

1/13/94

Bill -

As you requested, enclosed
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DEPARTMENT OF EDUCATION

34 CFR Part 602

RIN 1840-AB82

Secretary's Procedures and Criteria for Recognition of
Accrediting Agencies

AGENCY: Department of Education

ACTION: Notice of Proposed Rulemaking

SUMMARY: The Secretary proposes to amend the regulations governing the Secretary's recognition of accrediting agencies.

The proposed regulations are needed to implement provisions added to the Higher Education Act of 1965 (HEA) by the Higher Education Amendments of 1992. The purpose of the Secretary's recognition of accrediting agencies is to assure that those agencies are, for HEA and other Federal purposes, reliable authorities as to the quality of education or training offered by the institutions of higher education or higher education programs they accredit.

DATE: Comments must be received on or before [insert the 60th day from the date of publication in the FEDERAL REGISTER].

ADDRESSES: All comments concerning these proposed regulations should be addressed to Karen W. Kershenstein, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3036, ROB-3, Washington, D.C. 20202-5244.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Karen W. Kershenstein.

Telephone: (202) 708-7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: In order to approve a postsecondary education institution to participate in the student financial assistance (SFA) programs authorized under Title IV of the HEA and many other Federal programs, the Secretary must determine, in part, that the institution satisfies the statutory definition of an "institution of higher education." Under the HEA and other Federal statutes, one element of that definition requires an eligible institution of higher education to be accredited or preaccredited by an accrediting agency recognized by the Secretary as a reliable authority as to the quality of the education or training provided by the institution. Another element requires an eligible institution to be legally authorized to provide an educational program beyond the secondary level in the State in which it is located. Thus, the statutory definition of an institution of higher education provides the framework for a shared responsibility among accrediting agencies, States, and the Federal government to ensure that the "gate" to SFA programs is opened to only those institutions that provide students with quality education or training worth the time, energy, and money they invest in it. The three "gatekeepers" sharing this responsibility have traditionally been referred to as "the

triad." While the concept of a triad of entities responsible for gatekeeping has had a long history, the triad has not always worked as effectively as it should to ensure educational quality, nor has it served as an effective deterrent to abuse by institutions participating in SFA programs.

For several years, certain institutions participating in SFA programs have failed to provide students with education or training of an acceptable level of quality; they have also failed to treat students fairly. In addition, they have failed to meet acceptable standards of financial responsibility and administrative capability and to adequately protect the SFA program funds entrusted to them. The institutions that have engaged in these abusive practices are not restricted to a particular sector of higher education. Rather, the abuses have been found in all types of institutions participating in SFA programs, including those in the private non-profit and public sectors of higher education as well as those in the proprietary sector.

At the same time, gatekeeping functions have not been carried out effectively. For example, some accrediting agencies have not taken sufficient care to ensure the quality of the education or training provided by the institutions or programs they accredit or to protect student interests when they accredit particular institutions or programs. Moreover, some States have also not taken sufficient care to ensure the quality of the education or training provided by the institutions they authorize

or license to operate in the State or to protect student interests. Finally, the Federal government's management of its responsibilities to determine eligibility and to certify institutions to participate in SFA programs has not always been adequate to prevent abusive practices at institutions that participate in SFA programs.

Consequently, in the Higher Education Amendments of 1992, Public Law 102-325, Congress amended the HEA to provide for a new part H of Title IV entitled "Program Integrity Triad." Under that part, States and accrediting agencies are required to assume major new oversight responsibilities, and States, accrediting associations, and the Secretary are linked to create a stronger and more coordinated evaluation of institutions that participate or wish to participate in the SFA programs. The Secretary believes that the most appropriate approach to this coordinated evaluation of institutions by the three components of the triad is a complementary one with each component focusing its evaluation on its obligations within the context of the HEA. Thus, the focus for accrediting agencies is the quality of education or training provided by the institutions or programs they accredit. For States, which already had responsibility for determining that institutions have the legal authority to operate within the State, the HEA added a new focus: reviewing institutions that meet certain statutory review criteria. The focus of the Secretary's evaluation of institutions is the administrative and financial capacity of those institutions to

participate in the SFA programs. While the specific statutory responsibilities for the three triad members may overlap somewhat, when viewed as a whole, the triad brings together in a coordinated fashion three different yet very important aspects of institutional review.

Subpart 1 of part H establishes a State Postsecondary Review Program under which each State designates a single State postsecondary review entity that is responsible for reviewing institutions of higher education that the Secretary identifies as meeting certain review criteria and for determining whether those institutions should continue to participate in the SFA programs. Subpart 3 specifies the procedures the Secretary uses to determine whether an institution meets the eligibility requirements and has the administrative capacity and financial responsibility to administer the SFA programs.

In subpart 2 of part H, the Secretary is charged with making a comprehensive and careful evaluation of an accrediting agency before recognizing that agency as a reliable authority as to the quality of the education or training offered by institutions or programs that the agency accredits. Moreover, as part of this evaluation, the Secretary is charged with establishing recognition standards that must include "an appropriate measure or measures of student achievement." Accordingly, the standards that the Secretary proposes in this notice of proposed rulemaking require an accrediting agency to make a detailed and careful evaluation of the institutions or programs it accredits and to

include in that evaluation "appropriate measure or measures of student achievement."

These proposed regulations were subject to the negotiated rulemaking process set forth in section 492 of the HEA. Under that process, the Secretary convened four regional meetings in September, 1992 to obtain public involvement in the development of these proposed regulations. The meetings were held in San Francisco, Atlanta, New York, and Kansas City. Before convening the meetings, the Secretary held a meeting in Washington, D.C. in August 1992 to invite comments from interested parties as to the key issues that should be addressed at the regional meetings.

At the four regional meetings, the Secretary provided attendees with a list of issues that needed to be addressed in these proposed regulations. A summary of the responses of the attendees is contained in Appendix A to these proposed regulations.

Individuals and groups who attended the regional meetings nominated individuals to participate in the negotiated rulemaking process. The Secretary selected negotiators from the list of nominees to reflect all the groups that are involved in the SFA programs. With regard to these proposed regulations, the Secretary chose negotiators who reflected the diversity of the accrediting community as well as the interests of States, higher education institutions, and students.

In accordance with section 492(b) of the HEA, the Secretary prepared a draft proposed regulation and negotiated the

provisions of that draft with the negotiators. Two negotiating sessions were held: one in January 1993 and one in February 1993. During those sessions, consensus was reached on several of the provisions that are included in this notice of proposed rulemaking. On the remaining provisions, however, the negotiators agreed to disagree. Where agreement was not reached on a particular provision, that fact is noted in the discussion that follows.

On several issues that were negotiated, there was general discussion on various approaches to take with regard to those issues. The Secretary believes those issues are important enough to include in this preamble possible alternative approaches in order to give the public a fuller understanding of the issues and the available potential solutions. Finally, on most issues where consensus was reached, the negotiators also reached general agreement on the language of a proposed regulatory provision. However, the Secretary wishes to reiterate the remarks of the Federal negotiators that the agreed-to language with regard to a specific provision would be subject to change in the proposed regulations for technical reasons but the substance of the provision would remain unchanged, wherever possible. Where a substantive change was made in a particular provision, that fact is noted in the discussion that follows, and an explanation of the reasons for the change is provided.

Significant Changes Proposed by the Regulations.

The following discussion reflects proposed significant changes to the existing regulations governing the Secretary's Procedures and Criteria for Recognition of Accrediting Agencies. The changes are discussed in the order in which they appear in the proposed regulations. If a provision applies to more than one section or is included in more than one section, it is discussed the first time it appears with an appropriate cross-reference to its other appearances. The general format for the discussion of each section is to state the appropriate statutory provision for that section and to explain any provisions that interpret or clarify the statute that the Secretary believes are necessary to implement the statutory provision through regulation.

In developing these proposed regulations, the Secretary has regulated as little as possible. He has regulated narrowly to the law, except where the Secretary deems further interpretation is necessary. In these cases, either the proposed regulations include the specific language agreed to by negotiators during negotiated rulemaking, if an agreement was reached, or the Secretary proposes language where agreement was not reached. In both cases, the Secretary solicits comments on the clarifications and interpretations included in the proposed regulations.

Subpart A - General Provisions

§602.1 Purpose.

Current regulations permit the Secretary to recognize any accrediting agency the Secretary determines to be a reliable authority as to the quality of postsecondary education or training provided by the institutions or programs it accredits. However, section 496(m) of the HEA now authorizes the Secretary to recognize only those agencies that accredit institutions of higher education or higher education programs for the purpose of enabling those institutions or programs to establish eligibility to participate in programs administered either by the Secretary or by other Federal agencies. In §602.1 of the proposed regulations, the Secretary reiterates the statutory provision.

§602.2 Definitions.

Most of the definitions included in the proposed regulations are self-explanatory. Three, however, warrant additional comment based on the discussions that took place during the negotiated rulemaking sessions.

Institution of higher education. In the proposed regulations, the Secretary defines an institution of higher education to be an educational institution that qualifies or may qualify as an eligible institution under 34 CFR Part 600, Institutional Eligibility under the Higher Education Act of 1965, as amended. Some of the non-Federal negotiators, however, pointed out that it is not clear that this definition includes certain types of hospitals and health care facilities. For this reason, the

Secretary wishes to make clear that a hospital or health care facility may qualify as an eligible institution of higher education if the hospital or facility satisfies any definition of that term, i.e., a "public or nonprofit private institution of higher education," a "proprietary institution of higher education," or a "postsecondary vocational institution."

Prebaccalaureate vocational education programs and vocational education programs.

In §602.2, the Secretary proposes to define the term "vocational education program" based upon the statutory provision included in the definition of various types of eligible institutions of higher education. Thus, the Secretary defines a vocational education program as a program that "prepares students for gainful employment in a recognized occupation." (See, for example, section 481(b)(1) of the HEA for a "proprietary institution of higher education;" section 481(c)(1) for a "postsecondary vocational institution;" and the second sentence of section 1201(a) of the HEA for a "public and private nonprofit institution of higher education.")

This definition, if read literally, could be viewed as including all postsecondary programs. To avoid this overreaching conclusion, the Secretary proposes that the vocational education programs that trigger actions under these regulations are prebaccalaureate vocational education programs. See, for example, §602.24(c). This latter term is defined as a vocational education program that leads to a certificate, degree, or other

education credential that is less than a bachelor's degree. The Secretary invites comment on these definitions, as well as alternative definitions, in light of the fact that the non-Federal negotiators could not agree among themselves as to the acceptability of these definitions.

One alternative definition for prebaccalaureate vocational education that the Secretary is considering is "undergraduate vocational education that leads to a certificate or other educational credential but not to a degree." The Secretary is considering this definition in order to ease the burden on institutions whose vocational education programs leading to an associate degree would also trigger special action under the proposed regulations.

If this alternative definition were to be adopted, however, the Secretary is concerned that some institutions might try to stretch their non-degree programs into associate-degree programs simply to avoid the additional requirements that, as a result of these proposed regulations, accrediting agencies will have to impose on institutions that provide prebaccalaureate vocational education. The Secretary invites comments on the alternative definition of prebaccalaureate vocational education and suggestions for preventing unwarranted course or program stretching, should the alternative definition be adopted. The Secretary also wishes to know if commenters believe there are other risks associated with adopting the alternative definition

that might outweigh any benefits derived by the degree-granting sector of the higher education community through its adoption.

§602.3 Organization and membership.

Section 496(a) of the HEA requires accrediting agencies whose accreditation enables the institutions they accredit to participate in programs authorized under the HEA to be administratively and financially separate from and independent of any related, associated, or affiliated trade association or membership organization. The term "separate and independent" is defined in section 496(b) of the HEA. In §602.3(a), (b), and (c) of the proposed regulations, the Secretary reiterates the statutory requirement and definition.

During the negotiated rulemaking sessions, non-Federal negotiators expressed concern that the "separate and independent" requirement would prevent any joint use of personnel, services, equipment, or facilities by an accrediting agency and a related, associated, or affiliated trade association or membership organization, a practice that is fairly common among accrediting agencies and helps reduce the cost of accreditation. To address this concern, in §602.3(d) the Secretary proposes conditions that accrediting agencies must meet regarding the joint use of personnel, services, equipment, or facilities if that use is not to be considered a violation of the "separate and independent" requirement. The Secretary believes this approach respects the intent of Congress yet eases the financial burden on agencies to implement the new requirement.

Section 496(a) of the HEA permits the Secretary to waive the "separate and independent" requirement if the agency is one that, for purposes of determining eligibility for SFA programs, either conducts accreditation through a voluntary membership organization of individuals participating in a profession or has as its principal purpose the accreditation of programs within institutions that are accredited by another agency recognized by the Secretary. In §602.3(e) of the proposed regulations, the Secretary proposes conditions under which the Secretary may waive the "separate and independent" requirement. Specifically, the Secretary proposes to grant an agency's request for a waiver if the agency demonstrates to the Secretary's satisfaction that the existing relationship between the agency and the trade association or membership organization has not compromised the independence of its accreditation process.

In providing comments with regard to this section, the Secretary advises commenters that only the type of accrediting agency described in §602.3(b)(4) may seek a waiver of the separate and independent requirement under the law. Thus, the Secretary is precluded by statute from waiving this requirement for any other type of accrediting agency.

Finally, the Secretary wishes to note that the language in §602.3(c)(2) specifying that no less than one-seventh of an agency's decision-making body must consist of representatives of the public is derived from language in the Conference Report stating that the House agrees to the requirement in the Senate

bill that "at least one out of every seven members of an accreditation association's board be members of the general public."

§602.4 Submission of information to the Secretary by recognized accrediting agencies.

Section 496 does not specifically address the type of information that a recognized accrediting agency must submit to the Secretary to enable the Secretary to evaluate whether the agency continues to comply with the requirements for recognition throughout its recognition period. In §602.4(a), (b), (c), (d), and (f) of the proposed regulations, the Secretary proposes various types of information that recognized agencies must routinely submit to the Secretary during their recognition period. All of the items on the list were agreed to by the negotiators, who did not perceive them to be particularly burdensome to agencies to provide.

