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Accreditation, Innovation, and Modernization (AIM)
Negotiated Rulemaking

April 13-17 and May 18-22, 2026

VERSION 1.1 (4/17/26) DRAFT REGULATIONS FOR DISCUSSION

(REDLINED TO CURRENT REGULATIONS AT 34 CFR PARTS 600 AND 602)

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION
ACT OF 1965, AS AMENDED

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

Subpart A—General

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§ 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:~~

Commented [A1]: No proposed changes to Part 600 outside of 600.11 Special rules regarding institutional accreditation or preaccreditation.

Commented [A2]: Changes in this section correspond to existing Department policy guidance in [GEN-25-03, Changes to the Approval Process for Changing Accrediting Agencies](#).

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(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 ~~unless the Secretary determines that if~~ the institution ~~is seeking the change in order to-~~

(A) Evade or circumvent a requirement of Federal law or regulation;

(B) Avoid or delay enforcement or oversight by the Department or an accrediting agency;

(C) Obtain eligibility for title IV, HEA programs through misrepresentation or other unlawful means; or

(D) Otherwise undermine the integrity of the title IV, HEA programs.

(iii) The Secretary will not determine the cause of changing its accrediting agency to be unreasonable due to a withdrawal, revocation, other termination of accreditation, probation or equivalent, show cause order, or suspension order unless the change is sought for reasons listed in sections (a) (1) (ii) (A)-(D).

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~~(A) Has had its accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months, unless such withdrawal, revocation, or termination has been rescinded by the same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) **Multiple accreditation.** An institution may obtain accreditation or preaccreditation from more than one accrediting agency recognized by the Secretary if the institution provides the following to the Secretary:

(1) Materials related to its prior accreditation or preaccreditation;

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(2) A written explanation showing reasonable cause for having multiple accreditors. The Secretary will determine such cause to be reasonable unless the Secretary determines that the institution is seeking to be accredited by more than one accrediting agency in order to-

(i) Evade or circumvent a requirement of Federal law or regulation;

(ii) Avoid or delay enforcement or oversight by the Department or an accrediting agency;

(iii) Obtain eligibility for title IV, HEA programs through misrepresentation or other unlawful means; or

(iv) Otherwise undermine the integrity of the title IV, HEA programs.

(3) The Secretary will not determine the cause of having multiple accrediting agencies to be unreasonable due to a withdrawal, revocation, other termination of accreditation, probation or equivalent, show cause order, or suspension order.

~~The Secretary does not recognize the accreditation or preaccreditation of an otherwise eligible institution if that institution is accredited or preaccredited as an institution by more than one accrediting agency, unless the institution~~

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~~(1) Provides to each such accrediting agency and the Secretary the reasons for that multiple accreditation or preaccreditation;~~

~~(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~~

(3) (4) Designates to the Secretary which agency's accreditation or preaccreditation the institution uses to establish its eligibility under this part.

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(c) **Loss of accreditation or preaccreditation.**

(1) An institution may not be considered eligible for 24 months after it has had its accreditation or preaccreditation withdrawn, revoked, or otherwise terminated for cause, unless the accrediting agency that took that action rescinds that action.

(2) An institution may not be considered eligible for 24 months after it has withdrawn voluntarily from its accreditation or preaccreditation status under a show-cause or suspension order issued by an accrediting agency, unless that agency rescinds its order.

(d) **Religious exception.**

(1) If an otherwise eligible institution loses its accreditation or preaccreditation, the Secretary considers the institution to be accredited or preaccredited for purposes of complying with the provisions of §§ 600.4, 600.5, and 600.6 if the Secretary determines that its loss of accreditation or preaccreditation—

(i) Is related to the religious mission or affiliation of the institution; and

(ii) Is not related to its failure to satisfy the accrediting agency's standards.

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(2) If the Secretary considers an unaccredited institution to be accredited or preaccredited under the provisions of paragraph (d) (1) of this section, the Secretary will consider that unaccredited institution to be accredited or preaccredited for a period sufficient to allow the institution to obtain alternative accreditation or preaccreditation, except that period may not exceed 18 months.

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

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Commented [A3]: No changes proposed to these subparagraphs.

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PART 602—THE SECRETARY'S RECOGNITION OF ACCREDITING AGENCIES

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

Subpart A—General

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

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

(b) If the Secretary denies continued recognition to a previously recognized agency, or if the Secretary limits, suspends, or terminates the agency's recognition before the end of its recognition period, the Secretary publishes an ~~announcement~~ ~~notice~~ of that action ~~on the Department's website,~~ which includes the reasons for the action and date it was taken, and also publishes such information of the list and scope of recognized agencies published in the Federal Register pursuant to subsection (a) ~~in the Federal Register. The Secretary also makes the reasons for the action available to the public, on request.~~

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

§ 602.3 What definitions apply to this part?

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

(1) Accredited.

(2) Additional location.

(3) Branch campus.

(4) Correspondence course.

(5) Direct assessment program.

(6) Distance education.

~~(7) Institution of higher education.~~

~~(8)~~ Nationally recognized accrediting agency.

~~(9)~~ Preaccreditation.

~~(10)~~ Religious mission.

~~(11)~~ Secretary.

~~(12)~~ State.

~~(13)~~ Teach-out.

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(1413) Teach-out agreement.

(1514) Teach-out plan

(b) The following **additional** definitions apply to this part:

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

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

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

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

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

Compliance report means a written report that the Department requires an agency to file when the agency is found to be out of compliance to demonstrate that the agency has corrected deficiencies specified in the decision letter from the senior Department official or the Secretary. Compliance reports must be reviewed by Department staff and the Advisory Committee and approved by the senior Department official or, in the event of an appeal, by the Secretary.

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

Final accrediting action means a final determination by an accrediting agency regarding the accreditation or preaccreditation status of an institution or program. A final accrediting action is a decision made by the agency, at the

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conclusion of any appeals process available to the institution or program under the agency's due process policies and procedures.

Institution means an educational institution that meets the requirements of paragraph (1) of the definition of *eligible institution* found in 34 C.F.R. 600.2.

Commented [A4]: RATIONALE: Term clarifies that in this part the term institution refers to institution of higher education (600.4), proprietary institution of higher education (600.5), and postsecondary vocational institution (600.6)

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

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

(i) The agency is implementing its current or corrected policies; or

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(ii) The agency, which is compliant in practice, has updated its policies to align with those compliant practices.

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

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

Recognition means an unappealed determination by the senior Department official under § 602.36, or a determination by the Secretary on appeal under § 602.37, that an accrediting agency complies with the criteria for recognition listed in subpart B of this part and that the agency is effective in its application of those criteria. A grant of recognition to an agency as a reliable authority regarding the quality of education or training offered by institutions or programs it accredits remains in effect for the term granted except upon a

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determination made in accordance with subpart C of this part that the agency no longer complies with the subpart B criteria or that it has become ineffective in its application of those criteria.

