excludes credits from certain types of institutions. The Department also believes that disclosures relating to an institution's prior learning assessment policies are important to students, especially those who have not attended college before or who are returning to college after many years of experience or training in other fields. Students would also receive information about any written arrangements under which an entity other than the institution itself provides all or part of a program. Another key proposed disclosure is whether the program meets educational requirements for licensure in the State in which the student is located. The proposed regulations about teach-out plans required by accreditors

<sup>16</sup> Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Postsecondary Education Administrators, available at [www.bls.gov/ooh/management/postsecondary-education-administrators.htm](http://www.bls.gov/ooh/management/postsecondary-education-administrators.htm) (visited May 21, 2019).

and State actions are intended to ensure that students have clear information about serious problems at their institutions, and this is most likely to occur when those institutions are required to have a teach-out plan in place or are under investigation by a State or other agency. The Department welcomes comments on the proposed disclosures and the value to students of the information to be provided.

Under the proposed regulations, in certain circumstances, such as when an accrediting agency places a school on probation, the Department changes the school to reimbursement payment method, or the school receives an auditor's adverse opinion, an accrediting agency would require a teach-out plan to facilitate the opportunity for students to complete their academic program. A school closing would also trigger a required teach-out opportunity. For students, this could enable them to complete a credential with less burden associated with transferring credits and finding a new program. Alternatively, they would have the option to choose a closed school discharge if it makes sense for their situation. The additional flexibility under the proposed regulations for accrediting agencies to sanction programs instead of entire institutions potentially creates a trade-off as the students in programs that close are not eligible for closed school discharges. However, by focusing on problematic programs, fewer institutions may close precipitously, and fewer students would have their programs disrupted.

#### Federal Government

Under the proposed regulations, the Federal government would incur some additional administrative costs.

The costs associated with processing post-participation disbursements are not expected to be significant as the disbursement system is well established and designed to accommodate fluctuations in disbursements. A file review at the agency would be incorporated into the review of agency applications. Currently, the Department reviews approximately 10 accrediting agencies for initial or renewal applications annually and we expect a file review would take Department staff 6 hours at a GS-14 Step 1 hourly wage rate of \$43.42. The potential increase in

the number of reviews due to the proposed regulations is uncertain, but we estimate a cost of \$261 per review (6 hours \* \$43.42). Additional costs may also arise from increased senior Department official reviews under proposed § 602.36(g), which provides an agency subject to a determination that a decision to deny, limit, or suspend recognition may be warranted with an opportunity to submit a written response and documentation addressing the finding, and the staff with an opportunity to present its analysis in writing. The Department has reviewed 17 compliance between 2014 and 2018, so the administrative burden on the Department from this provision is not expected to be significant.

The Federal government would benefit from savings due to a reduced number of closed-school loan discharges as a result of an expected increase in students completing teach-outs, but it could also incur annual costs to fund more Pell Grants and some title IV loans for students participating in teach-outs and increased volume from new programs or extension of existing programs, as discussed in the *Net Budget Impacts* section.

#### Net Budget Impacts

The proposed regulations are estimated to have a net Federal budget impact over the 2020–2029 loan cohorts of \$97 million in outlays in the primary estimate scenario and an increase in Pell Grant outlays of \$3,744 million over 10 years, for a total net impact of \$3,841 million. A cohort reflects all loans originated in a given fiscal year. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. The Net Budget Impact is compared to the 2020 President's Budget baseline (PB2020).

As the Department recognizes that the market transformations that could occur in connection with the proposed regulations are uncertain and we have limited data on which to base estimates of accrediting agency, institutional, and student responses to the regulatory changes, we present alternative scenarios to capture the potential range of impacts on Federal student aid

transfers. An additional complicating factor in developing these estimates are the related regulatory changes on which the committee reached consensus in this negotiated rulemaking that will be proposed in separate notices of proposed rulemaking. For example, the potential expansion of distance education or direct assessment programs because of significant proposed changes in the regulations governing such programs will be addressed in a separate notice of proposed rulemaking. In this analysis, we address the impact of the accreditation changes and other changes in these proposed regulations but recognize that attributing future changes in the Federal student aid disbursements to provisions that have overlapping effects is an inexact process. Therefore, in future proposed regulations, as appropriate, we will consider interactive effects related to the changes proposed in this NPRM.

The main budget impacts estimated from the proposed regulations come from changes in loan volumes and Pell Grants disbursed to students as establishing a program becomes less burdensome and additional students receive title IV, HEA funds for teach-outs. Changes that could allow volume increases include making it easier for new accreditors to be recognized and reducing the experience requirement for expanding an agencies' scope to new degree levels. Agencies would also be able to establish alternative standards that require the institution or program to demonstrate a need for the alternative approach, as well as that students will receive equivalent benefit and will not be harmed. The alternative standard could allow for the faster introduction of innovative programs. The possibility of additional accreditors would increase the chances for institutions to find an accreditor. Institutions' liability associated with acquiring additional locations and expanded time to come into compliance could also keep programs operating longer than they otherwise might. The tables below present the assumed grant and loan volume changes used in estimating the net budget impact of the proposed regulations for the primary scenario, with discussion about the assumptions following the tables.

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Table 2A: Assumptions about Change in Pell Grants by Award

Year

	Additional Pell Recipients				
	2020	2021	2022	2023	2024
4-year public	0	8,845	15,075	30,789	39,292
2-year public	0	6,790	11,624	17,891	24,469
4-year private	0	3,252	5,514	11,215	14,272
2-year private	0	163	281	433	597
Proprietary	0	4,988	10,266	15,832	21,691
<b>Total</b>	<b>-</b>	<b>24,038</b>	<b>42,760</b>	<b>76,161</b>	<b>100,321</b>

	Additional Pell Recipients				
	2025	2026	2027	2028	2029
4-year public	48,153	57,375	66,980	68,903	70,333
2-year public	31,395	38,633	46,219	47,710	48,933
4-year private	17,456	20,806	24,230	24,869	25,369
2-year private	772	956	1,155	1,193	1,235
Proprietary	25,102	28,679	32,454	33,612	34,570
<b>Total</b>	<b>122,879</b>	<b>146,450</b>	<b>171,037</b>	<b>176,288</b>	<b>180,441</b>

Estimated program costs for Pell Grants range from \$30.1 billion in AY 2021–22 to \$37.2 billion in AY 2029–30, with a ten-year total estimate of \$333.8 billion. On average, the FY 2020 President's Budget projects a baseline increase in Pell Grant recipients from

2020 to 2029 of approximately 200,000 annually. The increase in Pell Grant recipients estimated due to the proposed regulations ranges from about 12 percent in 2021 to approximately 90 percent by 2029 of the projected average annual increase that would otherwise

occur. However, even the additional 180,441 recipients estimated for 2029 would account for approximately 2 percent of all estimated Pell recipients in 2029 and results in an approximately 1.4 percent increase in estimated 10-year Pell Grant program costs.

Table 2B: Assumptions about Change in Loan Volume from  
Proposed Regulations by Cohort and Risk-Group

	PB2020 Vol Est (Subsidized and Unsubsidized) FY2020 (\$mns)	Percent Change in Loan Volume by Risk Group and Cohort- Subsidized and Unsubsidized Loans				
		2020	2021	2022	2023	2024
2-Yr Proprietary	2,774	0	0.5	1	1.5	2
2-Yr NP and Pub	4,981	0	0.3	0.5	0.75	1
4-Yr Fr/So	17,118	0	0.3	0.5	1	1
4-YR Jr/Sr	20,063	0	0.3	0.5	1	1
Grads	29,186	0	0	-0.2	-0.2	-0.2
		2025	2026	2027	2028	2029
2-Yr Proprietary		3	4	5	5	5
2-Yr NP and Pub		1.25	1.5	2	2.25	2.5
4-Yr Fr/So		1.5	2	2.75	3.5	4
4-YR Jr/Sr		1.5	2	2.75	3.5	4
Grads		-0.2	-0.3	-0.3	-0.3	-0.3
	PB2020 Vol Est (PLUS) FY2020 (\$mns)	Percent Change in Loan Volume by Risk Group and Cohort - Plus Loans				
		2020	2021	2022	2023	2024
2-Yr Proprietary	356	0	0.25	0.5	0.75	1
2-Yr NP and Pub	133	0	0.15	0.25	0.375	0.5
4-Yr Fr/So	8,003	0	0.15	0.25	0.5	0.5
4-YR Jr/Sr	5,713	0	0.15	0.25	0.5	0.5

Grads	11,888	0	0	-0.2	-0.2	-0.2
		<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>2029</b>
2-Yr						
Proprietary		1.5	2	2.5	2.5	2.5
2-Yr NP and						
Pub		0.625	0.75	1	1.125	1.25
4-Yr Fr/So		0.75	1	1.375	1.75	2
4-YR Jr/Sr		0.75	1	1.375	1.75	2
Grads		-0.2	-0.3	-0.3	-0.3	-0.3

As seen from the approximately \$100 billion annual loan volume, even small changes will result in a significant amount of additional loan transfers. Loan volume estimates are updated regularly, but for PB2020 total non-consolidated loan volume estimates between FY2020 and FY2029 range from \$100.2 billion to \$116.1 billion. The additional high and low scenarios represent a 20 percent increase or decrease from the assumptions presented in the table. The Department does not anticipate that the changes in the proposed regulation will lead to widely different scenarios for volume growth and therefore believes the 20 percent range captures the likeliest outcomes. For the provisions aimed at reducing closed school discharges by enhancing teach-outs, the main assumption is that closed school discharges will decrease by 10 percent, with a 20 percent decrease in the high scenario and a 5 percent decrease in the low scenario. With some exceptions, the Department has limited information about teach-outs and what motivates students to pursue them versus a closed school discharge, but we assume proximity to completion, convenience, and perception of the quality of the teach-out option have a substantial effect. Absent any evidence of the effect of the proposed changes on student response to teach-out plans, the Department has made a conservative assumption about the decrease in closed

school discharges and the potential savings from the proposed changes may be higher.

The assumed changes in loan volume would result in a small cost that represents the net impact of offsetting subsidy changes by loan type and risk group due to positive subsidy rates for Subsidized and Unsubsidized Stafford loans and negative subsidy rates for Parent PLUS Loans and the interaction of the potential reduction in closed school discharges and increases in loan volume. We do not assume any changes in subsidy rates from the potential creation of new programs or the other changes reflected in the proposed regulations. Depending on how programs are configured, the market need for them, and their quality, key subsidy components such as defaults, prepayments, and repayment plan choice may vary and affect the costs estimates. For example, if institutions with less favorable program outcomes find more lenient accreditors or if they take advantage of the substantive change policy revisions to expand their program offerings, there could be an increase in default rates or other repayment issues. On the other hand, institutions with strong programs may take advantage of the flexibility allowed by the substantive change policy revisions to expand their program offerings, possibly by adding certificate programs. We do not have sufficient information at this point to assume that

new programs established under these provisions would have a different range of performance from current programs or to estimate how performance could vary. The Department welcomes comments about where program growth might occur as a result of the proposed regulations, including other factors that might change performance, and we will consider them in developing the final regulations.

Table 3 summarizes the Pell and loan effects for the Low, Main, and High impact scenarios over a 10-year period with years 2022 through 2029 showing amounts of over \$100 million in outlays per year. Each column reflects a low impact, medium impact, or high impact scenario showing estimated changes to Pell Grants and Direct Loans under those low, medium, and high conditions. Therefore, the overall amounts reflect the sum of outlay changes occurring under each scenario for Pell Grants and Direct Loans when combined. The loan amounts reflect the combined change in the volumes and closed school discharges, which do have interactive and offsetting effects. For example, the closed school changes had estimated savings ranging from \$80 million to \$201 million when evaluated without the volume changes, and the volume changes had costs of \$182 million to \$252 million when estimated without the closed school changes.