Of particular note is the requirement in §602.4(e) that accrediting agencies must submit to the Secretary, upon request, information to assist the Secretary in resolving problems with any institution or program accredited by the agency, provided the Secretary's request does not conflict with the agency's policies on confidentiality with respect to its records on its institutions or programs. This provision reflects the agreement of negotiators. However, the Secretary has reconsidered the "confidentiality" aspect of this provision because of a concern that certain information that the Secretary may need to resolve a

problem with a particular institution or program may not be obtainable from an agency because of its confidentiality policies. The Secretary believes this situation is untenable because it allows agencies to withhold information that the Secretary may need to carry out the Secretary's responsibilities under the Act, such as determining whether an institution or program accredited by the agency should remain eligible to participate in SFA programs. The Secretary seeks suggestions for resolving this dilemma in a manner that respects both the agency's need for confidentiality and the Secretary's need for information.

The Secretary also is considering adding to this section a requirement that an accrediting agency must refer to the Department's Office of Inspector General any fraudulent activities it discovers on the part of an institution or program that it accredits, if the institution or program participates in Department programs. The Secretary invites comments on this possible additional requirement and alternative approaches to sharing information among members of the triad concerning suspected fraudulent activity by an institution or program.

Subpart B - Recognition and Termination Procedures

Section 496(o) of the HEA requires the Secretary to provide, by regulation, the procedures the Secretary uses for recognizing accrediting agencies. In the proposed regulations, the Secretary proposes to specify procedures for recognizing accrediting agencies in far greater detail than in current or previous

regulations. The Secretary believes this greater detail is necessary to ensure that all agencies applying for recognition, as well as other interested parties, have a clear understanding of the entire process.

The Secretary acknowledges that the application for recognition constitutes a significant burden on agencies seeking recognition by the Secretary. For this reason, the Secretary is considering ways to minimize the burden. One approach under consideration is to allow an agency to provide a simple statement of assurance, along with supporting documentation, that it meets certain requirements for recognition. The Secretary estimates that at least two-thirds of the requirements in the proposed regulations are amenable to this type of approach, and the resultant savings in time, effort, and cost to prepare an application for recognition would be significant. The Secretary invites comments on this approach and alternative methods for minimizing the burden on agencies of the application process without adversely affecting the Secretary's ability to conduct a thorough evaluation of the agency.

The recognition process, as described in subpart B of the proposed regulations, consists of an application to the Secretary by the agency, an analysis of the application by a designated Department official, an opportunity for a written response to that analysis by the applicant agency, a review of the agency's application by the National Advisory Committee on Institutional Quality and Integrity (Advisory Committee), a recommendation to

the Secretary by the Advisory Committee with regard to that application, an opportunity to contest the Advisory Committee's recommendation by either the agency or the designated Department official, and, finally, a decision on that application by the Secretary. The analysis of an agency's application by the designated Department official includes publication of a notice of the agency's application in the FEDERAL REGISTER inviting comment on the agency's compliance with the requirements for recognition and a review by the designated Department official of any public comment received. The Secretary believes the new procedures for recognition allow an agency a full and fair review of its application.

Additional appeal procedures. The proposed regulations add two key new steps to the recognition process. First, in §602.11(b) the Secretary gives an accrediting agency seeking recognition by the Secretary an opportunity to respond in writing to the designated Department official's analysis of its application for recognition before the application is reviewed by the Advisory Committee. Second, in §602.13(b), after the Advisory Committee completes its review of the agency's application and makes a recommendation to the Secretary on the agency's application, the Secretary gives both the agency and the designated Department official an opportunity to contest the Advisory Committee's recommendation. The contesting party, however, may not submit any evidence to the Secretary that it did not submit to the Advisory Committee. This restriction is to ensure that the

Advisory Committee's authority is not circumvented. The Secretary believes that in general the only reasonable grounds for contesting an Advisory Committee recommendation would be if the contesting party could demonstrate that the Advisory Committee either misunderstood or did not take into proper account certain information presented by the contesting party.

The negotiators reached consensus during the negotiated rulemaking sessions on the first step. The Secretary added the second step after the negotiated rulemaking sessions ended to address the non-Federal negotiators' concerns about the lack of sufficient appeal mechanisms for agencies prior to the Secretary's final decision. The Secretary believes that these two new steps in the proposed recognition process provide agencies with sufficient opportunity to present any concerns they might have regarding the recommendation of either the designated Department official or the Advisory Committee before the Secretary reaches a decision on the agency's application.

Announced and unannounced site visits by the Secretary. Section 496(n) of the HEA requires the Secretary to conduct an independent analysis of an agency's application for recognition, which must include a site visit to the accrediting agency and may, at the Secretary's discretion, include site visits to representative institutions or programs accredited by the agency. Section 496(n) of the HEA also provides that the site visits may be unannounced, as appropriate. Accordingly, both §602.10(b) and §602.11(b) of the proposed regulations provide for unannounced

site visits. Specifically, the Secretary proposes to conduct unannounced site visits only, where necessary in the judgment of the Secretary, to obtain information to verify the agency's compliance with the requirements for recognition and the information would not be forthcoming in an announced site visit. The Secretary wishes to make it clear that this Secretarial judgment is not subject to challenge by an accrediting agency.

In §602.11(b), the Secretary also proposes that the Secretary's evaluation of an agency may include a review of information directly related to the institutions or programs accredited by the agency, as this information relates to the institution's or program's compliance with the agency's standards, the effectiveness of those standards, or the agency's application of those standards. The Secretary believes that the inclusion of this language in the proposed regulations, which was agreed to by negotiators, provides the agency, the institutions and programs it accredits, and the general public with a clear understanding of the scope of the Secretary's evaluation of an agency.

In sum, to implement section 496(n) of the HEA, the proposed regulations make it clear that in evaluating an agency's application for recognition, the Secretary may not and does not depend solely on written submissions from the accrediting agency or on announced visits to the agency or its member institutions or programs. The Secretary makes a more thorough and independent evaluation of an agency's application for recognition, including,

where appropriate, unannounced visits to ensure that information available to the designated Department official is comprehensive, accurate, and unbiased, and to ensure that the agency is actually carrying out its stated policies and procedures.

Scope of recognition requirements. Under §602.10(b) of the current regulations, in order for an accrediting agency to be recognized by the Secretary, the agency has to meet each recognition criterion taken as a whole unless it can demonstrate to the Secretary's satisfaction that one or more criteria should not be applied. In §602.13(c) of the proposed regulations, the Secretary requires an agency to meet each of the requirements contained in this part. However, in §602.13(e) the Secretary proposes that the Secretary may exercise discretion and grant recognition to an agency that does not comply with each requirement if the Secretary determines that the agency's effectiveness is not impaired by its noncompliance. Such discretion might, for example, be exercised if an accrediting agency is unable to conduct an unannounced site visit, as required by §602.24, because the program being evaluated is offered on a military installation that requires prior approval before any visitors are permitted on the installation. The Secretary believes that Secretarial discretion provides the desired flexibility that non-Federal negotiators sought during the negotiated rulemaking sessions.

Consensus was reached by negotiators regarding the elements to be included in the scope of recognition the Secretary grants

to an agency, i.e., geographic area, the degrees or certificates awarded, the types of courses or programs offered, and the length of the recognition period. In the proposed regulations, the Secretary has clarified that an agency's scope of recognition does not automatically extend to any preaccreditation status it offers. Rather, when an agency formally applies for recognition, it must include the types of preaccreditation status for which it seeks recognition, and the Secretary grants recognition to an agency for each preaccreditation status if the agency complies with all the requirements for recognition with regard to that preaccreditation status.

§602.14 Limitation, suspension, or termination of recognition.

Section 496(1) of the HEA permits the Secretary to limit, suspend, or terminate the Secretary's recognition of an accrediting agency before the completion of the agency's recognition period if the Secretary determines that the agency has failed to meet any of the requirements of part 602. In §602.14 of the proposed regulations, the Secretary establishes the procedures to be followed before the Secretary may limit, suspend, or terminate an agency's recognition. The proposed procedures allow the agency to request a hearing to contest that action.

The Secretary proposes that, if an agency requests a hearing, the hearing will be conducted by the Advisory Committee. However, the Secretary further proposes that the hearing may be conducted by a subcommittee of the Advisory Committee, consisting

of three members of the Advisory Committee, if the schedule of the full Advisory Committee would not permit a hearing to be held in a timely manner. After evaluating the evidence presented before it, the Advisory Committee or subcommittee makes a recommendation to the Secretary as to whether the sanction proposed by the designated Department official, no sanction, or another sanction is warranted. Any hearing held under this section is open to the public.

After the negotiated rulemaking sessions, in response to non-Federal negotiators' concerns about the lack of sufficient appeal mechanisms, the Secretary added to this section a provision that either party in a hearing may appeal the Advisory Committee's or subcommittee's recommendation to the Secretary.

§602.15 Requests for reconsideration of the Secretary's decision.

Section 496(o) of the HEA requires the Secretary to provide in regulation the procedures to be followed by an accrediting agency for the appeal of the Secretary's decision regarding its application for recognition. Accordingly, in §602.15 of the proposed regulations, the Secretary permits an agency to request reconsideration of a final decision of the Secretary regarding either the agency's application for recognition or the limitation, suspension, or termination of the agency's recognition. However, §602.15(a)(2) proposes that a request for reconsideration may be made only under limited conditions. Under these limited conditions, the agency may request reconsideration

only if it demonstrates that it has new information that could not have been presented previously and that the information is likely to result in reversal of the Secretary's decision.

While, as noted by the non-Federal negotiators at the negotiated rulemaking sessions, the grounds for reconsideration are narrow, the Secretary believes the narrow grounds are appropriate. Adverse decisions regarding an agency's application for recognition are made by the Advisory Committee and forwarded to the Secretary. Under §602.13, the agency may appeal the Advisory Committee's recommendation to the Secretary. Similarly, under §602.14, the agency may appeal an adverse Advisory Committee or subcommittee recommendation to the Secretary under a limitation, suspension or termination proceeding. Therefore, the Secretary believes that reconsideration requests should be narrowly circumscribed. The Secretary notes that non-Federal negotiators requested opportunities for agencies to request reconsideration in cases where the Secretary had not established appeal procedures. Given the provisions for appeal that are now in the proposed regulations, the Secretary requests public comment on whether reconsideration procedures are necessary.

The Secretary wishes to make clear that any agency that fails to notify the Secretary of its intent to file a written request for reconsideration within the 10-day time frame specified in the regulations forfeits its right to reconsideration. Additionally, the Secretary wishes to reiterate that, in general, any failure to meet a required deadline date in

any appeal to the Secretary results in a forfeiture of that appeal right.

While consensus was reached during the negotiated rulemaking sessions that an agency should have 45 days to submit its written request for reconsideration, the Secretary questions whether a shorter period--30 days--is sufficient for the agency to prepare an adequate request, given the fact that 30 days is the usual time frame specified by the Department for other types of appeals to the Secretary. The Secretary requests comments on the shorter period.

Because requests for reconsideration are restricted to instances where the Secretary's decision involves denial, limitation, suspension, or termination of an agency's recognition, it is anticipated that, due to the extensive material that must be reviewed, the Secretary will require more than 30 days to reach a final decision on an agency's request for reconsideration. Non-Federal negotiators were concerned that there be some time limit imposed to bring the issue to closure. Accordingly, the Secretary is proposing a 60-day time frame for reaching a final decision on an agency's request for reconsideration.

§602.16. Appeals procedures.

As mentioned in §602.15, section 496(o) of the HEA requires the Secretary to provide for the appeal of the Secretary's decision regarding an accrediting agency's application for recognition. In §602.16 of the proposed regulations, the

Secretary provides for an appeal to the Federal courts of all final decisions of the Secretary regarding an agency's application for recognition. During the negotiated rulemaking sessions, non-Federal negotiators urged an appeals procedure other than through the courts, as, for example, through an administrative law judge. However, the Secretary believes that there can be no administrative appeal within the Department of a Secretarial decision since the Secretary, as head of the Department of Education, makes all final decisions on behalf of the Department. It should be noted, however, that in response to the non-Federal negotiators' concerns, the Secretary has modified the proposed recognition procedures to include an opportunity for an agency to appeal an Advisory Committee's recommendation to the Secretary before the Secretary reaches a final decision on the agency's application. The proposed limitation, suspension, and termination procedures also have been modified to provide for an appeal to the Secretary of an Advisory Committee or subcommittee recommendation.

Subpart C - Criteria for Secretarial Recognition

§602.22 Demonstration of accreditation experience.

Section 496(a)(1) of the HEA requires accrediting agencies to demonstrate experience in operating as an accrediting agency as a condition for recognition. In §602.22 of the proposed regulations, the Secretary defines what a demonstration of accrediting experience must include, basically reiterating the requirements for experience set forth in §602.14 of the current

regulations. However, §602.22 does not contain the requirement set forth in §602.14(c) of the current regulations that agencies must demonstrate that their policies, evaluation methods, and decisions are accepted throughout the United States by recognized accrediting agencies. The Secretary is aware, as argued by the non-Federal negotiators, that this requirement is an important indicator of an agency's acceptance. On the other hand, this requirement has been subject to criticism by persons and institutions interested in forming new accrediting agencies. These individuals and agencies have often expressed concern to the Secretary that this requirement imposes unfair hurdles for them and unduly stifles competition among accrediting agencies. The Secretary proposes to eliminate this requirement because the Secretary believes that it is inappropriate to require acceptance by recognized agencies as a condition for recognition even though evidence of acceptance by recognized accrediting agencies provides some measure of an agency's reliability.

§602.23 Application of Standards.

Current regulations require accrediting agencies to maintain a systematic program of review designed to assess the validity and reliability of their criteria, procedures, and standards and their relevance to the educational and training needs of affected students. As this requirement is fundamental to sound accrediting practice, there was consensus among negotiators that it should continue to be part of any regulations governing the accrediting agency recognition process. However, the language of

the requirement has been changed in the proposed regulations from the language of the current regulations in response to the non-Federal negotiators' concerns about various technical interpretations of the words "validity and reliability." The substance of the requirement, as expressed in §602.23(b)(5), is unchanged. The Secretary wishes to emphasize the importance of this requirement, which is fundamental to the establishment of sound standards for the accreditation process and the determination of educational quality.

§602.24 Accreditation processes.

Section 496(c)(1) of the HEA requires that, in addition to the announced on-site review that is part of the regular accreditation process, an accrediting agency whose accreditation enables the institutions it accredits to participate in programs authorized under the HEA must conduct, some time during any accreditation or preaccreditation period, at least one unannounced on-site review at each institution that provides vocational education or training. Accordingly, in §602.24(c) of the proposed regulations, the Secretary requires unannounced site visits by these accrediting agencies. However, as noted in the discussion of §602.2, if the term "vocational education" is interpreted literally, it could be viewed as including all postsecondary education, and, under this interpretation, accrediting agencies would have to conduct unannounced site visits to all institutions. To avoid this outcome, in §602.24(c) of the proposed regulations, the Secretary limits the type of

vocational education programs that trigger unannounced visits to the prebaccalaureate level. As non-Federal negotiators were divided among themselves as to the definition of vocational education, they did not reach consensus on this point.

