

**Proposed Regulatory Language  
Committee IV -- Accreditation**

**Issue #1:** Due Process

**Regulatory Cite:** §602.3, §602.25, §602.20, §602.28

**Summary of Change:**

Substitutes “adverse accrediting decision” for “adverse accrediting action” or “adverse action” in §§602.3 and 602.25 to clarify the timing of the “process due” under new §602.25(b); revises §§602.20 and 602.28, which had used the term “adverse accrediting action”, to retain the current meaning of those regulations. Specifies the procedures an agency must follow in arriving at an adverse accrediting decision. Changes in the procedures include providing adequate written notice to the institution or program about deficiencies, giving an institution or program the opportunity to present oral and written information to the decision-makers, and ensuring the decision-makers making adverse accrediting decisions and hearing appeals are impartial and free of conflicts of interest.

**Tentative Agreement:** Not yet fully discussed.

**Change:**

§602.3 What definitions apply to this part?

\* \* \* \* \*

~~Adverse accrediting action or adverse action~~ **Adverse accrediting decision** means ~~the denial, withdrawal, suspension, revocation, or termination~~ **a decision to deny, withdraw, suspend, revoke, or terminate** of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution or program, ~~that will become final unless appealed.~~

§602.25 Due process.

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

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

(b) **In arriving at an adverse accrediting decision, the agency applies procedures that--**

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(1) Require written notice of the deficiencies the institution or program is believed to have under the agency's standards and policies;

(2) Provide a reasonable period of time for the institution or program to prepare its response to the deficiencies identified;

(3) Permit the institution or program to present oral and written information to the agency's decision makers in its response; and

(4) Ensure that the agency's decision makers are impartial and free of conflicts of interest.

(cb) The agency notifies the institution or program in writing of any adverse accrediting ~~action~~ **decision** or an action to place the institution or program on probation or show cause. The notice describes the basis for the action.

(de) The agency permits the institution or program the opportunity to appeal an adverse **accrediting decision**. **The appeal procedures include--**

(1) ~~action and~~ The right to be represented by counsel during ~~the~~ that appeal;

(2) **The right to decision makers who are impartial and free of conflicts of interest; and**

(3) If the agency allows institutions or programs the right to appeal other types of actions, the agency has the discretion to limit the appeal to a written appeal.

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

§602.20 Enforcement of standards.

(a) If the agency's review of an institution or program under any standard indicates that the institution or program is not in compliance with that standard, the agency must--

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(1) Immediately initiate **an action to deny, withdraw, suspend, revoke, or terminate accreditation or preaccreditation, or take comparable action against, ~~adverse action against~~** the institution or program; or

(2) \* \* \*

\* \* \* \* \*

(b) If the institution or program does not bring itself into compliance within the specified period, the agency must take **an immediate ~~adverse~~ action to deny, withdraw, suspend, revoke, or terminate accreditation or preaccreditation, or take comparable action against the institution or program** unless the agency, for good cause, extends the period for achieving compliance.

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

\* \* \* \* \*

(d) 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 an **adverse action to deny, withdraw, suspend, revoke, or terminate accreditation or preaccreditation, or take comparable action against the institution or program** by another recognized accrediting agency or has been placed on probation or an equivalent status by another recognized agency, the agency must promptly review its accreditation or preaccreditation of the institution or program to determine if it should also take **such ~~adverse~~** action or place the institution or program on probation or show cause.

(e) The agency must, upon request, share with other appropriate recognized accrediting agencies and recognized State approval agencies information about the accreditation or preaccreditation status of an institution or program and any **adverse** action it has taken **to deny, withdraw, suspend, revoke, or terminate accreditation or preaccreditation, or take comparable action** against an accredited or preaccredited institution or program.

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**Issue #2:** Substantive Change

**Regulatory Cite:** §602.22

**Summary of Change:**

Expands the list of types of substantive changes to include an accredited institution's contracting out of 25% or more of a program to entities that are not eligible to participate in Title IV student aid program. Modifies the descriptions of the substantive changes in §602.22(a)(ii) and (iii) to include a change in academic subject matter and a change in level of offerings, in any direction.

Provides greater flexibility for an accrediting agency to grant prior approval for addition of multiple locations for certain types of institutions that provide information acceptable to the accrediting agency about their practices. Clarifies the requirement that any agency have a mechanism for conducting visits to additional locations operated by institutions that have more than three additional locations by specifying that a representative sample of additional locations must be visited throughout the accreditation cycle.

A new provision requires agencies to define in their substantive change policy when changes would be so extensive that the institution or program would need to seek initial accreditation as a new institution or program. Finally, a change has been made to require agencies to include in their approvals a date, that is not retroactive, on which the change becomes incorporated into the program's or institution's accreditation.

**Tentative Agreement:** Not yet fully discussed.

**Change:**

§602.22 Substantive change.

\* \* \* \* \*

(a) (2) The agency's definition of a substantive change includes at least the following types of change:

(i) Any change in the established mission or objectives of the institution.

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

(iii) The addition of courses or programs that represent a significant departure, in ~~either~~ content, **academic subject matter**, or method of delivery, from those that were offered when the agency last evaluated the institution.

