

To: Department of Education

From:

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Regulation: 602.10

Rationale:

Accreditors who solely accredit programs with links to non-HEA federal funding have concerns about the Department's interpretation of statute in the area of establishing recognition eligibility and the unintended consequences it will cause for students, programs, and accreditors.

First, as I have mentioned during the negotiated rulemaking sessions, the statute states: "The Secretary may only recognize ... higher education programs for the purpose of **enabling them to establish eligibility to participate** in other programs administered by the Department of Education or other Federal agencies." The term used in statute is "enable" – which means to make possible. It does not state that a program must be currently using a link – it says that it must be possible for a program to use a link. It is our assertion that the Department is statutorily required to recognize the accreditor, whether or not a program is planning to take advantage of that link in the current year.

Second, I would refer the Department to the new provision of 668.14(b)(32)(i) and (ii) that indirectly ties programmatic accreditation to Title IV. This regulation will take effect on July 1, 2024. It specifies that when accreditation is needed for licensure, the program must meet all requirements for student eligibility for employment in the state it is located. Some states require programmatic accreditation from a recognized agency. Is this not an appropriate or valid federal link?

Finally, circumstances change over time and some years there may be several programs taking advantage of the accreditor's link and some years when there are few or none. If during the year that the accreditor is up for recognition renewal and the link is not being used – then the

accreditor would not be eligible for recognition. If during the next year a program requests access to the link, the accreditor would have to apply for recognition to provide that access. The program is very likely to miss the opportunity to apply for the linked federal funding with the length of time that it takes for an accreditor to become recognized. This situation would also increase the administrative burden on the Department and the accreditor.

The concern that the Department lacks capacity to recognize accreditors if they currently do not have programs needing access to the advantages provided by the federal link is not a sufficient reason to disadvantage programs and students. We have been supportive of the Department's proposed changes regarding risk-based recognition to help address Department's workload concerns.

While we still question the Department's statutory authority to make this change related to non-HEA programs, we offer the following proposed language in the spirit of negotiating in good faith.

Highlighted = our edits

§602.10 Link to Federal programs. The agency must demonstrate that--

- (a) If the agency is seeking renewal of recognition, it must--
- (1) If the agency accredits institutions, demonstrate that its accreditation is a required element in enabling at least one of those institutions to establish eligibility to participate in title IV, HEA programs. If, pursuant to 34 CFR 600.11(b), an agency accredits one or more institutions that participate in HEA programs and that could designate the agency as its link to HEA programs, the agency satisfies this requirement, even if the institution currently designates another institutional accrediting agency as its Federal link; and provide documentation that at least one institution it accredits currently participates in and uses the agency's accreditation to establish eligibility for title IV, HEA programs; or
 - (b) (2) If the agency accredits institutions or programs, or both, demonstrate that its accreditation is a required element, as stated in enabling a Federal statute, Federal regulation, Federal grant or funding announcement, or other similar Federal publication, in enabling at least one of those entities to establish eligibility to participate in non-HEA Federal programs; and provide documentation—
 - (i) That at least one institution or program it accredits **within the past 3 years currently** participates in a non- HEA Federal program and uses the agency's accreditation to establish eligibility to participate in that non-HEA Federal program; and

(ii) To show how many of the entities it accredits currently participate and rely on the agency's accreditation to establish eligibility to participate in a non-HEA Federal program and how much those entities receive in funding as a result of the link.

(b) If the agency is seeking initial recognition, it must demonstrate that an institution or program it accredits will rely on the agency's accreditation to establish eligibility to participate in an HEA or non-HEA Federal program upon recognition of the agency.