Related, associated, or affiliated trade association means an organization that:

(i) is generally a membership organization;

(ii) is organized to promote a line of commerce, **business, industry, or profession;**

(iii) does not to engage in a regular business of a kind ordinarily carried on for profit, and no part of the net earnings of which inures to the benefit of any member; and

(iv) is related to a particular accrediting agency in that the agency accredits institutions or programs that prepare students

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to enter the labor force of the same or substantially the same line of commerce that organization promotes.

Representative of the public means a person who is not—

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

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

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

Scope of recognition or scope means the range of accrediting activities for which the Secretary recognizes an agency. The Secretary may place a limitation on the scope of an agency's

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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.

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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.

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Subpart B—The Criteria for Recognition

BASIC ELIGIBILITY REQUIREMENTS

§ 602.10 Link to Federal programs.

~~The agency must demonstrate that~~

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

(b) If the agency **is seeking renewal of recognition and the agency** accredits institutions ~~of higher education or higher education programs, or both, it must demonstrate that~~ its accreditation is a required element, **as stated in a Federal statute, Federal regulation, Federal grant or funding**

Commented [A5]: RATIONALE: These edits strengthen the Federal link requirements for non-TIV accrediting agencies and limit ED recognition reviews to agencies whose accredited institutions/programs utilize Federal funding programs. It would also assist ED in prioritizing recognition reviews of agencies described in 34 CFR 602.32. NACIQI **agreed** that access to recognition by non-TIV accrediting agencies should be limited as described by these revisions.

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announcement, or other official Federal agency notice establishing eligibility requirements for participation in the program, in enabling at least one of those entities to establish eligibility to participate in non-HEA Federal programs and provide documentation that an institution or program is currently relying on the agency's accreditation as a condition of eligibility to participate in such programs.

(c) If the agency is seeking initial recognition, it must demonstrate that an institution or program it accredits is likely to rely on the agency's accreditation to establish or continue eligibility to participate in an HEA or non-HEA Federal program upon recognition of the agency within two years. In the event the agency does not have an institution or program that is relying upon the agency's accreditation to establish or continue eligibility to participate in an HEA or non-HEA Federal program when the agency is recognized by the Department, it must report to the Secretary when the first institution or program it accredits begins relying upon its accreditation for such purposes. If, after two years after initial recognition, there are no institutions or programs that rely on the agency's accreditation to establish or continue eligibility to participate in an HEA or non-HEA Federal program upon

Commented [A6]: RATIONALE: This addition provides the expectation that institutions/programs accredited by agencies that are granted initial recognition would be expected to utilize Federal funding programs.

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recognition of the agency, then the agency ceases to be recognized by the Department.

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

§ 602.11 Geographic area Extent of accrediting activities.

(a) The agency must identify the extent of its accrediting activities and demonstrate that it has the capacity, policies, and procedures necessary to conduct accrediting activities within ~~if the agency is part of a State government,~~ the identified extent.

(b) An agency may seek recognition to operate in a State, a group of States, or in all States, but the Secretary does not assign, prefer, or limit geographic extent, except as necessary to ensure that the agency has the capacity to carry out its intended accrediting activities. The Secretary may not assign institutions or programs to accrediting agencies, restrict institutions or programs from seeking accreditation from any agency recognized by the Secretary, directly or indirectly discourage institutions or programs from seeking accreditation from another recognized agency through policy, guidance, communications, or other actions, or otherwise favor one

Commented [A7]: RATIONALE: Edits made to this section to implement in regulation the recently-published interpretation in FRN (91 FR 7199) to revise and clarify its prior interpretation of its position on the use of descriptive terms by Department-recognized accrediting agencies, specifically, the use of "regional" and "national."

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recognized accrediting agency over another. The Secretary may not delay, condition, or otherwise adversely affect an institution's participation in title IV, HEA programs solely because the institution seeks accreditation from, or changes accreditation to, another agency recognized by the Secretary.

~~(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)

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§ 602.12 Accrediting experience.

(a) An agency seeking initial recognition must demonstrate that it has ~~(1)C~~ granted accreditation or preaccreditation prior to ~~submitting an application for recognition -~~ being recognized

(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; and

(ii) The agency meets the criteria in either paragraph (1) or paragraph (2).

~~(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~~

Commented [A8]: RATIONALE: Edits made to implement in regulation the recently-published interpretation in FRN (91 FR 9709) related to an accrediting agency's submission of a written application seeking initial recognition. The revisions are designed to reduce unnecessary barriers to the recognition of accrediting agencies to promote competition in the market for assessing the quality of education or training offered by postsecondary institutions and programs, as directed in EO 14279.

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(21) The agency has the ability and the experience to operate as an accrediting agency by showing that ~~it is incorporated to operate in the relevant jurisdiction~~ it is legally incorporated in a State and has conducted accrediting activities that shall be considered under a reasonable evaluation of the totality of the circumstances in determining if the agency is a reliable authority as to the quality of education or training provided. ~~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.~~ For the purposes of demonstrating experience under this part, accrediting activities may include one or more of the following:

(i) adopting accreditation standards consistent with 34 C.F.R. § 602.16;

(ii) granting or denying accreditation or preaccreditation consistent with 34 C.F.R. §§ 602.17-18;

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(iii) conducting a site visit at an institution or program consistent with 34 C.F.R. § 602.17(c);

(iv) adopting operating procedures consistent with 34 C.F.R. § 602.23;

(v) establishing a process to accept applications for accreditation consistent with 34 C.F.R. § 602.17; or

(vi) Other evidence the agency may submit that shows it has the ability and experience to operate as an accrediting agency recognized by the Secretary.

(2) The agency has the ability and the experience to operate as an accrediting agency by showing that it is incorporated to operate in the relevant jurisdiction and has granted accreditation or preaccreditation to at least one institution or program not less than two years prior to being granted recognition.

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(3) Nothing in this part shall be construed as prohibiting an agency that has not granted accreditation or preaccreditation from applying for recognition or being reviewed by Department staff or the Advisory Committee, except that the agency must grant accreditation or preaccreditation to an institution or program prior to being granted recognition.

(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

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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; ~~and~~

(c) Experience qualifying under this section is not limited to the accreditation of institutions within a particular geographic area and may include experience obtained in a national, State or group of States, or programmatic basis.

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

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§ 602.13 ~~(Reserved)~~Effect of recognition.

(a) Recognition under this part does not confer immunity or any relief from Federal or State antitrust laws. Accrediting agencies, institutions, and programs remain subject to those laws notwithstanding recognition or eligibility determinations made by the Department.

(b) Recognition under this part does not authorize collective action among accrediting agencies, institutions, or programs that would otherwise be subject to oversight under Federal or State law.

(c) Recognition under this part does not create a property interest or entitlement to continued recognition.

Commented [A9]: RATIONALE: This addition provides the requirement that accrediting agencies, institutions, and programs are subject to Federal and State antitrust laws, as directed in EO 14279.

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ORGANIZATIONAL AND ADMINISTRATIVE REQUIREMENTS

§ 602.14 Purpose and organization.