**Table 3: Estimated Net Impact of Pell Grant and Loan Changes- 2020-2029 Outlays (\$mns)**

	Low	Main	High
Pell Grants	2,981	3,744	4,463
Loans	95	97	54
<b>Overall</b>	<b>3,076</b>	<b>3,841</b>	<b>4,517</b>

When considering the impact of the proposed regulations on Federal student aid programs, a key question is the extent to which the proposed changes will expand the pool of students who will receive grants or borrow loans compared to the potential shifting of students and associated aid to different programs that may arise because of the changes in accreditation. The Department believes many of the proposed regulatory provisions that clarify definitions or reflect current practice will not lead to significant expansion of program offerings that would not otherwise occur for reasons related to institutions' business plans or academic mission. We believe these provisions may ease the burden of setting up new programs and accelerate the timeframe for offering them. Accreditation is a significant consideration when establishing a program because of the expense and work involved in seeking and maintaining it, but institutions make decisions about programs to offer based on employment needs, student demand, availability of faculty, and several other factors. Therefore, the Department does not expect the proposed regulations to

increase total loan volumes more than 2 percent or Pell Grant recipients more than 2 percent by 2029 compared to the FY 2020 President's Budget baseline.

Another factor reflected in Table 2 is that we do not expect the impacts of the proposed regulations to occur immediately upon implementation, but to be the result of changes in postsecondary education over time. Institutions generally undergo accreditation review every 7 to 10 years, depending upon the accrediting agency and their status. Additionally, accrediting agencies may develop a new focus area or geographic scope over time as resources are required for expanding their operations. To the extent that there is a change in the institutional accreditation landscape, we would not expect institutions to change agencies until their next review point, so the impacts of the proposed regulations would be gradual.

The proposed changes to the substantive change requirements, which would allow institutions to respond quickly to market demand and create undergraduate programs at different credential levels and focus agency attention on the creation of graduate

certificate and masters level programs where many loan dollars are directed, could lead to expansion in Federal aid disbursed. The increased volume change of the high scenario reflects uncertainty about the extent of this potential expansion, as well as the fact that much of the expansion may involve online programs subject to forthcoming proposed regulatory changes that would interact with these proposed regulations. The number of graduate programs awarding credentials has increased substantially since the introduction of graduate PLUS loans in 2006, as has the volume of loans disbursed to graduate borrowers, as shown in Table 4. The proposed regulations would not change the substantive change requirements for graduate programs. This emphasis reflects the Department's concern about the growing practice of elevating the level of the credential required to satisfy occupational licensure requirements. Focusing accreditor attention on graduate programs may slow down or prevent the creation of some new programs, which is reflected in the slight reduction in graduate loan volume in Table 2.

Table 4<sup>17</sup>: Programs Awarding Credentials and Credentials Awarded in Selected Years  
2006–2017

	Programs				Awards			
	2006	2010	2013	2017	2006	2010	2013	2017
<b>Undergraduate Certificates</b>	<b>50,960</b>	<b>58,870</b>	<b>60,440</b>	<b>64,490</b>	<b>1,461,460</b>	<b>734,880</b>	<b>1,987,740</b>	<b>1,919,950</b>
Public 4yr	1,890	3,130	4,160	7,970	30,740	34,840	104,860	196,790
Private 4yr	1,810	2,280	2,490	2,810	21,640	9,990	27,320	27,720
Prop 4yr	950	1,550	2,150	1,820	30,220	13,680	61,200	61,470
Public 2yr or less	33,570	37,250	36,740	39,020	713,690	409,720	986,440	1,064,240
Private 2yr or less	1,290	1,050	1,010	890	58,490	22,350	41,920	40,030
Prop 2yr or less	11,440	13,620	13,900	11,990	606,670	244,290	766,010	529,700
<b>Undergraduate Degrees</b>	<b>136,190</b>	<b>149,840</b>	<b>161,220</b>	<b>168,980</b>	<b>4,596,970</b>	<b>2,144,470</b>	<b>5,942,860</b>	<b>6,164,090</b>
Public 4yr	40,000	42,670	46,770	55,080	2,126,290	1,036,150	2,709,700	3,048,600
Private 4yr	57,240	61,950	67,070	71,550	1,101,850	488,020	1,289,280	1,349,090
Prop 4yr	4,680	9,460	11,270	7,170	202,920	159,620	519,650	342,520
Public 2yr or less	30,280	31,590	31,880	32,320	1,029,930	413,450	1,282,000	1,343,570
Private 2yr or less	840	620	570	540	19,480	4,240	13,200	14,090



**Table 4<sup>18</sup>: Graduate PLUS and Graduate Unsubsidized Loans Disbursed to Students in Selected Years 2006-2017**

	AY2005-06	AY2009-10	AY2012-13		AY2016-17	
	Grad PLUS	Grad PLUS	Grad PLUS	Grad Unsub	Grad PLUS	Grad Unsub
Public	12,793,910	1,276,149,977	1,838,645,436	10,232,321,388	2,444,408,219	10,584,552,835
Private	59,288,547	3,909,981,128	4,934,939,609	12,629,730,564	6,094,281,420	13,030,559,389
Proprietary	4,000,483	575,779,471	830,210,361	3,967,504,952	1,106,645,769	3,410,171,851
Total	76,082,940	5,761,910,576	7,603,795,406	26,829,556,904	9,645,335,408	27,025,284,075

**Note:** Unsubsidized loans to graduate students not included as not split in volume reports until 2010-11.

The proposed regulations also aim to bring greater clarity to the nature of teach-outs and to create a more orderly process for students and institutions when schools are closing precipitously. We seek through these proposed regulations to provide students with the opportunity to finish their program of study and attain their credential and keep closed school discharges to a minimum to reduce taxpayer cost.

The proposed regulations would permit an accrediting agency to sanction a specific program or location within an institution without taking action against the entire institution if the agency found that only that program or location was noncompliant. The Department recognizes that this situation would preclude a student from obtaining a closed school discharge, since only a program was subject to closure and not

the entire institution. However, accrediting agency actions have rarely been the sole cause of institutional closure, so the potential application of this more limited response may not change the level of closed school discharges significantly.

Nevertheless, students would be entitled to teach-outs that facilitate program completion and degree attainment. In turn, the expansion of teach-outs could have budgetary impacts related to financial aid amounts as students take out loans or grants to complete their programs. When participating in a teach-out, the receiving school may not charge students more than what the closing or closed school would have charged for the same courses. If teach-outs increase significantly, this could result in some increase in loan volume and Pell Grants

to such students. Closed school discharges are a very small percent of cohort volume, so the potential volume increase associated with increased teach-outs ranges is not expected to be substantial and contributes to the volume increases presented in Table 2.

#### Accounting Statement

In accordance with OMB Circular A-4 we have prepared an accounting statement showing the classification of the expenditures associated with the proposed regulations (see Table 2). This table provides our best estimate of the changes in annual monetized transfers as a result of the proposed regulations. Expenditures are classified as transfers from the Federal Government to affected student loan borrowers and Pell Grant recipients.

**Table 5: Accounting Statement: Classification of Estimated Expenditures (in millions)**

Category	Benefits	
Restored focus and clarity for accrediting agency recognition process	Not Quantified	
	Not Quantified	
Category	Costs	
Cost of compliance with paperwork requirements	7% \$20.1	3% \$20.1
Category	Transfers	
Increased Pell Grants transferred to students who enter postsecondary education because of programs established or that remain open because of accreditation changes or who participate in teach-outs	7% \$323.2	3% \$351.9
Change in transfers from increased Federal student loans transferred to students who enter postsecondary education because of programs established or that remain open because of accreditation changes or who participate in teach-outs and reduced closed school discharges from the Federal Government to affected borrowers	\$7.3	\$8.6

<sup>17</sup> U.S. Department of Education analysis of IPEDS completions data for 2006, 2010, 2013, and

2017. Available at <https://nces.ed.gov/ipeds/datacenter/DataFiles.aspx>.

<sup>18</sup> FSA Data Center loan volume files available at <https://studentaid.ed.gov/sa/about/data-center/student/title-iv>.

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## Regulatory Alternatives Considered

In the interest of ensuring that these proposed regulations produce the best possible outcome, we considered a broad range of proposals from internal sources as well as from non-Federal negotiators and members of the public as part of the negotiated rulemaking process. We reviewed these alternatives in detail in the preamble to this NPRM under the “Reasons” sections accompanying the discussion of each proposed regulatory provision. Among the items discussed was removing or revising the limit on how much of a program may be offered by a non-accredited entity, which could allow faster expansion of programs but raised concerns about maintaining program quality. Also, a variety of alternatives to the proposed elimination of the requirement that an agency must have conducted accrediting activities for at least two years prior to seeking recognition when the agency is affiliated with, or is a division of, a recognized agency were considered by the negotiating committee. A proposal to make all regional accreditors national was not agreed to, with the institutional designation being used for Department business instead. Stricter requirements for obtaining approval of graduate programs were considered but not agreed upon. These would likely have had a stronger negative effect on graduate program creation than the proposed regulations. While consensus was reached on all provisions, the Department is interested in receiving comments related to other alternatives to the proposed regulations.

## Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum “Plain Language in Government Writing” require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A “section” is preceded by the symbol

“§” and a numbered heading; for example, § 600.2.)

- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

## Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department’s collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Sections 600, 602, and 668 contain information collection requirements. Under the PRA the Department has submitted a copy of these sections to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number.

Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations we will display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

## Discussion

The goal of accreditation is to ensure that institutions of higher education meet acceptable levels of quality. Accreditation in the United States involves non-governmental entities as well as Federal and State government agencies. Accreditation’s quality

assurance function is one of the three main elements of oversight governing the HEA’s Federal student aid programs. In order for students to receive Federal student aid from the Department for postsecondary study, the institution must be accredited by a “nationally recognized” accrediting agency (or, for certain vocational institutions, approved by a recognized State approval agency), be authorized by the State in which the institution is located, and receive approval from the Department through a program participation agreement.

Accrediting agencies, which are private educational associations operating in multiple states or with national scope, develop evaluation criteria and conduct peer evaluations to assess whether or not those criteria are met. Institutions and programs that request an accrediting agency’s evaluation and that meet that agency’s criteria are then “accredited”.

As of April 2019, the Secretary recognizes 53 accrediting agencies that are independent, membership-based organizations designed to ensure students have access to qualified faculty, appropriate curriculum, and other support services. Of these 53 accrediting agencies recognized by the Secretary, 36 are institutional for title IV HEA purposes and 18 are solely programmatic. Institutional accrediting agencies accredit institutions of higher education, and programmatic accrediting agencies accredit specific educational programs that prepare students for entry into a profession, occupation, or vocation. The PRA section will use these figures in assessing burden. Additionally, the numbers of title IV eligible institutions noted in the Regulatory Impact Analysis, 1,860 public institutions, 1,704 private institutions, and 1,783 proprietary institutions, will be used as the basis for assessing institutional burden in the PRA.

Through this process we identified areas where cost savings would likely occur under the proposed regulations; however, many of the associated criteria do not have existing information collection requests and consequently are not assigned OMB numbers for data collection purposes. Instead, they are included in the collections table in a column titled: “Estimated savings absent ICR requirement”, and they are sometimes referred to as “hours saved”. These areas of anticipated costs savings are not included in the total burden calculations.

