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**To:** 2024 Negotiated Rulemaking  
 Program Integrity and Institutional Quality Committee

**Date:** January 10, 2024

**Re:** Accreditation Proposals

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NOTE: Text in red was proposed by the Department; text in red and highlighted in yellow is proposed by these negotiators.



## Eliminate the Concept of Substantial Compliance

### 602.3

We are concerned that the concept of substantial compliance (for which institutions are subject to a monitoring report) is too subjective to be reliably enforced. In the wrong hands, substantial compliance could be used to allow an institution to operate with non-compliant practices in ways that cause significant harm to students.

We strongly urge the Department to eliminate this concept from the regulations. However, should the Department be unwilling to eliminate it, we propose that ED limit the use of this status for institutions that are behaving appropriately, but which need to make documentation or paperwork updates to meet the Department's bar for recognition. We also propose changing the name to reflect the temporary and paperwork nature of the non-compliance. (Note that while we have changed the name here, we have not included all necessary conforming changes to references to substantial compliance.

### §602.3 What definitions apply to this part?

\* \* \*

(b) The following definitions apply to this part:

\* \* \*

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

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

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

\* \* \*

~~*Substantial Minor non-compliance*~~ means the agency demonstrated to the Department that it has appropriate ~~the necessary policies, practices, and standards in place and generally adheres with fidelity to those policies,~~ practices, and standards ~~and applies those standards consistently; and its written or the agency has~~ policies, practices, and standards in place that need ~~only~~ minor modifications to reflect its generally compliant practice.

## Strengthen the Definition of a Public Member

### 602.3

Accrediting agencies are required to have public members on their boards (1 for every 7 overall members). But [research](#) has found that most of those public members are, in reality, from other

institutions of higher education. As of January 2019, 22 of 69 public members on commissions were from institutional backgrounds (including 12 of 38 at agencies formerly known as regional accreditors and 10 of 31 at national accreditors).

The Department proposed to define public membership as preventing current and former employees or associates of an institution accredited by that agency (or that has applied for accreditation with that agency); current or former employees or associations of a trade association/membership organization related to the accreditor; current or former employees or consultants of the accreditor; current or former employees of another member of the program integrity triad (ED, state agencies, or other accreditors); or a close family member of those individuals.

The Department's proposed definition is strong, and we support it. However, we suggest a few small changes. Namely, we suggest also prohibiting anyone with a fiduciary obligation to a regulated entity, like another institution of higher education, from serving as a public member. This would mean that, even if the institution is accredited by a different accrediting agency, administrators of a college wouldn't be able to serve as a public member. We hope this would help prevent agencies from simply accessing people with the same interests but in another accreditor's portfolio to fill a role designed to serve as an independent check on how the accreditor operates.

We also think the program integrity triad prohibition might be overly broad; we suggested clarifying that only a *current* member of the triad (and not a former employee of a state, for instance) cannot be considered a public member. We think, for instance, someone who formerly worked for a state AG or a state higher education regulatory body might have good insights to share with an accrediting commission. Proposed changes to (b)(3) are purely technical, because the language ED proposed is duplicative of (1).

### §602.3 What definitions apply to this part?

\* \* \*

(b) The following definitions apply to this part:

\* \* \*

*Representative of the public* means a person who is not--

(1) ~~an~~ ~~a~~ ~~current~~ ~~or~~ ~~former~~ 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) An individual with a fiduciary obligation to a regulated entity, such as an institution of higher education;

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

or program that either is accredited or preaccredited by the agency or has applied for accreditation or preaccreditation;

(4) A current or former employee of or consultant to the agency;

(4) A current or former employee of a member of the program integrity triad (the Department of Education; State higher education agencies or other officials or representatives of the State; and accrediting agencies); or

(5) A spouse, parent, child, or sibling of an individual identified in paragraph (1), (2), (3), or (4), or (5) of this definition.

## Create an On-Ramp for Newly Recognized Accrediting Agencies

### 602.12

Accreditors seeking recognition for the very first time are required, among other things, to show they have accredited at least one institution and have conducted at least two years of accrediting activities before their application is submitted. This is designed to ensure some basis for the Department to evaluate the agency's application, and to avoid rushing approval to an agency that will have Title IV gatekeeping authority to approve colleges.

We proposed to build out the current framework for new accrediting agencies. Rather than making a new accreditor either entirely with or without recognition -- and thus with or without gatekeeping status -- we propose an "on-ramp" for new agencies to begin slowly accrediting institutions. Specifically, they would not be permitted to accredit more than two times the number of schools they had accredited as of when they submit their application during their initial recognition period. This would balance the need for a responsible and cautious approach to enabling new accreditors with the interest some have in enabling new agencies to enter the system.

#### §602.12 Accrediting experience.

(a) An agency seeking initial recognition--

(1) must demonstrate that it has--

(i) Granted accreditation or preaccreditation prior to submitting an application for recognition—

(A) 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;

(B) That covers the range of the specific degrees, certificates, institutions, and programs for which it seeks recognition; and

(Cii) In the geographic area for which it seeks recognition; and

(ii2) Conducted **effective** accrediting activities, including deciding whether to grant or deny accreditation or preaccreditation, for at least two years prior to seeking recognition, unless the agency seeking initial recognition is affiliated with, or is a division of, an already recognized agency.

**(2) Shall not be approved to accredit more than two times the number of institutions or programs it accredited under paragraph (a)(1)(i)(A) for its initial recognition period.**

\* \* \*

## Strengthen Requirements for Student Achievement Standards

### **602.16(b) (proposed), 604.14(b)**

The statute currently outlines 10 areas in which accreditors are required to set standards. The first of those is “success with respect to student achievement in relation to the institution’s mission,” designed to ensure that accreditors look at student outcomes. However, accreditors have often fallen short in doing so. As [research](#) has shown, many accreditors lack specific performance expectations for their institutions, and others fail to act even when their institutions fall short.

The Department asked several guiding questions of the committee on this issue; namely, it sought feedback from negotiators on the following questions: How can the Department ensure that standards are rigorous, and what factors should the Department consider in ensuring they are rigorous?

We recommended ED make four additions to the text to address student achievement, all of which we believe are permissible and would address significant and known flaws in accreditors’ practices.

First, accreditors should be required to use reliable data to measure student achievement, including by considering data provided by the Secretary (such as data from the College Scorecard). This is a necessary aspect of ensuring accreditors are effective in their assessment of student achievement, and has been a problem in the past where agencies like ACICS used job placement rates that turned out to be based on misrepresentations.