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

(1) A State agency that-

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

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

(2) An accrediting agency that-

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

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(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-

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(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

Commented [A10]: RATIONALE: These edits strengthen the "separate and independent" requirements in statute at 20 USC 1099b (b) to exclude any accredited institutional representative or any representative from a related trade or membership organization from the decision-making body of the accrediting agency. The edits also strengthen the conflict of interest expectations and remove the ability of accrediting agencies to jointly use personnel, services, equipment, or facilities with a related trade or membership organization.

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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. Representatives of the public shall not currently be or previously have been suppliers of higher education services, or professionals in the field in which the agency conducts programmatic accreditation;

(3) The agency has established and implemented ~~guidelines~~ mandatory conflict of interest controls for each member of the decision-making body including ~~guidelines~~ policies to ~~on~~ avoiding conflicts of interest in making decisions, including by ensuring that members of the standards and policy-making body, which may be different than the decision-making body, do not vote on, supervise, or otherwise participate in the setting of standards or policies (including student achievement standards) that directly or indirectly impact or affect any institution or program that such a member is an officer, director, or employee;

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(4) The agency's dues are paid **and held** separately from any dues paid to any related, associated, or affiliated **trade association, professional organization, standard setting organization, State certification organization,** or membership organization;~~and~~

(5) The agency's dues are determined without review by any related, associated, or affiliated trade association, professional organization, standard setting organization, State certification organization, or membership organization;

(6) ~~(5)~~ The agency develops and determines its own budget, **without** ~~with no~~ review by or consultation with any other entity or organization, **including any related, associated or affiliated trade association, professional organization, standard setting organization, State certification organization,** or membership organization.

(7) The agency does not share resources, such as personnel, services, equipment, facilities, or information technology, and does not have office space in the same building with any related, associated, or affiliated trade association,

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professional organization, standard setting organization, State certification organization, or membership organization. The requirement in this paragraph for separate office space will take effect one year after the effective date of this section;

(8) The agency has sufficient controls to ensure that any officers, directors, employees, or volunteers of the agency do not share or solicit feedback formally or informally regarding any of the agency's policies, standards, or decisions with respect to any institution or program from any related, associated, or affiliated trade association, professional organization, standard setting organization, State certification organization, or membership organization, except that this provision does not apply to any agency action to solicit public feedback on such policies, standards, or decisions so long as general members of the public are also able to provide feedback;

(9) The agency affirmatively disclaims on its website that it is not connected to any related, associated, or affiliated trade association, professional organization, standard setting organization, State certification organization, or membership organization;

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(10) The agency trains staff annually regarding the requirement to be "separate and independent," including by training staff regarding the controls it has in place to ensure that it remains "separate and independent";

(11) The agency establishes a complaint process whereby employees, institutions, programs, or members of the public may submit complaints on a named or anonymous basis regarding purported violations of the "separate and independent" requirements.

(12) The chief executive of the agency submits a signed statement certifying to the Department staff that it has met the requirements to be "separate and independent" on an annual basis, and includes in that statement information regarding any complaints received under paragraph (10) in the past year that are material or that are over 90 days old and have been unresolved at the time of the submission.

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(13) The agency, including any officers, directors, employees, or volunteers of the agency will not act, nor encourage any other entity to act, to restrict access to employment in a profession, occupation, or vocation, including by taking steps to increase credentialing standards, to increase the cost or level of required education or training, or to decrease the availability of education or training in a manner that may benefit any related, associated, or affiliated trade association, professional organization, standard setting organization, State certification organization, or membership organization, unless the agency demonstrates, based on clear and convincing evidence in the administrative record, that the restriction is necessary to protect the public and that the expected public benefits outweigh the costs to the public from reduced access to the profession, occupation, or vocation. In making this determination, the agency must demonstrate that no less restrictive alternative would adequately protect the public. The agency may not rely solely on requirements, recommendations, or standards adopted by any trade association, professional organization, licensing body, or other related entity as justification for such restrictions. The agency must document this analysis in the administrative record and make it available to the Secretary upon request.

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(i) This provision does not apply to any agency action to solicit public feedback on such policies, standards, or decisions so long as general members of the public are also able to provide feedback.

(ii) Nothing in this paragraph shall be construed to limit, displace, or preempt State authority over higher education or professional licensure, whether exercised through statute, regulation, or other policy or administrative action, nor to prohibit accrediting agencies from complying with applicable State requirements;

(14) Any officers, directors, or employees of an agency must not interlock by serving as a paid or unpaid officer, director, employee, or volunteer of both the agency and any related, associated, or affiliated trade association, professional organization, standard setting organization, State certification organization, membership organization, State licensing board, or similar body, unless required by State law

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~~(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;~~

Commented [A11]: RATIONALE: The removal of the ability for accrediting agencies to jointly use personnel, services, equipment, or facilities with a related trade or membership organization strengthens the "separate and independent" requirements in statute at 20 USC 1099b (b).

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

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

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

~~(c) 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)

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§ 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;~~

Commented [A12]: RATIONALE: These edits remove prescriptive regulations that add burden to accrediting agencies and address concerns related to undue individual influence in the accreditation process, but still meet the requirements of 20 USC 1099b (c)(1).

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~~(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;~~

(3) Training provided to all agency representatives and staff as necessary for each of their roles, which emphasizing that accreditation requirements should not unnecessarily increase institutional costs or restrict innovative or lower-cost models that can provide students with a high-quality education;

~~(45) Representatives of the public, which may include students, on all decision-making bodies; and~~

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

Commented [A13]: RATIONALE: Edits made to mirror changes made to 34 CFR 602.14(b).

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(i) ~~Board members~~ **Officers** and **Directors**;

Commented [A14]: We will explain in the preamble that Board Members and Commissioners are included as Officers and Directors. are officers and that Administrative Officers are employees.

(ii) ~~Commissioners~~ **Employees** (including temporary, part-time, and full-time employees);

(iii) Evaluation team members;

(iv) Consultants and **Contractors**;

(v) ~~Administrative staff~~ **Volunteers**; and

(vi) Other agency representatives.

(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

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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 if applicable; and

(2) All decision letters issued by the agency regarding the accreditation and preaccreditation of any institution or program and any substantive changes.

(c) The agency conducts its accreditation activities in a cost-effective manner. For purposes of this paragraph cost effective means avoiding that limits unnecessary financial, compliance, and administrative burdens, on accredited institutions and/or programs, including by avoiding duplicative reporting, excessive documentation requirements, and unwarranted prescriptive processes. that do not demonstrably advance educational quality or student achievement.

Commented [A15]: RATIONALE: Regulation added to address the cost of accreditation for institutions and programs and ensure that all accrediting activities and reporting required by accrediting agencies are necessary to determine educational quality.

(d) The agency will cooperate with other agencies and the Department in the development of common templates and forms for institutions to submit when seeking to change accrediting agencies.

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

§ 602.16 Accreditation and preaccreditation standards.

