Program Integrity & Institutional Quality Regulatory Negotiation

Issue: Accreditation

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Public Member definition (602.3)

Accrediting agencies value the perspective and engagement of the many public members who hold these positions today, including assuming leadership roles on their commissions. It is already challenging to recruit for the demanding volunteer role of commissioner. While reasonable criteria and clarification make sense, they should be sensitive to the fact that many people well-qualified to serve as public commissioners have some long past, brief, or modest connection or role with higher education (e.g., student worker, adjunct instructor, external auditor). Accrediting agencies agree with the state agency negotiator who suggested establishing a period since holding a covered role after which a person could be eligible to serve, and appreciate the Department's indication that it would be open to looking at that change. This would promote the desired independence from higher education without disqualifying the many policy and student advocates, business and non-profit leaders, financial and legal professionals, and others who already do or could serve effectively as public members.

- In drafting alternative text we turned to NACIQI's 2023 policy committee report that recommended articulating the positive purpose of public members, and not only prohibitions, in the definition of public members. (Negotiator Prince (representing HBCUs/Tribal Colleges/MSIs) made a similar point.)
- Accrediting agencies could support a reasonable time period between having an institutional connection and service as a public member. An analogy could be the three year time frame since departure from an institution used by such federal agencies as NIH and NIFA in their grant review processes to judge a conflict of interest. https://grants.nih.gov/policy/peer/peer-coi.htm; https://www.nifa.usda.gov/sites/default/files/resource/The%20NIFA%20Peer%20Review%20Process%20for%20Competitive%20Grant%20Applications-07062021.pdf. Accreditors offer text proposing a five year window for people covered by (1), (2) and (3).
- Accreditors believe that understanding and cross-fertilization across the regulatory triad can be constructive. The prohibition on current members of the triad serving as public members is acceptable, and we agreeing with the group of eight negotiators (Jan 10,

2024) that the provision is overly broad and that former members should be eligible to serve.

- We would like to understand better the suggestion from that group regarding prohibiting individuals with fiduciary responsibility for an institution from serving as a public member of an agency with which their institution does not have an accrediting connection.
- The Department referred to conflicts of interest concerns as a basis for narrowing eligibility for public members, but cited only what seemed to be a few isolated cases in which proper conflicts policies or practices were not followed. Accrediting agencies are already required under 34 CFR 602.14 to maintain, follow, and report on conflicts of interest policies applicable to all commissioners, peer reviewers, appeals body members, and staff. The family restrictions again are overbroad in precluding people from serving, while the conflicts policies would preclude any commission members from participating in actions on the basis of an actual or perceived conflict.
- Item (2) re trade associations appears to require an editing correction or clarification.

Text:

Representative of the public means a person competent to carry out the responsibilities of a commissioner whose background is substantially or recently in a field other than higher education and who is not--

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

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

(3) a current or former employee of or consultant to the agency;

(4) a person who served in a capacity covered by subsections (1), (2) or (3) in the past five years;

~~(3)~~ (5) A currentemployee of a member of the program integrity triad (the Department of Education; State higher education agencies or other officials or representatives of the State; and accrediting agencies); or

(6) A spouse of an individual identified in paragraph (1) ~~or),~~ (2), (3) or (4) of this definition.

Geographic Area (602.11)

The fundamental principles at issue here are that institutions meet the standards of any agency from which they seek accreditation, accept the principles and commitments associated with accreditation, and are not able to change accreditors to avoid sanctions or consequences. This is a complex issue, and accreditors look forward to further interchange with the Department and other negotiators.

Question 2: the Department applies a test of whether an institution has "reasonable cause" to change accreditors. In making that determination the Department should take a broad view of reasonable bases. Factors it might consider could include respect for the agency's mission and focus, or the way its accrediting standards are expressed and applied; desire to be part of the agency's community of institutions; appreciation for the agency's approach to improvement, evidence and data, peer review, or professional development; or agency procedures, costs, and operations.

Question 3: There are many reasons an institution might seek to change accreditors. Agencies' responsibility is to determine whether the institution meets its standards; is in good standing with any current accreditor and not seeking to avoid sanction or consequences with that agency; and is prepared to enter in good faith into the accrediting scheme set forth in the agency mission and purpose, standards, and procedures.

We note that there are two different decisions or steps an institution may take as to which the question of "voluntariness" might be applied: the action to leave the membership of an accrediting agency and the action to seek accreditation from an agency.