Second, accreditors should be required to disaggregate data as practicable to look at student subgroups. Few agencies look at disaggregated data for anything but enrollment, but a necessary aspect of student achievement is understanding whether there are pockets of students who see demonstrably worse outcomes, so that accreditors know where they need to focus institutions’ efforts to improve.

Third, we propose to require that accreditors establish adequate controls to avoid manipulation of the metrics by institutions. For instance, a common metric for nursing programs is a minimum pass-rate on the state licensure exam (NCLEX). Some students who enrolled in nursing programs have reported that,

despite otherwise completing the program successfully, their schools did not allow them to graduate because they failed to meet a minimum score set by the school on a third-party's standardized practice test for the NCLEX. (Two such students addressed this committee directly during the public comment period on January 8 and January 9.) One student ended up with nearly \$30,000 in debt, and no degree to show for it. Another exhausted most of his GI Bill benefits and was forced to appeal to the school to be readmitted and permitted to retake the practice test. When schools prevent students who have otherwise completed the curriculum from graduating and sitting for a licensure exam, they artificially inflate their licensure exam pass-rate. Allowing schools to use such high-stakes exams to prevent students from taking the NCLEX and other such practices undermine accreditors' obligation to oversee student achievement by manipulating schools' performance on commonly used accreditor student achievement measures.

Fourth, we suggested that accreditors should be required to identify the standard they will use for each institution/program. For instance, if they have a graduation rate standard, they should be required to note that Community College A has defined its performance goals as 45%, and Public Four-Year B has set its graduation rate goal at 65%. The Department can't tell agencies what benchmark to use (and even accreditors must arrive at these benchmarks in relation to the mission of each institution), but it can expect that they should HAVE a benchmark, and that benchmark should be a knowable and reportable number.

Finally, while we didn't provide language, we recommend that the Department consider establishing common definitions of certain frequently used student achievement measures, like retention rates, graduation rates, and job placement rates. Common measures, defined in the same way, would further enhance the reliability of the data, improve comparability across institutions, and address some of the problematic definitions (e.g., with respect to misrepresented or gamed job placement rates) that some agencies have used. We would welcome the opportunity to work with the Department and other non-federal negotiators on language.

#### **§602.16 Accreditation and preaccreditation standards.**

\* \* \*

(b) Agencies are required to ensure the standards described in paragraph (a)(1)(i) are effective, which shall include:

(1) Using reliable data, including the consideration of standard information on institutional performance available to agencies or provided by the Secretary or other Federal sources;

(2) Disaggregating data as practicable to consider the performance of student subgroups within student achievement measures;

(3) Including adequate controls to prevent institutions from manipulating or otherwise inflating their performance on the standards; and

(4) Publicly identifying the standard and performance goal for each institution or program, as established in relation to the institution's mission.

\* \* \* \*

#### **§604.10 – Annual report**

(a) The State approval agency must demonstrate that it requires each program of nurse education it approves to submit a comprehensive annual report that enables the agency to identify problems with a program's continued compliance with agency standards.

(b) The required annual report for each approved program of nurse education must include current data, disaggregated by income and race/ethnicity where applicable and as practicable, and information in at least the following areas:

- (1) Enrollment by class;
- (2) Student-teacher ratios;
- (3) Admissions data for prior five years;
- (4) Graduation/completion data for prior five years;
- (5) Performance of students on State licensing examination(s) for prior 5 years;
- (6) Any changes to the curricula;
- (7) A copy of the course catalog;
- (8) Any new contractual arrangements which reflect upon the academic program;
- (9) A copy of its audited fiscal report; and
- (10) Any other key indicators, as determined by the State approval agency.

### **Ensure Risk-Based Reviews of Institutions by Accrediting Agencies**

#### **602.19(c) (proposed), 602.28(d)**

Some schools within the higher education system present an outsized risk to students and taxpayers. Yet these high-risk institutions are not always the same ones that receive the greatest amount of attention. Some risky schools are able to avoid any added oversight because agencies have no real established processes for determining risk. Guidance issued by the Education Department in 2016 further clarified how agencies could offer risk-based reviews, but that guidance has received little attention since it was published.

Recently, state approval agencies (state oversight entities for institutions and educational providers approved for VA dollars) began initiating a risk-based review process for institutions that receive veterans education benefits, like the GI Bill. [Research](#) has provided insights into the factors for identifying institutions that yielded the highest value in a pilot project with several states; we have



drawn on that research here to propose language for the comparable task of risk-based reviews by accreditors.

We propose to insert a new subsection requiring accrediting agencies to conduct risk-based reviews of their institutions, assessing risk based on financial stability, academic quality, administrative capability, and student achievement. The agencies would be required to use certain factors (complaints received, record of noncompliance, year-over-year tuition changes, high net price, year-over-year fluctuations in enrollment, low retention rates or high dropout rates, low completion rates, and lower share of graduates earning more than a typical high school graduate). These factors, as noted above, are drawn from the research into the SAA pilot. To implement this change, we also proposed to require agencies to establish procedures for identifying high-risk institutions, evaluating them, and (if appropriate) taking action based on an evaluation.

We also propose to require accrediting agencies to initiate a review of any institution that is subject to a review, negative action, or adverse action by a state agency, federal agency, or another recognized accrediting agency. This would cover a broader array of actions: warnings, investigations, lawsuits, revocations of approval by a state, etc. By triggering a review, the language would require more interaction and coordination across the program integrity triad.

### **§602.19 Monitoring and reevaluation of accredited institutions and programs.**

\* \* \*

(c)(1) Each institutional accrediting agency must conduct risk-based reviews of the institutions it accredits that present a high risk of financial stability, academic quality, administrative capability, or student achievement. The agency must identify high-risk institutions through the consideration of factors that include:

- (i) Severity and/or high volume of complaints and/or legal proceedings;
- (ii) Severity and/or high volume of noncompliance, as reported in program reviews, audits, or other compliance actions by the Department;
- (iii) Large annual changes in tuition;
- (iv) High annual net price, overall or for low-income students;
- (v) Large annual fluctuations in enrollment;
- (vi) Low annual retention rates or high annual dropout rates, calculated overall, by Pell Grant recipient status, and by race/ethnicity;
- (vii) Low annual completion rates, calculated overall, by Pell Grant recipient status, and by race/ethnicity; and
- (viii) Low share of graduates earning more than the typical high school graduate in the State where the institution is located.

(2) The agency must establish and publish procedures that describe--

- (i) How it identifies high-risk institutions, including through the factors in (c)(1)(i)-(viii);
- (ii) Its process for evaluating high-risk institutions; and

(iii) How it determines the appropriate course of action following an evaluation under subparagraph (ii).

