



UNITED STATES DEPARTMENT OF EDUCATION OF POSTSECONDARY EDUCATION

Issue Paper 5: Accreditation Session 1: January 8-11, 2024

Issue: Accreditation

Statutory cites: Section 496 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. § 1099b

Regulatory cites: 34 CFR parts 602 and 604

Summary of issues: Under the HEA, the Department “recognizes” accrediting agencies that the Secretary of Education determines to be reliable authorities as to the quality of education or training provided by institutions of higher education. For more than half a century, accreditation has set baseline standards for postsecondary institutions with the goal of continuous improvement in how well they serve students across a diverse array of institutions and educational programs. The Federal government, and the Department in particular, rely on accreditation to determine whether an institution or educational program is a worthwhile investment for Federal financial aid and taxpayer dollars. Robust accreditation and oversight of postsecondary educational institutions and programs is critical to advancing quality outcomes for students and protecting students and taxpayers.

Through this rulemaking, the Department seeks to 1) implement a process that focuses on the areas of greatest risk among accrediting agencies and in accrediting agencies’ reviews of institutions, 2) increase the rigor of accreditation, 3) support and strengthen accreditation as a critical pillar of the regulatory triad, and 4) simplify, clarify, and streamline regulations to better align goals across the Department.

Proposal:

Under § 602.3, definition of “Representative of the public”:

1. **Require that public members serving on agency decision-making bodies are independent of agencies, associations, and institutions.** The Department would exclude the following from participation as a public member: current or former employees, members of the governing board, owners, shareholders of, or consultants to accredited, preaccredited, and applicant institutions or programs; current or former members of any trade association or membership

organization related to, affiliated with, or associated with the agency; current or former employees of, or consultants to, the agency; or members of the program integrity triad. This will help ensure that public members are truly independent of the agency or an institution or program the agency has accredited and will reduce potential conflicts of interest.

Under § 602.10, Link to Federal programs:

1. **Require demonstration of a Federal link.** For accrediting agencies that seek recognition by the Secretary for the purpose of allowing their institutions and/or programs to meet requirements to participate in non-HEA programs at other Federal agencies, the Department would require that the accreditor provide verified documentation of the number of accredited institutions or programs that participate in the established non-HEA programs, including the amount of Federal funding the programs or institutions receive using the agency as a Federal link. By requiring accreditors to demonstrate and provide sufficient documentation of a non-HEA link, the Department seeks to understand and better account for the risk an accreditor presents to taxpayers, relative to other accreditors. This would assist the Department in prioritizing its review of accreditors through a risk-based approach that considers the types of Federal assistance for which accreditation by a particular accreditor allows its accredited institutions or programs to qualify. This would also help ensure that Department time and resources are not used reviewing accreditors that do not have a Federal link.

Under § 602.13, [Reserved (formerly Acceptance of the agency by others)]:

1. **Reinstate requirements that an agency be “widely accepted”** as a reliable authority regarding the quality of the education provided by the institutions or programs the agency accredits. Requiring agencies to demonstrate that their accrediting standards, policies, and decisions are widely accepted by relevant educators, licensing bodies, practitioners, and employers helps ensure that agencies are reliable authorities for the quality of the institutions and programs they accredit.

Under §§ 602.18 and 602.20, Monitoring and reevaluation of accredited institutions and programs and Enforcement of standards:

1. **Require accreditors to take action more quickly when they identify areas of non-compliance,** including limiting the amount of time an institution can be out of compliance to the shorter of either the length of the longest program at an institution or two years. The reduction in time would not apply to instances where an agency takes action because of student achievement-related compliance failures, given that it may take an institution or program more time to demonstrate improvement in this area. The Department proposes to strengthen its regulations related to the timeline for monitoring and enforcement actions that an agency must take and to eliminate unwarranted exceptions to this timeline, while allowing flexibility for national emergencies. The proposed changes to the timeline would help ensure that institutions or programs that are out of compliance with an agency’s standards do not remain accredited for extended periods of time.