In the applicable regulations the word "voluntary" is used simply to define the membership of an accrediting agency. See 34 CFR § 602.14 (the Secretary will only recognize an accrediting agency that "[h]as a voluntary membership").

This concept from the regulations was then picked up by ED in GEN-22-10 when it noted that one factor that FSA will consider when making the reasonable cause determination regarding switching accreditors is whether "ultimately…the institution's membership in the [new] accrediting agency would be voluntary." See https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2022-07-19/guidance-institutions-seeking-change-or-add-accrediting-agencies.

The concept of "voluntary" is also addressed in ED's companion letter to accreditors stating that agencies should, as part of their review of an institution that is seeking accreditation, review whether the "change of accrediting agencies…is voluntary."
See https://www2.ed.gov/admins/finaid/accred/letter-to-institutional-accreditors.pdf.
Importantly, however, in this context, ED re-purposes "voluntary" to mean something quite different. Specifically, in the letter to accreditors, voluntary is now used to assess **whether the institution's changing accreditors is voluntary, not whether an accrediting agency has a voluntary membership**, which is how it is used in the regulations.

Because voluntary is used in the sense of "voluntary membership" in the regulations, this regulatory understanding should be the focus of any proposed definition, not the different understanding in the sub-regulatory context of the letter to accreditors. One text option for consideration as a definition of "voluntary membership" could be:

An accrediting agency has a voluntary membership if its members choose, as appropriately authorized through their institutional decision-making processes (as determined by the accrediting agency), to be accredited by the agency (assuming that each member meets the agency's standards).

Accrediting experience (602.12)

Institutions can indicate serious intention to work with a particular accreditor but it may not be responsible or consistent with good governance practice to commit several years out to either being certain that they will pursue or change institutional or programmatic accreditation or expand or add a program, or that they will choose a specific agency for accreditation of such an action.

Text change would be :

602.12(b)(2) An agency seeking an expansion of scope must--

(i) State the reason for the expansion of scope request;

DELETE: (ii) Include letters from at least three institutions or programs that would expect to seek accreditation under one or more of the elements of the expansion of scope

Acceptance by others (602.13)

The requirement for three letters of support should be eliminated for recognized agencies. Although such letters would be easy enough to arrange if required, far better information is developed through the Department re-recognition process, which includes not just less than a handful of solicited letters of support but also an extensive agency record, staff analysis, public comment, and NACIQI recommendation. Continued participation by accredited institutions is far better evidence of agency "acceptance" and effectiveness than a few letters from institutions. We await discussion among the negotiators whether letters from employers or practitioners would add to understanding of agencies' acceptance.

Text change: 602.13: An agency seeking initial ~~or renewal of~~ recognition must demonstrate that its standards, policies, procedures, and decisions to grant or deny accreditation are widely accepted by providing to the Department the following:…

Accreditation and preaccreditation standards (602.16) (Discussion; no proposed language)

In response to this discussion topic, accreditors note that standards have to apply broadly to a wide variety of institutions. It is in the application of the standards where rigor should be judged. Rigor lies in serious decisions based on annual monitoring and in-depth cyclical reviews (routine and targeted), both informed by comparative, trend and contextualized data, treatment of complaints and other signals, and other processes. The rigor in application of

accreditor standards can be judged in terms of effective use of evidence including metrics to identify deficiencies or need for improvement, within specified time frames, using disaggregated, data informed approaches to measuring student achievement and other requirements and results. .

Institutional accreditors and ED have held promising discussions over the last two years about improving the timeliness, scope, and detail of federal data on multiple critical dimensions. Such improved federal data resources could build on and go beyond the extensive efforts undertaken by many agencies to develop strong data resources and systems. Pursuing those collaborative federal initiatives is the most helpful way that ED can advance accreditors' initiatives and ability to evaluate and pursue student success using comprehensive, timely, nuanced national data.

Ensuring consistency in decision-making (602.18) and Enforcement of Standards (602.20)

Accreditors take action quickly when they identify non-compliance. Then agencies tailor the time to come into compliance to the nature and degree of the deficiency. Agencies look forward to adding to the discussion to clarify key concepts (such as standards, student achievement, outcome metrics or measures) and to explore appropriate timelines for monitoring and enforcement. We appreciate the Department's recognition that achieving improvements in student outcomes requires time as well as focused attention.

DATA REQUEST: Does the Department have evidence supporting its concern about the period of time allowed to remedy deficiencies, and how it would define "excessive"?

Text change: Delete the word "immediately" in 602(a)(1): it is undefined, unnecessary, and cannot be read to override due process obligations to institutions.