(d) Each agency must monitor overall growth of the institutions or programs it accredits and, at least annually, collect head-count enrollment data from those institutions or programs.

\* \* \*

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

(a) If the agency learns that an institution it accredits or preaccredits, or an institution that offers a program it accredits or preaccredits, is the subject of a review, lawsuit, negative action, or an adverse action by a State or Federal agency or another recognized accrediting agency, or has been placed on probation or an equivalent status by another recognized agency, the agency must promptly **immediately initiate** review ~~its of the~~ accreditation or preaccreditation of the institution or program to determine if **the institution or program is out of compliance with agency standards and should be placed under negative action** ~~it should also take adverse action or place the institution or program on probation or show cause.~~

## **Ensure Reasonable Enforcement Timeframes for Accreditor Actions**

### **602.20, 604.16(b) and (d)**

As noted elsewhere in this document, accrediting agency approval serves as both an important signal to students about the quality of their institutions, and a necessary precursor to receiving federal financial aid to attend that institution. Yet even where accrediting agencies have concerns about the caliber or compliance of an institution, they may continue the accreditation of that school for years on end, allowing it to run out the clock. Students are sometimes left in the dark about these concerns.

We are concerned that the Department proposed to retain a three-year (longer, with a good cause extension) timeframe in which institutions can remain out of compliance, now moved from 602.18 to 602.20. Additionally, while we support the Department restoring pre-2020 timeframes for the enforcement of accreditors' standards (set at 12 months, 18 months, and two years, respectively, for schools whose longest programs are less than one year, more than one year but less than two years, or two years or longer), we are concerned that the timeframe for student achievement provisions would continue to allow accreditors to drag their feet. Specifically, for student achievement-related provisions, the Department would allow institutions as long as 18 months, three years, or four years out of compliance, respectively -- the lesser of four years or 150 percent of the longest length of a program.

We first seek clarity from the Department on how the three-year timeframe would apply to the separate enforcement timeframes -- whether the Department proposes to allow three years, followed by up to two years (for a non-student-achievement matter) or four years (for a student achievement matter); or whether the Department proposes for the three-year period to fall within those timeframes. If the former, up to seven years' worth of students could continue to enroll in a school already known to be

out of compliance with accreditors' standards -- a significant reprieve for institutions, enforced on the backs of students. Accordingly, we propose to shorten the three-year timeframe to a one-year timeframe.

Additionally, for the enforcement timeframes that the Department proposed, we suggested using the length of the predominant program offered at the school, rather than the length of the longest program offered, for institutional accreditors, to better reflect the amount of time the school should reasonably need to come back into compliance.

### **§602.20 Enforcement of standards.**

(a) If the agency's review of an institution or program under any standard, except a standard setting forth the agency's expectations for success with respect to student achievement as required under § 602.16(a)(1)(i), indicates that the institution or program is not in compliance with that standard, the agency must—

(1) Follow its written policy for notifying the institution or program of the finding of noncompliance;

(2) Provide the institution or program with a written timeline for coming into compliance that is reasonable, as determined by the agency's decision-making body, based on the nature of the finding, the stated mission, and educational objectives of the institution or program. The timeline may include intermediate checkpoints on the way to full compliance and must not exceed the lesser of four years or 150 percent of the—

(i) Length of the program in the case of a programmatic accrediting agency; or

(ii) Length of the longest program at the institution in the case of an institutional accrediting agency;

(3) Follow its written policies and procedures for granting a good cause extension that may exceed the standard timeframe described in paragraph (a)(2) of this section when such an extension is determined by the agency to be warranted; and

(4) Have a written policy to evaluate and approve or disapprove monitoring or compliance reports it requires, provide ongoing monitoring, if warranted, and evaluate an institution's or program's progress in resolving the finding of noncompliance.

(b) Notwithstanding paragraph (a) of this section, the agency must have a policy for taking an immediate adverse action, and take such action, when the agency has determined that such action is warranted.

(1) Immediately initiate adverse action against the institution or program; or

(2) Require the institution or program to take appropriate action to bring itself into compliance with the agency's standards within a time period that must not exceed--

(i) Twelve months, if the program, or the longest program predominant length of the programs offered by the institution, is less than one year in length;

(ii) Eighteen months, if the program, or the longest program predominant length of the programs offered by the institution, is at least one year, but less than two years, in length; or

(iii) Two years, if the program, or the longest program predominant length of the programs offered by the institution, is at least two years in length.

(b) If the agency's review of an institution's or program's compliance with a standard setting forth the agency's expectations for success with respect to student achievement, as required under 34 C.F.R. § 602.16(a)(1)(i), indicates that the institution or program is not in compliance with that standard, the agency must 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 the educational objectives of the institution or program. The timeline may must include the enforcement of intermediate checkpoints on the way to that allow the agency to ensure the institution will be in full compliance by the end of the timeline. The timelineand must not exceed the lesser of four years or 150 percent of the—

(1) Length of the program in the case of a programmatic accrediting agency; or

(2) Length of the longest program predominant length of the programs offered byat the institution in the case of an institutional accrediting agency.

(c) If the institution or program does not bring itself into compliance within the specified period, the agency must take immediate adverse action unless the agency, for good cause, extends the period for achieving compliance. Such extensions must be reported to the Department, with a brief description of the reasons for the extension, within 10 days of approval by the agency's decision-making body.

\* \* \*

(h) 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 one year unless the agency determines there is good cause to extend the period of time, and if—

(1) The agency and the institution or program can show that the circumstances requiring the period of noncompliance are beyond the institution's or program's control, such as—

(i) A natural disaster or other catastrophic event significantly impacting an institution's or program's operations;

(ii) Accepting students from another institution that is implementing a teach-out or closing;

(iii) Significant and documented local or national economic changes, such as an economic recession or closure of a large local employer;

(iv) Changes relating to State licensure requirements;

(v) The normal application of the agency's standards creates an undue hardship on students; or

(vi) Instructors who do not meet the agency's typical faculty standards, but who are otherwise qualified by education or work experience, to teach courses within a dual or concurrent enrollment program, as defined in 20 U.S.C. 7801, or career and technical education courses;

(2) The grant of the period of noncompliance is approved by the agency's decision-making body;

(3) The agency projects that the institution or program has the resources necessary to achieve compliance with the standard, policy, or procedure postponed within the time allotted; and

(4) The institution or program demonstrates to the satisfaction of the agency that the period of noncompliance will not—

(i) Contribute to the cost of the program to the student without the student's consent;

(ii) Create any undue hardship on, or harm to, students; or

(iii) Compromise the program's academic quality.

