

# Proposed Regulations Implementing Accreditation Provisions in The Higher Education Opportunity Act of 2008 (HEOA)



August 13, 2009

*A comparison of current regulation with proposed regulations published by the U.S. Department of Education in the August 6, 2009 Federal Register. Updates CHEA's May 27, 2009 chart comparing current regulation with proposed regulations agreed to by the negotiated rulemaking committee on accreditation.*

Topic	Current Regulations	Proposed Regulations (as of August 6, 2009)
<b>Issue #1: Definitions of Distance Education and Correspondence Education</b>	Current rules (§602.3) define “distance education” but not “correspondence education.”	<p>The proposed new rules require accrediting organizations to consider correspondence education as separate and distinct from distance education as this relates to accreditation, preaccreditation and expansion of scope.</p> <p>The new rules reflect the new statutory definition of “distance education.”</p>
<b>Issue #2: Accreditation Team Members</b>	Current rules (§602.15) require accrediting organizations to include competent and knowledgeable educators and practitioners and the public in the conduct of on-site evaluations and to have means to address conflict of interest in relation to the work of evaluation teams.	The proposed new rules require accrediting organizations to provide training for accreditation teams, including attention to distance education and correspondence education where needed. The new rules reflect the statutory language.
<b>Issue #3: Student Achievement Standard</b>	Current rules (§602.16) include the statutory recognition standard that an accrediting organization is to examine success with regard to student achievement as part of its accreditation review.	The proposed new rules state that (1) institutions set their own standards for student achievement (2) accreditors, with their members, set standards for their organizations and (3) the Secretary of Education cannot regulate in this area. The new rules reflect the statutory language.
<b>Issue #4: Operating Procedures – Transfer of Credit</b>	Current rules do not address transfer of credit.	The proposed new rules require accrediting organizations to confirm that the institutions or programs they accredit (1) have transfer of credit policies, (2) make these policies public and (3) make public the criteria by which an institution makes a determination with regard to accepting credits from another institution. The new rules reflect the statutory language.

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<b>Issue #5: Operating Procedures – Teach-out Plan Approval</b>	<p>Current rules (§602.3 and 602.24(c)) call for accrediting organizations to assure that institutions that enter into teach-out agreements (agreements to provide students with appropriate opportunity to complete a program in the event that a program is to be discontinued) with other institutions. The rules describe the requirements for approval of teach-out agreements, including equitable treatment of students.</p>	<p>The proposed new rules establish teach-out plans as well as teach-out agreements and require accreditors to review all plans and agreements. This is applicable to agreements between institutions as well as some changes within institutions. Accreditors are to require institutions to submit teach-out plans for approval if: USDE initiates an action against an institution; the accreditor withdraws or terminates accreditation; the institution ceases operation or a State licensing or authorizing agency revokes the institution's license. In addition, if an institution closes a location that provides 100% of at least one program, a teach-out plan is required. Teach-out agreements can be approved only if they provide for equitable treatment of students and if the teach-out institution has the experience and resources to meet the obligations of existing students.</p>
<b>Issue #6: Definition of Recognition</b>	<p>Current rules (§602.3) do not define "recognition."</p>	<p>The proposed new rules define "recognition" as a USDE determination that an accrediting organization "...complies with the criteria for recognition...and that the agency is effective in its application of these criteria." Recognition remains in effect for the term granted unless USDE officials determine that the accreditor no longer complies with regulatory requirements or has become ineffective in applying its criteria for accreditation.</p>
<b>Issues #7 &amp; 8: Demonstration of Compliance Within 12 Months and Recognition When Not Fully Compliant / Recognition Procedures – Subparts C &amp; D</b>	<p>Current rules (§602.30-602.45) provide for procedures by which USDE receives, reviews and acts upon an application for recognition, including the role of the National Advisory Committee on Institutional Quality and Integrity (NACIQI). Current rules address the appeals process for recognition or adverse action decisions, and requirements on accrediting organizations regarding compliance reporting.</p>	<p>The proposed new rules modify the role of USDE in two ways: (1) USDE officials monitoring and action between committee reviews has been made explicit and enhanced and (2) recognition decisions may be made by USDE officials independent of NACIQI when statutory authority or appropriations for NACIQI end or there are fewer appointed NACIQI members than needed to constitute a quorum.</p>
<b>Issue #9: Direct Assessment Program</b>	<p>Current rules do not address "direct assessment" of student learning.</p>	<p>The proposed new rules define a "direct assessment" program as "...an instructional program that, in lieu of credit hours or clock hours, utilizes direct assessment of student learning, or recognizes the direct assessment of student</p>