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(iv) The addition of courses or programs at a degree or credential level ~~above~~ **different from** that which is included in the institution's current accreditation or preaccreditation.

(v) A change from clock hours to credit hours.

(vi) A substantial increase in the number of clock or credit hours awarded for successful completion of a program.

(vii) If the agency's accreditation of an institution enables the institution to seek eligibility to participate in Title IV, HEA programs, the entering into a contract under which an institution or organization not certified to participate in those programs offers more than 25 percent of one or more of the accredited institution's educational programs.

~~(vii)~~ (viii) If the agency's accreditation of an institution enables the institution to seek eligibility to participate in Title IV, HEA programs, the establishment of an additional location geographically apart from the main campus at which the institution offers at least 50 percent of an educational program. An addition of such a location must be approved by the agency in accordance with paragraph (c) of this section unless the accrediting agency determines, and issues a written determination stating, that the institution has been accredited for at least ten years, has at least three additional locations that the agency has approved, and has met criteria established by the agency indicating sufficient maturity to add additional locations without individual prior approvals, including, at a minimum, a management plan that provides satisfactory evidence of--

(A) A system to ensure quality across a distributed enterprise;

(B) Centralized academic control;

(C) Centralized and regular evaluation of the locations;

(D) Adequate faculty, facilities, resources, and academic and student support systems;

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(E) Financial stability; and

(F) Long-range planning for expansion.

The agency's procedures must require timely reporting to the agency of every additional location established under this approval. Each agency determination or redetermination to preapprove the addition of multiple locations under this paragraph must be of limited duration, and may not exceed four years. The approval may not remain in force after an institution undergoes a change in ownership.

(3) The agency's substantive change policy defines when the changes made or proposed are or would be sufficiently extensive to require the agency to process the application as a request for initial accreditation or preaccreditation of a new institution or program.

(b) The agency may determine the procedures it uses to grant prior approval of the substantive change. However, the procedures must specify an effective date, not retroactive, on which the change is included in the program's or institution's accreditation. Except as provided in paragraph (c) of this section, these may, but need not, require a visit by the agency.

(c) If the agency's accreditation of an institution enables the institution to seek eligibility to participate in Title IV, HEA programs, the agency's procedures for the approval of an additional location described in paragraph (a)(2)(viii) of this section must determine if the institution has the fiscal and administrative capacity to operate the additional location. In addition, the agency's procedures must include--

(1) A visit, within six months, to each additional location the institution establishes, if the institution--

(i) Has a total of three or fewer additional locations;

(ii) Has not demonstrated, to the agency's satisfaction, that it has a proven record of effective educational oversight of additional locations; or

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(iii) Has been placed on warning, probation or show cause by the agency or is subject to some limitation by the agency on its accreditation or preaccreditation status;

(2) An effective mechanism for conducting, at reasonable intervals **throughout the accreditation cycle**, visits to **a representative sample of** additional locations of institutions that operate more than three additional locations; and

(3) An effective mechanism, which may, at the agency's discretion, include visits to additional locations, for ensuring that accredited and preaccredited institutions that experience rapid growth in the number of additional locations maintain educational quality.

(d) The purpose of the visits described in paragraph (c) of this section is to verify that the additional location has the personnel, facilities, and resources it claimed to have in its application to the agency for approval of the additional location.

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**Issue #3:** Monitoring of institutions

**Regulatory Cite:** §602.19

**Summary of Change:**

Clarifies the two-fold purpose of monitoring and specifies that agencies must collect and analyze information on key performance indicators to identify new problems at an institution or program that may require agency intervention. Requires each agency to provide a rationale for the length of intervals between evaluations and periodic reporting throughout the accreditation period.

**Tentative Agreement:** Not yet fully discussed.

**Change:**

§602.19 Monitoring and reevaluation of accredited institutions and programs.

(a) The agency must reevaluate, at regularly established intervals, the institutions or programs it has accredited or preaccredited.

(b) The agency must monitor institutions or programs throughout their accreditation or preaccreditation period, including conducting special evaluations or site visits, as necessary, to ensure that **the institution or program--**

**(1) Resolves identified problems related to compliance with agency standards; and**

**(2) Implements concrete and reasonable steps to improve the institution's or program's performance in relation to the institution's educational mission.**

(c) The agency must regularly collect and analyze information on key performance indicators, such as enrollments, financial audits, retention and completion rates, and other measures of student achievement identified by the agency, to signal the need for intervention.

(d) The agency must provide a rationale acceptable to the Secretary, which may include consideration of the length of educational offerings, for the intervals between evaluations and institutional reporting that takes into consideration the length of the accreditation period.

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**Issue #4:** Relationship of input and resource standards to student achievement

**Regulatory Cite:** §602.16

**Summary of Change:**

Based on discussions at the first meeting, the Department proposes dropping this issue.

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**Issue #5:** Standard definitions of terms related to student achievement

**Regulatory Cite:** §602.16

**Summary of Change:**

Based on discussions at the first meeting, the Department proposes dropping this issue.