\* \* \* \*

#### **§604.10 – Enforcement of standards**

\* \* \* \*

(b) If the State approval agency's review of a program of nurse education's compliance with a standard setting forth the agency's expectations for success with respect to student achievement, as required

under 34 C.F.R. § 604.12(a), indicates that the program of nurse education is not in compliance with that standard, the State approval agency must provide the program of nurse education with a written timeline for coming into compliance that is reasonable, as determined by the State approval agency's decision-making body, based on the nature of the finding, the stated mission, and the educational objectives of the institution or program. The timeline ~~must~~ ~~may~~ include the enforcement of intermediate checkpoints ~~to~~ that allow the agency to ensure the institution will be in full compliance by the end of the timeline. The timeline on the way to full compliance and must not exceed the lesser of four years or 150 percent of the length of the program of nurse education.

\* \* \*

(d) Nothing [A2] in this part prohibits a State approval agency from permitting the program of nurse education to be out of compliance with one or more of its standards, policies, and procedures for a period of time, as determined by the agency annually, not to exceed ~~three~~ ~~one~~ years unless the agency determines there is good cause to extend the period of time, and if –

\* \* \* \*

## Strengthen Substantive Change Requirements for Written Arrangements

### 602.22(f)

Under these proposed regulations, institutions are required to comply with substantive change requirements, submitting an application to their accreditor before making major changes to their academic offerings, adding new locations, or their educational levels, among other issues. One of those relates to written arrangements (i.e., contracts) with outside entities (including ineligible entities). Institutions have long been required to seek accreditor approval for written arrangements where an ineligible entity (non-Title IV-provider) will offer 25-50 percent of a program; and outsourcing of more than 50 percent is prohibited. These arrangements can include contracts with [online program management companies](#), [coding bootcamps](#), and [others](#).

As the Department noted in recent [guidance](#), however, some of these written arrangements are “not compliant” with Title IV requirements, in part because “institutions and their accrediting agencies do not always accurately account for the percentage of a program that is provided by an ineligible entity...” [Research](#) from 2021 further identified that accrediting agencies’ policies were inadequate, often with little scrutiny into the provider or the nature of the arrangement, and proposed some policy reforms to enhance oversight of these types of arrangements.

We propose a new section with requirements specific to reviewing written arrangements. Specifically, the proposed language would require accreditors to assess the percentage of a program being outsourced – the primary topic covered by the Department’s guidance last year, so a known issue the Department is concerned about. It would also require accreditors to evaluate the ineligible entity’s capacity to offer the program by investigating its performance in offering similar programs with an institution. If the entity offers recruitment/marketing services to the school, the accreditor would also need to evaluate those activities for compliance with the agency’s standards on recruitment.

## § 602.22 Substantive changes and other reporting requirements.

(a)

(1) If the agency accredits institutions, it must maintain ~~adequate-written~~ 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—

\* \* \*

(g) The agency must ensure that written arrangements approved under paragraph (a)(1)(M) must include—

(1) An assessment of the portion of the program included under the arrangement, including the extent to which the ineligible entity designs, administers, or instructs the course, to ensure the arrangement complies with regulatory limitations;

(2) An evaluation of the ineligible entity's performance, including analysis of student achievement data, in providing similar programs with an institution, to assess the entity's capability; and

(3) As appropriate, an evaluation of the ineligible entity's recruitment and marketing practices to ensure they are compliant with the agency's standards.

(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.

### Strengthen Complaint Procedures

602.23(c), 604.17(b)(iv)

Student complaints are an important mechanism to protect students, providing them with an avenue to address institutional misconduct and raise unresolved concerns. Complaints are also a critical tool for regulators, providing them with on-the-ground insights into institutions' behavior and lifting up patterns of wrongdoing that may warrant further investigation or action.

However, accrediting agencies have long had [deeply flawed](#) complaint processes. Many of the institutional accrediting agencies formerly known as regional accreditors have inaccessible or convoluted complaint policies. For instance, most required complainants not only to state their problem, but to identify the specific section of the accreditor's standards that they believe is violated. Some allow only a one-year window in which complaints can be addressed, or require submissions be made by snail-mail.

The Department has already acknowledged many of these shortcomings, issuing new [guidance](#) to accrediting agencies to clarify its expectations for their complaint processes. We also support the

Department's efforts to codify many of these changes in the regulations through these proposed regulations.

We suggest some further changes to strengthen these processes. The below changes (highlighted in yellow) would clarify that accrediting agencies should take note of complaints submitted through traditional venues, as well as other complaints they become aware of through other avenues (such as media reports or class-action lawsuits). They would also require accreditors to accept complaints for at least five years following an incident or enrollment. And accrediting agencies would be required to publish aggregate data on the types and volume of complaints they received.

### **§602.23 Operating procedures all agencies must have.**

\* \* \*

(c) The accrediting agency must--

(1) Review any complaint it receives **or otherwise becomes aware of** against an accredited or preaccredited institution or program that is related to the agency's standards or procedures in a timely, fair, and equitable manner ~~any complaint it receives against an accredited 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 **and may not** refuse to accept a complaint on the basis that it does not identify the complainant or specify a particular accreditation standard. The agency must review complaints to determine whether they raise concerns related to possible noncompliance by the institution or program with the agency's standards, policies, and procedures. The agency's complaint procedures must include--;

(i) Clear timelines for the complaint review process, including the timely notification of the complainant regarding the status of the complaint;

(ii) **Acceptance of complaints submitted within at least five years after the date of the incident detailed in the complaint;**

(iii) Allowance for more than one complaint submission method;

(iv) A requirement that agency staff must provide feedback to a complainant who does not submit a complaint correctly under the agency's prescribed method(s), or that the agency must accept a complaint even when the complainant does not technically follow the agency's complaint procedures;

(v) Allowance for the confidentiality of the complainant, including the complainant's ability to elect to keep their personally identifiable information confidential from the institution or program that is the subject of the complaint;



(vi) A clear explanation of whether, and under what circumstances, an agency requires the complainant to first submit the complaint to the institution or program and to allow the institution or program to reach a conclusion prior to filing a complaint with the accrediting agency;

(vii) Clear complaint procedures, including with respect to the responsibilities and roles of agency staff in handling and responding to complaints; and

(viii) Accessibility for individuals with disabilities.