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<b>Issue #9: Direct Assessment Program (Continued)</b>		learning by others....” An institution is to obtain approval from USDE for the direct assessment program for Title IV purposes. Accreditors are to evaluate, review and approve such programs and include them in an institution’s grant of accreditation or preaccreditation.
<b>Issue #10: Distance Education and Correspondence Education</b>	Current rules (§602.18) require that the accrediting organization consistently apply and enforce its standards to ensure that any program offered, including through distance education, is of sufficient quality to achieve its objectives throughout the accreditation period.	<p>The proposed new rules distinguish distance education from correspondence education. An accrediting organization can expand its scope to include distance education and correspondence education by notifying the Secretary; a review process is not required.</p> <p>Accrediting organizations are required to assure that institutions track the identity of students who participate in distance education or correspondence education offerings, while protecting students’ privacy and notifying students of any additional costs associated with such verifications.</p>
<b>Issues #11 &amp; 12: Monitoring of Institutions and Programs Throughout Period; Operating Procedures – Growth Monitoring</b>	Current rules (§602.19) call for accrediting organizations to monitor institutions for compliance throughout the accreditation or preaccreditation period.	<p>The proposed new rules require accrediting organizations to monitor programs and institutions in the case of significant growth.</p> <p>The monitoring and reevaluation approaches required of accrediting organizations are described in detail. These include identification of problems with an institution’s continued compliance with accreditation standards that takes into account the strength and stability of institutions and programs. The approaches must include periodic reports and collection and analysis of key data and indicators, identified by the accreditor, including but not limited to fiscal information and measures of “student success.”</p> <p>Any monitoring of “student success” must be done consistent with the new rules of construction in HEOA that institutions are to set their own standards of student achievement and accreditors, with involvement from their members, are to set organizational standards.</p>

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<b>Issue #13: Substantive Change</b>	Current rules (§602.22) operationally define “substantive change” as, e.g., changes in mission, objectives, legal status, degree levels and number of additional locations. In the case of additional locations, the rules describe conditions under which an accrediting organization is to undertake a review of the location for eligibility to participate in Title IV.	<p>The definition of “substantive change” is expanded to include contracting with a non-Title IV certified institution to offer more than 25 percent of one or more educational programs.</p> <p>Additional locations may not be preapproved after a change in ownership resulting in a change in control of the institution. Substantive change decisions may not be retroactive when there is a change in ownership.</p>
<b>Issue #14: Record Keeping and Confidentiality</b>	Current rules (§602.15(b), 602.27(f)) call on accrediting organizations to maintain full and accurate records of all accrediting reviews and decisions for the two most recent cycles of accreditation. Accreditors must provide USDE with any annual report and an updated directory of accredited institutions and programs, a summary of major activities (if requested) and any proposed changes that would alter the accreditor’s scope or compliance with recognition criteria. The accreditor also is required to provide information about an institution or program that may or may not be meeting its Title IV responsibilities and other related information that the Secretary may request.	<p>The proposed new rules modify the record keeping of accrediting organizations. First, accreditors are to provide information about an institution that, on a case-by-case basis and upon request of the Secretary, must be kept confidential. Accreditors are not to inform an institution about an inquiry or investigation conducted by USDE.</p> <p>Second, materials provided by accrediting organizations to USDE for purposes of decision-making are covered by the Freedom of Information Act that provides for public disclosure of such materials upon request.</p> <p>Third, accreditors are now required to retain records for one accreditation cycle, except for decisions made by the agency that must be permanently maintained.</p>
<b>Issue #15: Due Process and Appeals</b>	Current rules (§602.18, 602.23(a), 602.25) call for accrediting organizations to sustain consistency in decision making, make written comments available to the public upon request, provide for third-party comments in the course of an accreditation review and work with institutions and programs to assure accuracy in the reporting of accreditation reviews and accreditation status. Accreditors are to accept, review and act upon complaints received. Accreditors are to have procedures in place that satisfy due process, including an opportunity to appeal certain actions.	The proposed new rules additionally specify how accrediting organizations are to deal with due process and appeals. Accreditors are to (1) provide adequate written specification and notification regarding accreditation, preaccreditation, deficiencies identified at institutions and programs and any adverse actions, including limitation, suspension or termination of recognition, (2) provide an opportunity for institutions to respond in writing, (3) establish an appeals panel to which institutions and programs can appeal an action prior to its becoming final with the power to affirm, amend or reverse adverse actions taken by an accrediting organization, (4) provide additional opportunities for the use of attorneys during appeals and (5) consider financial information in the appeals process as a special case.

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<p><b>Issue #16: Operating Procedures – Summary of Agency Actions</b></p>	<p>Current rules (§602.26) call for the accrediting organization to provide written notice to the Secretary, the appropriate State licensing and authorizing agency, appropriate accrediting organizations and the public with information on the award or renewal of accreditation, a final decision to place an institution or program on probation or a final decision to deny, withdraw, suspend, revoke or terminate accreditation. In addition, accrediting organizations must provide the Secretary, the appropriate State licensing or authorizing agency, appropriate accrediting organizations and the public, upon request, a statement summarizing the reasons for the decision or when an institution or program decides to withdraw voluntarily from accreditation or lets its accreditation lapse.</p>	<p>The proposed new rules require accrediting organizations to provide notification of accrediting decisions to the Secretary, the appropriate State licensing or authorizing agency and other appropriate accrediting organizations at the same time the institution or program of the decision is notified. Additionally, accrediting organization must provide the same parties and the public with a statement summarizing the reasons for the decision along with evidence that the affected institution has been offered the opportunity to provide official comment.</p>