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**Issue #6:** Quantitative standards for programs leading to gainful employment  
**Issue #7:** Institutional success with respect to student achievement

**Regulatory Cite:** §602.16

**Summary of Change:**

Specifies that an agency must establish minimum quantitative standards for completion rates, job placement rates, and pass rates on licensing and professional certification exams or other measures of occupational or professional competency for prebaccalaureate vocational programs and for baccalaureate and professional degree programs that prepare students for employment in an occupation or profession that requires certification or licensure.

Requires agencies to select one of three approaches for measuring institutional success with respect to student achievement. In the first option, the agency establishes for all institutions it accredits specific quantitative and qualitative measures of student achievement and an expected level of performance. In the second option, the agency develops a set of evaluative rubrics for groups of institutions with similar missions, which includes a variety of quantitative and qualitative measures. The agency then weights the components of the rubric for each institution and specifies an expected level of performance on each component. In the third option, the institution establishes quantitative and qualitative measures for each of the programs it offers, and an expected level of performance, that is satisfactory to the agency. The institution is required to make available to the public, and to each prospective student, information about its mission and each program's objectives, expected levels of performance on measures of student achievement, and actual performance.

**Change:**

§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--

(1) The agency's accreditation standards effectively address the quality of the institution or program in the following areas:

(i) Success with respect to student achievement in relation to the institution's mission, ~~including as appropriate, consideration of course completion, state licensing examinations, and job placement rates.~~ **For**

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standards under paragraph (a) (1) (i) of this section, the agency must--

(A) For any prebaccalaureate vocational or occupational education program to be included in the institution's accreditation, establish minimum levels of expected student performance using quantitative measures, including a prescribed method of computation, for--

(1) Completion rates;

(2) Job placement rates; and

(3) Pass rates on State licensing examinations or other appropriate measures of occupational competency.

(B) For any baccalaureate or professional degree program that is to be accredited or included in an institution's accreditation, and that has as its objective the preparation of students for employment in an occupation or profession that requires successful performance on a certification or licensing exam, establish minimum expected levels of student performance using quantitative measures, including a prescribed method for computation, for--

(1) Completion rates;

(2) Job placement rates; and

(3) Pass rates on State licensing examinations or other appropriate measures of occupational or professional competency.

(C) Measure institutional success with respect to student achievement by--

(1) Determining whether the programs offered by an institution, or the institution's programs in each subject area, meet an expected level of performance with respect to student achievement on quantitative and qualitative measures established by the agency for all institutions it accredits; or

(2) Developing and ensuring compliance with a set of evaluative rubrics, applicable to multiple institutions with similar missions, that include a variety of quantitative and qualitative measures related to student

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achievement and, for each institution, weighting the components of each rubric in accordance with the particular characteristics of the institution and specifying an expected level of performance; or

(3) For each program the institution offers, requiring the institution to: specify the educational objective(s) of the program; using quantitative and qualitative measures -- which must include those developed under paragraphs (a)(1)(i)(A) and (B) of this section, when applicable -- establish expected levels of performance, acceptable to the agency, with respect to student achievement consistent with the program's objective(s) and the institution's mission; make a showing satisfactory to the agency that the program has met the expected levels of performance it has established; and demonstrate to the satisfaction of the agency that it makes available to the public and to each prospective student the institution's mission as well as the program's objective(s), expected levels of performance on qualitative and quantitative measures, and the actual performance on these measures.

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**Issue #8:** Consideration of mission in application of standards

**Regulatory Cite:** §602.17

**Summary of Change:**

Reinforces the principle of mission-based evaluation of institutions and programs, while affirming the need for all institutions to meet standards of educational quality.

**Tentative Agreement:** Not yet fully discussed.

**Change:**

§602.17 Application of standards in reaching an accrediting decision.

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

(a) Shows due regard for institutional mission in applying agency standards and policies that are unrelated to educational quality;

(ab) Evaluates whether an institution or program--

(Renumber as necessary)

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**Issue #9:** Transfer of credit and acceptance of credentials

**Regulatory Cite:** §602.16(a)(1)(vii)

**Summary of Change:**

Specifies that an agency's standards related to admissions and recruiting practices must address transfer of credit and acceptance of credentials by requiring that decisions about the acceptance of credits and credentials cannot be made solely on the basis of the accreditation of the sending institution or program, provided that institution or program is accredited by a recognized agency. Also requires that institutions inform prospective students of their policy.

**Tentative Agreement:** Not yet fully discussed.

**Change:**

§602.16 Accreditation and preaccreditation standards.

(a) The agency must demonstrate that it has standards for accreditation and, **if offered**, 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

--

(1) The agency's accreditation standards effectively address the quality of the institution or program in the following areas:

\* \* \*

(vii) Recruiting and admissions practices, **including those related to transfer of credit and acceptance of credentials**, academic calendars, catalogs, publications, grading, and advertising.

(A) The agency must ensure that decisions about transfer of credit and acceptance of credentials are not made solely on the source of accreditation of a sending institution or program, as long as the accreditation in question is from a recognized accrediting agency and within that agency's scope, and must also ensure that the institutions or programs it accredits provide a complete description to prospective students of their policies

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**concerning transfer of credit and acceptance of  
credentials.**

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**Issue #10:** Direct assessment programs

**Regulatory Cite:** §602.3, §602.18

**Summary of Change:**

Adds definitions of "direct assessment program" and "direct assessment of student learning" to the accreditation regulations and modifies the definition of "scope of recognition" to incorporate direct assessment programs, if applicable. Also incorporates a reference to these types of programs in the provision addressing the agency's obligation to consistently apply and enforce its standards to ensure the quality of the education or training offered by an institution or program.