*Section 600.9—State Authorization Requirements*

Under § 600.9(c)(1)(ii)(A), the institution must determine in which State a student is located while enrolled in a distance education or correspondence course when the institution participates in a State authorization reciprocity agreement under which it is covered in accordance with the institution’s policies and procedures. The institution must make

such determinations consistently and apply them to all students. Under § 600.9(c)(1)(ii)(B), the institution must, upon request, provide the Secretary with written documentation of its determination of a student’s location, including the basis for such determination.

*Burden Calculation*

We estimate that, on average, an institution would need 30 minutes to update its policies and procedures

manual to ensure consistent location determinations for distance education and correspondence course students. Additionally, we estimate that it would take an institution 30 minutes to provide the Secretary, upon request, with written documentation from its policies and procedures manual of its method of determination of a student’s location, including the basis for such determination.

Table 1: § 600.9(c)(1)(ii)(A)

Respondent	Responses	Time per response	Total Hours
Public	1,860	.5 (30 min.)	= 930 hours
Private	1,704	.5 (30 min.)	= 852 hours
Proprietary	1,783	.5 (30 min.)	<u>= 892 hours</u>
			=2,674 hours

We estimate that no more than five percent of institutions will be required to provide written documentation to the Secretary regarding the basis for the institutions’ determinations of a State location for a student. We estimate that 93 public institutions will require 47

hours to provide written documentation of their basis for a location determination for a student as requested by the Secretary. We estimate that 85 private institutions will require 43 hours to provide written documentation of their basis for a location

determination for a student as requested by the Secretary. We estimate that 89 proprietary institutions will require 45 hours to provide written documentation of their basis for a location determination for a student as requested by the Secretary.

Table 2: § 600.9(c)(1)(ii)(B)

Respondent	Responses	Time per response	Total Hours
Public	1,860	5% x .5 (30 min.)	= 47 hours
Private	1,704	5% x .5 (30 min.)	= 43 hours
Proprietary	1,783	5% x .5 (30 min.)	<u>= 45 hours</u>
			= 135 hours

The estimated burden for § 600.9 is 2,809 hours under OMB Control Number 1845–0144. The estimated institutional cost is \$127,416 based on \$45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

*Section 602.12—Accrediting Experience Requirements*

The Department proposes requiring under § 602.12(b)(1) that an accrediting agency notify the Department of its geographic expansion and to publicly disclose it on its website.

*Burden Calculation*

Under § 602.12(b)(1), we estimate that, on average, it would take an agency

1 hour to inform the Department that it has expanded its geographic scope and to disclose the information publicly on its website. However, overall burden would decrease because an agency would no longer need to request such an expansion be approved by the Department, which takes, on average, 20 hours. The Department has received, on average, one such request annually.

The estimated burden under § 602.12 would increase by 1 hour [1 x 1] under

OMB Control Number 1840–0788. In addition, in absence of an ICR for expansion of scope, we estimate, on average, burden reduction under § 602.12 would be 19 hours [ $1 \times (20-1)$ ] under OMB Control Number 1840–0788. The estimated institutional cost is \$45.36 based on \$45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

*Section 602.18—Ensuring Consistency in Decision-Making; Section 602.20—Enforcement of Standards; Section 602.22—Substantive Changes and Other Reporting; Section 602.23—Operating Procedures All Agencies Must Have; Section 602.24—Additional Procedures Certain Institutional Agencies Must Have; and Section 602.26—Notifications of Accrediting Decisions: All Related to Proposed Accreditation Agency Policy Changes*

#### Requirements

Under § 602.18(a)(6), we propose that accrediting agencies publish any policies for retroactive application of an accreditation decision. The policies must not provide for an effective date that predates an earlier denial by the agency of accreditation or preaccreditation to the institution or program or the agency's formal approval of the institution or program for consideration in the agency's accreditation or preaccreditation process.

Under § 602.20(a)(2), we propose that accrediting agencies provide institutions or programs with written timelines for coming into compliance, which may include intermediate checkpoints as the institutions progress to full compliance. Under § 602.20(b), we propose that accrediting agencies have a policy for taking immediate adverse action when warranted. We propose both changes to remove overly prescriptive timelines for accrediting agencies that will emphasize acting in the best interest of students rather than merely acting swiftly.

Under § 602.20(d), we propose to add that accrediting agencies could limit adverse actions to specific programs or additional locations without taking action against the entire institution. This change would provide accrediting agencies with more tools to hold

programs or locations within institutions accountable.

The Department proposes revisions to substantive change regulations to provide accrediting agencies more flexibility to focus on the most important changes. Under § 602.22(a)(3)(i), we propose to have accrediting agencies' decision-making bodies designate agency senior staff members to approve or disapprove certain substantive changes. Under § 602.22(a)(3)(ii), we propose a 90-day timeframe (180 days for those with significant circumstances) for accrediting agencies to make final decisions about substantive changes involving written arrangements for provision of 25 to 50 percent of a program by a non-eligible entity. Under § 602.22(b), we propose two additional substantive changes for which an institution placed on probation or equivalent status must receive prior approval and for which other institutions must provide notice to the accrediting agency. Under § 602.23(f)(1)(ii), we propose that agencies require that all preaccredited institutions have a teach-out plan that ensures students completing the teach-out would meet curricular requirements for professional licensure or certification, if any. We further propose in this section to require that the teach-out plan includes a list of academic programs offered by the institution, as well as the names of other institutions that offer similar programs and that could potentially enter into a teach-out agreement with the institution.

Under proposed § 602.24(a), we propose that agencies not require an institution's business plan, submitted to the Department, to describe the operation, management, and physical resources of the branch campus and remove the requirement that an agency may only extend accreditation to a branch campus after the agency evaluates the business plan and takes whatever other actions it deems necessary to determine that the branch campus has enough educational, financial, operational, management, and physical resources to meet the agency's standards.

Under § 602.24(c), we propose new requirements for teach-out plans and teach-out agreements. We propose these changes to add additional specificity

and clarity to teach-out plans and agreements and new provisions regarding when they will be required, what they must include, and what accrediting agencies must consider before approving them.

Under § 602.24(f), we propose that agencies adopt and apply the definitions of "branch campus" and "additional location" in 34 CFR 600.2, and 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. We propose this change to standardize the use of these terms and alleviate misunderstandings.

Under § 602.26(b), we propose that accrediting agencies provide 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. We further propose to require the institution or program to disclose such an action within seven business days of receipt to all current and prospective students.

#### Burden Calculation

Under § 602.18(a)(6), § 602.20(a)(2), § 602.20(b), § 602.20(d), § 602.22(a)(3)(i), § 602.22(a)(3)(ii), § 602.22(b), § 602.23(f)(1)(ii), § 602.24(a), § 602.24(c), § 602.24(f), and § 602.26(b), we estimate that, on average, an agency would need 12 hours to develop policies regarding submitting written documentation to the Secretary, which includes obtaining approval from its decision-making bodies, updating its policies and procedures manual, distributing the new policies to its institutions, and training agency volunteers on the changes.

Collectively, the one-time estimated burden for § 602.18(a)(6), § 602.20(a)(2), § 602.20(b), § 602.20(d), § 602.22(a)(3)(i), § 602.22(a)(3)(ii), § 602.22(b), § 602.23(f)(1)(ii), § 602.24(a), § 602.24(c), § 602.24(f), and § 602.26(b), is 636 hours ( $53 \times 12$ ) under OMB Control Number 1840–0788. The estimated institutional cost is \$28,849 based on \$45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

Table 3: Summary of Accrediting Agency Policy Manual

Changes

Requirements	Hours	Agencies	Total Burden
Write Policies	4	53	212
Obtain Approval	2	53	106
Update Manual	2	53	106
Distribute Policies	1	53	53
Train Volunteers	3	53	159
Total	12	53	636

*Section 602.22—Substantive Changes and Other Reporting Requirements*

Requirements

Under 602.22(a)(3)(i), for certain substantive changes, the agency’s decision-making body may designate agency senior staff to approve or disapprove the request.

Burden Calculation

Although a formal ICR does not exist under §§ 602.22(a)(3)(i), we estimate that we would save time, on average, by 6 hours given that a designated agency staff member could approve or disapprove certain substantive changes in place of decision-making bodies.

The estimated amount of time saved under § 602.22(a)(3)(i) is 318 hours [53 × (−6)] under OMB Control Number 1840–0788. There is no estimated institutional cost under § 602.22(a)(3)(i), but we believe that there would be an overall savings of \$14,424.48 for agencies.

*Section 602.23—Operating Procedures All Agencies Must Have*

Requirements

Under § 602.23(a)(2), we propose to require that accrediting agencies make publicly available the procedures that institutions or programs must follow in applying for substantive changes. While we are aware that some agencies voluntarily make such procedures publicly available, we propose to require it. We further propose to require that the agencies make publicly available the sequencing of steps relative to any applications or decisions required by States or the Department relative to the agency’s preaccreditation,

accreditation or substantive change decisions.

Burden Calculation

Under § 602.23(a)(2), we estimate that, on average, it would take an agency a one-time effort of 2 hours to make its application procedures publicly available. We anticipate that accrediting agencies will use their websites to comply, but any reasonable method is acceptable if the information is available to the public.

The estimated one-time burden for § 602.23 is 106 hours (53 × 2) under OMB Control Number 1840–0788. The estimated institutional cost is \$4,808 based on \$45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

*Section 602.24—Additional Procedures Certain Institutional Agencies Must Have*

Requirements

Under proposed § 602.24(a), agencies would not have to require an institution’s business plan, submitted to the Department, to describe the operation, management, and physical resources of the branch campus and we would remove the requirement that an agency may only extend accreditation to a branch campus after the agency evaluates the business plan and takes whatever other actions it deems necessary to determine that the branch campus has enough educational, financial, operational, management, and physical resources to meet the agency’s standards. Proposed § 602.24(c) would establish new requirements for teach-

out plans and teach-out agreements, including when an agency must require them and what elements must be included.

Proposed § 602.24(f) would remove the requirement that an agency conduct an effective review and evaluation of the reliability and accuracy of the institution’s assignment of credit hours.

Burden Calculation

We believe the requirements under § 602.24 that are being deleted are unnecessarily prescriptive and administratively burdensome without adding significant assurance that the agency review will result in improved accountability or protection for students or taxpayers.

Institutional accreditors reviewed and extended accreditation to 53 branch campuses in 2018; and 26 to date in 2019. Given these figures, we estimate that under proposed 602.24(a), an agency would save, on average, three hours [(2 hours × 53 business plans = 106)/36 institutional accreditors = 3 hours) not reviewing business plans for branch campus applications. Under 602.24(c), we estimate that an agency would need, on average, an additional hour to review the extra requirements for teach out plans and teach out agreements of their Title IV gatekeeping institutions (1 hour × 5,347 institutions).

Accreditors review their institutions at different intervals with a maximum of 10 years. Using a five-year interval as an “mean”, agencies would review and evaluate credit hours of 5,347 Title IV gatekeeping institutions every five years. Under 602.24(f), we estimate that accrediting agencies have conducted the one-time review and evaluation of 80

percent (4,277) of their institutions' credit hours given the requirement became effective eight years ago (2011) leaving, no more than likely, 20 percent (1,070) of institutions' credit hours to be reviewed and evaluated.

Collectively, under 602.24(a), 602.24(c), and 602.24(f), we estimate, on

average, added burden of 5,347 hours (1 × 5,347); and 2,246 saved hours (106 + 2,140) if an ICR was associated with the proposed changes to lift required review of institutions' business plans and credit hours.