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

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

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

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(ii) Curricula.

(iii) Faculty.

(iv) Facilities, equipment, and supplies.

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

(vi) Student support services.

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

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

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

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

~~(2b)~~ 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

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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.

(ed) 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.

(de) (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.

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

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

~~(f)~~g) An agency that has established and applies the standards in paragraph (a) of this section may establish any additional lawful accreditation standards it deems appropriate that are consistent with ensuring institutional or programmatic quality. ~~(g)~~h) Nothing in paragraph (a) of this section restricts-

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

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

(3) Agencies from having separate standards regarding an institution's or a program's process for approving curriculum to enable programs to more effectively meet the recommendations of-

(i) Industry advisory boards that include employers who hire program graduates;

(ii) Widely recognized industry standards and organizations;

(iii) Credentialing or other occupational registration or licensure; or

(iv) Employers in a given field or occupation, in making hiring decisions.

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(4) Agencies from having separate faculty standards for instructors teaching courses within a dual or concurrent enrollment program, as defined in 20 U.S.C. 7801, or career and technical education courses, as long as the instructors, in the agency's judgment, are qualified by education or work experience for that role.

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

§ 602.17 Application of standards in reaching accreditation decisions.

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

(a) Evaluates whether an institution or program--

(1) Maintains clearly specified educational objectives, including minimum expectations of student performance as

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appropriate, that are consistent with its mission and appropriate in light of the degrees or certificates awarded that are developed and regularly reviewed and updated, using valid and reliable data, which may include Federal or state data;

(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 § 602.19 (b);~~

(3) Maintains a sufficient number of appropriately qualified faculty and other subject matter instructors who are regularly evaluated on the performance of their instructional, research, or service responsibilities. Such evaluation should also include whether the institution or program:

(i) Maintains and applies written faculty performance evaluation policies that:

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(A) Are conducted on a periodic basis;

(B) Include defined performance criteria; and

(C) Provide meaningful, consistently applied remediation or personnel action in cases of sustained nonperformance;

(ii) Maintains faculty appointment structures that permit the institution or program to address persistent deficiencies in instructional quality, program relevance, or institutional effectiveness;

(iii) Maintains academic freedom protections that are clearly articulated and applied consistently to faculty regardless of appointment classification, race or other immutable characteristics, viewpoint, or ideology;

(iv) Maintains sufficient flexibility in instructional staffing to respond to material changes in student demand, program viability, or financial conditions; and

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(v) In the case of public institutions, fulfills their obligations under the First Amendment to the Constitution of the United States. The agency should similarly evaluate any private institutions that, through their institutional policies, guarantee the same or similar protections for students or faculty.

(vii) Ensures that program length is appropriate to the objectives to the program and credential awarded. In applying this standard, the agency must not categorically prohibit or unreasonably restrict the accreditation of a:

(A) Short-term program that is designed to prepare students for employment in recognized occupations eligible for Federal student aid under applicable law; or

(B) Certificate or degree program offered for a shorter period of time than is traditionally required to obtain that credential, so long as the program results in comparable

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academic, professional, and employment outcomes for students would complete such programs.

(b) When reviewing institutions or programs, the agency evaluates the criteria of 602.16(a). Such agency review must include:

(1) For 602.16(a)(1)(i):

(i) State licensing or certification examination results, where applicable;

(ii) Program retention, completion, or graduation rates, including as appropriate the extent to which grades meaningfully reflect student learning and support progression through the program of study;

(iii) Post-completion or graduation outcomes, including employment and continued education;

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(iv) Scores on relevant standardized assessments taken for admission to a higher-level degree, during and after the time of enrollment at an institution; and

(v) Educational and economic returns relative to the total cost of attendance, including tuition and fees, room and board, supplies, and transportation, assessed using reliable wage data, as available, aligned to the program's credential level, length, and occupational context.

(2) For 602.16(a)(1)(iv) and (vi):

(i) a cost/benefit analysis, which means a review by the agency of the institution's budget, resource utilization and allocation, and if existing, its business/strategic plan, continuous improvement strategic plan, and review of whether the institution considers whether the expected benefits of the institution's activities justify the associated financial, administrative and opportunity costs, and the impact of capital expenditures on future operating expenses;

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(ii) a review of an institution's practices and capabilities regarding the administration of student aid programs; and

(iii) a review of the sufficiency and proper maintenance of the institution's facilities and that such facilities comply with applicable safety standards, laws, and regulations.

(3) For 602.16(a)(1)(iii), (vi), and (vii), whether the institution has a policy or policies to protect civil rights and, as applicable, First Amendment rights, and whether such policy or policies include:

(i) academic freedom protections that are clearly articulated and applied consistently to faculty regardless of appointment classification, race or other immutable characteristics, viewpoint, or ideology;

(ii) academic freedom and freedom of inquiry protections for faculty in teaching, scholarship and research within the subject matter of a course and research within their academic discipline, including conditions under which a range of academic

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perspectives may be expressed and examined without adverse action based on lawful viewpoints unrelated to professional or academic competence;

(iii) in the case of a private institution, policies, that if established, guarantee the same or similar protections as those described subsections (i) and (ii) above.

(c) It requires the institution or program to engage in a self-study process or other comprehensive 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;

~~(e)~~ It ~~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;

~~(e)~~ It ~~a~~llows the institution or program the opportunity to respond in writing to the report of the on-site review;

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(ef) It cConducts 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;

(fg) It pProvides 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;

(gh) It rRequires 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

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(i) It administers standards and review processes in a manner that reduces unnecessary barriers that limit allows institutions or programs from to adopting instructional, programmatic, or delivery practices that improve student access, accelerate credential or degree completion, or support innovative models of postsecondary education, including program length.

~~(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.~~

(j) That it has adopted, implements, and enforces written policies and procedures that seek to ensure the accuracy, completeness, and integrity of all representations made by the agency to:

(1) The Secretary;

(2) The public, including current and prospective students;

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(3) State, Tribal, and other governmental authorities; and

(4) Institutions or programs it accredits or preaccredits.

(k) That the policies of the agency provide that the agency:

(1) Does not make false, misleading, or materially incomplete statements regarding:

(i) The accreditation or preaccreditation status of any institution or program~~—~~or

(ii) The scope, conditions, or implications of accreditation or preaccreditation;

(iii) Compliance of an institution or program with applicable Federal or State law; and

(iv) Findings, monitoring outcomes, or enforcement actions of the agency.

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(2) Maintains procedures for the prompt correction of materially inaccurate public statements or disclosures;

(3) Maintains procedures for investigating credible allegations that the agency or its representatives made materially inaccurate or misleading representations; and

(4) Takes appropriate corrective or disciplinary action when the agency determines that materially inaccurate or misleading representations have occurred.

(1) The agency trains staff annually and trains peer reviewers periodically on various education models and modalities, including emphasis on how greater physical infrastructure, traditional institutional structures, and high tuition and fees are not necessary to provide high-quality education.