Substantive change and other reporting requirements (602.22)

1. Changes requiring review
    - We encourage the Department to define or add clarity on such terms as "significant departure," non-degree programs and credentials, and the multiple variations on distance education, or to make clear that the agency is responsible to define these terms.
    - Agencies identified potential implementation problems such as: (H), an aggregate change of content over time would require cumbersome, possibly retroactive, review, and that these revisions would require agencies to adopt the federal definition of change of ownership.
    - Agencies are especially concerned about the potential harm to program quality and thus to students and the overbreadth of the requirement to treat as a sub change "any change to the content of a program equivalent to an aggregate change of 25%

or more of the content of the program." (602.aii)(I). Is this intended to include changes in readings or discussion topics or updating of technical or professional material to meet contemporary practice? Accredited institutions have already been found to have the capacity to develop, deliver, and evaluate curriculum and are expected to adjust to assure effective coverage of the subject and achievement of learning goals. Requiring excessive sub change reviews on content could stymy the very improvement of course material that promotes learning, career readiness, and economic and other value. If there is a real issue of concern the Department should narrow this provision or allow agencies leeway to address it without standing in the way of program improvement and updating.

- Regarding the new reporting requirement in 602.22(b): what is the evidence that agencies have not been appropriately careful in reviewing and substantive changes from institutions on probation or equivalent status, subject to negative action in the last three years, or provisionally certified? [DATA REQUEST] Absent such a basis accreditors recommend deleting this section.

2. Visit all additional locations: The Department has not explained why they believe this broad change may be necessary or how it aligns with its interest in risk-based oversight. There is also some question about consistency and clarity across the multiple references to required visits.
    - Many of the issues suggested as warranting on-site visits do not involve or benefit from physical presence and can be reviewed without an in-person visit (e.g, verification of academic control; long range planning; financial stability). Several years of positive results with remote accreditation visits should be taken into account.
    - The additional costs of unneeded visits would ultimately be borne by students.
    - This determination of reasonable schedule and scope is best left to agencies, subject to Department oversight on reaffirmation. If the current three additional location baseline threshold is not sufficient perhaps a different number could be considered. Note that the workload and institutional expense could be high; at one end of the spectrum are institutions with high school dual enrollment programs with 100+ additional locations.

Text should return to "…conducting, at reasonable intervals, a representative sample of additional physical locations…"

3. Staff approval of routine sub changes within rules and criteria established by a commission should be permitted in the interest of allowing selected categories of changes to be implemented without unnecessary waiting.

Operating Procedures (602.23)

Many agencies have revised or are in the process of revising their complaint provisions and practices to promote clear, timely, fair, and equitable handling consistent with the Department's recent guidance and NACIQI discussions.

1) The reference in 602.23(c)(1)(iii) to "technically following" is intended to promote reasonable flexibility in accepting understandable complaints. We suggest the language be revised along these lines:

Text: (iii) A requirement that agency staff must provide feedback to a complainant who does not submit a complaint correctly under the agency's prescribed method(s), or that the agency must accept a complaint that sufficiently satisfies the agency's complaint procedures such that it can pursue the issue raised;…

2) Accrediting agencies want to know about matters that relate to whether institutions meet their standards and are committed to follow up on information that might reveal deficiencies. Understanding that in some situations a person with a complaint or information prefers or needs not to be identified or identifiable, handling confidential and anonymous complaints can pose challenges of specificity, investigation, and due process in allowing an institution to understand the nature of the complaint. In some situations it doesn't matter whether the accreditor tells the institution who is complaining: once the issue is identified it is clear who the complainant is. Agencies can be asked to do everything possible to protect the confidentiality of the complainant but may not be able to guarantee it. negotiators have also correctly noted the difference between anonymous complaints and complaints made with a request for or contingent on confidentiality. Simply put, complaints cannot be meaningfully addressed without adequate identifying information.

Accreditors are continuing to explore possibilities and to listen carefully to suggestions during the negotiation for ways to balance the complex interests at play in this realm. Finally, accreditors note also that there are additional pathways to bring information to an agency's attention, including third party comments and other communications, if a person does not want to or cannot file a complaint, and that they pursue issues of concern that come to their attention in many different ways.

Text for consideration:

(iv) Allowance for the confidentiality of the complainant, including the complainant's ability to elect to keep their personally identifiable information confidential from the institution or program that is the subject of the complaint, to the maximum (or fullest or greatest) extent possible.