(2) Adequately document the review and decision and, if applicable, ~~take and document~~ 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 ~~and document~~ follow-up action, as appropriate, based on the results of its review; ~~and~~

~~(4) Publish data annually on the volume and type of complaints received and otherwise observed.~~

## **Proposed 34 C.F.R. Part 604 -- The Secretary's Recognition of State Agencies for the Approval of Nurse Education**

### **604.17 -- Operating Procedures**

(b) The State approval agency must--

(1) Review any complaint it receives against an approved program of nurse education that is related to the agency's standards or procedures in a timely, fair, and equitable manner. The agency may not complete its review and make a decision regarding a complaint unless, in accordance with published procedures, it ensures that the program of nurse education has sufficient opportunity to provide a response to the complaint and may not refuse to accept a complaint on the basis that it does not identify the complainant or specify a particular approval standard. The State approval agency must review complaints to determine whether they raise concerns related to possible noncompliance by the program of nurse education with the agency's standards, policies, and procedures. The State approval agency's complaint procedures must include –

(i) Clear timelines for the complaint review process, including the timely notification of the complainant regarding the status of the complaint;

(ii) Allowance for more than one complaint submission method;

(iii) A requirement that agency staff must provide feedback to a complainant who does not submit a complaint correctly under the agency's prescribed method(s), or that the agency must accept a complaint even when the complainant does not technically follow the agency's complaint procedures;

(iv) Allowance for the confidentiality of the complainant, including the complainant's ability to elect to keep their personally identifiable information confidential from both the state agency and the program of nurse education that is the subject of the complaint;

(v) A clear explanation of whether, and under what circumstances, an agency requires the complainant to first submit the complaint to the program of nurse education and to allow the program of nurse education to reach a conclusion prior to filing a complaint with the State approval agency;

(vi) Clear complaint procedures, including with respect to the responsibilities and roles of agency staff in handling and responding to complaints; and

(vii) Accessibility for individuals with disabilities.

## Improve Disclosures to Students of Changes in Accreditation Status

### 602.23(e), 602.26(e)

Accrediting agencies must require institutions to provide notice to students within seven days of a final decision to deny, withdraw, suspend, revoke, or terminate accreditation, or taking any other adverse action as defined by the agency. This notice serves as a critical signal to students about concerns related to the institution where they are investing their time and money, and, since institutions must be accredited in order to access federal financial aid under the Title IV programs, a timely warning about the loss of accreditation.

However, in some cases, institutions have failed to provide accurate, timely warnings about the actions taken against their schools -- including actions like probation, as well as those that result in the loss of accreditation. In [one case](#), for example, a publicly traded institution faced serious action from its accreditor -- but reported the issue twice to its investors before it disclosed the fact directly to students. In another, a for-profit company [effectively hid](#) its loss of accreditation from students for months, but continued to tell students "we remain accredited..." even after being told by the accrediting agency that it was required to report to students that its "courses or degrees are not accredited..."

We propose to enhance oversight of these types of disclosures to students. Under this proposed language, accrediting agencies would be required to take action against institutions that fail to update their accreditation status to students following a probation action, show-cause order, or adverse action. Additionally, notification to current and prospective students of adverse actions would be required

before such actions become final, to allow students to make informed decisions about where they enroll in school.

**§602.23 Operating procedures all agencies must have.**

\* \* \*

(e) The accrediting agency must

(1) provide for the public correction of incorrect or misleading information an accredited or preaccredited institution or program releases about--

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

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

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

(2) take action against any institution that fails to update its accreditation status to students, including a plain-language description of the consequences and timeline associated with any action, in a timely and prominent manner following an action of probation or equivalent status, a show cause order, or an adverse action.

**§602.26 Notification of accrediting decisions.**

(a) For any decision listed in paragraph (c) of this section, or any such decision that is not yet final, requires the institution or program to disclose the decision to current and prospective students within seven business days of receipt and makes available to the Secretary, the appropriate State licensing or authorizing agency, and the public, no later than 60 days after the decision, a brief statement summarizing the reasons for the agency's decision and the official comments that the affected institution or program may wish to make with regard to that decision, or evidence that the affected institution has been offered the opportunity to provide official comment;

\* \* \*

## Improve the Caliber of Teach-Out Plans and Agreements for High-Risk Institutions

**600.2, 602.23(f)(1)(ii), 602.24(c)(2), 602.25(f)(3)**

When institutions are at risk of closure, one of accrediting agencies' obligations is to ensure continuity for students by requiring teach-out plans or agreements of those institutions. Under a teach-out plan, a

college provides a light sketch of how a closure could be managed; under an agreement, a more formal arrangement or contract to ensure that closure plan can be executed.

Unfortunately, however, accrediting agencies have often failed to seek or obtain an actual agreement; and these plans have fallen far short of what students deserve. As the Department noted in [regulations](#) last year, “We have seen numerous examples of institutional closures that harmed students, their families, and taxpayers.” [Research](#) shows that between the 2009 and 2017 school years, over 300 degree-granting institutions shut down, including [many](#) where students -- particularly marginalized students and students of color -- were left unaware and without options to continue their education. [Additional recent research](#) has shown that a large proportion of students attending a college when it abruptly closed are likely to never complete their college education as a result.

We propose to strengthen references to teach-outs throughout the regulations. This includes clarifying the definition of a teach-out agreement includes requirements that the school teaching out the program offer the same program as the student’s current course of study, and for a similar cost, and that it must have been in existence prior to entering into the agreement. We also propose requiring preaccredited institutions to maintain a teach-out agreement, not just a plan. Preaccreditation does not always lead to accreditation for institutions, and students enrolled in these programs function as guinea pigs for the institution. Thus, we believe that strong student protections are needed. We also propose to require teach-out agreements in very high-risk cases in all cases, removing the current language that requires agreements only “if practicable.” Finally, we propose to require that teach-out agreements be submitted alongside appeals of adverse actions to ensure these institutions on the verge of a potential loss of accreditation have conducted adequate planning to protect their students.

### **§600.2 Definitions.**

*Teach-out agreement:* A written agreement between institutions that provides for the equitable treatment of students and a reasonable opportunity for students to complete their **current** program of study **for a similar cost** if an institution, or an institutional location that provides 100 percent of at least one program offered, ceases to operate or plans to cease operations before all enrolled students have completed their program of study. **The institution offering the teach-out agreement must have operated the program for at least two years, and must not be under a warning or other negative action by an institutional accrediting agency, state authorizing agency, or the Secretary.**

### **§602.23 Operating procedures all agencies must have.**

(a)(1) If preaccreditation is offered—

- (i) The agency's preaccreditation policies must limit the status to institutions or programs that the agency has determined are likely to succeed in obtaining accreditation;

(ii) The agency must require all preaccredited institutions to have a teach-out **plan agreement**, which must ensure students completing the teach-out would meet curricular requirements for professional licensure or certification, if any, and which must include a list of academic programs offered by the institution and the names of other institutions that offer similar programs and that could potentially enter into a teach-out agreement with the institution;

(iii) An agency that denies accreditation to an institution it has preaccredited may maintain the institution's preaccreditation for currently enrolled students until the institution has had a reasonable time to complete the activities in its teach-out plan to assist students in transferring or completing their programs, but for no more than 120 days unless approved by the agency for good cause; and

(iv) The agency may not move an accredited institution or program from accredited to preaccredited status unless, following the loss of accreditation, the institution or program applies for initial accreditation and is awarded preaccreditation status under the new application. Institutions that participated in the title IV, HEA programs before the loss of accreditation are subject to the requirements of 34 C.F.R. § 600.11(c).