The estimated institutional cost is \$242,540 based on \$45.36 per hour for

Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

TABLE 4—SUMMARY OF PROPOSED BURDEN AND HOURS SAVED FOR ADDITIONAL PROCEDURES CERTAIN INSTITUTIONAL AGENCIES MUST HAVE

Changes	Hours	Branch campus	Total burden	Hours saved
Business Plans—Applications .....	2	53	.....	106
Teachout Plans & Agreements .....	1	5,347	5,347	.....
Credit Hours .....	2 ×	5,347 × .20	.....	2,140
<b>Total</b> .....	<b>1</b>	.....	<b>5,347</b>	<b>2,246</b>

*Section 602.31—Agency Applications and Reports To Be Submitted to the Department*

Requirements

Given the increased number of Freedom of Information Act (FOIA) requests, in § 602.31(f), we propose to require that accrediting agencies redact personally identifiable information and other sensitive information prior to sending documents to the Department to

help prevent public disclosure of that sensitive information.

Burden Calculation

In FY 2018, the Department closed 10 FOIA requests that were associated with accreditation. The estimated calculations are based on the time Department staff spent redacting PII, not the total time staff used to conduct searches and process the requests. Using the FY 2018 FOIA data related to accreditors, we estimate that, on

average, it would take an agency 5.37 hours to comply with the proposed redaction requirements under § 602.31(f).

The estimated burden for § 602.31 is 285 hours [(285 hours/53 agencies) = 5.37] under OMB Control Number 1840–0788. The estimated institutional cost is \$12,928 based on \$45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

TABLE 5—SUMMARY OF BURDEN FOR ACCREDITORS TO REDACT PII

	Hours	Cost per hour	Total burden	Per agency
<b>Total</b> .....	<b>285</b>	<b>\$45.36</b>	<b>\$12,928</b>	<b>\$244</b>

*Section 602.32—Procedures for Applying for Recognition, Renewal of Recognition, or for Expansion of Scope, Compliance Reports, and Increases in Enrollment*

Requirements

Under § 602.32(a), we propose specifying what accrediting agencies preparing for recognition renewal would submit to the Department 24 months prior to the date their current recognition expires. Under § 602.32(j)(1), we propose outlining the process for an agency seeking an expansion of scope, either as a part of the regular renewal of recognition process or during a period of recognition.

Burden Calculation

Under § 602.32(a), we anticipate that, on average, it would take an agency 3 hours to gather, in conjunction with 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, and any institutions subject to compliance reports or reporting requirements. Also, under § 602.32(j)(1), we anticipate that, on average, it would take an agency 20 hours to compose and submit a request for an expansion of scope of recognition.

Over the last five years, the Department has received fewer than five requests for expansion of scope.

The estimated burden for § 602.32 is 179 hours (53 × 3) + (1 × 20) under OMB Control Number 1840–0788. The estimated institutional cost is \$8,119 based on \$45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

*Section 602.36—Senior Department Official's Decision*

Requirements

Under proposed § 602.36(f), the senior Department official (SDO) would determine whether an agency is compliant or substantially compliant, which would give accrediting agencies opportunities to make minor modifications to reflect progress toward full compliance using periodic monitoring reports.

Burden Calculation

If we determine that an agency is substantially compliant, the SDO could allow the agency to submit periodic monitoring reports for review by Department staff in place of the currently used compliance report; the compliance report, requires a review by the NACIQI, attendance at one of its bi-annual meetings, and conceivably comments filed with the SDO and an appeal to the Secretary. From 2014

through 2018, the Department reviewed 17 compliance reports. Under proposed § 602.36(f) these 17 compliance reports could have had the following designations: Five monitoring reports (one annually); two requiring both compliance and monitoring reports (less than one annually); and 10 (two annually) as compliance reports. Using data from our findings during reviews, we anticipate that proposed changes would reduce the burden on an agency.

If an accrediting agency is required to submit a monitoring report, we estimate

that, on average, the proposed changes would save an agency 72 hours for travel and meeting attendance, given we would not require attendance at one of NACIQI's bi-annual meetings unless the agency does not address the initial areas of noncompliance satisfactorily through the use of monitoring reports. However, if we require an accrediting agency to submit both a monitoring report and a compliance report, we estimate that the proposed changes in § 602.36(f) would increase the burden for an accrediting agency by 8 hours as the agency

completes its application for renewal of recognition by the Secretary.

We estimate that, on average, the burden for § 602.36 would increase 8 hours (1 × 8) under OMB Control Number 1840-0788. However, considering the time saved for travel, we estimate (72 - 8 = 64) 64 saved hours overall. The estimated institutional cost is \$363 based on \$45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

TABLE 6—SUMMARY OF BURDEN AND HOURS SAVED USING MONITORING REPORTS

Report type	Number	Hours	Total burden	Hours saved
Monitoring .....	1	72	.....	72
Mont. & Comp. ....	1	8	8	.....

*Section 668.26 End of an Institution's Participation in the Title IV, HEA Programs*

Requirements

Under proposed § 668.26, the Secretary may permit an institution that has ended its participation in title IV programs to continue to originate, award, or disburse title IV funds for up to 120 days under specific circumstances. The institution must

notify the Secretary of its plans to conduct an orderly closure in accordance with its accrediting agency, teach out its students, agree to abide by the conditions of the program participation agreement in place prior to the end of participation, and provide written assurances of the health and safety of the students, the adequate financial resources to complete the teach-out and the institution is not subject to adverse action by the

institution's State authorizing body or the accrediting agency.

Burden Calculation

We estimate that, on average, an institution would need 5 hours to draft, and finalize for the appropriate institutional management signature, the written request for extension of eligibility from the Secretary. We anticipate that 5 institutions may utilize this opportunity annually.

TABLE 7—§ 668.26

Respondent	Responses	Time per response (hours)	Total hours
Public .....	1	5	= 5
Private .....	2	5	= 10
Proprietary .....	2	5	= 10
.....	.....	.....	= 25

The estimated burden for § 668.26 is 25 hours under OMB Control Number 1845-NEW1. The estimated institutional cost is \$1,134 based on \$45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

*Section 668.43—Institutional Information*

Requirements

The proposed regulations in § 668.43(a)(5) would require an institution to disclose whether the program would fulfill educational requirements for licensure or certification if the program is designed to or advertised as meeting such requirements. Institutions would be

required to disclose, for each State, whether the program did or did not meet such requirements, or whether the institution had not made such a determination.

The proposed regulations in § 668.43(a)(11) would revise the information about an institution's transfer of credit policies to require the disclosure of any types of institutions from which the institution will not accept transfer credits. Institutions would also be required to disclose any written criteria used to evaluate and award credit for prior learning experience.

The proposed regulations in § 668.43(a)(12) would require institutions to provide disclosures regarding written arrangements under which an entity other than the

institution itself provides all or part of a program be included in the description of that program.

The proposed regulations would add disclosure requirements that are in statute but not reflected fully in the regulations as well as new disclosure requirements. These disclosures would include: In § 668.43(a)(13), the percentage of the institution's enrolled students disaggregated by gender, race, ethnicity, and those who are Pell Grant recipients; in § 668.43(a)(14) placement in employment of, and types of employment obtained by, graduates of the institution's degree or certificate programs; in § 668.43(a)(15) the types of graduate and professional education in which graduates of the institution's four-year degree programs enrolled; in

§ 668.43(a)(16) the fire safety report prepared by the institution pursuant to § 668.49; in § 668.43(a)(17) the retention rate of certificate- or degree-seeking, first-time, full-time, undergraduate students; and in § 668.43(a)(18) institutional policies regarding vaccinations.

The proposed regulations in § 668.43(a)(19) would require an institution to disclose to students if its accrediting agency requires it to maintain a teach-out plan under § 602.24(c)(1), and to indicate the reason why the accrediting agency required such a plan.

The proposed regulations in § 668.43(a)(20) would require that an institution disclose students if it is aware that it is under investigation by a law enforcement agency for an issue related to academic quality, misrepresentation, fraud, or other severe matters.

The proposed regulations would add a new paragraph (c) requiring an institution to make direct disclosures to individual students in certain circumstances. Institutions would be required to disclose to a prospective student that the program in which they intended to enroll did not meet the educational requirements for licensure in the State in which the student was located, or if such a determination of whether the program met the licensure

requirements in that State had not been made. We would also require an institution to make a similar disclosure to a student who was enrolled in a program previously meeting those requirements which ceased to meet the educational requirements for licensure in that State. The proposed regulations would hold the institutions responsible for establishing and consistently applying policies for determining the State in which each of its students is located. Such a determination would have to be made at the time of initial enrollment, and upon receipt of information from the student, in accordance with institutional policies, that his or her location had changed to another State. The proposed regulations require institutions to provide the Secretary, on request, with written documentation of its determination regarding a student's location.

**Burden Calculation**

We anticipate that most institutions will provide this disclosure information electronically on either the general institution website or individual program websites as required. Using data from the National Center for Educational Statistics, there were approximately 226,733 certificate and degree granting programs in 2017 identified for the public, private and proprietary sectors. Of those, public

institutions offered 134,387 programs, private institutions offered 70,678 programs, and proprietary institutions offered 21,668 programs.

For § 668.43(a)(5)(v), we estimate that five percent or 11,337 of all programs would be designed for specific professional licenses or certifications required for employment in an occupation or is advertised as meeting such State requirements. We further estimate that it would take an institution an estimated 50 hours per program to research individual State requirements, determine program compatibility and provide a listing of the States where the program curriculum meets the State requirements, where it does not meet the State requirements, or list the States where no such determination has been made. We base this estimate on institutions electing not to research and report licensing requirements for States in which they had no enrollment or expressed interest. Additionally, we believe that some larger institutions and associations have gathered such data and have shared it with other institutions so there is less burden as the research has been done.

The estimated burden for § 668.43(a)(5)(v) would be 556,850 hours 1845–NEW1.

Table 8: § 668.43(a)(5)

Respondent	Responses	Time per response	Total Hours
Public hours	6,719	50 hours	= 335,950
Private hours	3,534	50 hours	= 176,700
Proprietary	1,084	50 hours	= 54,200 hours
			= 136,050 hours

For § 668.43(a)(11) through (20), we estimate that it would take institutions an average of 2 hours to research,

develop and post on institutional or programmatic websites the required information. The estimated burden for

§ 668.43(a)(13) through (20) would be 10,694 hours 1845–NEW1.

Table 9: § 668.43(a) (11) through (20)

Respondent	Responses	Time per response	Total Hours
Public	1,860	2 hours	= 3,720 hours
Private	1,704	2 hours	= 3,408 hours
Proprietary	1,783	2 hours	= 3,566 hours
			= 10,694 hours

For § 668.43(c), we anticipate that institutions would provide this information electronically to prospective students regarding the determination of a program’s curriculum to meet State requirements for students located in that State or if no such determination has been made. Likewise, we anticipate that institutions

would provide this information electronically to enrolled students when a determination has been made that the program’s curriculum no longer meets State requirements. We estimate that institutions would take an average of 2 hours to develop the language for the individualized disclosures. We estimate that it would take an additional average

of 4 hours for the institutions to disclose this information to prospective and enrolled students for a total of 6 hour of burden. We estimate that five percent of the institutions would meet the criteria to require these disclosures. The estimated burden for § 668.43(c) would be 1,602 hours 1845–NEW1.