(1) The agency's accreditation standards, policies and enforcement practices must not restrict public institutions from fulfilling their obligations under the First Amendment to the Constitution of the United States. These standards similarly also must not restrict any private institutions that, through

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their institutional policies, guarantee the same or similar protections for students or faculty.

(m) The agency may not have standards that encourage, direct, or otherwise require institutions or programs to violate Federal or State law, including by having policies that provide any preferences on the basis of race.

(n) Nothing in this section shall be construed to require any action that would conflict with applicable State law.

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

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REQUIRED STANDARDS AND THEIR APPLICATION

§ 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;

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(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 adopted and followed procedures to ensure that agency decisions are neutral with respect to viewpoint and ideology that are unrelated to its accrediting policies or standards, except that nothing in this paragraph requires an accrediting agency with a religious mission to be neutral with respect to **religious** viewpoints.

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

(65) Provides the institution or program with a detailed written report that clearly identifies any deficiencies in the

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institution's or program's compliance with the agency's standards.

(76) 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) ~~This section does not~~ 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 reducing barriers that limit institutions and programs from adopting practices that advance credential and degree completion and that promote new models of education by applying equivalent written standards, policies, and procedures

Commented [A16]: RATIONALE: These edits remove prescriptive regulations that are not based on statute, but retains language to reduce barriers to educational innovation, as directed in EO 14279.

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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

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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;~~

Commented [A17]: RATIONALE: Moved to 34 CFR 602.20 to remove implementation confusion by accrediting agencies regarding enforcement timelines.

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~~(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;~~

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~~(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)

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§ 602.19 Monitoring and reevaluation of accredited institutions and programs.

* * * * *

§ 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 **to include clearly delineating success and failure in relation to student achievement;**

(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—

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(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.~~

Commented [A18]: RATIONALE: These edits remove prescriptive regulations that are not based on statute. Also this regulation utilizes terms that are defined in regulation, but are not used as defined so are confusing.

(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, **to include when an institution or program fails to meet student achievement standards.**

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

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

(e) All adverse actions taken under this subpart are subject to the arbitration requirements in 20 U.S.C. 1099b(e). **Nothing in this section prescribes whether arbitration must be binding or**

Commented [A19]: RATIONALE: These edits provide guidance to accrediting agencies on how to structure their arbitration procedures, but removes the overly prescriptive requirements included in current subregulatory guidance in DCL GEN-23-14.

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nonbinding, which is determined by the agreement of the parties or applicable law. Agency policies governing the arbitration of disputes must:

(1) Apply to all final adverse actions, regardless of an however, an agency may require the institution's or program's participation in to first exhaust the agency's appeal process;

(2) Ensure that the arbitration process is fair and impartial; and

(3) Provide for a transparent and reasonable period of time for resolution of disputes.

(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.

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(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.

(h) The agency must have a policy for restoring accreditation (including retroactive restoration) in circumstances that the agency determines are appropriate. ~~in the event that the agency makes material error in taking an adverse action against an institution. The Department is not required to withdraw or may restore title IV, HEA program eligibility to an institution in such a circumstance when a material error has been made by an agency and the agency takes action to correct that error by restoring accreditation.~~

(i) 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, 602.22, 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-

Commented [A20]: RATIONALE: Moved from 602.18(d) to remove implementation confusion by accrediting agencies regarding enforcement timelines.

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(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 in State licensure requirements;

(v) 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

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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 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) Increase 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.

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(5) The agency timeline must include the enforcement of intermediate checkpoints that allow the agency to ensure the institution will be in full compliance by the end of the timeline.

(6) An extension under this provision can only be granted by the agency if the special circumstances constitute a new and independent cause for the non-compliance.

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

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§ 602.21 Review of standards.

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

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

Commented [A21]: RATIONALE: These edits remove prescriptive regulations that are not based on statute, but retains the best practice to require accrediting agencies to regularly review their standards.

~~(1) Is comprehensive;~~

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

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

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

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

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

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

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

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

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REQUIRED OPERATING POLICIES AND PROCEDURES

§ 602.22 Substantive changes and other reporting requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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(3) The institution is financially stable.

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

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

(K) Addition of each direct assessment program.

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

Commented [A22]: RATIONALE: These edits remove prescriptive regulations that are not based on statute, but retains the best practice to require institutional accrediting agencies to review substantive changes.

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(ii) In the case of a request under paragraph (a)(1)(ii)(J) of this section, the agency must make a final decision within 90 days of receipt of a materially complete request, unless the agency or its staff determine significant circumstances related to the substantive change require a review by the agency's decision-making body to occur within 180 days.

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

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

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

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~~(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.~~

(be) Institutions that have successfully completed at least one cycle of accreditation and have received agency approval for the addition of at least two additional locations as provided in paragraph (a)(1)(ii)(I) of this section, and that have not been

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placed on probation or equivalent status or been subject to a negative action by the agency over the prior three academic years, and that are not under a provisional certification, as provided in 34 CFR 668.13, need not apply for agency approval of subsequent additions of locations, and must report these changes 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~~

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~~(5) Long range planning for expansion.~~

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

(e) The agency may determine the procedures it uses to grant prior approval of the substantive change. However, these procedures must specify an effective date, on which the change is included in the program's or institution's grant of accreditation or preaccreditation. The date of prior approval must not pre-date either an earlier agency denial of the substantive change, or the agency's formal acceptance of the application for the substantive change for inclusion in the program's or institution's grant of accreditation or preaccreditation. An agency may designate the date of a change in ownership as the effective date of its approval of that substantive change if the accreditation decision is made within 30 days of the change in ownership. ~~Except as provided in paragraphs (d) and (f) of this section, an agency may require a visit before granting such an approval.~~

Commented [A23]: RATIONALE: Conforming change to reflect removal of paragraphs (d) and (f).

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

~~(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;~~

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~~(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.~~

(d~~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.

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

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§ 602.23 Operating procedures all agencies must have.

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

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

(2) The procedures that institutions or programs must follow in applying for accreditation, preaccreditation, or substantive changes and the sequencing of those steps relative to any applications or decisions required by States or the Department relative to the agency's preaccreditation, accreditation, or substantive change decisions;

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

(4) The institutions and programs that the agency currently accredits or preaccredits and, for each institution and program,

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the year the agency will next review or reconsider it for accreditation or preaccreditation; and

(5) A list of the names, academic and professional qualifications, and relevant employment and organizational affiliations of—

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

(ii) The agency's principal administrative staff.

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

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(c) The accrediting agency must—

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

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

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

(d) The agency must require its accredited institutions or programs to publicly disclose any action by the agency that

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begins the enforcement timeline in 602.20(a) or (b). When ~~if~~ an institution or program makes such a disclosure or 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, the reason(s) for the action, and the name and contact information for the agency.

Commented [A24]: RATIONALE: These edits ensure the transparency of accreditation actions that could lead to a negative or adverse action if the noncompliance issues cited are not resolved.