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

**§ 602.24 Additional procedures certain institutional agencies must have.**

(a) Teach-out plans and agreements.

(1) The agency must require an institution it accredits to submit a teach-out plan as defined in 34 C.F.R. § 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.

(iii) The Secretary notifies the agency that the institution is participating in title IV, HEA programs under a provisional program participation agreement and the Secretary has required a teach-out plan as a condition of participation.

(2) The agency must require an institution it accredits or preaccredits to submit a teach-out plan and **if practicable**, teach-out agreements (as defined in 34 C.F.R. § 600.2) to the agency for approval upon the occurrence of any of the following events:

\* \* \*

### **§602.25 Due process.**

(a) 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;

(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 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.

**(3) The institution must submit a teach-out agreement alongside its appeal.**

## **Improve Accreditor Oversight of Institutional Credit Transfer Policies**

### **602.24(e)**

Millions of students who enroll in higher education attend more than one institution, including hundreds of thousands of community college students each year who hope to ultimately transfer to and earn a bachelor's degree. Yet in the process, students often [lose many of their credits](#), adding to the costs of earning a degree and often derailing students' academic pathways so they don't earn a credit. Accrediting agencies do too little to oversee institutions' transfer of credit policies, failing to ensure students have reliable access to transfer pathways.

To that end, we propose that the Department enhance existing requirements that accreditors review institutional transfer of credit policies. In addition to requiring that such policies be publicly disclosed and clear in their statements of institutional criteria, we propose that accrediting agencies assess actual credit transfer rates (overall and within the student’s course of study), average time to completion for transfer students, and the share of transfer students who are enrolled at the institution. We also propose that accrediting agencies conduct a review of the institutions’ use of widely accepted best practices to improve transfer outcomes.

**§ 602.24 Additional procedures certain institutional agencies must have.**

(e) Transfer of credit policies. The accrediting agency must confirm, as part of its review for initial accreditation or preaccreditation, or renewal of accreditation, that the institution has transfer of credit policies that—

(1) Are publicly disclosed in accordance with § 668.43(a)(11); **and**

**(2) Include an assessment of credit transfer acceptance rates, overall and within the course of study, the average time to completion for transfer students, and the share of transfer students enrolled at the institution of higher education;**

**(3) Evaluate the institution’s use of widely accepted best practices, such as common course numbering, establishment of articulation agreements, and application of transfer credits toward the program of study; and**

**(42)** Include a statement of the criteria established by the institution regarding the transfer of credit earned at another institution of higher education.

## **Increase Transparency and Public Input in the Recognition Process**

**602.30(f)(v) and (vi), 602.31(b) and (f), 602.32(a)(1), 602.34(c)**

The Department of Education’s process of recognizing accrediting agencies is a high-stakes one: While approved, accreditors provide a signal of quality assurance to students and serve as gatekeepers to billions of dollars in taxpayer-financed student aid. However, this process has often lacked transparency and public accountability, with an internally-focused protocol that provides too little information to the public. The Department has an opportunity in this rulemaking to enhance transparency and increase public trust in the system; in this proposal, we include a range of proposals all dedicated to these goals.

In proposed changes to § 602.30(f), we propose to require accrediting agencies to post their recognition materials on their websites at least 30 days prior to the NACIQI meeting at which their petitions will be assessed, and to certify that the redactions they submitted to the Department were made accurately and in good faith. The Department has worked in recent years to increase transparency into accretor materials, but the redaction and disclosure process under FOIA has created significant slow-downs in

that work. It is our hope that this language will assist, though not replace, the process of the Department's review and release of materials.

In proposed changes to §§602.31(b) and (f) and 602.32(a)(1), we propose several ways to enhance the public comment process during recognition proceedings to ensure the public can provide more timely and actionable information to the Department and NACIQI. In §602.31(b) and §602.32(a)(1), we seek to establish in the regulations that the public comment period should be at least 30 days -- consistent with the timeframe typically used by the Department already.

In §602.31(f) and §602.32(a)(1), we propose to ensure the Department will publish the draft staff analysis it develops for an agency and a compliance report submitted by an agency, respectively. Currently, members of the public do not have access to this information, and as a result cannot provide meaningful comment to the Department on areas where it should dive more deeply or potential aspects of noncompliance in the agency's policies or practice.

For both sections, we would ensure that these materials are available prior to seeking public information on the agency. In the case of recognition proceedings in §602.31(f), this would entail a second public comment period, closer to the date of the NACIQI meeting than the current comment period opened when an agency submits its petition. Under the current process, public comments are due well over a year before the NACIQI meeting for the agency in question, and before the draft analysis is completed. That means, by the time the Senior Department Official makes a decision, the only written public comments submitted are based on stale information, and are non-responsive to any compliance issues or evidence raised throughout the rulemaking process. By creating a second comment process, this time based on the draft analysis, the public can provide more extensive, useful, and actionable information to those involved in the process -- including Department staff, NACIQI members, and the SDO.

Finally, we also propose to provide an opportunity for members of NACIQI to provide input to the Department and inform the site visit, file review, and other aspects of the analysis. This is particularly important because, by retaining the file review process as the basis for the analysis of an application, the record provided to NACIQI is less complete than when more of the documentation was provided by the agency as part of its petition. It will also ensure NACIQI members have an opportunity to ask questions as part of the initial review (providing agencies with more time to respond to the questions that members raise), rather than raising those issues only in live NACIQI discussions.

### **§602.30 [Removed and Reserved]**

### **~~§ 602.31~~ Agency applications and reports to be submitted to the Department.**

\* \* \*

(f) Public availability of agency records obtained by the Department.