As mentioned in the discussion under §602.2, the Secretary is considering an alternative definition of prebaccalaureate vocational education that would not require unannounced site visits to degree-granting institutions whose prebaccalaureate vocational programs lead to the associate degree. This would minimize the burden of the new requirement for unannounced visits, hopefully without any adverse consequences. The Secretary invites comments on this approach and suggestions for alternative ways of reducing the burden without eliminating from review those institutions offering vocational education that have abused the Title IV program.

§602.25 Additions to or substantive changes in educational programs.

Section 496(a) of the HEA authorizes the Secretary to recognize accrediting agencies that are reliable authorities as to the quality of the education or training provided by the institutions or programs they accredit. Section 496 does not specifically address the manner in which accrediting agencies evaluate either new programs begun by institutions after their last grant of accreditation or preaccreditation or programs that are substantially changed after the institution is accredited or preaccredited. However, the Secretary believes that an agency

cannot be a reliable authority as to the quality of education or training offered by an institution if the agency does not assess those new or substantively changed programs. Accordingly, in §602.25 of the proposed regulations, the Secretary establishes the framework for a policy that accrediting agencies must have to address additions to and substantive changes in educational programs. Specifically, in §602.25(a) the Secretary proposes that an accrediting agency may include within its previous grant of accreditation or preaccreditation an educational program that an institution initially offers or substantively changes after that grant of accreditation or preaccreditation only if the agency specifically evaluates and approves the program. The Secretary proposes this requirement based upon the past actions of some accrediting agencies.

Certain accrediting agencies that accredit institutions offering specific prebaccalaureate vocational education programs have, on occasion, extended their accreditation to additional programs that these institutions offered after being accredited, without evaluating the quality of those additional programs, even though the additional programs were totally unrelated to the programs initially accredited. For example, an accrediting agency that accredited an institution that offered cosmetology courses extended its accreditation to additional programs that the institution subsequently offered in jet airplane mechanics and air conditioning and refrigeration without ever evaluating

the quality of those additional programs. The Secretary believes that this practice violates the purpose of accreditation.

On the other hand, the Secretary believes that prior approval of programs is not necessary in all circumstances, a belief shared by negotiators, although no consensus was reached as to the circumstances. In §602.25(b) the Secretary proposes an exception to this requirement if the institution notifies the accrediting agency of the new or substantially changed program before it is offered, and the new or substantially changed program does not provide prebaccalaureate vocational education. The Secretary proposes this exception because the Secretary believes that new bachelor and higher degree programs are thoroughly reviewed by a variety of entities before they may be offered. Most institutional accrediting agencies, for example, require institutions to have thorough internal reviews of all new degree programs by curriculum committees, governing boards, and other appropriate units within the institution and to obtain appropriate state authorization for those new degree programs before they are offered. However, even though an accrediting agency may not be required by these proposed regulations to evaluate a new or substantially changed program before it is offered under §602.25(b), accrediting agencies are certainly free, and encouraged, to do so under their own policies.

The Secretary acknowledges that the task of deciding which programs should require preapproval by accrediting agencies is a difficult one and seeks suggestions from commenters. For

commenters who suggest that preapproval be allowed for prebaccalaureate vocational education programs that are "related" to a previously accredited program, the Secretary requests specific suggestions on how to determine whether the new or substantially changed program is "related" to the other program.

The Secretary notes that most accrediting agencies already have a definition of "substantive change" but observes that there is considerable variation among agencies as to what this term means. Most agencies' definitions generally include the following kinds of changes: a substantial change in the length of a program, its content, or both, as, for example, when a secretarial program increases from 1200 clock hours to 1600 clock hours to provide a 400-hour component in office automation; a change from a traditional 15-week semester format to an alternate weekend format; and a change from a certificate program to an associate degree program. The Secretary seeks to require preapproval for these and similar types of changes and proposes that an agency's definition of a substantive change in an educational program include, at a minimum, a substantial change in the number of clock or credit hours, the number of weeks, or the content of a program, a change in the type of program offered, a change in the credential awarded for completion of the program, and a change in the manner in which the institution measures the educational quantity of the program from clock hours to credit hours. The Secretary invites comments on this approach as well

as suggestions for alternative approaches to defining which types of programs require preapproval.

Finally, the Secretary acknowledges that the proposed requirement for a substantive change policy may result in increased costs to agencies and, in turn, institutions. However, for the reasons noted above, the Secretary believes the benefits far outweigh the costs. The Secretary also wishes to note that there was general consensus among non-Federal negotiators about the appropriateness of including a substantive change requirement in the proposed regulations. However, not all of the negotiators agreed that the approach proposed by the Secretary was appropriate.

§602.26 Required accreditation standards.

Section 496 of the HEA authorizes the Secretary to recognize accrediting agencies that are reliable authorities as to the quality of the education or training provided by the institutions or programs only if the agencies satisfy standards established by the Secretary. Section 496(a) specifically requires the Secretary to establish standards and requires the standards to include "an appropriate measure or measures of student achievement."

Section 496(a)(5) of the HEA provides that the Secretary's standards for recognition of accrediting agencies must require that an accrediting agency establish accreditation standards that assess 12 areas pertaining to the institutions or programs it accredits. These areas are: (1) curricula; (2) faculty; (3)

facilities, equipment and supplies; (4) fiscal and administrative capacity as appropriate to the specified scale of operation; (5) student support services; (6) recruiting and admissions practices, academic calendars, catalogs, publications, grading and advertising; (7) program length and tuition and fees in relation to the subject matters taught and the objectives of the degrees or credentials offered; (8) measures of program length in clock hours or credit hours; (9) success with respect to student achievement in relation to the institution's mission; (10) default rates in student loan programs under Title IV of the HEA; (11) record of student complaints received by, or available to, the accrediting agency; and (12) the institution's compliance with its program responsibilities under Title IV of the HEA. However, under section 496(a)(5), accrediting agencies that have as their principal purpose the accrediting of institutions of higher education or higher education programs to enable them to participate in Federal programs not authorized under the HEA are exempt from the requirement to have standards for the areas listed in (7), (8), (9), (10), and (12).

The Secretary notes that most accrediting agencies already have standards addressing many of these areas. However, to the extent that an agency does not have standards for all of them, there is an increased cost to that agency to develop and implement the new standards. The Secretary believes that the proposed regulations minimize the increased cost by allowing agencies maximum flexibility to set their standards to best suit

their needs and the needs of the institutions or programs they accredit.

If the ultimate purpose of section 496 is to authorize the Secretary to recognize accrediting agencies that are reliable authorities as to the quality of the education or training provided by the institutions or programs they accredit, so that recognized agencies only accredit institutions or programs of demonstrated quality, then the Secretary believes that each agency's standard for a particular area listed in section 496(a)(5) must evaluate the quality of the effort the institution or program is making in that area.

Accordingly, in §602.26 of the proposed regulations, the Secretary requires accrediting agencies to have standards assessing the 12 areas cited in section 496(a)(5) of the HEA. In §602.26(a)(3), the Secretary exempts accrediting agencies whose accreditation enables their institutions or programs to participate only in Federal programs not authorized under the HEA from having to establish standards for the areas listed under (7), (8), (10), and (12). However, the Secretary does not exempt these agencies from the requirement to establish standards that assess success with respect to student achievement. The Secretary believes that the standards specified in §602.26(b)(9) fulfill the requirement in section 496(a) of the HEA that the Secretary recognize accrediting agencies that meet the Secretary's standards, which must include "an appropriate measure or measures of student achievement." Furthermore, the Secretary

believes that any determination by an accrediting agency that the program or institution it accredits provides quality education or training must be based, in part, on an assessment of the achievement of students enrolled in the institution or program. The Secretary notes that the exemption provided in section 496(a)(5) of the HEA for certain standards was not discussed during negotiated rulemaking because it was added as a technical legislative amendment after the negotiations took place.

Each of the 12 required standards is discussed below. The title for each standard is based on the statutory language used in section 496(a)(5) for that standard. Unless otherwise noted, consensus was reached among negotiators as to language for each of the standards.

The proposed regulatory language in §602.26(b) for standards addressing areas (1), (2), (3), and (5) follows the recommendations of negotiators and simply restates the law. These four provisions require that, to be recognized by the Secretary, an accrediting agency must adopt standards under which it evaluates the quality of an institution's or program's curricula; faculty; facilities, equipment, and supplies; and student support services. The Secretary has reexamined the manner in which these four standards are described in the proposed regulations and believes that it may be more useful to provide guidance as to the manner in which quality may or should be discussed under these standards than to simply restate the law. The Secretary requests comment on this matter. To assist

commenters in this regard, for each of the four areas, the Secretary examined the standards of several accrediting agencies to determine how these agencies addressed quality standards for those areas and presents the results of that examination under the appropriate topic. The Secretary invites comments on those approaches and additional suggestions for focusing on quality assessment.

§602.26(b)(1) Curricula. The Secretary found that the standards most accrediting agencies have adopted to evaluate an institution's or program's curricula relate to the overall quality of the curricula, its appropriateness in light of an institution's or program's educational objectives and the specific degrees or certificates awarded, and the mechanisms the institution or program uses to evaluate the curricula and make modifications. The Secretary considers all of these to be elements of good practice in the assessment of an institution's or program's curricula. Accordingly, the Secretary requests specific comment as to whether the manner in which these agencies handle standards for curricula would be a useful addition to these regulations. The Secretary also invites additional comments regarding other elements that the Secretary should include in the evaluation of accrediting agencies for compliance with this requirement.

§602.26(b)(2) Faculty. The Secretary found that the standards most accrediting agencies have adopted to evaluate an institution's or program's faculty relate to the overall quality

of the faculty, the extent to which the institution or program relies on part-time faculty to teach students, and the effectiveness of the teaching provided by all faculty. Some agencies also include in their standards an assessment of the procedures an institution or program uses for the hiring, promotion, evaluation, and professional development of faculty, while other agencies merely examine these issues in light of whether the institution's or program's policies provide for the fair and equitable treatment of faculty. The Secretary considers all of these to be elements of good practice in the assessment of an institution's or program's faculty. Accordingly, the Secretary requests specific comment as to whether the manner in which these agencies handle standards for faculty would be a useful addition to these regulations. The Secretary also invites additional comments regarding other elements that the Secretary should include in the evaluation of accrediting agencies for compliance with this requirement.

§602.26(b)(3) Facilities, equipment, and supplies. The Secretary found that the standards most accrediting agencies have adopted to evaluate an institution's or program's facilities, equipment, and supplies relate to the overall quality of these support areas. Specifically, the Secretary found that most accrediting agencies assess, in light of an institution's or program's educational objectives, the adequacy and appropriateness of: libraries, learning resource centers, and other academic and instructional support facilities; the

equipment and supplies that support the instructional program; and any other physical resources the institution or program uses to achieve its educational objectives. The Secretary considers all of these elements to be good practices for the assessment of facilities, equipment, and supplies. Accordingly, the Secretary requests specific comment as to whether the manner in which these agencies handle standards for this area would be a useful addition to these regulations. The Secretary also invites additional comments regarding other elements that the Secretary should include in the evaluation of accrediting agencies for compliance with this requirement.

§602.26(b)(4) Fiscal and administrative capacity as appropriate to the specified scale of operations. Section 496(a)(5)(D) requires an accrediting agency to have standards that address the fiscal and administrative capacity of an institution or program in relation to its scale of operation. It is the Secretary's view that the purpose of this requirement is to enable the agency to determine whether the institution or program is fiscally and administratively sound and will likely remain so for a future period. Because the financial condition of an institution is subject to change, the Secretary proposes that an agency must make this determination each time it grants accreditation, preaccreditation, or reaccreditation. The Secretary also proposes that an agency must examine each institution's financial capacity in sufficient depth on an annual basis to determine if the financial capacity of the institution threatens the ability

of the institution or program to continue to meet the agency's standards and, if so, to take appropriate follow-up action. The Secretary invites comments as to whether this follow-up action should include notifying the Secretary of the institution's financial condition.

The Secretary believes that the enhanced financial monitoring by accrediting agencies that is required by these proposed regulations will provide increased protection to students with regard to problems arising from an institution's financial instability.

§602.26(b)(5) Student support services. The Secretary found that the standards most accrediting agencies have adopted to evaluate an institution's or program's student support services relate to the overall quality and extent of the services provided and their appropriateness in light of the institution's or program's mission and the types of students it admits. The Secretary considers all of these elements to be good practices for the assessment of student support services. Accordingly, the Secretary requests specific comment as to whether the manner in which these agencies handle standards for this area would be a useful addition to these regulations. The Secretary also invites additional comments regarding other elements that the Secretary should include in the evaluation of accrediting agencies for compliance with this requirement.

§602.26(b)(6) Recruiting and admission practices; and academic calendars, catalogs, publications, grading, and advertising.

Section 496(a)(5)(F) requires an accrediting agency to have standards that address an institution's or program's recruiting and admissions practices, as well as its academic calendars, catalogs, publications, grading, and advertising. The Secretary believes this statutory provision contains two different standards. One standard relates to the appropriateness of the institution's or program's recruiting and admission practices. Under this standard, the agency must determine whether an institution's practices are reasonable in light of the institution's or program's educational mission.

The other standard relates to the institution's academic calendars, catalogs, publications, grading, and advertising. Under that standard, which is in the nature of consumer protection, the agency must evaluate whether those items are accurate, complete, and consistent with the institution's actual practice.

§602.26(b)(7) Program length and tuition and fees in relation to the subject matters taught and the objectives of the degrees or credentials offered. Section 496(a)(5)(G) requires an accrediting agency to have standards that address program length and tuition and fees in relation to the subject matters taught and the objectives of the degree or credential offered. It is the Secretary's view that one of the purposes of this requirement

is to eliminate certain abuses that have been discovered at institutions participating in Title IV, HEA programs.

These abusive practices fall into three main categories. One category involves accredited institutions that offer prebaccalaureate vocational programs and charge an excessive amount of tuition and fees for programs that lead to dead end or very low-paying jobs. In some cases, the tuition and fees for a short-term program to prepare students for a particular job exceeded the annual income that a person employed in that job could expect to earn.