**Tentative Agreement:** Not yet fully discussed.

**Change:**

§602.3 What definitions apply to this part?

\* \* \* \* \*

*Direct assessment program* means an instructional program that, in lieu of credit hours or clock hours as a measure of student learning, utilizes direct assessment of student learning, or recognizes the direct assessment of student learning by others.

*Direct assessment of student learning* means a measure by the institution of what a student knows and can do in terms of the body of knowledge making up the education program. Examples of direct measures include projects, papers, examinations, presentations, performances, and portfolios.

\* \* \*

*Scope of recognition* or *scope* means the range of accrediting activities for which the Secretary recognizes an agency. The Secretary may place a limitation on the scope of an agency's recognition for Title IV, HEA purposes. The Secretary's designation of scope defines the recognition granted according to--

\* \* \*

(4) Types of preaccreditation status covered, if any;  
and

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(5) Coverage of accrediting activities related to distance education, if any; **and**

(6) Coverage of accrediting activities related to **direct assessment programs, if any.**

§602.18 Ensuring consistency in decision-making.

The agency must consistently apply and enforce its standards to ensure that the education or training offered by an institution or program, including any offered through distance education, **and any utilizing direct assessment of student learning in lieu of credit or clock hours,** is of sufficient quality to achieve its stated objective for the duration of any accreditation or preaccreditation period granted by the agency. The agency meets this requirement if the agency--

\* \* \*

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**Issue #11:** Scope of Recognition

**Regulatory Cite:** §602.2(a), §602.3, §602.12(b), §602.15, §602.22(a)(1),  
§602.27(d)(1), §602.30(a)(1), §602.32(a)(1)(ii) and (iii)

**Summary of Change:**

The Department proposes dropping this item based on the discussion at the first meeting and a subsequent determination that the issue can be dealt with on an operational level.

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**Issue #12:** Recognition procedures  
**Issue #13:** Decision-making authority

**Regulatory Cite:** §602.3; Part 602, Subparts C and D

**Summary of Change:**

A new definition of "Recognition" clarifies that recognition is conditional and may be revoked at any time during the agency's period of recognition if the agency is found to be out of compliance with the criteria for recognition or is no longer effective in its performance. A new §602.32 details the procedures for conducting an investigation into the compliance of a recognized agency with the criteria for recognition in the midst of the recognition period, for soliciting information from the agency, and for bringing the agency before NACIQI.

A change in §602.31(b)(1) gives Department staff, in doing their analysis of an agency's application, the option of visiting the agency and/or institutions or programs the agency accredits. The senior Department official, rather than the Secretary, will receive and act upon NACIQI's recommendations. The Secretary will be the decision-making authority for appeals. The appeal procedures are detailed in a new §602.35.

Two procedural subparts, one for the recognition process and the other for the limitation, suspension or termination of recognition, are combined. NACIQI is given authority to recommend any type of action at its regular meeting. In the new §602.33(b)(2)(iii), the Advisory Committee is required to postpone further consideration of any agency if areas of noncompliance or concerns about the effectiveness of any agency are identified by the Advisory Committee that were not identified in the staff analysis.

**Tentative Agreement:** Not yet fully discussed.

**Change:**

Subpart A - General

§602.3 What definitions apply to this part?

\* \* \*

**Recognition means an unappealed determination by the senior Department official under 34 C.F.R. §602.34, or a determination by the Secretary on appeal under 34 C.F.R. §602.36, that an accrediting agency complies with the criteria for recognition listed in Subpart B of this part and that the agency is effective in its performance with respect to those criteria. Recognition is conditional and may be revoked at any time prior to its expiration upon a determination made in accordance with 34 C.F.R. §602.34 or**

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34 C.F.R. §602.36, as applicable, that the agency no longer complies with the Subpart B criteria or that it has become ineffective in its performance with respect to those criteria.

Subpart C - The Recognition Process

§602.31 How does Department staff review an agency's application?

\* \* \*

(b) Department staff analyzes the agency's application to determine whether the agency satisfies the criteria for recognition, taking into account all available relevant information concerning the compliance of the agency with those criteria and any deficiencies in the agency's performance with respect to the criteria. The analysis includes--

(1) ~~At the Secretary's discretion,~~ site visits, on an announced or unannounced basis, to the agency and, ~~at the Secretary's discretion,~~ to some of the institutions or programs it accredits or preaccredits.

\* \* \*

§602.32 What other type of review may Department staff conduct?

(a) Department staff may conduct an investigation into the compliance of a recognized agency with the criteria for recognition at any time, on its own initiative, at the request of the Advisory Committee, or in response to a third party complaint. The investigation may include, but need not be limited to, any of the activities described in 34 C.F.R. §602.31(b) (1), (b) (2), (b) (3), and (c).