Under § 602.22, Substantive changes and other reporting requirements:

1. **Revise substantive change requirements to focus on changes of greatest risk.** Substantive change requirements govern the required review and approval by accrediting agencies when an institution seeks to fundamentally change its policies or practices. These regulations are meant to ensure consistency and quality across institutions and are an important guardrail to protect students from significant changes that may impact an institution's resources and capacity. The Department proposes revising and clarifying its substantive change regulations to require agencies to visit and approve all additional locations of an institution, to approve distance education on an institution's first offering and at the 50 percent threshold, and to approve the addition of programs at any level by an institution that has not previously offered programs at such a level. The Department also proposes to eliminate exceptions in existing regulation that allow agencies to delegate certain substantive change approval decisions to agency staff, rather than the agency's decision-making body, or to permit institutions not to notify agencies of a substantive change under certain circumstances. Further, the Department proposes to require that, for substantive changes by institutions that are on sanction, negative action, or provisional certification status, the agency must evaluate, as part of its decision, whether the substantive change could create significant risk to students. Through these changes, the Department seeks to streamline, strengthen, and clarify the substantive change requirements, with a focus on the areas of greatest potential risk to students and taxpayers.

Questions for discussion:

1. Are there areas that create significant risk that are not included in an agency's required definition of "substantive change" under § 602.22(a)(1)(ii) but should be?
2. Should the Department define "significant departure," as used in § 602.22(a)(1)(ii)(C), and if so, how should it define the term?

Under § 602.23(c), Operating procedures all agencies must have:

1. **Clarify the requirement that agencies must review complaints in a timely, fair, and equitable manner,** including by specifying factors the Department will consider in reviewing complaint policies, such as the availability of multiple submission methods, confidentiality of the complainant, and whether timelines for reviewing complaints are clear. Complaints can be an important indicator of whether an institution or program is providing students a quality education, and the Department seeks to ensure that agencies' complaint policies are fair and equitable to anyone wishing to file a complaint. This change would also codify current practice.

Under § 602.30-602.39, Subpart C - The Recognition Process (and conforming changes throughout):

1. **Revise and streamline the recognition process** to provide more flexibility to the Department in how it conducts reviews and its timeline for reviewing agency recognition. Previous changes created a rigid and extended timeline that, in some instances, draws out reviews and limits the

ability of the Department to review or address issues in a more timely way. In revising the timeline, the Department also seeks to focus its reviews on agency risk categories (See Subpart C below).

Under Part 602, The Secretary's Recognition of Accrediting Agencies

1. **Better align the accreditation regulations with Title IV eligibility regulations.** Numerous Title IV eligibility regulations implicate institutional review by, and decisions of, accrediting agencies. Where appropriate throughout Part 602, the Department seeks to include cross references to related Title IV regulations to ensure that accrediting agencies are aware of the Title IV implications of their actions and the connection between requirements that apply to accrediting agencies and requirements for institutional eligibility.

Under Proposed Part 604, The Secretary's Recognition of State Agencies for the Approval of Nurse Education:

1. **Regulate standards and recognition processes for State agencies for the approval of nurse education.** Criteria for the Department's recognition of State agencies for the approval of nurse education are included in a January 16, 1969, Federal Register notice that cites outdated statute. By incorporating these criteria, with any appropriate revisions, into Department regulations at proposed Part 604, the Department would codify existing practice and update the criteria and recognition procedures applied to State agencies for the approval of nurse education to more closely align with those applied to other agencies. For reference, see the 1969 Federal Register Notice (pgs. 58-59) here: [FR-1969-01-16.pdf \(govinfo.gov\)](#)¹

Questions for Discussion:

Under § 602.16, Accreditation and preaccreditation standards:

Issue: The HEA and existing regulations require that accrediting agencies have, and effectively apply, standards for accreditation that are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of education provided. The ten categories for which accrediting agencies must have and effectively apply clear standards include, among others: success with respect to student

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achievement; fiscal and administrative capacity appropriate to the scale of operations; student support services; and recruiting and admissions practices. The Department seeks to further clarify the requirement that standards are sufficiently rigorous in these categories to ensure quality, particularly with respect to student achievement. Questions for discussion related to this issue may include the following:

1. How can the Department ensure that standards are sufficiently rigorous? Should the expectations of rigor vary by category? If yes, how so?
2. What factors should the Department consider in evaluating the rigor of an agency's standards generally?
3. What factors should the Department consider in evaluating the rigor of an agency's standards, specifically, on:
 - a. Success with respect to student achievement?
 - b. Fiscal and administrative capacity?
 - c. Student support services?
 - d. Recruiting and admissions practices?