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

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

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

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

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~~(f) (1) If preaccreditation is offered-~~

Commented [A25]: RATIONALE: These edits remove prescriptive regulations that are not based on statute related to preaccreditation.

~~(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~~

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~~(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(e).~~

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

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

(h) The agency must not have policies that require institutions or programs to violate any Federal or State law, including Title

Commented [A26]: RATIONALE: Edits made to implement EO 14279 in regulation to enhance the enforcement of civil rights laws.

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VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., and Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 et seq (Title IX), which means among other things, that agencies must not have policies that require institutions or programs to provide unlawful preferences to students, faculty, staff, contractors, or any employees based upon an their race, color, national origin, or sex, including in admissions, hiring, and the selection of contracts.

(i) The agency must have internal controls to ensure compliance with antitrust laws, including by ensuring that the agency does not directly or indirectly facilitate coordination or collusive activities that are anticompetitive among institutions or programs or unnecessarily restrict access to employment in an occupation.

(j) Agencies must refrain from review of institutional governance that is in the rightful purview of a State government.

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

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

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§ 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, **that cannot be conducted solely by agency staff,** to a new branch campus or following a change of ownership or control as soon as

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practicable, but no later than six months, after the establishment of that campus or the change of ownership or control.

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

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

(ii) The agency acts to place the institution on probation or equivalent status ~~or takes any other formal action against the institution related to its financial condition.~~

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(iii) The Secretary notifies the agency that the institution's participation in title IV, HEA programs has changed from full to provisional certification ~~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:

Commented [A27]: RATIONALE: These edits require the submission of a teach-out agreement for the specific situations noted, but provides an option for an institution to demonstrate why it cannot provide a teach-out agreement.

(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

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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, unless the institution is completing its own teach-out.

(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) If an institution is unable to secure a teach-out agreement within 30 days with another institution as required under paragraph (c)(2) of this section--

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(i) The institution must provide documentation to the agency and the State detailing why a teach-out agreement cannot be secured; and

~~(ii) The institution must update its teach-out plan; and~~

(ii) The institution must notify the Department that a teach-out agreement cannot be secured and the Department may require the institution to provide financial protection.

~~(43)~~ 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.

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

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

(76) The agency must require an ~~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);

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(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.

(87) 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~~

Commented [A28]: RATIONALE: These edits remove prescriptive regulations that are not based on statute related to teach-out agreement requirements.

~~(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~~

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~~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.~~

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(9~~8~~) Irrespective of any teach-out plan or signed teach-out agreement, the agency must not permit an institution to serve as a teach-out institution under the following conditions:

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

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

(10~~9~~) The agency is permitted to waive requirements regarding the percentage of credits that must be earned by a student at the institution awarding the educational credential if the student is completing his or her program through a written teach-out agreement or transfer.

~~(10) The agency must require the institution to provide copies of all notifications from the institution related to the institution's closure or to teach-out options to ensure the~~

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~~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~~-, including by-~~

Commented [A29]: RATIONALE: These edits include specific expectations for institutional accrediting agencies to work with ED and State agencies when an institution closes.

~~(i) Working with institutions to secure teach-out agreements;~~

~~(ii) Where a teach-out agreement cannot be arranged, working with institutions identified in the teach-out plan to secure transfer options with those institutions;~~

~~(iii) Making teach-out or transfer options, the terms of such options, and information on obtaining transcripts, loan discharges, and reimbursement publicly available on the agency's website; and~~

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(iv) Sharing such information with appropriate State agencies and, as applicable, with other recognized accrediting agencies.

(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-

Commented [A30]: RATIONALE: Edits made to promote the expansion of the acceptance of transfer of credit by institutions and has required by 20 USC 1099b (c)(9). The inability for students to transfer credit between institutions has been an issue for decades and the issue is well-researched (see Ithaka S+R paper from 12/11/2024). This issue also impacts higher education affordability, by increasing the money paid by students and ED (through Pell Grants and Direct Loans) - and therefore taxpayers - for the duplication of courses.

(1) Are publicly disclosed in accordance with § 668.43(a)(11), including any equivalency tables, which shall be published in a standardized data format prescribed by the accrediting agency; and

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

(3) Presume the transferability of **undergraduate** credits earned at another institution accredited by a nationally recognized accrediting agency count toward general education requirements, or electives, absent a detailed, written, academic rationale

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that is specific to the courses completed by the student and does not consider the selectivity or accreditation of the institution at which the student completed the coursework. Any denial ~~notification provided to the student~~ shall include the cost ~~to the student~~ to repeat or replace the credits at the institution.

(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

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IV participation by the Secretary, except with notice to and permission from the Secretary.

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

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§ 602.25 Due process.

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

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

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

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

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

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

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

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

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

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

~~(iii) Does not serve only an advisory or procedural role, and has and uses the authority to make the following decisions: To~~

Commented [A31]: RATIONALE: These edits remove prescriptive regulations that are not based on statute related to an appeals panel's role and charge.

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~~affirm, amend, or remand adverse actions of the original decision making body; and~~

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

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

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

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(h) (1) The agency must provide for a process, in accordance with written procedures, through which an institution or program may, before the agency reaches a final adverse action decision, seek review of new financial information if all of the following conditions are met:

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

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

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

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

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

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§ 602.26 Notification of accrediting decisions.

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

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

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

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

(b) Provides ~~written notice of~~ the decision letter or clear explanation in writing of the reasons for a final decision of a

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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~~ **the decision letter or clear explanation in writing** 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;

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(d) ~~Provides written notice to the public of~~ For the decisions listed in paragraphs (b) and (c) of this section, ~~the agency must update its website directory of accredited institutions or programs to note the decision~~ within one business day of its notice to the institution or program;

(e) For any decision listed in paragraph (c) of this section, requires the institution or program to disclose the decision to current and prospective students within seven business days of receipt and makes available to the Secretary, the appropriate State licensing or authorizing agency, and the public, no later than 60 days after the decision, ~~the agency's decision letter or clear explanation of 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,

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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.

(g) Nothing in this part shall be construed to require the Department to recognize any action taken by an agency, including adverse actions, that violate its own policies. This means that the Department may continue to provide access to title IV, HEA programs if the agency violates its own policies in issuing a final decision to deny, withdraw, suspend, revoke, or terminate the accreditation or preaccreditation of an institution. This provision does not authorize the Department to nullify agency

Commented [A32]: RATIONALE: This provision gives ED latitude to continue the title IV, HEA eligibility of institutions because an accrediting agency violated its own rules.

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decisions that are made in a manner consistent with the agency's standards, even if the Department disagrees with decision.

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

Changes in Yellow

§ 602.27 Other information an agency must provide the Department.

(a) The agency must submit to the Department—

(1) ~~A list, updated annually,~~ Regular and timely updates, occurring throughout the year, of its accredited and preaccredited institutions and programs ~~on its~~ the Department's website directory, 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

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(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.

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(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.