(b) If, in the course of the investigation, Department staff identifies one or more areas of apparent non-compliance with the criteria for recognition, it--

(1) May request that an agency file a report (including documentation) addressing the criteria with which the agency's continued compliance is in question;

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(2) Establishes a schedule for the review of the issues by the National Advisory Committee on Institutional Quality and Integrity;

(3) Publishes a notice in the Federal Register inviting the public to comment on the agency's compliance with the criteria in question and establishing a deadline for receipt of public comment;

(4) Provides State licensing or authorizing agencies, all currently recognized accrediting agencies, and other appropriate organizations with copies of the Federal Register notice; and

(5) Prepares a written analysis of the agency's compliance with the criteria identified that reflects the results of the investigation, and that includes a recommendation regarding what action to take with respect to recognition. Possible recommendations include, but are not limited to, limiting, suspending, or terminating recognition.

(c) The Department staff sends its analysis and all supporting documentation to the agency for response, and, if necessary, prepares an addendum, all in accordance with §602.31(e)(2), (e)(3), (f), and (g).

(d) Before the Advisory Committee meeting, Department staff provides the Advisory Committee with any materials generated or obtained under this section, along with any other information Department staff relied on in developing its analysis.

(e) At least 30 days before the Advisory Committee meeting, the Department publishes a notice of the meeting in the Federal Register inviting interested parties, including those who submitted third-party comments concerning the agency's compliance with the criteria for recognition, to make oral presentations before the Advisory Committee.

§602.323 What is the role of the Advisory Committee and the senior Department official in the review of an agency's application?

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(a) The Advisory Committee considers an agency's application for recognition, **or a staff analysis prepared under §602.32 together with the associated agency report, if any,** at a public meeting and invites Department staff, the agency, and other interested parties to make oral presentations at the meeting. A transcript is made of each Advisory Committee meeting.

(b) When it concludes its review, the Advisory Committee ~~recommends that~~ **makes such recommendations to the senior Department official as the Committee deems appropriate, including, but not limited to, a recommendation to either approve, or deny, limit, suspend, or terminate** recognition, ~~or that the Secretary to~~ defer a decision on the agency's application for recognition.

(1)(i) The Advisory Committee recommends approval of recognition if the agency complies with the criteria for recognition listed in subpart B of this part and if the agency is effective in its performance with respect to those criteria.

(ii) If the Advisory Committee recommends approval, the Advisory Committee also recommends a recognition period and a scope of recognition.

(iii) If the recommended scope or period of recognition is less than that requested by the agency, the Advisory Committee explains its reasons for recommending the lesser scope or recognition period.

(2)(i) If the agency fails to comply with the criteria for recognition ~~in subpart B of this part cited in the~~ **Department staff analysis,** or if the agency is not effective in its performance with respect to those criteria, the Advisory Committee recommends denial, **limitation, suspension, or termination** of recognition, unless the Advisory Committee concludes that a deferral **by the senior Department official** under paragraph (b)(3) of this section is warranted.

(ii) If the Advisory Committee recommends denial, **limitation, suspension, or termination of recognition,** the Advisory Committee specifies the reasons for its recommendation, including all criteria the agency fails to meet and all areas in which the agency fails to perform effectively.

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(iii) If the Advisory Committee identifies areas of noncompliance with the criteria for recognition (or in the effectiveness of agency performance with respect to those criteria) that are not identified in the Department staff analysis before the Advisory Committee, the Advisory Committee postpones further consideration of the agency until its next meeting and recommends that the Department staff conduct an investigation under 34 C.F.R. §602.32.

\* \* \*

(c) At the conclusion of its meeting, the Advisory Committee forwards its recommendations to the Secretary through the senior Department official, except as provided in subparagraph (b) (2) (iii) of this section.

~~(D) For any Advisory Committee recommendation not appealed under § 602.33, the senior Department official includes with the Advisory Committee materials forwarded to the Secretary a memorandum containing the senior Department official's recommendations regarding the actions proposed by the Advisory Committee.~~

~~§602.33 How may an agency appeal a recommendation of the Advisory Committee?~~

~~— (a) Either the agency or the senior Department official may appeal the Advisory Committee's recommendation. If a party wishes to appeal that party must~~

~~— (1) Notify the Secretary and the other party in writing of its intent to appeal the recommendation no later than 10 days after the Advisory Committee meeting;~~

~~— (2) Submit its appeal in writing to the Secretary no later than 30 days after the Advisory Committee meeting; and~~

~~— (3) Provide the other party with a copy of the appeal at the same time it submits the appeal to the Secretary.~~

~~— (b) The non appealing party must file a written response to the appeal. If that party wishes to do so, it must~~

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~~—— (1) Submit its response to the Secretary no later than 30 days after receiving its copy of the appeal, and~~

~~—— (2) Provide the appealing party with a copy of its response at the same time it submits its response to the Secretary.~~

~~—— (c) Neither the agency nor the senior Department official may include any new evidence in its submission, i.e., evidence it did not previously submit to the Advisory Committee.~~

§602.34 What does the Secretary senior Department official consider when making a recognition decision?