Under § 602.24, Teach-out plans and agreements:

Issue: When abrupt or disorderly closures occur, students are left to navigate a maze of options regarding whether and where to transfer or continue their education. Studies have shown that very few students affected by such closures are likely to ultimately complete their educational programs, and affected students are more likely to default on their loans. Under existing regulations, agencies must require an institution to submit a teach-out plan if the institution is subject to certain triggers, such as being placed on probation or equivalent status. For more serious triggers, such as an agency taking an adverse action against an institution, agencies must require the institution to submit a teach-out plan and, if practicable, a teach-out agreement. While teach-out agreements provide students with more viable options for transferring than teach-out plans alone, in most instances, either the accrediting agency does not require a teach-out agreement or the institution fails to create one even if it is required to do so. The Department wants to ensure that students have quality transfer options and guarantees when an institution suddenly closes. Questions for discussion related to this issue may include the following:

1. What can the Department do to further address the issue of orderly teach-outs and securing teach-out agreements in the event of a sudden closure?
2. Given that teach-out agreements can be hard to obtain, is there a middle ground between a teach-out plan and teach-out agreement that can be executed to provide students with transfer options?

3. What should the role and responsibilities of accrediting agencies be in securing options for students and communicating information in the event of a sudden closure of an institution an agency accredits?

Under Subpart C, The Recognition process

Issue: The Department seeks to create/codify a risk-based review process guiding how the Department reviews and approves agencies to protect students and taxpayers. The Department currently recognizes 53 accrediting agencies under Part 602, four State agencies for the approval of public postsecondary vocational education under Part 603, and five State agencies for the approval of nurse education under the January 16, 1969, Federal Register notice. The HEA requires that the Department, through the recognition process, prioritize its review of agencies based on certain risks, including agencies that accredit institutions that participate most extensively in Title IV and agencies that have been the subject of the most complaints or legal actions. The incorporation of a risk-based recognition review process into regulation would assist the Department in implementing this requirement, while also focusing the Department's limited resources on the most important reviews. Under such a system, we would: (1) prioritize regular monitoring and more frequent, in-depth reviews of agencies that represent the greatest risk; (2) implement a more focused and narrower review of moderate-risk agencies; and (3) subject the lowest risk agencies to less frequent and more highly focused reviews under the most critical criteria for an agency's recognition by the Secretary. Factors that could be weighed in determining risk include: the amount of Title IV dollars received by the institutions the agency accredits; the total number of institutions or programs the agency accredits and/or the number of students at those institutions or programs; the agency's record of compliance with the Department's criteria for recognition; and the record of compliance by accredited institutions or programs with the agency's standards. Questions for discussion related to this issue may include the following:

1. What factors should the Department consider in determining the relative risk of recognized accrediting agencies?
2. What types of reviews and observations should the Department apply to the various risk categories?

Other

Issue: Regulatory changes that went into effect in July 2020, eliminated the formal distinction between historically regional and national accrediting agencies and broadened the meaning of geographic area, as used in § 602.11, with the goals of: (1) fostering competition among regional agencies so that an institution or program can select the agency that best aligns with the institution's mission; and (2) improving transparency about the States in which each agency accredits campuses.

Since the change, most formerly regional accrediting agencies have expanded their geographic areas to accredit throughout the United States, and some institutions have started the process of changing accrediting agencies. Legislation passed in 2022 in Florida requires public institutions to switch accrediting agencies. North Carolina passed legislation this year requiring all public institutions to switch agencies every accreditation cycle. Texas recently proposed similar legislation, which was not passed, and other States are reportedly considering similar legislation.

While the Department supports the goal of institutional choice in choosing an accrediting agency that best fits an institution's mission and has the potential to improve quality, we remain concerned that forced switching undermines a key pillar of the Federal triad, hinders accreditation's ability to foster continuous improvement and hold institutions accountable, and places unnecessary costs on institutions which can be passed on to students. Through rulemaking, the Department seeks to maintain institutional choice while protecting against attempts to undermine accreditation through forced switching. Questions for discussion related to this issue may include the following:

1. The Department is interested in ensuring that accrediting agencies consist of voluntary memberships, as required by the HEA. How should the Department define voluntary?
2. Before an institution can switch accrediting agencies, it must demonstrate to the Secretary that it has reasonable cause to switch. What factors should the Department consider in determining reasonable cause?
3. Should the Department require accrediting agencies to consider additional information in evaluating an institution for accreditation when the institution is switching accreditors because it is required to do so under State law? If so, what information?