Another category involves accredited institutions that offer prebaccalaureate vocational education programs and inflate either the clock or credit hours for the program or the length of the program without educational justification, simply to increase the amount of SFA funds these institutions may receive. The third category involves accredited institutions that offer prebaccalaureate vocational education that are simply too short to be able to provide training that has any value in the workplace.

The Secretary proposes to address the statutory requirement for standards related to program length and tuition and fees by requiring an accrediting agency to establish minimum and maximum program lengths for prebaccalaureate vocational programs. In this context, program length means both the number of clock hours or credit hours in a program and the number of weeks that a program is offered. The Secretary invites specific comments with

regard to this requirement. The topic of standards for establishing minimum and maximum program lengths was not discussed during the negotiated rulemaking sessions, and the Secretary invites comments on this topic as well.

During the negotiated rulemaking sessions, consensus was reached on various factors that should be considered when an agency establishes its standard for program length in relation to tuition and fees. These factors are listed under §602.26(b)(7)(i), (ii), (iii), and (iv). The Secretary has reconsidered this matter and now proposes two additional factors. The first concerns any applicable Federal statutes and regulations. The Secretary does not believe the addition of a requirement for agencies to take into account applicable statutes and regulations when developing their standards goes beyond the intent of the HEA because it does not require agencies to adopt the Federal policies but simply to take them into account. The second factor concerns the relationship between tuition and fees for a prebaccalaureate vocational program and the remuneration that a graduate of that program can reasonably be expected to receive. The Secretary is concerned about this issue for this type of program because the very purpose of a prebaccalaureate vocational program is to prepare a student for gainful employment in a recognized occupation. Moreover, the Secretary is concerned that tuition and fees being charged for prebaccalaureate vocational programs may be excessive given the type of job for which a graduate of the program qualifies. Accordingly, the

Secretary requests specific comment regarding standards that address tuition and fee charges for a prebaccalaureate vocational program vis-a-vis the remuneration that graduates of a program may receive.

The Secretary requests comments on the various factors proposed for standards that assess program length and tuition and fees. In calling for comments with regard to this standard, the Secretary wishes to remind commenters that a violation of a standard does not necessarily preclude an agency from accrediting an institution or program. The violation would, however, at least require the institution to justify its tuition and fee charges to the agency.

The Secretary acknowledges that the development of standards for this area involves very complex issues. For the purpose of stimulating discussion in this area, the Secretary offers the following possible approaches to the development of standards. Under one approach, the standard might require that annualized tuition and fees for a program not exceed a percentage of the annualized minimum wage. Under another approach, the standard might require that annualized tuition and fees for a program not exceed a percentage of the program's graduates' average earnings for their first year of employment. Under still another approach, annualized tuition and fees for a program could not exceed a percentage of the average annualized wages, as reported by the U.S. Bureau of Labor Statistics, in occupations for which the program prepares students. In suggesting possible approaches

to the establishment of standards for this area, the Secretary reminds commenters of the difficulty in obtaining employment information, including salaries and wages, from graduates of an institution for periods beyond the first year after graduation.

The Secretary is considering establishing in other regulations requirements governing program length and tuition and fees for programs that are eligible to participate in the SFA programs. Accordingly, if those regulatory requirements are established, the Secretary would consider requiring an accrediting agency to notify the Secretary if it knows that an institution's program is too long or too short under that requirement, or if it knows that an institution's tuition and fee charges violate that other requirement. The Secretary invites comments about the feasibility of adding this notification requirement or any alternative method of obtaining this information.

Finally, the Secretary notes that the requirement to establish a standard for program length and tuition and fees applies only to those accrediting agencies whose accreditation enables the institutions they accredit to participate in programs authorized under the HEA.

§602.26(b)(8) Measures of program length in clock hours or credit hours. Section 496(a)(5)(H) requires an accrediting agency to have standards that address measures of program length in clock or credit hours. It is the Secretary's view that the purpose of this requirement is to enable the agency to determine if an institution take into proper account, as appropriate,

factors such as program objectives and content, the types and locations of instructional delivery, and the knowledge and skills necessary for students to reach competence in the field being taught when determining the length of its programs in clock or credit hours. General agreement was reached by negotiators with regard to the substance of this standard. However, the Secretary has reconsidered this matter and now proposes an additional factor: any applicable Federal statutes and regulations. The Secretary does not believe the addition of a requirement for agencies to take into account applicable statutes and regulations when developing their standards goes beyond the HEA because it does not require agencies to adopt the Federal policies but simply to take them into account. The Secretary invites comments on this proposed addition.

To the extent that the Secretary regulates this area in other regulations governing the SFA programs, these regulations may need to be modified. Moreover, as indicated with regard to §602.26(b)(7), if those other regulations are established, the Secretary may consider requiring an accrediting agency to notify the Secretary if it knows that an institution's measure of the number of credits hours in its programs does not satisfy that other regulatory requirement. The Secretary invites comments about the feasibility of adding this notification requirement or on alternative methods of obtaining this information.

The Secretary notes that the requirement to establish a standard for measures of program length in clock or credit hours

applies only to those accrediting agencies whose accreditation enables the institutions they accredit to participate in programs authorized under the HEA.

§602.26(b)(9) Success with respect to student achievement in relation to mission. Section 496(a)(5)(I) of the HEA requires an accrediting agency to have standards that address success with respect to student achievement in relation to mission, including, as appropriate, consideration of course completion rates, pass rates on State licensing examinations, and job placement rates. It is the Secretary's view that standards for student achievement are the most important of all accreditation standards because the true success of an institution or program is measured by the success of its students. For institutions that offer prebaccalaureate vocational programs, the Secretary proposes to require agencies to establish minimum quantitative standards for completion rates, job placement rates, and pass rates on State licensing examinations for those programs, since gainful employment is the purpose of those programs. The Secretary proposes this additional requirement for institutions offering prebaccalaureate vocational education programs because, as noted in the discussion under §602.26(b)(7), these institutions have often engaged in abusive practices. The Secretary notes that the concept of minimum quantitative standards, even when restricted to prebaccalaureate vocational education, was not supported by non-Federal negotiators.

The Secretary acknowledges that there are many possible approaches to the establishment of the standards for measuring success in prebaccalaureate vocational programs, both in terms of the information collected and the minimum standard selected. For example, if an institution's students are mainly first-time, full-time students in short-term programs, agencies could use data collected by institutions under the Student Right-to-Know and Campus Security Act of 1990 for calculating completion rates. Minimum job placement rate standards might be developed using three-year moving averages, adjusted for regional unemployment rates as computed by the Bureau of Labor Statistics of the U.S. Department of Labor. Further, a job placement rate could be calculated only for those jobs in the areas for which training was offered, all jobs obtained by graduates, or a combination of the two.

The Secretary specifically invites suggestions for standards in this area. Further, the Secretary understands that developing appropriate standards in these areas is not easy and requests suggestions with regard to specific rates for the standards in these areas. The Secretary suggests as a reference point for completion and placement rates the statutory requirement, contained in section 481(e)(2) of the HEA, that, to be an eligible short-term vocational program under the SFA programs, a program must have a 70 percent completion and a 70 percent placement rate.

§602.26(b)(10) Default rates in the student loan programs established under Title IV of the HEA. Section 496(a)(5)(J) of the HEA requires an accrediting agency to have standards that address an institution's default rates in the student loan programs established under Title IV of the HEA. It is the Secretary's view that the purpose of this requirement is to enable the agency to determine if an institution is out of compliance with its accrediting standards when the institution's latest cohort default rate under the Federal Family Education Loan (FFEL) programs exceeds a certain threshold or has increased significantly over its previous rate. The Secretary proposes to require an agency to conduct a review if an institution's latest cohort default rate equals or exceeds 25 percent. The Secretary establishes this rate as the trigger for review because that is the rate, beginning in fiscal year 1994, i.e. October 1, 1993, at which an institution will be disqualified from participating in the FFEL programs. An accrediting agency is free, of course, to set its trigger for review at a default rate below 25 percent.

The Secretary also is concerned that a significant change in an institution's default rate could be an indication of other serious problems that may affect the institution's compliance with an agency's standards. For this reason, the Secretary proposes to require an agency to conduct a review when the institution's latest cohort default rate increases significantly over its rate the previous year. The Secretary does not propose

to define the term "significant increase" in the proposed regulations but invites comments on an appropriate definition.

The Secretary notes that the requirement to establish a standard for this area applies only to those accrediting agencies whose accreditation permits the institutions they accredit to participate in programs authorized under the HEA.

§602.26(b)(11) Record of student complaints received by, or available to, an agency. Section 496(a)(5)(K) of the HEA requires an accrediting agency to have standards that address the record of student complaints received by, or available to, an agency concerning an institution or program it accredits. It is the Secretary's view that the purpose of this requirement is to enable an agency to focus its evaluation of the institution or program on the matters that gave rise to the student complaints when the agency undertakes its next evaluation of the institution or program.

§602.26(b)(12) Compliance with an institution's program responsibilities under Title IV of the Act. Section 496(a)(5)(L) of the HEA requires an accrediting agency to have standards that address an institution's compliance with its program responsibilities under Title IV of the Act. It is the Secretary's view that an institution's failure to comply with its Title IV responsibilities should be a factor in an accrediting agency's determination as to whether that institution should continue to be accredited by the agency. The Secretary recognizes that accrediting agencies do not have the responsibility, expertise, personnel, or time to evaluate, on a routine basis, whether the institutions they accredit are in compliance with their Title IV responsibilities. On the other hand, agencies may not ignore information provided to them regarding the lack of compliance of those institutions. Accordingly, the Secretary proposes that, in assessing an institution's compliance under this standard, the agency relies on documentation forwarded to it by the Secretary. The Secretary wishes to make it clear that this section of the proposed regulations does not require accrediting agencies to review an institution to determine whether the institution is fulfilling its responsibilities under the SFA programs, as, for example, by verifying that an institution is calculating Pell distributions properly. Rather, the Secretary expects agencies to use the information provided by the Secretary on the institution to trigger a review of the institution for compliance with agency standards if the documentation provided by the

Secretary indicates a problem that is related to one or more of the agency's standards.

The Secretary notes that the requirement to establish standards for this area applies only to those accrediting agencies whose accreditation enables the institutions they accredit to participate in programs authorized under the HEA.

§602.26(b)(13) The institution's practice of making refunds to students. Under section 484B of the HEA, an institution participating in the SFA programs must have a fair and equitable refund policy. An institution's refund policy is judged to be fair and equitable if it provides a refund in an amount of at least the largest of the amounts provided under "(1) the requirements of applicable State law; (2) the specific refund requirements established by the institution's nationally recognized accrediting agency and approved by the Secretary; or (3) the pro rata refund calculation" described elsewhere in section 484B. To permit an institution to satisfy the fair and equitable refund requirement using this criterion, the Secretary proposes not to recognize an accrediting agency unless the agency has a refund policy that provides for a fair and equitable refund to a student of tuition, fees, and other institutional charges. Thus, the Secretary's recognition of an agency means that the Secretary has approved that agency's refund policy. Non-Federal negotiators objected to the inclusion of this requirement in the proposed regulations on the grounds that section 496(g) of the HEA explicitly states that the Secretary may not establish standards

for accrediting agencies that are not required by section 496. The Secretary believes, however, that the inclusion of a requirement for a standard addressing an institution's refund policy in the proposed regulations is necessary to comply with section 484B of the HEA.

§602.26(c) Time limit on correcting deficiencies.

In §602.26(c), the Secretary proposes that, when an institution or program fails to meet an agency standard, the agency may permit the institution or program a period, which may not exceed 18 months, during which time it must take corrective action to bring itself back into compliance with the standard. The agency is free to set the time frame for coming into compliance at less than 18 months. If the institution or program fails to bring itself into compliance during the specified period, the agency must take adverse action, unless it finds that the time frame for achieving compliance should be extended for cause. Of course, the agency may take adverse action against an institution or program, either immediately or in less than 18 months, without offering the institution or program the opportunity to take corrective action if the agency believes that the adverse action is necessary.

The Secretary believes that the 18-month time frame is necessary to ensure that institutions and programs make serious efforts to improve the quality of their offerings and to ensure that accrediting agencies take adverse actions when institutions fail to make those efforts. Accordingly, the Secretary

anticipates that extensions beyond 18 months for cause will not be routinely granted. Additionally, the Secretary anticipates that for violations that are easily correctable, the appropriate period will be significantly less than 18 months.

The Secretary is considering adding to this section a requirement that an accrediting agency must take action not only if it determines that an institution or program is not in compliance with a standard but also if it determines that an institution or program may currently meet the standard but is unlikely to be able to continue to meet the standard. The Secretary invites comments on this possible addition to the section.

§602.27 Required operating procedures.

Section 496(c) of the HEA requires accrediting agencies whose accreditation enables institutions to participate in Title IV, HEA programs to take special action whenever institutions establish new branch campuses or undergo changes in ownership that result in changes in control. Accordingly, in §602.27 of the proposed regulations, the Secretary reiterates the requirement for special action set forth in that section. For purposes of this section, the Secretary notes that the term "branch campus" includes any "additional location," which the Secretary defines to be a location that is geographically apart from the main campus, that has its own separate administrative structure, services, and facilities, and at which the institution plans to offer a complete educational program. The Secretary

believes the inclusion of additional locations in this requirement is consistent with the intent of Congress. The close scrutiny of branch campuses and additional locations includes the requirement contained in sections 496(c)((2) and (3) to approve a business plan for a branch prior to its opening; to extend accreditation to the branch only after determining that it has sufficient educational, financial, operations, management, and physical resources to provide education or training consistent with the accreditation standards; and to conduct on-site reviews within six months for all new branches and all institutions that change ownership that results in a change in control.

Another requirement of section 496(c) of the HEA is that any institution participating in Title IV, HEA programs that enters into a teach-out agreement with another institution must agree to submit to its accrediting agency for approval a teach-out agreement that is consistent with applicable standards and regulations. In §602.27(b) of the proposed regulations, the Secretary reiterates this requirement.

§602.28 Due process for institutions and programs.

Section 496(a)(6) of the HEA requires an accrediting agency seeking recognition by the Secretary to use procedures throughout its accreditation process that satisfy due process requirements. Accordingly, in §602.28 of the proposed regulations, the Secretary sets out this due process requirement. Specifically, in §602.28 the Secretary requires an agency to set forth in writing all of its procedures governing its accreditation and

preaccreditation processes, including its processes for the appeal of an adverse action it takes against an institution or program, to notify an institution or program in writing of any adverse action the agency takes against it, and to afford the institution or program the opportunity to appeal the adverse action. In accordance with Section 496(a)(6)(D) of the HEA, in §602.28(b)(5) the Secretary specifically requires that an agency permit an institution or program the right to representation by counsel during an appeal of an adverse action.