The Secretary senior Department official makes a decision regarding recognition of an agency based on the entire record of the agency's application, including the following:

(a) The Advisory Committee's recommendation.

~~(b) The senior Department official's recommendation, if any.~~

(eb) The agency's application and supporting documentation.

(dc) The Department staff analysis of the agency.

(ed) All written third-party comments forwarded by Department staff to the Advisory Committee for consideration at the meeting.

(fe) Any agency response to the Department staff analysis and third-party comments.

(gf) Any addendum to the Department staff analysis.

(hg) All oral presentations at the Advisory Committee meetings.

~~(i) Any materials submitted by the parties, within the established timeframes, in an appeal taken in accordance with §602.33.~~

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§602.35 What information does the ~~Secretary senior~~  
~~Department official's~~ recognition decision include?

(a) The ~~Secretary senior~~ **Department official** notifies the agency in writing of the ~~Secretary's senior~~ **Department official's** decision regarding the agency's ~~application for~~ recognition.

(b) The ~~decision Secretary the senior~~ **Department official may make includes, but is not limited to, approving, denying, limiting, suspending, or terminating recognition, either approves or denies recognition or defers** ~~deferring~~ a decision on the agency's ~~application for~~ recognition.

(1)(i) The ~~Secretary senior~~ **Department official** approves recognition if the agency complies with the criteria for recognition listed in Subpart B of this part and if the agency is effective in its performance with respect to those criteria.

(ii) If the ~~Secretary senior~~ **Department official** approves recognition, the ~~Secretary's~~ recognition decision defines the scope of recognition and the recognition period.

(iii) If the scope or period of recognition is less than that requested by the agency, the ~~Secretary senior~~ **Department official** explains the reasons for approving a lesser scope or recognition period.

(2)(i) If the agency fails to comply with the criteria for recognition in subpart B of this part, or if the agency is not effective in its performance with respect to those criteria, the ~~Secretary senior~~ **Department official** denies, **limits, suspends, or terminates** recognition, unless the ~~Secretary senior~~ **Department official** concludes that a deferral under paragraph (b)(3) of this section is warranted.

(ii) If the ~~Secretary senior~~ **Department official** denies, **limits, suspends, or terminates** recognition, the ~~Secretary senior~~ **Department official** specifies the reasons for this decision, including all criteria the agency fails to meet and all areas in which the agency fails to perform effectively **with respect to the criteria.**

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(3)(i) The **Secretary senior Department official** may defer a decision on recognition if the **Secretary senior Department official** concludes that the agency's deficiencies do not warrant immediate ~~less denial,~~ **limitation, suspension, or termination** of recognition and if the **Secretary senior Department official** concludes that the agency will demonstrate or achieve compliance with the criteria for recognition and effective performance with respect to those criteria before the expiration of the deferral period.

(ii) In the deferral decision, the **Secretary senior Department official** states the bases for the ~~Secretary's~~ **senior Department official's** conclusions, specifies any criteria for recognition the agency fails to meet, and identifies any areas in which the agency fails to perform effectively with respect to the criteria.

(iii) The **Secretary senior Department official** also establishes a deferral period, which begins on the date of the ~~Secretary's~~ **senior Department official's decision**.

(iv) The deferral period may not exceed 12 months, either as a single deferral period or in combination with any expiring deferral period in which similar deficiencies in compliance or performance were cited by the **Secretary senior Department official**, except that the **Secretary senior Department official** may grant an extension of an expiring deferral period at the request of the agency for good cause shown.

(c) ~~The~~ **No** recognition period may ~~not~~ exceed five years. **Prior to the expiration of a period of recognition, an agency desiring renewal must apply under 34 C.F.R. §602.31.**

(d) If the **Secretary senior Department official** does not reach a final decision to approve, ~~or deny, limit,~~ **suspend, or terminate** an agency's ~~application for continued~~ recognition before the expiration of its recognition period, the **Secretary senior Department official** automatically extends the recognition period until the final decision is reached.

(e) **Unless appealed in accordance with 34 C.F.R. §602.36, the senior Department official's decision is the final decision of the Secretary.**

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**§602.36 How may an agency appeal the senior Department official's decision?**

(a) The agency may appeal the senior Department official's decision to the Secretary. If an agency wishes to appeal, the agency must--

(1) Notify the Secretary and the senior Department official in writing of its intent to appeal the decision no later than 10 days after receipt of the decision;

(2) Submit its appeal to the Secretary in writing no later than 30 days after receipt of the decision; and

(3) Provide the senior Department official with a copy of the appeal at the same time it submits the appeal to the Secretary.

(b) The senior Department official may file a written response to the appeal. To do so, the senior Department official must--

(1) Submit a response to the Secretary no later than 30 days after receipt of a copy of the appeal; and

(2) Provide the agency with a copy of the senior Department official's response at the same time it is submitted to the Secretary.

(c) Neither the agency nor the senior Department official may include any new evidence in its submission, i.e., evidence it did not previously submit to the Advisory Committee.

(d) On appeal, the Secretary makes a recognition decision in accordance with 34 C.F.R. §602.34, rendering a final decision after taking into account the senior Department official's decision and the parties' written submissions on appeal, as well as the entire record before the Advisory Committee and the Advisory Committee's opinion. The Secretary notifies the agency in writing of the Secretary's decision regarding the agency's recognition.