Table 10: § 668.43(c)

Respondent	Responses	Time per response	Total Hours
Public	1,860 x 5% = 93	6 hours	= 558 hours
Private	1,704 x 5% = 85	6 hours	= 510 hours
Proprietary	1,783 x 5% = 89	6 hours	= 534 hours
			= 1,602 hours

Section	Total Hours
668.43(a) (5)	566,850
668.43(a) (11) – (20)	10,694
668.43(c)	1,602

The total estimated burden for proposed § 668.43 would be 579,146 hours under OMB Control Number 1845–NEW1. The estimated institutional cost is \$26,270,062.56 based on \$45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

*668.50—Institutional Disclosures for Distance or Correspondence Programs Requirements*

The proposed regulatory package will remove and reserve the current regulatory requirements in § 668.50.

*Burden Calculation*

The proposed regulatory package will remove and reserve the current regulatory requirements in § 668.50. This removes seven public disclosures that institutions offering distance

education or correspondence courses were required to provide to students enrolled or seeking enrollment in such programs. These disclosures included whether the distance education program was authorized by the State where the student resided, if the institution was part of a State reciprocity agreement and consequences of a student moving to a State where the institution did not meet State authorization requirements. Other disclosures covered the process of submitting a complaint to the appropriate State agency where the

main campus is located, process of submitting a complaint if the institution is covered under a State reciprocity agreement, disclosure of adverse actions initiated by the institution's State entity related to distance education, disclosure of adverse actions initiated by the institution accrediting agency, the disclosure of any refund policy required by any State in which the institution enrolls a student, and disclosure of whether the distance education program meets the applicable prerequisites for professional licensure or certification in the State where the student resides, if such a determination has been made.

Also, there were two disclosures that were required to be provided directly to currently enrolled and prospective students in either distance education. Those disclosures included notice of an adverse action taken by a State or accrediting agency related to the distance education program and

provided within 30 days of when the institution became aware of the action; and, a notice of the institution's determination the distance education program no longer meets the prerequisites for licensure or certification of a State. This disclosure had to be made within seven days of such a determination.

The removal of these regulations would eliminate the burden as assessed \$ 668.50 which is associated with OMB Control Number 1845-0145. The total burden hours of 152,405 currently in the information collection 1845-0145 will be discontinued upon the final effective date of the regulatory package. The estimated institutional cost savings is \$ - 6,913,091 based on \$45.36 per hour for Postsecondary Education Administrators, from the 2019 Bureau of Labor Statistics Occupational Outlook Handbook.

Consistent with the discussion above, the following chart describes the sections of the proposed regulations involving information collection, the information being collected and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net costs of the increased burden on institutions and accrediting agencies using wage data developed using Bureau of Labor Statistics data, available at <https://www.bls.gov/ooh/management/postsecondary-education-administrators.htm> is \$26,696,265 as shown in the chart below. This cost is based on the estimated hourly rate of \$45.36 for institutions and accrediting agencies.

**BILLING CODE 4000-01-P**

## Collection Information

Regulatory Section	Information Collection	OMB Control Number and estimated burden	Estimated costs	Estimated savings absent ICR requirement
§ 600.9(c)(1)(ii)(A) § 600.9(c)(1)(ii)(B) State authorization.	<p>Institution must determine in which State a student is located while enrolled in a distance education or correspondence course when the institution participates in a State authorization reciprocity agreement under which it is covered in accordance with the institution's policies and procedures, and make such determinations consistently and apply them to all students.</p> <p>Institution must, upon request, provide the Secretary with written documentation of its determination of a student's location, including the basis for such determination.</p>	OMB 1845-0144 We estimate that the burden would increase by 2,809 hours.	\$127,417	
§ 602.12(b)(1) Accrediting experience.	Agency would notify the Department of a geographic expansion and publicly disclose it on the agency's website, without requesting permission.	OMB 1840-0788 We estimate that the burden would increase by 1 hour.	\$45	We estimate that, on average, agencies would save 19 hours given they would inform the Department of a geographic expansion rather than request it, amounting to a \$861.84 savings.

<p>§ 602.18(a)(6) Ensuring consistency in decision-making.</p> <p>§ 602.20(a)(2); § 602.20(b) § 602.20(d) Enforcement of standards.</p> <p>§ 602.22(a)(3)(i) § 602.22(a)(3)(ii) § 602.22(b) Substantive changes and other reporting requirements.</p> <p>§ 602.23(f)(1)(ii) Operating procedures all agencies must have.</p> <p>§ 602.24(a) § 602.24(c) § 602.24(f) Additional procedures certain institutional agencies must have.</p> <p>§ 602.26(b) Notifications of accrediting decisions.</p>	<p>Agency would publish and distribute new policies, with detailed requirements.</p>	<p>OMB 1840-0788 We estimate that the burden would increase by 636 hours.</p>	<p>\$28,849</p>	<p>--</p>
<p>§ 602.22(a)(3)(i) Substantive changes and other reporting requirements.</p>	<p>Agency would designate a staff member to approve or disapprove certain substantive changes.</p>		<p>--</p>	<p>We estimate agencies would save, on average, 318 hours, given designated substantive approvals could be determined by a senior staff member in place of the now required decision-making body, amounting to \$14,424.48.</p>
<p>§ 602.23(a)(2) § 602.23(f)(1)(ii) Operating procedures all agencies must</p>	<p>Agency would make publicly available the procedures that institutions or</p>	<p>OMB 1840-0788 We estimate that the burden would increase</p>	<p>\$4,808</p>	<p>--</p>

have.	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; require that all preaccredited institutions have a teach-out plan with specific requirements.	by 106 hours.		
§ 602.24 Additional procedures certain institutional agencies must have.	Agency would delete existing credit hour policy requirements and overly prescriptive language; and add new language with definition clarifications.	OMB 1840-0788 We estimate that the burden would increase by 5,347 hours.	\$242,540	We estimate that agencies would save overall, on average, 2246 hours given the proposed regulation would delete existing requirements related to evaluating credit hours amounting to a \$101,878.56 savings.
§ 602.31(f) Agency applications and reports to be submitted to the Department.	Agency would redact personally identifiable information and other sensitive information prior to sending documents to the Department.	OMB 1840-0788 We estimate that the burden would increase by 285 hours.	\$12,928	--
§ 602.32(a) § 602.32(j)(1) Procedures for applying for recognition, renewal of recognition, or for expansion of scope, compliance reports, and	Specifies what accrediting agencies preparing for recognition renewal would submit to the Department 24 months prior to the date their current recognition expires; outlines the	OMB 1840-0788 We estimate that the burden would increase by 179 hours.	\$8,119	--

increases in enrollment.	process for an agency seeking an expansion of scope, either as a part of the regular renewal of recognition process or during a period of recognition.			
§ 602.36(f) Senior Department official's decision.	Senior Department Official would determine whether an agency is compliant or substantially compliant, which would give accrediting agencies opportunities to make minor modifications to reflect progress toward full compliance using periodic monitoring reports.	OMB 1840-0788 We estimate that the burden would increase by 8 hours.	\$363	The increase in burden does not reflect the time saved for preparing and attending NACIQI meetings. We estimate that there would be 72 hours saved, on average, amounting to \$3,265.92.
§ 668.26 End of an institution's participation in the Title IV, HEA programs.	Secretary may permit an institution that has ended its participation in title IV programs to continue to originate, award, or disburse title IV funds for up to 120 days under specific circumstances. The institution must notify the Secretary of its plans to conduct an orderly closure in accordance with its accrediting agency, teach out its students, agree to abide by the conditions of the program participation agreement in place prior to the end of participation, and provide written assurances of the health and safety of the students, the adequate financial resources to complete the teach-out and the institution is not subject to adverse action by the	OMB 1845-NEW1 We estimate that the burden would increase by 25 hours.	\$1,134	

	institution's State authorizing body or the accrediting agency.			
§ 668.43(a)(5) Institutional information.	The proposed regulations would require an institution to disclose whether a program would fulfill educational requirements for licensure or certification if the program is designed to or advertised as meeting such requirements. Institutions would be required to disclose, for each State, whether the program did or did not meet such requirements, or whether the institution had not made such a determination.	OMB 1845-NEW1 We estimate that the burden would increase by 566,850 hours.	\$25,712,316	
§ 668.43(a)(11) through(20) Institutional information.	The proposed regulations would add disclosure requirements that are in statute but not reflected fully in the regulations as well as new disclosure requirements.	OMB 1845-NEW1 We estimate that the burden would increase by 10,694 hours.	\$485,080	
§ 668.43(c) Institutional information.	The proposed regulations would require direct disclosure to individual students in circumstances where an offered program no longer met the education requirements for licensure in a State where a prospective student was located, as well as to students enrolled in a program that ceased to meet such requirements.	OMB 1845-NEW1 We estimate that the burden would increase by 1,602 hours.	\$72,667	
§ 668.50 Institutional Disclosure for Distance or Correspondence Programs.	The proposed regulations would remove and reserve this section. The proposed regulations have move some of the disclosure requirements from this section to 668.43. Other requirements have been deemed duplicative.	OMB 1845-0145 We estimate a decrease of 152,405. This collection would be discontinued upon the final effective date of the regulatory package.	This represents a cost savings of \$-6,913,091.	

## BILLING CODE 4000-01-C

The total burden hours and change in burden hours associated with each OMB

Control number affected by the regulations follows:

Control No.	Total burden hours	Change in burden hours
1840-0788	10,550	+6,562
1845-0144	2,969	+2,809
1845-0145	-152,405	-152,405
1845-NEW1	579,171	+579,171

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by email to [OIRA\\_DOCKET@omb.eop.gov](mailto:OIRA_DOCKET@omb.eop.gov) or by fax to (202) 395-6974. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

We have prepared an Information Collection Request (ICR) for these collections. In preparing your comments you may want to review the ICR, which is available at [www.reginfo.gov](http://www.reginfo.gov). Click on Information Collection Review. These proposed collections are identified as proposed collections 1840-0788, 1845-0012, 1845-0144, 1845-0145, and 1845-NEW1.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including

whether the information will have practical use;

- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

OMB is required to make a decision concerning the collection [collections] of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments by July 12, 2019. This does not affect the deadline for your comments to us on the proposed regulations.

#### *Regulatory Flexibility Act Certification*

The Secretary proposes to certify that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Of the entities that would be affected by the proposed regulations, many institutions are considered small. The Department recently proposed a size classification based on enrollment using IPEDS data that established the percentage of institutions in various sectors considered to be small entities, as shown in Table [6].<sup>19</sup> This size classification was described in the NPRM published in the **Federal Register** July 31, 2018 for the proposed borrower defense rule (83 FR 37242, 37302). The Department has discussed the proposed standard with the Chief Counsel for Advocacy of the Small Business Administration, and while no change has been finalized, the Department continues to believe this approach better reflects a common basis for determining size categories that is linked to the provision of educational services.

Table 6: Small Entities Under Enrollment Based Definition

Level	Type	Small	Total	Percent
2-year	Public	342	1,240	28%
2-year	Private	219	259	85%
2-year	Proprietary	2,147	2,463	87%
4-year	Public	64	759	8%
4-year	Private	799	1,672	48%
4-year	Proprietary	425	558	76%
<b>Total</b>		<b>3,996</b>	<b>6,951</b>	<b>57%</b>

<sup>19</sup> U.S. Department of Education, National Center for Education Statistics. Integrated Postsecondary

Education Data System 2016 Institutional Characteristics: Directory Information survey file

downloaded March 3, 2018. Available at [nces.ed.gov/ipeds/datacenter/DataFiles.aspx](https://nces.ed.gov/ipeds/datacenter/DataFiles.aspx).