The Secretary acknowledges that the cost to an agency when an institution or program appeals an adverse action can be substantial. To minimize this cost, the Secretary has included in §602.28(b)(5) a provision, suggested by non-Federal negotiators, that agencies be given the discretion to determine when an appeal may be made only in writing.

§602.29 Notification of accrediting decisions.

Section 496(a)(7) of the HEA requires accrediting agencies to notify the Secretary, the appropriate State postsecondary review entities, and the public of any final adverse accrediting action regarding an institution or program. Accordingly, in §602.29(a) of the proposed regulations, the Secretary establishes this notification requirement. The Secretary proposes an additional requirement in §602.29(a) that is not specified in the law: that accrediting agencies notify other appropriate accrediting agencies of all final adverse actions. The Secretary believes this additional notification requirement, which was

suggested after the negotiated rulemaking sessions by one of the non-Federal negotiators, is necessary because of the requirement, implied in section 496(1)(2) of the HEA, that an accrediting agency must take into account the adverse accrediting actions of other accrediting agencies in making its own accrediting decisions.

Section 496(a)(8) of the HEA requires accrediting agencies to make available to the Secretary, the appropriate State postsecondary review entity and, upon request, the public a brief statement supporting any decision to deny, withdraw, suspend, or terminate the accreditation or preaccreditation of an institution or program, together with the comments of the affected institution or program concerning that decision. Accordingly, in §602.29 of the proposed regulations, the Secretary establishes this requirement. To ensure that the statement is made available in a timely fashion, the Secretary proposes to require that the statement be made available within 60 days of an agency's final decision.

The Secretary is considering adding to this section a requirement that agencies notify the Secretary prior to taking final adverse action against an institution when the information that caused the agency to take the adverse action may relate to the institution's continued participation in Title IV, HEA programs, as, for example, in the case of fraud or gross mismanagement of Federal funds. The Secretary is considering this additional notification requirement because of the length of

time it often takes agencies to reach a final adverse decision, due to an institution's rights under due process, even when circumstances indicate a gross violation of agency standards. The Secretary invites comments on this additional requirement and alternative approaches to notifying the Secretary when an agency has such serious concerns about an institution that it initiates an adverse action.

Finally, the Secretary is considering adding to this section a requirement that an accrediting agency must notify the Secretary and the appropriate State postsecondary review entity of any final adverse accrediting action at the same time the agency notifies the institution of this action. The Secretary believes this addition would prevent excessive draw-down of SFA funds by an institution after it loses accreditation. The Secretary notes that, while this topic was not discussed during negotiated rulemaking, many negotiators have told Department staff that this additional requirement would not present an undue hardship to their agencies. The Secretary invites comments on this proposed additional requirement and suggestions for alternative approaches to prevent unwarranted expenditure of SFA funds by institutions that have lost accreditation.

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

Section 496(1)(2) of the HEA implies that accrediting agencies are responsible for knowing what actions other recognized accrediting agencies have taken against an institution. The

Secretary addresses this issue in §602.30 by proposing that all agencies, including those that accredit only programs, take into account the decisions of States and other accrediting agencies when making any accreditation or preaccreditation decision involving an institution or program. The Secretary believes the inclusion of programmatic accrediting agencies in this requirement is essential to ensure that the problems that caused a programmatic accrediting agency to take adverse action against a program within an institution are promptly reviewed by the institutional accrediting agency that accredits the institution to determine if the institution is still in compliance with the latter agency's standards.

In §602.30(a)(3) of the proposed regulations, the Secretary requires that agencies routinely share with other appropriate recognized accrediting agencies and State agencies information about any actions they have taken regarding an institution's or programs's accreditation or preaccreditation. The Secretary is considering adding to this section a requirement that agencies share information about actions they are taking or are about to take regarding an institution's or program's accreditation or preaccreditation. The Secretary invites comments on this additional requirement and alternative approaches to sharing information with the other members of the triad regarding actions either under way or planned by the agency with respect to an institution or program.

Finally, in §602.30(b) the Secretary proposes that agencies are subject to the requirements in §602.30(a) if they "knew, or should have known," of the actions being taken by another recognized accrediting agency or State agency. The Secretary believes that it is reasonable to expect an agency to have known of these actions if there is evidence that the other agencies have sent information concerning these actions to the agency.

Other Issues

The following discussion addresses other issues either discussed by negotiators or raised by the Secretary after the negotiations. None of the issues, however, involves a significant change from the current policies and procedures governing the accrediting agency recognition process, and thus none warrants inclusion in the previous section.

§602.2 Definitions.

Accrediting agency. While the definition in the proposed regulations eliminates the language in the current regulations describing the type of entity that may comprise an agency, the Secretary wishes to make clear that the legal entity that is an accrediting agency may be an association, council, commission, or corporation.

Designated Department official. While this term is not used in the current regulations, the Secretary proposes to use it in subpart B on recognition and termination procedures to describe much of what has, in fact, been the Department's practice with respect to the accrediting agency recognition process. For

example, the Assistant Secretary for Postsecondary Education has, on occasion, presented the summary of the preliminary analysis of an accrediting agency to the Advisory Committee; on other occasions, the Assistant Secretary has delegated that responsibility to a member of the Assistant Secretary's staff. After the Advisory Committee meeting, the Assistant Secretary has routinely forwarded to the Secretary the Advisory Committee's recommendation on an agency's application for recognition, along with the Assistant Secretary's recommendation. Finally, the Assistant Secretary has routinely advised the Secretary on issues related to the recognition of agencies. The Secretary believes that the inclusion of the term "designated Department official" and its use throughout subpart B clarifies the longstanding involvement of individuals other than the Secretary in the accrediting agency recognition process.

Representative of the public. The Secretary wishes to make clear that under an agency's policy on conflicts of interest, a representative of the public may not participate in any accrediting decisions pertaining to an institution or program with which he or she may have any direct or indirect affiliation.

§602.21 Administrative and fiscal responsibility.

Consensus was reached by negotiators regarding the provisions specified in this section for demonstrating that an accrediting agency has the necessary administrative and fiscal resources to carry out its accrediting responsibilities. However, the Secretary is concerned that the provisions contained

in this section do not adequately address whether an agency's personnel and fiscal resources will continue to be adequate during any recognition period granted. The Secretary invites suggestions on how to address this concern.

Executive Order 12866

These proposed regulations have been reviewed in accordance with Executive Order 12866. An assessment of the potential costs and benefits of the various requirements contained in the proposed regulations has been incorporated into the relevant sections of this preamble. The Secretary notes that, as these proposed regulations were subject to negotiated rulemaking, the costs and benefits of the various requirements were discussed thoroughly by negotiators. The resultant consensus reached on a particular requirement reflected agreement on the best possible approach to that requirement in terms of cost and benefit.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small number of entities that would be affected by these proposed regulations are accrediting agencies that apply for recognition by the Secretary. The regulations would not have a significant economic impact on the institutions affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose the minimum

requirements needed to ensure the proper implementation of the Secretary's statutory mandate to recognize accrediting agencies.

Paperwork Reduction Act of 1980

Sections 602.4, 602.10, 602.26, and 602.27 contain information collection requirements. In addition, section 602.21(b)(7) contains specific record retention requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget for its review. (44 U.S.C. 3504(h))

These proposed regulations contain substantial information collection requirements for accrediting agencies applying for recognition by the Secretary, as well as additional requirements for recognized agencies during their recognition period. The Department needs and uses the information collected to determine whether an agency seeking recognition by the Secretary meets the requirements for recognition and whether, if the agency is recognized, it continues to operate in compliance with the requirements for recognition throughout its recognition period.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, D.C. 20503; Attention: Daniel J. Chenok.

INVITATION TO COMMENT:

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3069, ROB-3, 7th & D Streets, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the accrediting agency recognition process.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 602

Colleges and universities, Education, Reporting and recordkeeping requirements.

Dated:

Richard W. Riley,
Secretary of Education.

[Catalog of Federal Domestic Assistance Number does not apply.]

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Part 602 to read as follows:
PART 602 -- SECRETARY'S PROCEDURES AND CRITERIA FOR THE
RECOGNITION OF ACCREDITING AGENCIES

Subpart A - General Provisions

Sec.
602.1 Purpose.
602.2 Definitions.
602.3 Organization and membership.
602.4 Submission of information to the Secretary by
recognized accrediting agencies.

Subpart B - Recognition and Termination Procedures

602.10 Application for recognition.
602.11 Preliminary review by the Secretary.
602.12 Review by the National Advisory Committee on
Institutional Quality and Integrity.
602.13 Review and decision by the Secretary.
602.14 Limitation, suspension, or termination of recognition.
602.15 Requests for reconsideration of the Secretary's deci-
sions.
602.16 Appeals procedures.
602.17 Publication of list of recognized agencies.

Subpart C - Criteria for Secretarial Recognition

602.20 Geographic scope of accrediting activities.
602.21 Administrative and fiscal responsibility.
602.22 Accreditation experience.
602.23 Application of standards.
602.24 Accreditation processes.
602.25 Additions to or substantive changes in educational pro-
grams.
602.26 Required accreditation standards.
602.27 Additional required operating procedures.
602.28 Due process for institutions and programs.
602.29 Notification of accrediting agency decisions.
602.30 Regard for decisions of States and other accrediting
agencies.

AUTHORITY: 20 U.S.C. 1058, 1061, 1085, 1088, 1099b, 1141,
1401, 2471, and 3381, unless otherwise noted.

Subpart A - General Provisions

§602.1 Purpose.

(a)(1) This part establishes procedures and criteria for the Secretary's recognition of accrediting agencies. The purpose of the Secretary's recognition of agencies is to assure that these agencies are, for the purposes of the Higher Education Act of 1965, as amended (HEA), or for other Federal purposes, reliable authorities as to the quality of education or training offered by the institutions of higher education or the higher education programs they accredit.

(2) The Secretary's recognition of an accrediting agency is based on the Secretary's determination that the agency satisfies the requirements of this part.

(b) The Secretary grants recognition only to those agencies that--

(1) Accredit institutions of higher education for the purpose of enabling them to establish eligibility to participate in HEA programs; or

(2) Accredit institutions of higher education or higher education programs for the purpose of enabling them to establish eligibility to participate in other programs administered by the Department or by other Federal agencies.

(Authority: 20 U.S.C. 1099b)

§602.2 Definitions.

The following definitions apply to terms used in this part:

Accreditation means the status of public recognition that an accrediting agency grants to an educational institution or

program that meets the agency's established qualifications and standards.

Accrediting agency or agency means a legal entity, or that part of a legal entity, that conducts accrediting activities through voluntary, non-Federal peer evaluations and makes decisions concerning the accreditation or preaccreditation status of institutions, programs, or both.

Act means the Higher Education Act of 1965, as amended.

Adverse accrediting action means the denial, withdrawal, suspension, or termination of accreditation or preaccreditation, or any comparable accrediting action an agency may take against an institution or program, except that placing an institution or program on probation or issuing a show cause order against an institution or program is not an adverse accrediting action unless it is so defined by the accrediting agency.

Advisory Committee means the National Advisory Committee on Institutional Quality and Integrity.

Branch campus means a location of an institution of higher education that is geographically apart from and independent of the main campus of the institution. The Secretary considers a location of an institution to be independent of the main campus if the location (1) is permanent in nature; (2) offers courses in educational programs leading to a degree, certificate, or other recognized educational credential; (3) has its own faculty and administrative or supervisory organization; and (4) has its own budgetary and hiring authority.

Designated Department official means the official in the Department of Education to whom the Secretary has delegated the responsibilities indicated in this part.

Institution of higher education or institution means an educational institution that qualifies or may qualify as an eligible institution under 34 CFR Part 600.

Institutional accrediting agency means an agency that accredits institutions of higher education.

Nationally recognized accrediting agency, nationally recognized agency, or recognized agency means an accrediting agency that is recognized by the Secretary under this part.

Part means part 602 of Title 34 of the Code of Federal Regulations governing the Secretary's procedures and criteria for the recognition of accrediting agencies.

Preaccreditation means the status of public recognition that an accrediting agency grants to an institution or program for a limited period of time that signifies that the agency has determined that the institution or program is progressing towards accreditation and is likely to attain accreditation within a reasonable period of time.

Prebaccalaureate vocational education means vocational education that leads to a certificate, degree, or other credential that is less than a bachelor's degree.

Program means a postsecondary educational program offered by an institution that leads to an academic or professional degree, vocational certificate, or other recognized educational credential.

Programmatic accrediting agency means an agency that accredits specific educational programs that prepare students for entry into a profession, occupation, or vocation.

Representative of the public means a person who is not (1) an employee, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that either is accredited by the agency or has applied for accreditation; or (2) a member of any trade association or membership organization related to, affiliated with, or associated with the accrediting agency.

Secretary means the Secretary of the U.S. Department of Education or any official or employee of the Department acting for the Secretary under a delegation of authority.

State means a State of the Union, American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

Teach-out agreement means a written agreement between accredited institutions that provides for the equitable treatment of students if one of those institutions stops offering an educational program before all students enrolled in that program complete the program.

Title IV, HEA program means any of the programs set forth in 34 CFR 668.1(c).

Vocational education means education or training that prepares students for gainful employment in a recognized occupation.

(Authority: 20 U.S.C. 1099b)

§602.3 Organization and membership.

(a) The Secretary recognizes only the accrediting agencies described in paragraph (b) of this section that--

(1) Accredit institutions of higher education or higher education programs for the purpose described in §601.1(b); and

(2) Satisfy the criteria for Secretarial recognition contained in Subpart C of this part.

(b) The accrediting agencies referred to in paragraph (a) of this section are--

(1) A State agency that--

(i) Has as a principal purpose the accrediting of institutions of higher education, higher education programs, or both; and

(ii) Has been listed by the Secretary as a nationally recognized accrediting agency on or before October 1, 1991;

(2) An accrediting agency that--

(i) Has a voluntary membership of institutions of higher education;

(ii) Has as a principal purpose the accrediting of institutions of higher education to enable them to participate in programs authorized under this Act; and

(iii) Satisfies the "separate and independent" requirements contained in paragraph (c) of this section;

(3) An accrediting agency that--

(i) Has a voluntary membership; and

(ii) Has as its principal purpose the accrediting of higher education programs, or higher education programs and institutions of higher education to enable them to participate in Federal programs not authorized under this Act; and

(4) An accrediting agency that, for purposes of determining eligibility for Title IV, HEA programs--

(i)(A) Has a voluntary membership of individuals participating in a profession; or

(B) Has as its principal purpose the accrediting of programs within institutions that are accredited by another nationally recognized accrediting agency; and

(ii)(A) Satisfies the "separate and independent" requirements contained in paragraph (c) of this section; or

(B) Obtains a waiver from the Secretary under paragraph (e) of this section of the "separate and independent" requirements contained in paragraph (c) of this section.