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§602.367 May an agency appeal the Secretary's final recognition decision to deny, limit, suspend, or terminate its recognition?

An agency may appeal the Secretary's decision under this part in the Federal courts as a final decision in accordance with applicable Federal law.

~~Subpart D -- Limitation, Suspension, or Termination of Recognition~~

~~Limitation, Suspension, and Termination Procedures~~

~~§602.40 How may the Secretary limit, suspend, or terminate an agency's recognition?~~

~~—— (a) If the Secretary determines, after notice and an opportunity for a hearing, that a recognized agency does not comply with the criteria for recognition in subpart B of this part, or that the agency is not effective in its performance with respect to those criteria, the Secretary~~

~~—— (1) Limits, suspends, or terminates the agency's recognition; or~~

~~—— (2) Requires the agency to take appropriate action to bring itself into compliance with the criteria and achieve effectiveness within a timeframe that may not exceed 12 months.~~

~~—— (b) If, at the conclusion of the timeframe specified in paragraph (a) (2) of this section, the Secretary determines, after notice and an opportunity for a hearing, that the agency has failed to bring itself into compliance or has failed to achieve effectiveness, the Secretary limits, suspends, or terminates recognition, unless the Secretary extends the timeframe, on request by the agency for good cause shown.~~

~~§602.41 What are the notice procedures?~~

~~—— (a) Department staff initiates an action to limit, suspend, or terminate an agency's recognition by notifying the agency in writing of the Secretary's intent to limit, suspend, or terminate recognition. The notice~~

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~~—— (1) Describes the specific action the Secretary seeks to take against the agency and the reasons for that action, including the criteria with which the agency has failed to comply;~~

~~—— (2) Specifies the effective date of the action; and~~

~~—— (3) Informs the agency of its right to respond to the notice and request a hearing.~~

~~—— (b) Department staff may send the notice described in paragraph (a) of this section at any time the staff concludes that the agency fails to comply with the criteria for recognition in subpart B of this part or is not effective in its performance with respect to those criteria.~~

~~§602.42 What are the response and hearing procedures?~~

~~—— (a) If the agency wishes either to respond to the notice or request a hearing, or both, it must do so in writing no later than 30 days after it received the notice of the Secretary's intent to limit, suspend, or terminate recognition.~~

~~—— (1) The agency's submission must identify the issues and facts in dispute and the agency's position on them.~~

~~—— (2) If neither a response nor a request for a hearing is filed by the deadline, the notice of intent becomes a final decision by the Secretary.~~

~~—— (b) (1) After receiving the agency's response and hearing request, if any, the Secretary chooses a subcommittee composed of five members of the Advisory Committee to adjudicate the matter and notifies the agency of the subcommittee's membership.~~

~~—— (2) The agency may challenge membership of the subcommittee on grounds of conflict of interest on the part of one or more members and, if the agency's challenge is successful, the Secretary will replace the member or members challenged.~~

~~—— (c) After the subcommittee has been selected, Department staff sends the members of the subcommittee~~

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~~copies of the notice to limit, suspend, or terminate recognition, along with the agency's response, if any.~~

~~—— (d) (1) If a hearing is requested, it is held in Washington, DC, at a date and time set by Department staff.~~

~~—— (2) A transcript is made of the hearing.~~

~~—— (3) Except as provided in paragraph (c) of this section, the subcommittee allows Department staff, the agency, and any interested party to make an oral or written presentation, which may include the introduction of written and oral evidence.~~

~~—— (e) On agreement by Department staff and the agency, the subcommittee review may be based solely on the written materials. Submitted.~~

~~§602.43 How is a decision on limitation, suspension, or termination of recognition reached?~~

~~—— (a) After consideration of the notice of intent to limit, suspend, or terminate recognition, the agency's response, if any, and all submissions and presentations made at the hearing, if any, the subcommittee issues a written opinion and sends it to the Secretary, with copies to the agency and the senior Department official. The opinion includes —~~

~~—— (1) Findings of fact, based on consideration of all the evidence, presentations, and submissions before the subcommittee;~~

~~—— (2) A recommendation as to whether a limitation, suspension, or termination of the agency's recognition is warranted; and~~

~~—— (3) The reasons supporting the subcommittee's recommendation.~~

~~—— (b) Unless the subcommittee's recommendation is appealed under § 602.44, the Secretary issues a final decision on whether to limit, suspend, or terminate the agency's recognition. The Secretary bases the decision on consideration of the full record before the subcommittee and the subcommittee's opinion.~~

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~~§602.44 How may an agency appeal the subcommittee's recommendation?~~

~~—— (a) Either the agency or the senior Department official may appeal the subcommittee's recommendation. If a party wishes to appeal, that party must ——~~

~~—— (1) Notify the Secretary and the other party in writing of its intent to appeal the recommendation no later than 10 days after receipt of the recommendation;~~

~~—— (2) Submit its appeal to the Secretary in writing no later than 30 days after receipt of the recommendation; and~~

~~—— (3) Provide the other party with a copy of the appeal at the same time it submits the appeal to the Secretary.~~