However, the proposed regulations are not expected to have a significant economic impact on small entities. Nothing in the proposed regulations would compel institutions, small or not, to engage in substantive changes to programs that would trigger reporting to accrediting agencies or the Department. The proposed regulations would consolidate or relocate several institutional disclosures and add disclosure requirements under § 668.43, including disclosures relating to whether a program meets requirements for licensure, transfer of credit policies, written criteria to evaluate and award credit for prior learning experience, and written agreements under which an entity other than the institution itself provides all or part of a program. The proposed regulations would also add disclosure requirements that exist in statute but are not currently reflected in the regulations, including: (1) The percentage of the institution's enrolled students who are Pell Grant recipients, disaggregated by race, ethnicity, and gender; (2) placement in employment of, and types of employment obtained by, graduates of the institution's degree or certificate programs if its accrediting agency or State required it to calculate such rates; (3) the types of graduate and professional education in which graduates of the institution's four-year degree programs enrolled; (4) the fire safety report prepared by the institution pursuant to § 668.49; (5) the retention rate of certificate- or degree-seeking, first-time, full-time, undergraduate students; and (6) institutional policies regarding vaccinations. The small institutions that have distance education or correspondence programs would benefit from the elimination of the disclosure requirement related to the complaints process. Across all institutions, the net result of the institutional disclosure changes is \$19,485,522 and there is no reason to believe the burden would fall disproportionately on small institutions. Using the 57 percent figure for small institutions in Table 6, the estimated cost of the disclosures in the proposed regulations for small institutions is \$11,106,748. Institutions of any size would benefit from the opportunity to seek out a different or additional accreditation in a timeframe that suits them, but there is no requirement to do so.

The other group affected by the proposed regulations are accrediting agencies. The State agencies that act as accreditors are not small, as public institutions are defined as "small organizations" if they are operated by a

government overseeing a population below 50,000.

The Department does not have revenue information for accreditors and believes most are organized as nonprofit entities that are defined as "small entities" if they are independently owned and operated and not dominant in their field of operation. While dominance in accreditation is hard to determine, as it currently stands, the Department believes regional accreditors are dominant within their regions and programmatic accreditors very often have dominance in their field. Therefore, we do not consider the 53 accrediting agencies to be small entities, but we welcome comments on this determination and will consider any information received in evaluating the final regulations.

Even if the accrediting agencies were considered small entities, the proposed regulations are designed to grant them greater flexibility in their operations and reduce their administrative burden so they can focus on higher risk changes to institutions and programs. Nothing in the proposed regulations would require accrediting agencies to expand their operations or take on new institutions, but they would give them that opportunity. There could even be potential opportunities for accreditors that are small entities to develop in specialized areas and potentially grow.

Thus, the Department believes small entities would experience regulatory relief and a positive economic impact as a result of these proposed regulations with effects that will develop over years as accrediting agencies and institutions decide how to react to the changes in the proposed regulations.

#### *Federalism*

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations in 600, 602, 603, and 668 may have federalism implications. We encourage State and local elected officials to review and provide comments on these proposed regulations.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotope, or compact disc) on request to the person [one of the

persons] listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the *Code of Federal Regulations* at [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

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#### **List of Subjects**

##### *34 CFR Part 600*

Colleges and universities, Foreign relations, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

##### *34 CFR Part 602*

Colleges and universities, Reporting and recordkeeping requirements.

##### *34 CFR Part 603*

Colleges and universities, Vocational education.

##### *34 CFR Part 654*

Grant programs—education, Reporting and recordkeeping requirements, Scholarships and fellowships.

##### *34 CFR Part 668*

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Dated: June 7, 2019.

**Betsy DeVos,**

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary of Education proposes to amend parts 600, 602, 603, 654, and 668 of title 34 of the Code of Federal Regulations as follows:

**PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED**

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

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

■ 2. Section 600.2 is amended by:

- a. Adding in alphabetical order a definition for “additional location”;
- b. Revising the definition of “Branch Campus”;
- c. Adding in alphabetical order a definition for “preaccreditation”;
- d. Removing the definition of “preaccredited”;
- e. Adding in alphabetical order definitions for “religious mission”, “teach-out”, and “teach-out agreement”; and
- f. Revising the definition of “teach-out plan”.

The additions and revisions read as follows:

**§ 600.2 Definitions.**

\* \* \* \* \*

*Additional location:* A facility that is geographically apart from the main campus of the institution and at which the institution offers at least 50 percent of a program and may qualify as a branch campus.

\* \* \* \* \*

*Branch campus:* An additional location of an institution that is geographically apart and independent of the main campus of the institution. The Secretary considers a location of an institution to be independent of the main campus if the location—

- (1) Is permanent in nature;
- (2) Offers courses in educational programs leading to a degree, certificate, or other recognized educational credential;
- (3) Has its own faculty and administrative or supervisory organization; and
- (4) Has its own budgetary and hiring authority.

\* \* \* \* \*

*Preaccreditation:* The status of accreditation and public recognition that a nationally recognized accrediting agency grants to an institution or program for a limited period of time that signifies the agency has determined that the institution or program is progressing toward full accreditation and is likely to attain full accreditation before the expiration of that limited period of time (sometimes referred to as “candidacy”).

\* \* \* \* \*

*Religious mission:* A published institutional mission that is approved by

the governing body of an institution of postsecondary education and that includes, refers to, or is predicated upon religious tenets, beliefs, or teachings.

\* \* \* \* \*

*Teach-out:* A period of time during which a program, institution, or institutional location that provides 100 percent of at least one program engages in an orderly closure or when, following the closure of an institution or campus, another institution provides an opportunity for the students of the closed school to complete their program, regardless of their academic progress at the time of closure. Eligible borrowers should never be prevented from accessing closed school discharge, as provided in 34 CFR 685.214, instead of a teach-out. Any institution is prohibited from engaging in misrepresentation about the nature of the teach-out plans, teach-out agreements, and transfer of credit.

*Teach-out agreement:* A written agreement between institutions that provides for the equitable treatment of students and a reasonable opportunity for students to complete their program of study if an institution, or an institutional location that provides 100 percent of at least one program offered, ceases to operate or plans to cease operations before all enrolled students have completed their program of study.

*Teach-out plan:* A written plan developed by an institution that provides for the equitable treatment of students if an institution, or an institutional location that provides 100 percent of at least one program, ceases to operate or plans to cease operations before all enrolled students have completed their program of study.

\* \* \* \* \*

■ 3. Section 600.4 is amended by revising paragraph (c) to read as follows:

**§ 600.4 Institution of higher education.**

\* \* \* \* \*

(c) The Secretary does not recognize the accreditation or preaccreditation of an institution unless the institution agrees to submit any dispute involving an adverse action, such as the final denial, withdrawal, or termination of accreditation, to arbitration before initiating any other legal action.

\* \* \* \* \*

■ 4. Section 600.5 is amended by revising paragraphs (d) and (e) to read as follows:

**§ 600.5 Proprietary institution of higher education.**

\* \* \* \* \*

(d) The Secretary does not recognize the accreditation of an institution unless the institution agrees to submit any

dispute involving an adverse action, such as the final denial, withdrawal, or termination of accreditation, to arbitration before initiating any other legal action.

(e) For purposes of this section, a “program leading to a baccalaureate degree in liberal arts” is a program that is a general instructional program falling within one or more of the following generally accepted instructional categories comprising such programs, but including only instruction in regular programs, and excluding independently designed programs, individualized programs, and unstructured studies:

(1) A program that is a structured combination of the arts, biological and physical sciences, social sciences, and humanities, emphasizing breadth of study.

(2) An undifferentiated program that includes instruction in the general arts or general science.

(3) A program that focuses on combined studies and research in humanities subjects as distinguished from the social and physical sciences, emphasizing languages, literature, art, music, philosophy, and religion.

(4) Any single instructional program in liberal arts and sciences, general studies, and humanities not listed in paragraph (e)(1) through (3) of this section.

\* \* \* \* \*

■ 5. Section 600.6 is amended by revising paragraph (d) to read as follows:

**§ 600.6 Postsecondary vocational institution.**

\* \* \* \* \*

(d) The Secretary does not recognize the accreditation or preaccreditation of an institution unless the institution agrees to submit any dispute involving an adverse action, such as the final denial, withdrawal, or termination of accreditation, to arbitration before initiating any other legal action.

\* \* \* \* \*

■ 6. Section 600.9 is amended by:  
■ a. Revising paragraphs (b) and (c)(1); and

■ b. Revising paragraph (d)(1)(iii), as added at 81 FR 92262 (Dec. 19, 2016), effective July 1, 2020, at 83 FR 31303 (July 3, 2018).

The revisions read as follows:

**§ 600.9 State authorization.**

\* \* \* \* \*

(b) An institution is considered to be legally authorized to operate educational programs beyond secondary education if it is exempt as a religious institution from State authorization

under the State constitution or by State law.

(c)(1)(i) If an institution that meets the requirements under paragraph (a)(1) or (b) of this section offers postsecondary education through distance education or correspondence courses to students located in a State in which the institution is not physically located or in which the institution is otherwise subject to that State's jurisdiction as determined by that State, except as provided in paragraph (c)(1)(ii) of this section, the institution must meet any of that State's requirements for it to be legally offering postsecondary distance education or correspondence courses in that State. The institution must, upon request, document the State's approval to the Secretary; or

(ii) If an institution that meets the requirements under paragraph (a)(1) or (b) of this section offers postsecondary education through distance education or correspondence courses in a State that participates in a State authorization reciprocity agreement, and the institution is covered by such agreement, the institution is considered to meet State requirements for it to be legally offering postsecondary distance education or correspondence courses in that State, subject to any limitations in that agreement and to any additional requirements of that State. The institution must, upon request, document its coverage under such an agreement to the Secretary.

(A) For purposes of this section, an institution must make a determination, in accordance with the institution's policies or procedures, regarding the State in which a student is located, which must be applied consistently to all students.

(B) The institution must, upon request, provide the Secretary with written documentation of its determination of a student's location, including the basis for such determination; and

(C) An institution must make a determination regarding the State in which a student is located at the time of the student's initial enrollment in an educational program and, if applicable, upon formal receipt of information from the student, in accordance with the institution's procedures, that the student's location has changed to another State.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iii) The additional location or branch campus must be approved by the institution's recognized accrediting

agency in accordance with § 602.22(a)(2)(ix) and (c).

\* \* \* \* \*

■ 7. Section 600.11 is amended by revising paragraphs (a) and (b)(2) to read as follows:

**§ 600.11 Special rules regarding institutional accreditation or preaccreditation.**

(a) *Change of accrediting agencies.* (1) For purposes of §§ 600.4(a)(5)(i), 600.5(a)(6), and 600.6(a)(5)(i), the Secretary does not recognize the accreditation or preaccreditation of an otherwise eligible institution if that institution is in the process of changing its accrediting agency, unless the institution provides the following to the Secretary and receives approval:

(i) All materials related to its prior accreditation or preaccreditation.

(ii) Materials demonstrating reasonable cause for changing its accrediting agency. The Secretary will not determine such cause to be reasonable if the institution—

(A) Has had its accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months, unless such withdrawal, revocation, or termination has been rescinded by the same accrediting agency; or

(B) Has been subject to a probation or equivalent, show cause order, or suspension order during the preceding 24 months.

(2) Notwithstanding paragraph (a)(1)(ii) of this section, the Secretary may determine the institution's cause for changing its accrediting agency to be reasonable if the agency did not provide the institution its due process rights as defined in § 602.25, the agency applied its standards and criteria inconsistently, or if the adverse action or show cause or suspension order was the result of an agency's failure to respect an institution's stated mission, including religious mission.

(b) \* \* \*

(2) Demonstrates to the Secretary reasonable cause for that multiple accreditation or preaccreditation.