(1) The Secretary's processing and decision-making on requests for public disclosure of agency materials reviewed under this part are governed by the Freedom of Information Act, 5 U.S.C. 552; the



Trade Secrets Act, 18 U.S.C. 1905; the Privacy Act of 1974, as amended, 5 U.S.C. 552a; the Federal Advisory Committee Act, 5 U.S.C. Appdx. 1; and all other applicable laws. In recognition proceedings, agencies must, before submission to the Department—

- (i) Redact the names and any other personally identifiable information about individual students and any other individuals who are not agents of the agency or of an institution or program the agency is reviewing;
- (ii) Redact the personal addresses, personal telephone numbers, personal email addresses, Social Security numbers, and any other personally identifiable information regarding individuals who are acting as agents of the agency or of an institution or program under review;
- (iii) Designate all business information within agency submissions that the agency believes would be exempt from disclosure under exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4). A blanket designation of all information contained within a submission, or of a category of documents, as meeting this exemption will not be considered a good faith effort and will be disregarded; **and**
- (iv) Ensure documents submitted are only those required for Department review or as requested by Department officials;

**(v) Post the redacted materials on their websites not less than 30 days prior to the Advisory Committee meeting at which the agency's recognition will be discussed; and**

**(vi) Certify under penalty of perjury that the agency has made a good-faith effort to make all necessary redactions and to redact only information that would be exempt from disclosure, as identified in paragraphs (i)-(iii).**

**§ 602.312 Procedures for submitting ~~an~~ applications for recognition, and renewal of recognition, ~~expansion of scope, compliance reports, and increases in enrollment.~~**

\* \* \*

~~(b) An agency seeking initial recognition must follow the policies and procedures outlined in paragraph (a) of this section, but in addition must also submit—~~

~~(1) Letters of support for the agency from at least three accredited institutions or programs, three educators, and, if appropriate, three employers or practitioners, explaining the role for such an agency and the reasons for their support; and~~

~~(2) Letters from at least one program or institution that will rely on the agency as its link to a Federal program upon recognition of the agency or intends to seek multiple accreditation which will allow it in the future to designate the agency as its Federal link.~~

~~(c) After receipt of an agency's application for initial or renewal of recognition, Department staff publishes a notice in the Federal Register stating that the ~~of the agency's submitted~~ ~~ssion~~ of an application ~~in the Federal Register~~ and inviting the public to ~~comment~~ provide information concerning the performance of ~~on the agency's compliance~~ to assist the Department in determining whether the~~

agency meets the criteria for recognition and ~~with the criteria for recognition and~~ establishing a deadline for receipt of information from the public ~~comment.~~ of not less than 30 days.

\* \* \*

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

(1) Prepare a written draft analysis of the agency's application;

(2)

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

(ii) Publish the draft analysis on its website for the public.

(3) Publish a notice in the Federal Register stating where the draft analysis is now available, inviting the public to provide information concerning the performance of the agency or the agency's compliance, and establishing a deadline for receipt of information from the public of not less than 30 days.

(~~4~~3) Invite the agency to provide a written response to the draft analysis and third-party ~~comments~~ information or other material included in the review, specifying a deadline that provides at least ~~180~~90 days for the agency's response;

(~~5~~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, ~~renew-continue recognition~~ with compliance reporting requirements due in 12 months, ~~renew-continue recognition~~ with compliance reporting requirements with a deadline in excess of 12 months based on a finding of good cause and extraordinary circumstances, approve with monitoring or other reporting requirements, or deny, limit, suspend, or terminate recognition; and

(~~6~~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).

**§ 602.32 Procedures for review of an expansion of scope, compliance report, or increase 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 (a)(2) of this section.

(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.

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

(1)

(i) Publishes the compliance report on its website; and

(ii) Publishes in the *Federal Register* a notice that an agency submitted a compliance report, stating where the report is now available, inviting the public to provide information concerning the performance of the agency to assist the Department in determining whether the agency meets the criteria for recognition identified in the recognition decision and establishing a deadline for receipt of information from the public of not less than 30 days;

\* \* \*

**§602.34 Advisory Committee meetings.**

\* \* \*

(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) Within 7 days of publishing the notice in the Federal Register seeking public comment for an application for recognition or renewal to recognition, as described in § 602.31(b), Department staff invite members of the Advisory Committee to provide feedback to inform the staff's analysis of the application.

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

(1) ~~The~~As applicable, the agency's application for recognition, or renewal of recognition, ~~or the agency's application for~~ expansion of scope when Advisory Committee review is required, and when the application for expansion of scope is reviewed by Department staff under either 34 C.F.R. §§ 602.32(a)(1) or 602.32(a)(2), or the agency's compliance report, and supporting documentation submitted by the agency;

(2) The final Department staff analysis of the agency developed in accordance with §602.31, § 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.

\* \* \*

## **Establish Risk-Based Reviews of Accrediting Agencies by the Department**

### **602.33(a)(2)**

The Department noted in its issue paper that it is interested in codifying a risk-based review process that will help it to more clearly prioritize the review of dozens of agencies. We strongly support the Department's efforts to do so, including the use of factors like the Title IV volume under the accreditor. We also propose considering a variety of additional factors, including complaints received about the agency; precipitous institutional closures; annual increases in the number of institutions or programs accredited by the agency; and state or federal investigations, lawsuits, or settlements. The Department already utilizes risk-based reviews, for instance in selecting institutions of higher education for program reviews; broadening those efforts to other Department oversight work, and establishing some of the ways in which the Department will consider risk-based reviews, will provide significant benefit to students and to taxpayers.

### **§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, **which shall include:**

**(i) The volume of Title IV, HEA funds received by institutions accredited by the agency;**

**(ii) Severe and/or a high volume of complaints received about the agency or its institutions;**

**(iii) One or more institutional closures without an approved teach-out plan or agreement in place by an institution accredited by the agency;**

(iv) Severe deficiencies in the student achievement performance of institutions accredited by the agency;

(v) Notable annual increases in the number of institutions or programs accredited by the agency; and

(vi) Ongoing State or Federal investigations or lawsuits by, or a recent State or Federal settlement with, one or more institutions accredited by the agency.

## Additional Language Changes

(Throughout)

In addition to the substantive additions and edits to the Department’s redlines, below we provide a number of smaller-scale language changes that require less explanation, but that would similarly support an improved accreditation system for higher education. Each item under this header is explained with a comment bubble.