~~—— (b) The non appealing party may file a written response to the appeal. If that party wishes to do so, it must ——~~

~~—— (1) Submit its response to the Secretary no later than 30 days after receiving its copy of the appeal; and~~

~~—— (2) Provide the appealing party with a copy of its response at the same time it submits its response to the Secretary.~~

~~—— (c) Neither the agency nor the senior Department official may include any new evidence in its submission, i.e., evidence it did not previously submit to the subcommittee.~~

~~—— (d) If the subcommittee's recommendation is appealed, the Secretary renders a final decision after taking into account that recommendation and the parties' written submissions on appeal, as well as the entire record before the subcommittee and the subcommittee's opinion.~~

~~§602.45 May an agency appeal the Secretary's final decision to limit, suspend, or terminate its recognition?~~

~~An agency may appeal the Secretary's final decision limiting, suspending, or terminating its recognition to the Federal courts as a final decision in accordance with applicable Federal law.~~

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**Issue #14:** Agency materials — record keeping and confidentiality

**Regulatory Cite:** §602.15(b), §602.27(f), §602.30(c)

**Summary of Change:**

The requirement that agencies retain materials related to each institution's or program's last two accreditation reviews has been modified. The proposed regulation requires retention of materials related to a single accreditation cycle for each institution or program, and also materials related to substantive change reviews. The requirement in §602.15(b) that addresses agency retention of information about accreditation decisions and related correspondence has been modified to clarify the length of time these materials must be retained, and to include in the requirement the retention of materials related to substantive change decisions. The paragraph §602.30(c) that provided unauthorized assurance to agencies and institutions about the Department's ability to keep confidential all materials submitted by an agency related to its review of institutions or programs has been deleted. A change to §602.27(f) clarifies the obligation of agencies to provide information to the Secretary about accredited institutions or programs for any purpose related to compliance with Title IV requirements.

**Tentative Agreement:** Not yet fully discussed.

**Change:**

§602.15 Administrative and fiscal responsibilities.

\* \* \* \* \*

(b) The agency maintains complete and accurate records of--

(1) Its last ~~two~~ full accreditation or preaccreditation reviews of each institution or program, including on-site evaluation team reports, the institution's or program's responses to on-site reports, periodic review reports, any reports of special reviews conducted by the agency between regular reviews, **substantive change reviews**, and a copy of the institution's or program's most recent self-study; and

(2) All decisions made **throughout an institution's or program's affiliation with the agency** regarding the accreditation and preaccreditation of **any the** institution or program **and substantive changes**, including all correspondence that is significantly related to those decisions.

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§602.30 How does an agency apply for recognition?

\* \* \* \* \*

~~(e) The Secretary does not make available to the public any confidential agency materials a Department employee reviews during the evaluation of either the agency's application for recognition or the agency's compliance with the criteria for recognition.~~

§602.27 Other information an agency must provide the Department.

The agency must submit to the Department--

\* \* \*

(f) If the Secretary requests, information that may bear upon an accredited or preaccredited institution's compliance with its Title IV, HEA program responsibilities, including the eligibility of the institution or program to participate in Title IV, HEA programs. ~~The Secretary may ask for this information to assist the Department in resolving problems with the institution's participation in the Title IV, HEA programs.~~

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**Issue #15:** Providing information to the public

**Regulatory Cite:** §602.16(a)(1)(vii), §602.23(a)

**Summary of Change:**

Modifies requirements for an agency's accreditation standards related publications and advertising. Agencies must now require that their accredited institutions and programs publish information about their effectiveness, particularly their performance regarding student outcomes. Also modifies agency operating procedures to require agencies to make available to the public information about the agency's expectation of performance in relation to each standard or criterion.

**Tentative Agreement:** Not yet fully discussed.

**Change:** [transfer of credit is already set out above]

§602.16 Accreditation and preaccreditation standards.

(a) The agency must demonstrate that it has standards for accreditation, and, **if offered**, 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

--

(1) The agency's accreditation standards effectively address the quality of the institution or program in the following areas:

\* \* \*

(vii) Recruiting and admissions practices, **including those related to transfer of credit and acceptance of credentials**, academic calendars, catalogs, publications, grading and advertising.

(A) The agency must ensure that decisions about **transfer of credit and acceptance of credentials** are not made solely on the source of accreditation of a sending institution or program, as long as the accreditation in question is from a recognized accrediting agency and within that agency's scope, and must also ensure that the institutions or programs it accredits provide a complete description to prospective students of their policies

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concerning transfer of credit and acceptance of credentials.

(B) The agency must require each program and institution it accredits to publish information related to the program's or institution's effectiveness in fulfilling program objectives and institutional mission, especially indicators of the program's or institution's performance regarding student outcomes.

§602.23 Operating procedures all agencies must have.

(a) The agency must maintain and make available to the public, upon request, written materials describing--

\* \* \*

(3) The standards and procedures it uses to determine whether to grant, reaffirm, reinstate, restrict, deny, revoke, terminate, or take any other action related to each type of accreditation and preaccreditation that the agency grants. **The information must explicitly describe the agency's expectation of performance in relation to each standard.**