(i) The Secretary determines the institution's cause for multiple accreditation to be reasonable unless the institution—

(A) Has had its accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months, unless such withdrawal, revocation, or termination has been rescinded by the same accrediting agency; or

(B) Has been subject to a probation or equivalent, show cause order, or

suspension order during the preceding 24 months.

(ii) Notwithstanding paragraphs (b)(2)(i)(A) and (B) of this section, the Secretary may determine the institution's cause for seeking multiple accreditation or preaccreditation to be reasonable if the institution's primary interest in seeking multiple accreditation is based on that agency's geographic area, program-area focus, or mission; and

\* \* \* \* \*

■ 8. Section 600.31 is amended:

■ a. By revising paragraph (a)(1);

■ b. In paragraph (b), by revising the definitions of "closely-held corporation", "ownership or ownership interest", "parent", and "person"; and

■ c. Revising paragraphs (c)(3) through (5).

The revisions read as follows:

**§ 600.31 Change in ownership resulting in a change in control for private nonprofit, private for-profit and public institutions.**

(a)(1) Except as provided in paragraph (a)(2) of this section, a private nonprofit, private for-profit, or public institution that undergoes a change in ownership that results in a change in control ceases to qualify as an eligible institution upon the change in ownership and control. A change of ownership that results in a change in control includes any change by which a person who has or thereby acquires an ownership interest in the entity that owns the institution or the parent of that entity, acquires or loses the ability to control the institution.

\* \* \* \* \*

(b) \* \* \*

*Closely-held corporation.* Closely-held corporation (including the term "close corporation") means—

(1) A corporation that qualifies under the law of the State of its incorporation or organization as a closely-held corporation; or

(2) If the State of incorporation or organization has no definition of closely-held corporation, a corporation the stock of which—

(i) Is held by no more than 30 persons; and

(ii) Has not been and is not planned to be publicly offered.

\* \* \* \* \*

*Ownership or ownership interest.* (1) Ownership or ownership interest means a legal or beneficial interest in an institution or its corporate parent, or a right to share in the profits derived from the operation of an institution or its corporate parent.

(2) Ownership or ownership interest does not include an ownership interest held by—

(j) A mutual fund that is regularly and publicly traded;

(ii) A U.S. institutional investor, as defined in 17 CFR 240.15a-6(b)(7);

(iii) A profit-sharing plan of the institution or its corporate parent, provided that all full-time permanent employees of the institution or its corporate parent are included in the plan; or

(iv) An employee stock ownership plan (ESOP).

*Parent.* The parent or parent entity is the entity that controls the specified entity directly or indirectly through one or more intermediaries.

*Person.* Person includes a legal entity or a natural person.

(c) \* \* \*

(3) *Other entities.* The term “other entities” includes limited liability companies, limited liability partnerships, limited partnerships, and similar types of legal entities. A change in ownership and control of an entity that is neither closely-held nor required to be registered with the SEC occurs when—

(i) A person who has or acquires an ownership interest acquires both control of at least 25 percent of the total of outstanding voting stock of the corporation and control of the corporation; or

(ii) A person who holds both ownership or control of at least 25 percent of the total outstanding voting stock of the corporation and control of the corporation, ceases to own or control that proportion of the stock of the corporation, or to control the corporation.

(4) *General partnership or sole proprietorship.* A change in ownership and control occurs when a person who has or acquires an ownership interest acquires or loses control as described in this section.

(5) *Wholly-owned subsidiary.* An entity that is a wholly-owned subsidiary changes ownership and control when its parent entity changes ownership and control as described in this section.

\* \* \* \* \*

■ 9. Section 600.32 is amended by revising paragraphs (c) introductory text, (c)(1) and (2), (d)(1), (d)(2)(i) introductory text, and (d)(2)(i)(A) and (B) to read as follows:

**§ 600.32 Eligibility of additional locations.**

\* \* \* \* \*

(c) Notwithstanding paragraph (b) of this section, an additional location is not required to satisfy the two-year requirement of § 600.5(a)(7) or § 600.6(a)(6) if the applicant institution and the original institution are not related parties and there is no

commonality of ownership, control, or management between the institutions, as described in 34 CFR 668.188(b) and 34 CFR 668.207(b) and the applicant institution agrees—

(1) To be liable for all improperly expended or unspent title IV, HEA program funds received during the current academic year and up to one academic year prior by the institution that has closed or ceased to provide educational programs;

(2) To be liable for all unpaid refunds owed to students who received title IV, HEA program funds during the current academic year and up to one academic year prior; and

\* \* \* \* \*

(d)(1) An institution that conducts a teach-out at a site of a closed institution or an institution engaged in a formal teach-out plan approved by the institution’s agency may apply to have that site approved as an additional location if—

(i) The closed institution ceased operations, or the closing institution is engaged in an orderly teach-out plan and the Secretary has evaluated and approved that plan; and

(ii) The teach-out plan required under 34 CFR 668.14(b)(31) is approved by the closed or closing institution’s accrediting agency.

(2)(i) An institution that conducts a teach-out and is approved to add an additional location described in paragraph (d)(1) of this section—

(A) Does not have to meet the requirement of § 600.5(a)(7) or § 600.6(a)(6) for the additional location described in paragraph (d)(1) of this section;

(B) Is not responsible for any liabilities of the closed or closing institution as provided under paragraph (c)(1) and (c)(2) of this section if the institutions are not related parties and there is no commonality of ownership or management between the institutions, as described in 34 CFR 668.188(b) and 34 CFR 668.207(b); and

\* \* \* \* \*

■ 10. Section 600.41 is amended by:

■ a. Removing paragraph (a)(1)(ii)(B) and redesignating paragraphs (a)(1)(C) through (G) as paragraphs (a)(1)(B) through (F); and

■ b. Revising paragraph (d) introductory text.

The revision reads as follows:

**§ 600.41 Termination and emergency action proceedings.**

\* \* \* \* \*

(d) After a termination under this section of the eligibility of an institution as a whole or as to a location or educational program becomes final, the

institution may not originate applications for, make awards of or commitments for, deliver, or disburse funds under the applicable title IV, HEA program, except—

\* \* \* \* \*

**PART 602—THE SECRETARY’S RECOGNITION OF ACCREDITING AGENCIES**

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

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

■ 12. Section 602.3 is amended:

■ a. By redesignating the introductory text as paragraph (b);

■ b. By adding paragraph (a); and

■ c. In newly redesignated paragraph (b):

■ i. By removing in the definitions of “branch campus”, “correspondence education”, “direct assessment program”, “institution of higher education”, “nationally recognized accrediting agency”, “preaccredited”, “State”, “teach-out agreement”, and “teach-out plan”;

■ ii. Adding in alphabetical order definitions for “monitoring report” and “substantial compliance”; and

■ iii. Revising the definitions of “compliance report”, “final accrediting action”, “programmatic accrediting agency”, “scope of recognition”, and “senior Department official”.

The additions and revisions read as follows:

**§ 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:

- Accredited*
- Additional location*
- Branch campus*
- Correspondence course*
- Institution of higher education*
- Nationally recognized accrediting agency*
- Preaccreditation*
- Religious mission*
- Secretary*
- State*
- Teach-out*
- Teach-out agreement*
- Teach-out plan*
- (b) \* \* \*

\* \* \* \* \*

*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.

\* \* \* \* \*

*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.

\* \* \* \* \*

*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.

\* \* \* \* \*

*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.

\* \* \* \* \*

*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

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.

\* \* \* \* \*

■ 13. Section 602.10 is amended by revising paragraph (a) to read as follows:

**§ 602.10 Link to Federal programs.**

\* \* \* \* \*

(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

\* \* \* \* \*

■ 14. Section 602.11 is revised to read as follows:

**§ 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)

■ 15. Section 602.12 is revised to read as follows:

**§ 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)

**§ 602.13 [Removed and Reserved]**

■ 16. Section 602.13 is removed and reserved.

■ 17. Section 602.14 is revised to read as follows:

**§ 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

(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

(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; and

(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)

■ 18. Section 602.15 is revised to read as follows:

**§ 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)

■ 19. Section 602.16 is amended by:

■ a. Revising paragraphs (a)(1)

introductory text, (a)(2), (b) and (c);

■ b. Redesignating paragraph (d) as paragraph (d)(2);

■ c. Adding paragraph (d)(1);

■ d. Removing the “or” at the end of paragraph (f)(1);

■ e. Removing the period at the end of paragraph (f)(2) and adding a semicolon in its place; and

■ f. Adding paragraphs (f)(3) and (4).

The revisions and additions read as follows:

**§ 602.16 Accreditation and preaccreditation standards.**

(a) \* \* \*

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

\* \* \* \* \*

(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.

\* \* \* \* \*

(f) \* \* \*

(3) Agencies from having separate standards regarding an institution'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; or

(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.

\* \* \* \* \*

■ 20. Section 602.17 is revised to read as follows:

**§ 602.17 Application of standards in reaching an accreditation decision.**

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)

■ 21. Section 602.18 is revised to read as follows:

**§ 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.

(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;

(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)

■ 22. Section 602.19 is revised to read as follows:

**§ 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)(1) and

(2)(2).f). This provision does not require institutions or programs to provide annual reports on each specific accreditation criterion.

(c) Each agency must monitor overall growth of the institutions or programs it accredits and, at least annually, collect 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)

■ 23. Section 602.20 is revised to read as follows:

**§ 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 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.

(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)

■ 24. Section 602.21 is amended by revising paragraphs (a) and (c) and adding paragraph (d) to read as follows:

**§ 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.

\* \* \* \* \*

(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 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.

\* \* \* \* \*

■ 25. Section 602.22 is revised to read as follows:

**§ 602.22 Substantive changes and other reporting requirements.**

(a) If the agency accredits institutions, it must maintain adequate substantive change policies that ensure that any substantive change to the institution's or program's mission 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—

(1) 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

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

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

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

(iii) 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.

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

(v) 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.

(vi) 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.

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

(viii) 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.

(ix) 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:

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

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

(C) The institution is financially stable.

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

(x) 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 and up to 50 percent of one or more of the accredited institution's educational programs.

(xi) Addition of each direct assessment program.

(3)(i) For substantive changes under only paragraph (a)(2)(iii), (v), (vi), (viii), or (x) 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)(2)(x) 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 substantive 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) A change of 25 percent or more 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)(2)(ix) of this section, 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 may report these changes 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)(2)(viii) and (ix) 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 accreditation, that does not pre-date either an earlier agency denial of the substantive change, or the agency's formal approval of the substantive change for consideration by the agency for inclusion in the program's or institution's 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, these procedures may, but need not, require a visit by the agency.

(f) 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—

(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)

- 26. Section 602.23 is amended by:
- a. Revising paragraphs (a)(2), (a)(5) introductory text, and (d);
- b. Redesignating paragraph (f) as paragraph (g); and
- c. Adding a new paragraph (f).

The revisions and addition read as follows:

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

(a) \* \* \*

(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;

\* \* \* \* \*

(5) A list of the names, academic and professional qualifications, and relevant employment and organizational affiliations of—

\* \* \* \* \*

(d) If an institution or program elects to make a public disclosure of its accreditation or preaccreditation status, the agency must ensure that the institution or program discloses that status accurately, including the specific academic or instructional programs covered by that status and the name and contact information for the agency.

\* \* \* \* \*

(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 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.

\* \* \* \* \*

■ 27. Section 602.24 is revised to read as follows:

**§ 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 with 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 provide 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).

(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 which 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.