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

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

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

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

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

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

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

(c) The agency may grant accreditation or preaccreditation to an institution or program described in paragraph (b) of this section only if it provides to the Secretary, within 30 days of its action, a thorough and reasonable explanation, consistent with its standards, why the action of the other body does not preclude the agency's grant of accreditation or preaccreditation.

(d) If the agency learns that an institution it accredits or preaccredits, ~~or~~ an institution that offers a program it accredits or preaccredits, **or a program it accredits or preaccredits**, is the subject of an adverse action ~~by another recognized accrediting agency~~ or has been placed on probation or an equivalent status by another recognized agency, **or has been the subject of a similar action or status by a State agency or**

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Federal agency, the agency must promptly review its accreditation or preaccreditation of the institution or program to determine if it should also take adverse action or place the institution or program on probation or ~~show cause~~ an equivalent status.

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

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

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Subpart C—The Recognition Process

Application and Review by Department Staff

§ 602.30[Reserved]§ 602.31 Agency applications and reports to be submitted to the Department.

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

Commented [A33]: RATIONALE: Edits made to implement EO 14279 in regulation to streamline the recognition process.

(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

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(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(1).

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(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;

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(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;

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(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. Appx. 1~~ **5 U.S.C. Chapter 10 (Federal Advisory Committees)**; 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 or program the agency is reviewing;

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

(iii) Designate, but not redact, all business information within agency submissions that the agency believes would be exempt from disclosure under exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4). A blanket designation of all information contained within a submission, or of a category of documents, as meeting this exemption will not be considered a good faith effort and will be disregarded; and

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

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

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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)

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~~§602.31~~ ~~§602.32~~ Procedures for submitting applications for recognition and renewal of recognition, ~~expansion of scope, compliance reports, and increases in enrollment.~~

(a) An agency must submit an application for initial or renewal of recognition and meet the submission deadline set by the Department. ~~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. The type of application that must be submitted, and the scope and priority of the Department's review, is determined by the Department as follows:~~

Commented [A34]: RATIONALE: Edits made to implement EO 14279 in regulation to streamline the recognition process, to include implementing a risk-based review of agencies. A risk-based review would also implement 20 USC 1099b (n)(2), which required ED to prioritize its review of agencies based on certain risks, including agencies that accredit institutions that participate most extensively in TIV and agencies that have been the subject of the most complaints or legal actions. NACIQI also recommended streamlining the recognition process.

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(1) If an institutional accrediting agency accredits institutions for which title IV, HEA program funds constitute a substantial portion of institutional revenue, as determined by the Secretary, the agency must submit a comprehensive application that addresses the agency's compliance with all criteria in subpart B of this part.

(2) If an institutional accrediting agency is not identified for review under paragraph (a)(1) of this section, the agency must submit an application that addresses the agency's compliance with §§ 602.15, 602.16, 602.17, 602.19, and 602.20 and any other criteria as directed by Department staff. The agency must also attest that, since its last comprehensive review, the agency's policies and practices have remained in compliance with all criteria in subpart B of this part not addressed in its application.

(3) If an agency has been the subject of legal actions, complaints, or other compliance issues that, individually or in the aggregate, raise substantial concerns regarding the agency's compliance with this part, the agency must submit a

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comprehensive application that addresses the agency's compliance with all criteria in subpart B of this part.

(4) If an agency is exclusively a programmatic accrediting agency and is not identified for review under paragraph (a) (3) of this section, the agency must submit an application that addresses the agency's compliance with the criteria in §§ 602.10, 602.16, 602.17, 602.19, and 602.20 and any other criteria as directed by Department staff. The agency must also attest that, since its last comprehensive review, the agency's policies and practices have remained in compliance with all criteria in subpart B of this part not addressed in its application.

(5) An agency described in paragraphs (a) (2) or (a) (4) of this section must submit a comprehensive application that addresses the agency's compliance with all criteria in subpart B of this part at least once every third cycle of review.

(6) In prioritizing an agency for review, the Department may consider factors that include, but are not limited to--

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(i) Whether any of its accredited institutions closed without an approved teach-out agreement in place when such an agreement was required in accordance with 34 CFR 602.24(c);

(ii) Whether there is a significant number of title IV, HEA program compliance issues among the institutions the agency accredits;

(iii) Whether the Department has received serious or a high volume of complaints about the institutions or programs the agency accredits;

(iv) Whether the agency has significantly increased the number of institutions or programs it accredits;

(v) Whether any of the institutions it accredits are subject to any investigation, legal action, or administrative proceeding by, or have recently entered into a settlement with, a State or Federal agency, including the Department; and

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(vi) The number of noncompliant findings identified in the senior Department official's or Secretary's decision letter for the agency's application for renewal 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.~~

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(be) After receipt of an agency's application for initial or renewal of recognition, Department staff publishes a notice in the Federal Register stating that ~~of the agency's submitted decision of an application in the Federal Register and~~ inviting the public to provide information concerning the performance of ~~comment on the agency's compliance~~ to assist the Department in determining whether the agency meets ~~with~~ the criteria for recognition and establishing a deadline for receipt of information from the public ~~comment~~.

Commented [A35]: RATIONALE: Edits made to accurately reflect the purpose of the FRN soliciting information on accrediting agencies from the public, but still meet the requirement of 20 USC 1099b (n)(1)(A).

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

(1) A site visit, which may be conducted as an in-person visit at the agency, including an onsite file review of agency documents, or through a virtual file review of agency

Commented [A36]: RATIONALE: Edits made to remove burden on ED and agencies, but still meet the requirement of 20 USC 1099b (n)(1)(B).

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documents. The site visit may also include, as appropriate, an in-person visit to the agency's member institutions or programs, an onsite or virtual observation of a meeting of the agency's decision-making body, or an on-site or virtual observation of other agency activity. During the site visit, Department staff may retain copies of documents needed for inclusion in the

~~administrative record; (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)~~2) 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 ~~information~~ information

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comments, as appropriate, and any other information Department staff obtains for purposes of evaluating the agency under this part; and

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

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

(de) 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 anticompetitive conduct that is violative of the antitrust laws, such as collusion between accrediting agencies and any related, associated, or affiliated trade association, professional

Commented [A37]: RATIONALE: Edits made to implement EO 14279 in regulation to prohibit accrediting agencies from engaging in practices that result in credential inflation that burdens students with additional unnecessary costs.

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organization, standard setting organization, State certification organization, or membership organization to unnecessarily inflate the qualifications necessary for a student to sit for a licensure or certification examination or otherwise be eligible for entry into a profession, occupation, or vocation due to an increase in related education or training requirements⁷.

(e~~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.

(f~~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-

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(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.