(c) For purposes of this section, "separate and independent" means that--

(1) The members of the agency's decision-making body--who make its accrediting decisions, establish its accreditation policies, or both--are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association or membership organization;

(2) At least one member of the agency's decision-making body is a representative of the public, with no less than one-seventh of the body consisting of representatives of the public;

(3) The agency has established and implemented guidelines for each member of the decision-making body to avoid 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's budget is developed and determined by the agency without review by or consultation with any other entity or organization.

(d) The Secretary considers that any joint use of personnel, services, equipment, or facilities by an accrediting agency and a related, associated, or affiliated trade association or membership organization does not violate the provisions of paragraph (c) of this section if--

(1) The agency pays the fair market value for its proportionate share of the joint use; and

(2) The joint use does not compromise the independence and confidentiality of the accreditation process.

(e)(1) Upon request of an accrediting agency described in paragraph (b)(4) of this section, the Secretary waives the "separate and independent" requirements of this section if the agency demonstrates that--

(i) The agency has been listed by the Secretary as a nationally recognized agency on or before October 1, 1991; and

(ii) The existing relationship between the agency and the related, associated, or affiliated trade association or member-

ship organization does not compromise the independence of the accreditation process.

(2) To demonstrate that the existing relationship between the agency and the related, associated, or affiliated trade association or membership organization does not compromise the independence of the accreditation process, the agency must show that--

(i) The related, associated, or affiliated trade association or membership organization plays no role in making or ratifying the accreditation decisions of the agency;

(ii) The agency has sufficient budget and administrative autonomy to carry out its accrediting functions; and

(iii) The agency provides to the related, associated, or affiliated trade association or membership organization only information it makes available to the public.

(Authority: 20 U.S.C. 1099b)

§602.4 Submission of information to the Secretary by recognized accrediting agencies.

Each accrediting agency recognized by the Secretary shall submit to the Secretary--

(a) Reports of final accrediting actions taken by the agency with respect to the institutions and programs it accredits;

(b) A copy of any annual report prepared by the agency;

(c) A copy, updated annually, of the agency's directory of accredited institutions and programs;

(d) A summary of the agency's major accrediting activities during the previous year (an annual data summary), if so requested by the Secretary to carry out the Secretary's responsibilities related to this part;

(e) Upon request, information to assist the Secretary in resolving problems with any institution or program accredited by the agency, provided that the request does not conflict with the agency's policies on confidentiality with respect to its records on those institutions or programs; and

(f) Any proposed change that might alter the agency's--

(1) Scope of recognition; or

(2) Compliance with the requirements of this part.

(Authority: 20 U.S.C. 1099b)

Subpart B - Recognition and Termination Procedures

§602.10 Application for recognition.

(a) An accrediting agency seeking initial or renewed recognition by the Secretary as a nationally recognized accrediting agency submits a written application to the Secretary. The application for recognition consists of--

(1) A statement of the agency's requested scope of recognition;

(2) An analysis of the agency's compliance with the criteria for recognition set forth in this part; and

(3) Supporting documentation.

(b)(1) An accrediting agency's application for recognition constitutes a grant of authority to the Secretary to conduct site

visits and to gain access to agency records, personnel, and facilities on an announced or unannounced basis.

(2) The Secretary conducts an unannounced site visit only, where necessary in the judgment of the Secretary, to obtain information to verify that the agency is in compliance with the requirements of this part and the information cannot be obtained or substantiated in an announced site visit.

(c) The Secretary does not make available to the public any confidential agency materials examined by Department personnel or the Secretary as part of the evaluation of an accrediting agency's application for recognition.

(Authority: 20 U.S.C. 1099b)

§602.11 Preliminary review by the Secretary.

(a) Upon receipt of an accrediting agency's application for recognition, the Secretary--

(1) Establishes a schedule for the review of the agency by the designated Department official, the National Advisory Committee on Institutional Quality and Integrity, and the Secretary; and

(2) Publishes a notice of the agency's application in the FEDERAL REGISTER inviting public comment on the agency's compliance with the requirements for recognition.

(b)(1) The designated Department official analyzes the accrediting agency's application to determine whether the agency satisfies the requirements of this part, taking into account all available relevant information concerning the compliance of the

agency with the requirements for recognition. The analysis includes--

(i) Site visits, on an announced or unannounced basis, to the agency and, at the Secretary's discretion, representative institutions or programs it accredits;

(ii) Review of public comment and other third-party information solicited by the Secretary, as well as any other information provided to the Secretary, concerning the performance of the agency in relation to the requirements of this part; and

(iii) Review of complaints or legal actions involving the agency.

(2) The designated Department official's evaluation may also include a review of information directly related to institutions or programs accredited or preaccredited by the agency, relative to their compliance with the accrediting agency's standards, the effectiveness of the agency's standards, or the agency's application of those standards.

(c) The designated Department official--

(1) Prepares a written analysis of the accrediting agency;

(2) Sends the analysis and all supporting documentation, including all third-party comments received by the Secretary, to the agency in advance of the Advisory Committee meeting; and

(3) Specifies a time period before the Advisory Committee meeting during which the agency may provide the designated Department official with any written comments on the analysis.

(d) The accrediting agency provides any written comments it chooses to make to the designated Department official before the

expiration of the time period specified in paragraph (c)(3) of this section.

(e) The designated Department official provides the Advisory Committee with the accrediting agency's application and supporting documentation, the designated Department official's analysis of the application, all information relied upon in developing the analysis, any response by the agency to the analysis, any Department rebuttal to the agency's response, and any third-party information the Secretary receives regarding the agency.

(f) The designated Department official provides the agency with a copy of any Department rebuttal provided to the Advisory Committee under paragraph (e) of this section.

(Authority: 20 U.S.C. 1099b)

§602.12 Review by the National Advisory Committee on Institutional Quality and Integrity.

(a)(1) The Advisory Committee considers an accrediting agency's application at a public meeting and invites the designated Department official, the agency, and other interested parties to make oral presentations at the meeting.

(2) The designated Department official arranges for a transcript to be made of the Advisory Committee meeting.

(b) At the conclusion of the meeting, the Advisory Committee recommends that the Secretary approve or deny recognition of the accrediting agency or defer a decision on the agency's application.

(c)(1) If the Advisory Committee recommends recognition, the Advisory Committee also recommends the scope of recognition for the agency and a recognition period.

(2) If the Advisory Committee recommends recognition despite finding that the agency failed to comply with each of the requirements of this part, the Advisory Committee provides the Secretary with a detailed explanation as to why it believes the agency's failure to comply with the particular requirement(s) does not require denial or deferral.

(3) If the Advisory Committee recommends denial of recognition, the Advisory Committee specifies the reasons for the recommendation and the requirements of this part that the agency failed to meet.

(4) If the Advisory Committee recommends deferral of a decision on the agency's application, the Advisory Committee specifies the reasons for the recommendation, the requirements of this part that it believes the agency has not met, and a recommended deferral period.

(d) After the meeting, the Advisory Committee forwards its written recommendations concerning recognition to the Secretary.

(Authority: 20 U.S.C. 1099b, 1145)

§602.13 Review and decision by the Secretary.

(a) The Secretary determines whether to grant national recognition to an applicant accrediting agency based on the Advisory Committee's recommendation and the full record of the agency's application, including all oral and written

presentations to the Advisory Committee by the agency, the designated Department official, and interested third parties.

(b)(1) Before making a final decision, the Secretary affords both the designated Department official and the accrediting agency an opportunity to contest, in writing, the Advisory Committee's recommendation. If either the agency or the designated Department official wishes to contest the recommendation, that party shall notify the Secretary and the other party no later than 10 days after the Advisory Committee meeting.

(2) If the party contesting the Advisory Committee's recommendation wishes to make a written submission to the Secretary, the Secretary must receive that submission no later than 30 days after the Advisory Committee meeting. However, the contesting party may not submit any evidence to the Secretary that it did not submit to the Advisory Committee. The contesting party shall simultaneously provide a copy of its submission to the other party.

(3) If the noncontesting party wishes to respond in writing to the Secretary, the Secretary must receive that submission no later than 30 days after the noncontesting party receives the contesting party's submission. However, the noncontesting party may not submit any evidence to the Secretary that it did not submit to the Advisory Committee. The noncontesting party shall simultaneously provide a copy of its response to the contesting party.

(4) If the Advisory Committee's recommendation is contested, the Secretary renders a final decision after taking into account the two parties' written submissions, if any.

(c) The Secretary approves the accrediting agency for national recognition if the Secretary determines that the agency satisfies each of the requirements contained in this part.

(d) The Secretary approves the accrediting agency for national recognition even if the agency does not satisfy each of the requirements contained in this part if the Secretary determines that the agency's effectiveness is not impaired by the noncompliance.

(e) If the Secretary approves the accrediting agency for national recognition, the Secretary defines--

(1) The scope of recognition, which may include the--

(i) Geographic area;

(ii) Degrees and certificates awarded;

(iii) Types of institutions the agency may accredit;

(iv) Types of programs the agency may accredit; and

(v) Preaccreditation status(es), if any, that the Secretary approves for recognition; and

(2) The recognition period, which does not exceed five years.

(f)(1) If the Secretary denies recognition to the accrediting agency or grants recognition for a scope narrower than that requested by the agency, the Secretary indicates in writing the reasons for that decision.

(2) The agency described in paragraph (f)(1) of this section may request that the Secretary reconsider the decision under the provisions of §602.15.

(g) If the Secretary defers a decision on the accrediting agency's application, the Secretary--

(1) Indicates in writing the reasons for the deferral and the deferral period; and

(2) Automatically extends any previously granted recognition period until the Secretary reaches a decision on the renewal application.

(h) If the Secretary does not reach a final decision on an accrediting agency's application for renewal of recognition before the expiration of the agency's recognition period, the Secretary automatically extends the previously granted recognition period until the Secretary reaches a decision on the renewal application.

(Authority: 20 U.S.C. 1099b)

§602.14 Limitation, suspension, or termination of recognition.

(a)(1) The Secretary may limit, suspend, or terminate the recognition of an accrediting agency before completion of its previously granted recognition period if the Secretary determines, after notice and opportunity for a hearing, that the agency fails or has failed to satisfy any of the requirements of this part.

(2) If the agency requests a hearing--

(i) The hearing is conducted by the Advisory Committee or by a subcommittee of three members of the Advisory Committee,

appointed by the Secretary, if the Secretary determines that a more timely hearing is necessary than can be accommodated by the schedule of the full Advisory Committee; and

(ii) The designated Department official arranges for a transcript to be made of the hearing.

(b) The designated Department official begins a limitation, suspension, or termination proceeding against an accrediting agency by sending the agency a notice that--

(1) Informs the agency of the Secretary's intent to limit, suspend, or terminate its recognition;

(2) Identifies the alleged violations of the governing regulations that constitute the basis for the action;

(3) Describes the limits to be imposed if the Secretary seeks to limit the accrediting agency;

(4) Specifies the effective date of the limitation, suspension, or termination; and

(5) Informs the agency that it may--

(i) Submit to the designated Department official a written response to the notice no later than 30 days after it receives the notice; and

(ii) Request a hearing, which shall take place in Washington, D.C., before the Advisory Committee or subcommittee if the agency submits a hearing request to the designated Department official no later than 30 days after it receives the notice.

(c)(1) As part of its response to the limitation, suspension, or termination notice or its hearing request, if any,

the accrediting agency shall identify the issues and facts in dispute and its position with regard to those issues and facts.

(2) After receipt of the agency's response and hearing request, if any, the designated Department official--

(i) Transmits the limitation, suspension, or termination notice and the agency's response, if any, to that notice to the Advisory Committee or subcommittee; and

(ii) Establishes the date and time of any hearing before the Advisory Committee or subcommittee.

(d)(1) Except as provided in paragraph (d)(2) of this section, if a hearing is held, the Advisory Committee or subcommittee shall allow the designated Department official, the accrediting agency, and any interested party to make an oral or written presentation. That presentation may include the introduction of written and oral evidence.

(2) If the designated Department official and the accrediting agency each agree, the Advisory Committee or subcommittee review shall be based solely on the written materials submitted to it under paragraph (c)(2)(i) of this section.

(e)(1) After the Advisory Committee or subcommittee reviews the presentations, it shall issue an opinion in which it--

(i) Makes findings of fact based upon the evidence presented;

(ii) Recommends whether a limitation, suspension, or termination of the agency's recognition is warranted; and

(iii) Provides the reasons for that recommendation.

(2) The Advisory Committee or subcommittee shall--

- (i) Transmit its written opinion to the Secretary; and
- (ii) Provide a copy of its opinion to the designated Department official and the accrediting agency.

(f)(1) After receiving the Advisory Committee's recommendation, the Secretary issues a decision on whether to limit, suspend, or terminate the agency's recognition, based upon the recommendation of the Advisory Committee and the full record before the Advisory Committee.

(2) Either the accrediting agency or the designated Department official may appeal the Advisory Committee's recommendation by filing a notice of appeal with the Secretary within 10 days of receipt of the Advisory Committee's or subcommittee's recommendation. If either party files an appeal with the Secretary, that party shall simultaneously provide a copy of the notice of appeal to the other party.

(3) The party appealing the Advisory Committee's or subcommittee's recommendation has 30 days after its receipt of the recommendation to make a written submission to the Secretary challenging the recommendation. However, the appealing party may not submit any evidence that was not submitted to the Advisory Committee or subcommittee. The appealing party shall simultaneously provide a copy of the submission to the other party.

(4) The nonappealing party has 30 days from the date it receives the appealing party's submission to file a written response to the Secretary regarding the submissions of the

appealing party and shall simultaneously provide the appealing party with a copy of its response. The nonappealing party may not submit any evidence that was not submitted to the Advisory Committee or subcommittee.

(5) If the Advisory Committee's or subcommittee's recommendation is appealed, the Secretary renders a final decision after taking into account that recommendation and the parties' written submissions on appeal.

(g) If the Secretary limits, suspends, or terminates an accrediting agency's recognition during its recognition period, the agency may request that the Secretary reconsider this decision under §602.15.