(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 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)

■ 28. Section 602.25 is amended by revising paragraphs (f)(1)(iii) and (iv) to read as follows:

**§ 602.25 Due process.**

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(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 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.

\* \* \* \* \*

■ 29. Section 602.26 is amended by:

■ a. Redesignating paragraphs (b), (c), (d), and (e) as paragraphs (c), (d), (e), and (f);

■ b. Adding a new paragraph (b); and

■ c. Revising newly redesignated paragraphs (c), (d), (e), and (f).

The addition and revisions read as follows:

**§ 602.26 Notification of accrediting decisions.**

\* \* \* \* \*

(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, the agency 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, 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.

\* \* \* \* \*

■ 30. Section 602.27 is revised to read as follows:

**§ 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 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.

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

#### **§ 602.30 [Removed and Reserved]**

■ 31. Section 602.30 is removed and reserved.

■ 32. Section 602.31 is revised to read as follows:

#### **§ 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 application to the Secretary. Each accrediting agency must submit an application for continued recognition at least once every five years, or within a shorter time period specified in the final recognition decision, 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(m).

(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 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—

(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 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 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 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)

■ 34. Section 602.32 is revised to read as follows:

**§ 602.32 Procedures 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 in the agency's consistency in applying the criteria. The analysis of an application includes—

(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.

(2) Review of complaints or legal actions against an accredited or preaccredited institution or programs 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 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—

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

(2) Sends 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) Invites 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) Reviews the response to the draft analysis the agency submits, if any, and prepares the written final analysis—

(i) Indicating that the agency is in full compliance, substantial compliance, or noncompliance with each of the criteria for recognition; and

(ii) Recommending that the senior Department official approve, renew with compliance reporting requirements due in 12 months, renew with compliance reporting requirement 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, deny, limit, suspend, or terminate recognition; and

(5) Provides 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)(1) 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—

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

(ii) 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

(iii) 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.

(2) The application will be considered in accordance with paragraphs (c) through (h) of this section.

(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) If an agency is required to be reviewed by the Advisory Committee under § 602.19(e), the Department will follow the process outlined in § 602.32(a) through (h).

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

■ 35. Section 602.33 is revised to read as follows:

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

(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)

■ 36. Section 602.34 is revised to read as follows:

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

(g) After each meeting of the Advisory Committee, 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)

■ 37. Section 602.35 is amended:

■ a. In paragraph (a), by adding the word “business” between “ten” and “days”;

■ b. In paragraph (c)(1), by removing the words “documentary evidence” and adding in its place the word “documentation”; and

■ c. In paragraph (c)(2), by adding the word “business” between “ten” and “days” and adding a sentence to the end of the paragraph.

The addition reads as follows:

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

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \* No additional comments or new documentation may be submitted after the responses described in this paragraph are submitted.

\* \* \* \* \*

■ 38. Section 602.36 is amended by:

■ a. Removing the word “evidence” in paragraph (a)(5) and adding in its place the word “documentation”;

■ b. Revising paragraphs (b) and (e);

■ c. Adding paragraph (f);

■ d. Redesignating paragraphs (g) through (j).

The revisions and addition read as follows:

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

\* \* \* \* \*

(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.

\* \* \* \* \*

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

(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(c)(i).

(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.

\* \* \* \* \*

■ 38. Section 602.37 is revised to read as follows:

**§ 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—

(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)

### **PART 603—SECRETARY'S RECOGNITION PROCEDURES FOR STATE AGENCIES**

■ 39. The authority citation for part 603 continues to read as follows:

**Authority:** 20 U.S.C. 1094(C)(4), unless otherwise noted.

#### **§ 603.24 [Amended]**

■ 40. Section 603.24 is amended by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

### **PART 654—[REMOVED AND RESERVED]**

■ 41. Under the authority of Authority: 20 U.S.C. 1099b, part 654 is removed and reserved.

### **PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS**

■ 42. The authority citation for part 668 continues to read as follows:

**Authority:** 20 U.S.C. 1001–1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c–1, 1221–3, and 1231a, unless otherwise noted.

#### **§ 668.8 [Amended]**

■ 43. Section 668.8 is amended in paragraph (l)(2) introductory text by removing the words “in accordance with 34 CFR 602.24(f) or, if applicable, 34 CFR 603.24(c).”.

#### **§ 668.14 [Amended]**

■ 44. Section 668.14 is amended in paragraph (b)(32) introductory text by removing the citation “34 CFR 602.3” and adding in its place “34 CFR 600.2”.

■ 45. Section 668.26 is amended by:

■ a. Redesignating paragraph (e) as paragraph (f); and

■ b. Adding new paragraph (e).

The addition reads as follows:

#### **§ 668.26 End of an institution's participation in the Title IV, HEA programs.**

\* \* \* \* \*

(e) Notwithstanding paragraph (d) of this section, with agreement from the institution's accrediting agency and State, the Secretary may permit an institution to continue to originate, award, or disburse funds under a title IV, HEA program for no more than 120 days following the end of the institution's participation in the program if—

(1) The institution has notified the Secretary of its plans to conduct an orderly closure in accordance with any applicable requirements of its accrediting agency;

(2) As part of the institution's orderly closure, it is performing a teach-out that has been approved by its accrediting agency;

(3) The institution agrees to abide by the conditions of the program participation agreement that was in effect prior to the end of its participation, except that it will originate, award, or disburse funds under that program only to previously enrolled students who can complete the program within 120 days of the date that the institution's participation ended; and

(4) The institution presents the Secretary with acceptable written assurances that—

(i) The health and safety of the institution's students are not at risk;

(ii) The institution has adequate financial resources to ensure that instructional services remain available to students during the teach-out; and

(iii) The institution is not subject to probation or its equivalent or adverse action by the institution's State authorizing body or accrediting agency.

\* \* \* \* \*

#### **§ 668.41 [Amended]**

■ 46. Section 668.41 is amended by:

■ a. Removing the word “calculates” and adding in its place the phrase “publishes or uses in advertising” in paragraph (d)(5)(i)(A);

■ b. Removing and reserving paragraph (d)(5)(ii); and

■ c. Removing paragraph (d)(5)(iii).

■ 47. Section 668.43 is amended by:

■ a. Removing the word “and” at the end of paragraph (a)(5)(iii);

■ b. Adding the word “and” at the end of paragraph (a)(5)(iv)”;

■ c. Adding paragraph (a)(5)(v);

■ d. Removing the word “and” at the end of paragraph (a)(10)(iii);

■ e. Revising paragraphs (a)(11) and (12);

■ f. Adding paragraphs (a)(13) through (20); and

■ g. Adding paragraph (c).

The additions read as follows:

#### **§ 668.43 Institutional information.**

(a) \* \* \*

(5) \* \* \*

(v) If an educational program is designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation, or is advertised as meeting such requirements, information regarding whether completion of that program would be sufficient to meet licensure requirements in a State for that occupation, including—

(A) A list of all States for which the institution has determined that its curriculum meets the State educational requirements for licensure or certification;

(B) A list of all States for which the institution has determined that its curriculum does not meet the State educational requirements for licensure or certification; and

(C) A list of all States for which the institution has not made a determination that its curriculum meets the State educational requirements for licensure or certification;

\* \* \* \* \*

(11) A description of the transfer of credit policies established by the institution which must include a

statement of the institution's current transfer of credit policies that includes, at a minimum—

(i) Any established criteria the institution uses regarding the transfer of credit earned at another institution and any types of institutions or sources from which the institution will not accept credits; and

(ii) A list of institutions with which the institution has established an articulation agreement; and

(iii) Written criteria used to evaluate and award credit for prior learning experience including, but not limited to, service in the armed forces, paid or unpaid employment, or other demonstrated competency or learning.

(12) A description of written arrangements the institution has entered into in the program description in accordance with § 668.5, including, but not limited to, information on—

(i) The portion of the educational program that the institution that grants the degree or certificate is not providing;

(ii) The name and location of the other institutions or organizations that are providing the portion of the educational program that the institution that grants the degree or certificate is not providing;

(iii) The method of delivery of the portion of the educational program that the institution that grants the degree or certificate is not providing; and

(iv) Estimated additional costs students may incur as the result of enrolling in an educational program that is provided, in part, under the written arrangement.

(13) The percentage of those enrolled, full-time students at the institution who—

(i) Are male;

(ii) Are female;

(iii) Receive a Federal Pell Grant; and

(iv) Are a self-identified member of a racial or ethnic group;

(14) If the institution's accrediting agency or State requires the institution to calculate and report a placement rate, the institution's placement in employment of, and types of employment obtained by, graduates of the institution's degree or certificate programs, gathered from such sources as alumni surveys, student satisfaction surveys, the National Survey of Student

Engagement, the Community College Survey of Student Engagement, State data systems, or other relevant sources approved by the institution's accrediting agency as applicable;

(15) The types of graduate and professional education in which graduates of the institution's four-year degree programs enrolled, gathered from such sources as alumni surveys, student satisfaction surveys, the National Survey of Student Engagement, State data systems, or other relevant sources;

(16) The fire safety report prepared by the institution pursuant to § 668.49;

(17) The retention rate of certificate- or degree-seeking, first-time, full-time, undergraduate students entering such institution;

(18) Institutional policies regarding vaccinations;

(19) If the institution is required to maintain a teach-out plan by its accrediting agency, notice that the institution is required to maintain such teach-out plan and the reason that the accrediting agency required such plan under § 602.24(c)(1); and

(20) If the institution is aware that it is under investigation, action, or prosecution by a law enforcement agency for an issue related to academic quality, misrepresentation, fraud, or other severe matter, notice of that fact.

\* \* \* \* \*

(c) *Direct disclosures to students.* (1) If the institution has made a determination under paragraph (a)(5)(v) of this section that the program's curriculum does not meet the State educational requirements for licensure or certification in the State in which a prospective student is located, or if the institution has not made a determination regarding whether the program's curriculum meets the State educational requirements for licensure or certification, the institution must provide notice to that effect to the student prior to the student's enrollment in the program.

(2) If the institution makes a determination under paragraph (a)(5)(v)(B) of this section that a program's curriculum does not meet the State educational requirements for licensure or certification in a State in which a student who is currently enrolled in such program is located, the

institution must provide notice to that effect to the student within 14 calendar days of making such determination.

(3)(i) Disclosures under paragraphs (c)(1) and (2) of this section must be made directly to the student in writing, which may include through email or other electronic communication.

(ii)(A) For purposes of this paragraph (c), an institution must make a determination regarding the State in which a student is located in accordance with the institution's policies or procedures, which must be applied consistently to all students.

(B) The institution must, upon request, provide the Secretary with written documentation of its determination of a student's location under paragraph (c)(3)(ii)(A) of this section, including the basis for such determination; and

(C) An institution must make a determination regarding the State in which a student is located at the time of the student's initial enrollment in an educational program and, if applicable, upon formal receipt of information from the student, in accordance with the institution's procedures under paragraph (c)(3)(ii)(A) of this section, that the student's location has changed to another State.

\* \* \* \* \*

#### § 668.188 [Amended]

■ 48. Section 668.188 is amended in paragraph (c) introductory text by removing the citation “34 CFR 602.3” and adding in its place “34 CFR 600.2”.

#### PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 49. The authority citation for part 674 continues to read as follows:

**Authority:** 20 U.S.C. 1070g, 1087aa–1087hh; Pub. L. 111–256, 124 Stat. 2643; unless otherwise noted.

#### § 674.33 [Amended]

■ 50. Section 674.33 is amended in paragraph (g)(4)(i)(C) by removing the citation “34 CFR 602.2” and adding in its place “34 CFR 600.2”.

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