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

(1) Within 120 days of receipt of the application, ~~P~~prepare a written draft analysis of the agency's application;

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

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(3) Invite the agency to provide a written response to the draft analysis and third-party comments or other material included in the review, specifying a deadline that provides at least ~~180~~⁹⁰ days for the agency's response;

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

(i) Indicating that the agency is in full compliance, substantial compliance, or noncompliance with each of the criteria for recognition; and

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

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

(h±) 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 agency's failure to timely submit reports or other information requested by the Secretary, submit its response to the draft analysis, or to comply with the requirements of § 602.30(e), the Department will not grant the agency any requests to defer consideration of its application ~~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.~~

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~~(i) If Department staff does not conclude its review of the application for recognition before the expiration of an agency's recognition period, the recognition period automatically extends until a final recognition decision is made and Department staff will limit the length of the recognition recommendation to not exceed five years from the expiration.~~

Commented [A38]: RATIONALE: This addition provides ED flexibility when reviewing agencies via the focused review and scheduling agencies for NACIQI meetings. This language is similar to that provided to the SDO in 34 CFR 602.36(j) and the Secretary in 34 CFR 602.37(i).

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

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

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

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~~(3) Explains how the agency must expand capacity to support the expansion of scope, if applicable, and, if necessary, how it will do so and how its budget will support that expansion of capacity.~~

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

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

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

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

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~~§602.32~~ ~~§602.33~~ Procedures for review of agencies during the period of recognition, including the review of monitoring reports—~~an expansion of scope, compliance reports, or increases~~ in headcount enrollment.

(a) For an expansion of scope—

(1) The Department will only accept such applications in conjunction with an application for recognition, except as provided in paragraph (a)(2) of this section; and

(2) At the discretion of Department staff and on a case-by-case basis, Department staff may review an application for an expansion of scope independent of a renewal application. The accrediting agency must demonstrate that the Department's review of the agency's application for an expansion of scope is essential to prevent the delay of educational programs for which high student interest exists and where projected enrollment demonstrates support for educational programs associated with the expansion of scope.

(3) **The Department may view as a negative factor, when considering an expansion of scope as proposed by an agency,**

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anticompetitive conduct that is violative of the antitrust laws, such as collusion between accrediting agencies and any related, associated, or affiliated trade association, professional organization, standard setting organization, State certification organization, or membership organization to unnecessarily inflate the qualifications necessary for a student to sit for a licensure or certification examination or otherwise be eligible for entry into a profession, occupation, or vocation due to an increase in related education or training requirements.

(b) For the review of a compliance report, Department staff-

(1) Completes its evaluation of the agency's compliance report;

(2) Within 90 days of receipt of the compliance report, prepares a written draft analysis of the agency's compliance report;

(3) Sends to the agency the draft analysis, including any identified areas of potential noncompliance and any other

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materials the Department received by the established deadline or that is included in its review;

(4) Invites the agency to provide a written response to the draft analysis and other material included in the review, specifying a deadline that provides at least 45 days for the agency's response;

(5) Reviews any response to the draft analysis the agency submits 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 under review; and

(ii) Including a recognition recommendation to the senior Department official, including, but not limited to, a recommendation that the senior Department official approve, continue recognition with compliance reporting requirements based on a finding of good cause and extraordinary circumstances, approve with monitoring or other reporting

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requirements, or deny, limit, suspend, or terminate recognition;
and

(6) 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).

(c) For the review of a report related to an increase in headcount enrollment, the agency will provide the report required by § 602.30(d); and the Department will process the report in accordance with the procedures described in paragraph (b) of this section for a compliance report.

(d) ~~Within 90 days of receiving an application for recognition of renewal of recognition, the Department must notify the applicant whether the application is complete or identify any additional information required to complete the application.~~

(e) The Department must complete its review of a complete application and present the application for consideration by

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NACIQI within six months after the Department determines that the application is complete.

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

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

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

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

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

(b) The review may include, but need not be limited to, any of the activities described in § 602.32~~31~~(~~d~~c) and (~~e~~e).

(c) If the inquiry was initiated under paragraph (a) (2) of this section, Department staff will provide the agency with documentation concerning the inquiry and an opportunity to respond within a reasonable time.

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(d) If, in the course of the review, Department staff determine that the agency is in compliance with the criteria for recognition, Department will conclude the review and notify the agency.

~~(ee) 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 **not previously provided**;

(3) Invites the agency to provide a written response to the draft analysis within ~~45~~**90** days; and

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

(i) ~~Determines the agency is in compliance with the criteria and~~
~~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;~~

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

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

(~~C~~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

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

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

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Review by the National Advisory Committee on Institutional
Quality and Integrity

§ 602.34 Advisory Committee meetings.

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

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

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

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

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(2) The final Department staff analysis of the agency developed in accordance with § 602.31, § 602.32, or § 602.33, and any supporting documentation;

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

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

(5) Any agency response to third-party ~~comments~~ information; 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.

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(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;

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(ii) In the case of non-compliance -

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

(B) ~~(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; or

(C) Deny, limit, suspend, or terminate recognition.

~~(iii)~~~~(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 recommend for action by staff under § 602.33 if it is not); or

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

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

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

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

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§ 602.35 Responding to the Advisory Committee's recommendation.

(a) Within ~~10 ten~~ business days following the **publication of transcripts of the** Advisory Committee meeting, the agency and Department staff may submit written comments to the senior Department official on the Advisory Committee's recommendation. The agency must simultaneously submit a copy of its written comments, if any, to Department staff. Department staff must simultaneously submit a copy of its written comments, if any, to the agency.

(b) Comments must be limited to—

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

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

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

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

(2) Within ~~10~~ ten business days of receipt by the Department staff of an agency's comments or new evidence, if applicable, or of receipt by the agency of the Department staff's comments, Department staff, the agency, or both, as applicable, may submit a response to the senior Department official. Simultaneously with submission, the agency must provide a copy of any response to the Department staff. Simultaneously with submission, Department staff must provide a copy of any response to the agency. No additional comments or new documentation may be submitted after the responses described in this paragraph are submitted.

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

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Review and Decision by the Senior Department Official

Commented [A39]: No substantive proposed changes to Review and Decision by Senior Department Official, references updated. Only cross-reference changes are shown to conform to earlier proposed changes.

§ 602.36 Senior Department official's decision.

(a) The senior Department official makes a decision regarding recognition of an agency based on the record compiled under §§ 602.31, 602.32, 602.33, 602.34, and 602.35 including, as applicable, the following:

* * *

(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 § 602.31~~32~~ or § 602.32~~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.

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(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 § 602.31 or § 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

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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 (h).

(i) No agency may submit information to the senior Department official, or ask others to submit information on its behalf, for purposes of invoking paragraph (h) of this section. Before invoking paragraph (h) of this section, the senior Department official will take into account whether the information, if submitted by a third party, could have been submitted in accordance with § 602.31, § 602.32(a), or § 602.33(e)(2).

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

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Appeal Rights and Procedures

Commented [A40]: No proposed changes to Appeal Rights and Procedures. Only cross-reference changes are shown to conform to earlier proposed changes.

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

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(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 § 602.31, § 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

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(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,

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could have been submitted in accordance with § 602.31, § 602.32~~(a)~~, or § 602.33~~(a)~~.

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

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Subpart D—Department Responsibilities

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Commented [A41]: No proposed changes to Subpart D.