(Authority: 20 U.S.C. 1099b)

§602.15 Requests for reconsideration of the Secretary's decisions.

(a)(1) An accrediting agency may request a reconsideration of a Secretarial decision if the Secretary--

- (i) Denies its application for recognition;
- (ii) Does not grant its requested scope of recognition; or
- (iii) Limits, suspends, or terminates the agency's recognition during its recognition period.

(2) The agency may request reconsideration only if the agency demonstrates that--

(i) It has new information that could not have been presented previously; and

(ii) The new information is likely to result in reversal of the Secretary's decision.

(b) To request a reconsideration, the accrediting agency shall--

(1) Notify the Secretary of its intent no later than 10 days after its receipt of the Secretary's decision; and

(2) Submit its written request for reconsideration and the reasons for that request no later than 45 days after receipt of the Secretary's decision.

(c)(1) Within 60 days after receipt of the accrediting agency's written request for reconsideration, the Secretary renders a final decision based on the information contained in the agency's request and the entire record before both the Advisory Committee or subcommittee and the Secretary.

(2) The Secretary may request the opinion of the designated Department official, the Advisory Committee, or the subcommittee before rendering a final decision.

(Authority: 20 U.S.C. 1099b)

§602.16 Appeals procedures.

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

(Authority: 20 U.S.C. 1099b)

§602.17 Publication of list of recognized agencies.

(a) The Secretary periodically publishes in the FEDERAL REGISTER a list of recognized accrediting agencies and each agency's scope of recognition.

(b) If the Secretary denies recognition to a previously recognized accrediting agency, or limits, suspends, or terminates its recognition during a previously granted recognition period, the Secretary publishes a notice of that action in the FEDERAL REGISTER and makes available to the public, upon request, the Secretary's determination.

(Authority: 20 U.S.C. 1099b)

Subpart C - Criteria for Secretarial Recognition

§602.20 Geographic scope of accrediting activities.

To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that the geographical scope of its accrediting activities covers--

(a) A State, if the agency is a component of a State government;

(b) A region of the United States that includes at least three States that are contiguous or in close geographical proximity to one another; or

(c) The United States.

(Authority: 20 U.S.C. 1099b)

§602.21 Administrative and fiscal responsibility.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that it has the administrative and fiscal capability to carry out its accreditation activities in light of its requested scope of recognition.

(b) The Secretary considers that an accrediting agency meets the requirements of paragraph (a) of this section if it has, and will likely continue to have--

(1) Adequate administrative staff to--

(i) Carry out its accrediting responsibilities effectively; and

(ii) Manage its finances effectively;

(2) Competent and knowledgeable individuals, qualified by experience and training, responsible for on-site evaluation, policy-making, and decision-making regarding accreditation and preaccreditation status;

(3) Representation on its evaluation, policy, and decision-making bodies of--

(i) For an institutional accrediting agency, both academic and administrative personnel; and

(ii) For a programmatic accrediting agency, both educators and practitioners;

(4) Representation of the public on all decision-making bodies;

(5) Clear and effective controls against conflicts of interest or the appearance of conflicts of interest by the agency's board members, commissioners, evaluation team members, consultants, administrative staff, and other agency representatives;

(6) Adequate financial resources to carry out its accrediting responsibilities, taking into account the funds required to conduct the range of accrediting activities specified in the

requested scope of recognition and the income necessary to meet the anticipated costs of its activities in the future; and

(7) Complete and accurate records of--

(i) Its last two full accreditation or preaccreditation reviews of each institution or program, including self-study reports, on-site evaluation team reports, institution or program responses to on-site reports, periodic review reports, and any reports of special review conducted by the agency between regular reviews; and

(ii) Its decisions with respect to all preaccreditation and accreditation actions, including all adverse actions.

(Authority: 20 U.S.C. 1099b)

§602.22 Accreditation experience.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that it has adequate experience in accrediting institutions, programs, or both.

(b) The Secretary considers that an accrediting agency satisfies the requirements of paragraph (a) of this section if it has--

(1) Granted accreditation or preaccreditation status to institutions or programs in the geographical area for which it seeks recognition;

(2) Conducted accreditation activities covering the range of the specific degrees, certificates, and programs for which it seeks recognition, including--

(i) Granting accreditation or preaccreditation status; and

(ii) Providing technical assistance related to accreditation to institutions, programs, or both; and

(3) Policies, evaluative criteria, and procedures, and has made evaluative decisions, that are accepted throughout the United States by--

(i) Educators and educational institutions; and

(ii) Licensing bodies, practitioners, and employers in the professional or vocational fields for which the educational institutions or programs within the agency's jurisdiction prepare their students.

(Authority: 20 U.S.C. 1099b)

§602.23 Application of standards.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that it consistently applies and enforces written standards that ensure that the education or training offered by an institution or program is of sufficient quality to achieve, for the duration of any accreditation period granted by the agency, the stated objective for which it is offered.

(b) The Secretary considers that an accrediting agency meets the requirements of paragraph (a) of this section if--

(1) The agency's written standards and procedures for accreditation and preaccreditation, if that latter status is offered, comply with the requirements of this part;

(2) The agency's preaccreditation standards, if offered, are appropriately related to the agency's accreditation

standards, with a limit on preaccreditation status of no more than five years for any institution or program;

(3) The agency's organizations, functions, and procedures include effective controls against the inconsistent application of its criteria and standards;

(4) The agency bases its decisions regarding accreditation or preaccreditation on its published criteria; and

(5) The agency maintains a systematic program of review designed to ensure that its criteria and standards are appropriate and sufficiently comprehensive to evaluate the quality of the education or training provided by the institutions or programs it accredits and are relevant to the education or training needs of affected students.

(Authority: 20 U.S.C. 1099b)

§602.24 Accreditation processes.

(a)(1) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that it has effective mechanisms for evaluating compliance with its standards and those mechanisms cover the full range of an institution's or program's offerings, including those offerings conducted at branch campuses and additional locations.

(2) The Secretary considers that an accrediting agency meets the requirements of paragraph (a) of this section if it meets the requirements contained in paragraphs (b) through (f) of this section.

(b)(1) In determining whether to grant initial or renewed accreditation, the accrediting agency evaluates whether an institution or program--

(i) Maintains clearly specified educational objectives consistent with its mission and appropriate in light of the degrees or certificates it awards;

(ii) Is successful in achieving its stated objectives;

(iii) Maintains degree and certificate requirements that at least conform to commonly accepted standards; and

(iv) Complies with the agency's criteria.

(2) In reaching its determination to grant initial or renewed accreditation, the accrediting agency--

(i) Requires an in-depth self-study by each institution or program in accordance with guidance provided by the agency, with particular focus on the assessment of educational quality and the continuing improvement of educational quality;

(ii) Conducts at least one on-site review of the institution or program at which the agency obtains sufficient information to enable it to determine if the institution or program complies with the agency's criteria;

(iii) Conducts its own analyses and evaluations of the self-study and supporting documentation furnished by the institution or program, and any other appropriate information from other sources, to determine whether the institution or program complies with the agency's standards; and

(iv) Provides to the institution or program a detailed written report on its review assessing--

(A) The institution's or program's compliance with the agency's standards, including areas needing improvement; and

(B) The institution's or program's performance with respect to student achievement.

(c) In addition to the on-site visit described in paragraph (b)(2)(ii) of this section, an institutional accrediting agency whose accreditation enables the institutions it accredits to seek eligibility to participate in Title IV, HEA programs conducts--during the interval between the agency's award of accreditation or preaccreditation to the institution or program and the expiration of the accreditation or preaccreditation period--at least one unannounced on-site review at each institution that provides prebaccalaureate vocational education or training for the purpose of determining the institution's or program's continued compliance with the agency's standards.

(d) The accrediting agency--

(1) Monitors institutions or programs throughout the accreditation or preaccreditation period to ensure continuing compliance with the agency's standards or criteria; and

(2) Conducts special evaluations, site visits, or both, as necessary.

(e) The accrediting agency regularly reevaluates institutions or programs that have been granted accreditation or preaccreditation.

(Authority: 20 U.S.C. 1099b)

§602.25 Additions to or substantive changes in educational programs.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that, except as provided in paragraph (b) of this section, it includes within its previous grant of accreditation or preaccreditation to an institution an educational program that an institution initially offers, or substantively changes after that grant of accreditation or preaccreditation, only after--

(1) The institution notifies the accrediting agency of the addition of the new program or the substantive change in the existing program; and

(2) The accrediting agency evaluates the new or substantively changed program and determines that it does not adversely affect the institution's capacity to meet the agency's standards.

(b) An accrediting agency may extend accreditation to an educational program that an institution initially offers or substantively changes after it received the agency's last grant of accreditation or preaccreditation without specifically evaluating and approving that program if--

(1) The institution notifies the agency of that program; and

(2) The program does not provide prebaccalaureate vocational education.

(c) For purposes of this section, an accrediting agency defines a substantive change in an educational program, but the definition must include--

(1) A substantial change in the number of clock or credit hours, the number of weeks, and the content of that program;

(2) A change in the type of program offered;

(3) A change in the credential awarded for the successful completion of the program; and

(4) A change from clock hours to credit hours or vice versa.

(Authority: 20 U.S.C. 1099b)

§602.26 Required accreditation standards.

(a)(1) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that its accreditation or preaccreditation standards, or both, are sufficiently rigorous to ensure that the agency is a reliable authority as to the quality of the education or training provided by the institutions or programs it accredits.

(2) For a programmatic accrediting agency that does not serve as an institutional accrediting agency for any of the programs it accredits, the standards must address the areas contained in paragraph (b) of this section in terms of the type and level of the program rather than in terms of the institution.

(3) If none of the institutions an agency accredits participates in any Title IV, HEA program, or if the agency only accredits programs within institutions accredited by an

accrediting agency recognized by the Secretary, the accrediting agency is not required to have the standards described in paragraphs (b)(7), (b)(8), (b)(10), (b)(12), and (b)(13) of this section.

(b) In order to assure that an accrediting agency is a reliable authority as to the quality of the education or training provided by an institution or program it accredits, the agency must have standards that effectively address the quality of an institution or program in the following areas:

- (1) Curricula.
- (2) Faculty.
- (3) Facilities, equipment, and supplies.
- (4) Fiscal and administrative capacity as appropriate to the specified scale of operations. The agency shall--

(i) Have standards addressing the institution's or program's finances and management that enable it to assess an institution's or program's fiscal and administrative capacity, as appropriate to its scale of operations, for the purpose of determining whether--

(A) The institution or program appears able to continue to be an ongoing, economically viable entity; and

(B) The finances of the institution or program appear to be sufficient for it to continue to meet the agency's standards;

(ii) Make a determination under this standard--

(A) When it initially evaluates an institution or program for accreditation or preaccreditation; and

(B) When it periodically reevaluates the institution or program for accreditation or preaccreditation;

(iii) Require an institution or program to submit on an annual basis sufficient financial information, which may include the annual audited financial statement the institution or program submits to the Secretary under the Title IV, HEA programs, to enable the agency to determine if the financial capacity of the institution threatens the ability of the institution or program to continue to meet the agency's standards; and

(iv) Review, as appropriate on an annual basis, the information obtained under paragraph §602.26(b)(4)(iii) of this section to determine if there is reason to take any follow-up action based on a reduced financial capacity.

(5) Student support services.

(6) Recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising. The agency shall have standards that enable it to assess an institution's or program's recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising in terms of--

(i) Whether the institution's or program's academic calendar, catalogs, publications, and advertising are accurate, complete, and consistent with actual practice and agency standards, particularly with respect to costs, financial obligations, refunds, graduation rates, employment prospects, and other statements regarding educational effectiveness; and

(ii) Whether the institution's or program's admissions policies and standards are reasonable in light of the institution's or program's educational mission.

(7) Program length and tuition and fees in relation to the subject matters taught and the objectives of the degrees or credentials offered. The agency shall have standards that establish minimum and maximum program lengths for prebaccalaureate vocational education programs and have other standards to enable the agency to assess an institution's or program's length of program and tuition and fee charges. In developing these standards, the agency shall take into account such factors as--

- (i) Program objectives and content;
- (ii) The types and locations of instructional delivery;
- (iii) The knowledge and skills necessary for students to reach competence in the field being taught;
- (iv) Generally accepted practices in higher education;
- (v) Any applicable Federal statutes or regulations; and
- (vi) For any prebaccalaureate vocational education program, consideration of the remuneration that can reasonably be expected by students who complete the program.

(8) Measures of program length in clock hours or credit hours. The agency shall have standards that enable it to assess an institution's or program's measurement of program length. In developing these standards, the agency shall take into account such factors as--

- (i) Program goals, objectives, and content;

(ii) The types and combinations of instructional methodologies and delivery systems, including outside preparation as appropriate;

(iii) The knowledge and skills necessary for students to reach competence in the field being taught;

(iv) Generally accepted practices in higher education; and

(v) Any applicable Federal statutes or regulations.

(9) Success with respect to student achievement in relation to mission. The agency shall have standards that enable it to assess an institution's or program's success with respect to student achievement. Under these standards, the agency shall--

(i) Require the institution or program to document and assess the educational achievement of students in verifiable and consistent ways, such as--

(A) Student grades, grade point averages, theses, or portfolios;

(B) Results of admissions tests for graduate or professional school or other standardized tests;

(C) Transfer rates to institutions offering higher level programs; and

(D) Job placement rates, completion rates, results of licensing examinations, evaluations by employers, follow-up studies of alumni, and other recognized measures of educational outcomes;

(ii) Require the institution or program to use effectively the information obtained under paragraph (b)(9)(i) of this

section to improve student achievement with respect to the degrees or certificates offered;

(iii) Systematically monitor institutional or program performance with respect to student achievement to determine if performance is consistent with both the institution's or program's mission and objectives and the agency's objective measures of performance of student achievement; and

(iv) For any prebaccalaureate vocational education program accredited by the agency or provided by an institution the agency accredits, establish minimum quantitative standards for--

(A) Completion rates;

(B) Job placement rates; and

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

(10) Default rates in the student loan programs established under Title IV of the Act, based on the most recent data provided by the Secretary. The agency shall have standards that require it to evaluate an institution to determine whether the institution is out of compliance with its accrediting standards if the institution's latest cohort default rate under the Federal Stafford Loan or Federal Supplemental Loans for Students program

(i) Equals or exceeds 25 percent; or

(ii) Has increased significantly in relation to its rate in the previous year.