### §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 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 a notice of that action, **including the reasons for the action**, in the Federal Register **and on the Department’s website. The Secretary also makes the reasons for the action available to the public, on request.**

\* \* \* \*

### §602.14 Purpose and organization.

\* \* \*

(b) For purposes of this section, “separate and independent” means that—

(1) The members of the agency's decision-making body, who decide the accreditation or preaccreditation status of institutions or programs, establish the agency's accreditation policies, or both, are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association, professional organization, or membership organization and are not staff of the related, associated, or affiliated trade association, professional organization, or membership organization;

(2) At least one member of the agency's decision-making body is a representative of the public, and at least one-seventh of the body consists of representatives of the public;

(3) The agency has established and implemented **effective** guidelines for each member of the decision-making body, including **guidelines ensuring members avoid or avoiding** conflicts of interest in making decisions;

(4) The agency's dues are paid separately from any dues paid to any related, associated, or affiliated trade association or membership organization; and

(5) The agency develops and determines its own budget, with no review by or consultation with any other entity or organization.

\* \* \* \*

#### **§602.15 Administrative and fiscal responsibilities.**

The agency must have the administrative and fiscal capability to **effectively** 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, **data and technology infrastructure, expertise**, and financial resources to carry out its accrediting responsibilities;

\* \* \* \*

#### **§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 **and ensure that for** the institutions or programs it accredits **remain in compliance** in the following areas:

\* \* \*

#### **§602.18 Ensuring **consistency in effective** decision-making.**

(a) The agency must consistently apply and enforce standards that respect the stated mission of the institution, including religious mission, and that ensure that the education or training offered by an institution or program, including any offered through distance education, correspondence courses, or

direct assessment education is of sufficient quality to achieve its stated objective for the duration of any accreditation or preaccreditation period.

(b) The agency meets the requirement in paragraph (a) of this section if the agency—

(1) Has written specification of the requirements for accreditation and preaccreditation that include clear standards for an institution or program to be accredited or preaccredited;

(2) Has effective controls against the inconsistent application of the agency's standards;

(3) Bases decisions regarding accreditation and preaccreditation on the agency's published standards and does not use as a negative factor the institution's religious mission-based policies, decisions, and practices in the areas covered by § 602.16(a)(1)(ii), (iii), (iv), (vi), and (vii) provided, however, that the agency may require that the institution's or program's curricula include all core components required by the agency;

(4) Has a reasonable basis for determining that the information the agency relies on for making accrediting decisions is **current, representative, and** accurate;

\* \* \* \*

#### **§602.19 Monitoring and reevaluation of accredited institutions and programs.**

(a) The agency must reevaluate, at regularly established intervals, **and on an ongoing basis as appropriate**, the institutions or programs it has accredited or preaccredited.

(b) The agency must demonstrate it has, and effectively applies, monitoring and evaluation approaches that **provide the agency with the most current, representative, and accurate information available, and that** enable the agency to identify problems with an institution's or program's continued compliance with agency standards and that take into account institutional or program strengths and stability. These approaches must include periodic reports, and **regular** collection and analysis of key data and indicators, identified by the agency, including, but not limited to, fiscal information and measures of student achievement, consistent with the provisions of § 602.16(g). This provision does not require institutions or programs to provide annual reports on each specific accreditation criterion.

\* \* \* \*

#### **§ 602.22 Substantive changes and other reporting requirements.**

(a)

(1) If the agency accredits institutions, it must maintain **adequate** ~~adequate-written~~ 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—

\* \* \* \*

**§ 602.312 Procedures for submitting an applications for recognition, and renewal of recognition, expansion of scope, compliance reports, and increases in enrollment.**

\* \* \*

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

\* \* \*

(5) 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, ~~renew-continue recognition~~ with compliance reporting requirements due in 12 months, ~~renew-continue recognition~~ with compliance reporting requirements with a deadline in excess of 12 months based on a finding of good cause and extraordinary circumstances, approve with monitoring or other reporting requirements, or deny, limit **(including by limiting the scope of accreditation or number of institutions an accreditor may approve)**, suspend, or terminate recognition; and

\* \* \* \*

**§ 602.32 Procedures for review of an expansion of scope, compliance report, or increase in headcount enrollment.**

\* \* \*

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

\* \* \*

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

(i) Indicating that the agency is in full compliance, substantial compliance, or noncompliance with each of the criteria for recognition 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 due in 12 months, continue recognition with compliance reporting requirements with a deadline in excess of 12 months based on a finding of good cause and extraordinary circumstances, approve with monitoring or other reporting requirements, or deny, limit (including by limiting the scope of accreditation or number of institutions an accreditor may approve), suspend, or terminate recognition; and

\* \* \* \*

#### **§602.34 Advisory Committee meetings.**

\* \* \*

(e) The Advisory Committee considers the materials provided under paragraph (c) of this section in a public meeting and other materials or information relevant to an agency's compliance 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.

\* \* \*

(g) After each meeting of the Advisory Committee, the Advisory Committee forwards to the senior Department official its recommendation with respect to each agency, which may include, but is not limited to—

(1)(i) For an agency that is fully compliant, approve initial or renewed recognition;

(ii) In the case of non-compliance--

(A) Continue recognition with a required compliance report to be submitted to the Department within ~~12 months from~~ 30 days after the end of the period specified in the decision of the senior Department official, which may not exceed 12 months;

(B) 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 (including by limiting the scope of accreditation or number of institutions an accreditor may approve), suspend, or terminate recognition;

\* \* \* \*

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

\* \* \*

(f) The Secretary may determine, based on the record, that a decision to deny, limit (including by limiting the scope of accreditation or number of institutions an accreditor may approve), suspend, or terminate an agency's recognition may be warranted based on a finding that the agency is noncompliant with, or ineffective in its application with respect to, a criterion or criteria for recognition not identified as an area of noncompliance earlier in the proceedings. In that case, the Secretary, without further consideration of the appeal, refers the matter to the senior Department official for consideration of the

issue under § 602.36(g). After the senior Department official makes a decision, the agency may, if desired, appeal that decision to the Secretary.

(g) If relevant and material information pertaining to an agency's compliance with recognition criteria, but not contained in the record, comes to the Secretary's attention while a decision regarding the agency's recognition is pending before the Secretary, and if the Secretary concludes the recognition decision should not be made without consideration of the information, **within 12 months** 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

(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.

\* \* \* \*

## **Proposed 34 C.F.R. Part 604 – The Secretary's Recognition of State Agencies for the Approval of Nurse Education**

### **604.11 – Administrative and fiscal responsibilities**

(a) The State approval agency must have an appropriate **and adequate** organization to carry out its approval activities and administrative staff qualified for their roles.

\* \* \* \*

### **Subpart C – The Recognition Process**

The Department will follow the regulations at Part 602, Subpart C for the recognition process except that each State approval agency recognized under this subpart will be reevaluated by the Secretary at his discretion, but at least once every **four-five** years.