(11) Record of student complaints received by, or available to, the agency. The agency shall have standards that enable it to assess an institution's or program's record of student

complaints received by or made available to the agency. Under these standards, the agency shall--

(i) Review student complaints that relate to the agency's standards;

(ii) Take appropriate follow-up action with regard to those complaints;

(iii) If considered necessary by the agency, refer complainants to appropriate Federal, State, and other agencies if the complaints do not relate to the agency's standards; and

(iv) Require institutions or programs to make available to students the agency's mailing address or telephone number for complaints.

(12) Compliance with the institution's program responsibilities under Title IV of the Act. The agency shall have standards that require institutions to be in compliance with their responsibilities under the Title IV, HEA programs. The agency's assessment under these standards shall be based on program reviews, financial and compliance audits, audited financial statements, and any other information that the Secretary provides.

(13) The institution's practice of making refunds to students. The agency shall have--

(i) A refund policy, that must be approved by the Secretary, that provides for a fair and equitable refund to a student of tuition, fees, and other institutional charges; and

(ii) Standards that enable it to assess whether an institution complies with its refund policy.

(c)(1) An accrediting agency shall take appropriate action if its review of an institution or program under any standard indicates that the institution or program is not in compliance with that standard.

(2) If the agency believes that the institution or program is not in compliance with the standards, the agency shall--

(i) Take prompt adverse action against the institution or program; or

(ii) Require the institution or program to take appropriate action to bring itself into compliance, or to ensure its continued compliance, with the agency's standards within a time frame specified by the agency.

(3) The accrediting agency has sole discretion to determine the time frame specified in paragraph (c)(2)(ii) of this section for the institution or program to bring itself into compliance with agency standards. However, except as indicated in paragraph (c)(4) of this section, the specified period may not exceed 18 months.

(4) If the institution or program does not bring itself into compliance within the specified period, the agency must take adverse action unless the agency extends the period for achieving compliance for good cause.

(d) An accrediting agency shall have a reasonable basis for determining that the information it relies on for making the assessments described in paragraphs (b) and (c) of this section is accurate.

(e) An accrediting agency that has established and applies the standards in paragraph (b) of this section may establish any additional accreditation standards as it deems appropriate.

(Authority: 20 U.S.C. 1091, 1099b)

§602.27 Additional required operating procedures.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that it satisfies the procedural requirements contained in other provisions of this part and the additional requirements contained in paragraphs (b) through (h) of this section.

(b) If the accrediting agency accredits institutions and that accreditation enables those institutions to seek eligibility to participate in Title IV, HEA programs--

(1) The agency requires the institution to--

(i) Notify the agency if the institution plans to establish a branch campus or an additional location; and

(ii) Submit a business plan described in paragraph (b)(2) of this section if the institution plans to operate a branch campus or additional location--

(A) That is geographically apart from the main campus;

(B) That has its own separate administrative structure, services, and facilities, and

(C) At which the institution plans to offer a complete educational program;

(2) The business plan that an institution submits under paragraph (b)(1)(ii) of this section must contain a description of--

(i) The educational program to be offered at the branch campus or location;

(ii) The projected revenues and expenditures and cash flow at the branch campus or location; and

(iii) The operation, management, and physical resources at the branch campus or location;

(3) The agency extends accreditation to the branch campus or additional location only after evaluating the business plan and taking other necessary actions to permit the agency to determine that the branch campus or additional location has sufficient educational, financial, operational, management, and physical resources to satisfy the accrediting agency's standards for accreditation;

(4) The agency undertakes a site visit of the branch campus or additional location as soon as practicable, but no later than six months after the establishment of that branch campus or additional location;

(5) The agency undertakes a site visit of an institution that has undergone a change of ownership that resulted in a change of control as soon as practicable, but no later than six months after the change of ownership; and

(6) The agency requires any institution it accredits that enters into a teach-out agreement with another institution to submit to the accrediting agency for approval a teach-out agree-

ment that is consistent with applicable standards and regulations.

(c) The accrediting agency maintains and makes publicly available written materials describing--

(1) Each type of accreditation and preaccreditation granted by the agency;

(2) Its procedures for applying for accreditation or preaccreditation;

(3) The criteria and procedures used by the agency for determining whether to grant, reaffirm, reinstate, deny, restrict, revoke, or take any other action related to each type of accreditation and preaccreditation that the agency grants;

(4) The names, academic and professional qualifications, and relevant employment and organizational affiliations of the members of the agency's policy and decision-making bodies as well as the agency's principal administrative staff; and

(5) The institutions or programs that the agency currently accredits or preaccredits and the date when the agency will review or reconsider the accreditation or preaccreditation of each institution or program.

(d) In accordance with agency policy, the accrediting agency publishes the year when an institution or program subject to its jurisdiction is being considered for accreditation or preaccreditation and provides an opportunity for public comment concerning the institution's or program's qualifications for accreditation or preaccreditation.

(e) The accrediting agency provides advance public notice of proposed new or revised criteria, giving interested parties adequate opportunity to comment on these proposals prior to their adoption.

(f) The accrediting agency--

(1) Reviews any complaint against an accredited institution or program, or the agency itself, that is related to the agency's standards, criteria, or procedures; and

(2) Resolves the complaint in a timely, fair, and equitable manner.

(g) The accrediting agency ensures that if an institution or program elects to make a public disclosure of its accreditation or preaccreditation status granted by the agency, the institution or program discloses that status accurately, including the specific academic or instructional programs covered by that status.

(h) The accrediting agency provides for the public correction of incorrect or misleading information about--

(1) The accreditation status of an accredited or preaccredited institution or program;

(2) The contents of reports of site team visitors; and

(3) The agency's accrediting actions.

(Authority: 20 U.S.C. 1099b)

§602.28 Due process for institutions and programs.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that the procedures it uses

throughout the accrediting process satisfy due process requirements.

(b) The Secretary considers that an accrediting agency's procedures satisfy due process requirements if--

(1) The agency sets forth in writing its procedures governing its accreditation or preaccreditation processes;

(2) The agency's procedures afford an institution or program a reasonable period of time to comply with agency requests for information and documents;

(3) The agency notifies the institution or program in writing of any adverse accrediting action;

(4) The agency's notice describes with particularity the basis for any adverse accrediting action;

(5) The agency permits the institution or program the opportunity to appeal an adverse accrediting action, and the right to representation by counsel during an appeal, except that the agency, at its sole discretion, may limit the appeal to a written appeal; and

(6) The agency notifies the applicant in writing of the result of the appeal and the basis for that result.

(Authority: 20 U.S.C. 1099b)

§602.29 Notification of accrediting agency decisions.

(a) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that its written policies, procedures, and practices require it to notify the Secretary, the appropriate State postsecondary review entity, the appropriate

accrediting agencies, and the public of the following types of decisions, no later than 30 days after a decision is made:

(1) A decision by the agency to award initial accreditation or preaccreditation to an institution or program.

(2) A final decision by the agency to--

(A) Deny, withdraw, suspend, or terminate the accreditation or preaccreditation of an institution or program; or

(B) Take other adverse action against an institution or program.

(3) A decision by the agency to place an institution or program on probation.

(4) A decision by an accredited institution or program to withdraw voluntarily from accreditation or formal preaccreditation status.

(5) A decision by an accredited institution or program to let its accreditation or preaccreditation lapse.

(b) No later than 60 days after a final decision, the accrediting agency makes available to the Secretary, the appropriate State postsecondary review entity, and the public upon request, a brief statement supporting the agency's determination to deny, withdraw, suspend, or terminate the accreditation or preaccreditation of an institution or program and the comments of the affected institution or program with regard to that decision.

(Authority: 20 U.S.C. 1099b)

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

(a) To be listed by the Secretary as a nationally recognized accrediting agency, an accrediting agency must demonstrate to the Secretary that--

(1) If the accrediting agency accredits institutions--

(i) The agency accredits only those institutions that are legally authorized under applicable State law to provide a program of education beyond the secondary level;

(ii) The agency does not renew, under the conditions described in paragraph (b) of this section, the accreditation or preaccreditation of an institution during a period in which the institution--

(A) Is the subject of an interim action by a recognized institutional accrediting agency potentially leading to the suspension, revocation, or termination of accreditation or preaccreditation or by a State agency potentially leading to the suspension, revocation, or termination of the institution's legal authority to provide postsecondary education; or

(B) Has been notified of the loss of accreditation, or the suspension, revocation, or termination by the State of the institution's legal authority to provide postsecondary education, and the due process procedures required by the action have not been completed;

(iii) In considering whether to grant initial accreditation or preaccreditation to an institution, the agency takes into account actions by--

(A) Recognized institutional accrediting agencies that have denied accreditation or preaccreditation to the institution, placed the institution on public probationary status, or revoked the accreditation or preaccreditation of the institution; and

(B) A State agency that has suspended, revoked, or terminated the institution's legal authority to provide post-secondary education; and

(iv) If the agency grants accreditation or preaccreditation to an institution notwithstanding the actions described in paragraph (a)(1)(ii) or (a)(1)(iii) of this section, the agency shall provide to the Secretary a thorough explanation, consistent with its accreditation standards, why the previous action by a recognized institutional accrediting agency or the State does not preclude the agency's grant of accreditation or preaccreditation; and

(v) If a recognized institutional accrediting agency takes an adverse action with respect to a dually-accredited institution or places the institution on public probationary status, or if a programmatic accrediting agency takes an adverse action with respect to a program offered by the institution or places the program on public probation for reasons associated with the overall institution rather than the specific program, the agency shall promptly review its accreditation or preaccreditation of the institution to determine if it should also take adverse action against the institution.

(2) If the accrediting agency accredits programs--

(i) The agency does not renew, under the conditions described in paragraph (b) of this section, the accreditation or preaccreditation status of a program during any period in which the institution offering the program--

(A) Is the subject of an interim action by a recognized institutional accrediting agency potentially leading to the suspension, revocation, or termination of accreditation or preaccreditation or by a State agency potentially leading to the suspension, revocation, or termination of the institution's legal authority to provide postsecondary education; or

(B) Has been notified of the loss of accreditation, or the suspension, revocation, or termination by the State of the institution's legal authority to provide postsecondary education, and the due process procedures required by the action have not been completed;

(ii) In considering whether to grant initial accreditation or preaccreditation to a program, the agency takes into account actions by--

(A) Recognized institutional accrediting agencies that have denied accreditation or preaccreditation to the institution offering the program, placed the institution on public probationary status, or revoked the accreditation or preaccreditation of the institution; and

(B) A State agency that has suspended, revoked, or terminated the institution's legal authority to provide postsecondary education;

(iii) If the agency grants accreditation or preaccreditation to a program notwithstanding the actions described in paragraph (a)(2)(ii) of this section, the agency provides to the Secretary a thorough explanation, consistent with its accreditation standards, why the previous action by a recognized institutional accrediting agency or the State does not preclude the agency's grant of accreditation or preaccreditation; and

(iv) If a recognized institutional accrediting agency takes adverse action with respect to the institution offering the program or places the institution on public probationary status, the agency promptly reviews its accreditation or preaccreditation of the program to determine if it should take adverse action against the program.

(3) The agency routinely shares information with other appropriate recognized accrediting agencies and State agencies information about the accreditation or preaccreditation status of an institution or program and any actions it has taken regarding the institution's or program's accreditation or preaccreditation.

(b) An accrediting agency is subject to the requirements contained in paragraph (a) of this section if the accrediting agency knew, or should have known, of the actions being taken by another recognized accrediting agency or State agency.

(Authority: 20 U.S.C. 1099b)

APPENDIX A - Major Issues Discussed at the Regional Meetings

The Department convened four regional meetings in September 1992 to obtain public involvement in the development of regulations to implement Title IV, part H, subpart 2 of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992, Public Law 102-325. This subpart describes the procedures and criteria to be used for the Secretary's recognition of accrediting agencies.

The Department invited individuals and representatives of groups involved in student financial assistance programs to the four regional meetings. At each meeting, the Department provided for a comprehensive discussion and exchange of information regarding the implementation of subpart 2 by providing participants with an issue paper that raised issues and questions with regard to the statutory provisions included in subpart 2. The following is a summary of the information provided to the Department by participants at the regional meetings. The section of the proposed regulations that is the subject of the information is provided as a reference.

Separate and independent requirement - Section §602.3.

Participants in the regional meetings suggested that, in order for an accrediting agency to obtain a waiver of the requirement that it be separate from and independent of, both administratively and financially, any related, associated, affiliated, trade association or membership organization, an agency should have to demonstrate that (a) its parent body has no role in making or ratifying its accrediting decisions, (b) it has sufficient budget

and administrative autonomy to carry out its required accrediting responsibilities, and (c) information obtained in the course of its accrediting process is not made available to the parent body unless it is public information.

Unannounced visits by the Secretary - §602.10. Participants discussed the conditions under which an unannounced visit to either an accrediting agency or an institution or program that it accredits, as part of the Secretary's comprehensive review and evaluation of the agency, was appropriate and suggested that such a visit would be appropriate only if (a) the Secretary had evidence of the agency's non-compliance with the statute or Departmental regulations and (b) an unannounced site visit would assist in investigating the non-compliance.

Review by the National Advisory Committee on Institutional Quality and Integrity - §602.12. Participants discussed the role of the National Advisory Committee on Institutional Quality and Integrity in reviewing the applications of accrediting agencies seeking recognition by the Secretary and suggested that an agency should have an opportunity to appeal the Advisory Committee's recommendation before the Secretary reaches a final decision.

Limitation, suspension, or termination of recognition - §602.14. Participants discussed the process the Secretary should use in determining whether to limit, suspend, or terminate an accrediting agency's recognition if the Secretary determines, after notice and opportunity for a hearing, that the agency has failed to satisfy one or more of the requirements for recognition. They suggested that the proposed regulations should

afford the agency due process by providing (a) written notice to the agency, (b) opportunity for the agency to respond in writing, (c) public review by the Advisory Committee, (d) a written decision by the Advisory Committee, and (e) an appeal to the Secretary.

Ability and experience - §602.21-§602.22. Participants discussed what standards the Secretary should use to determine whether an accrediting agency demonstrates sufficient ability and experience in operating as an accrediting agency. Most favored retention of the language contained in the current regulations on these issues, but a minority expressed concern that these requirements placed undue burden on new agencies seeking initial recognition.

Unannounced site visits by accrediting agencies - §602.24.

Participants discussed whether the proposed regulations should contain specific guidance on how and when accrediting agencies were to conduct unannounced site visits to institutions that offer vocational education and training and also what institutions were to be visited. They were in agreement that the agency should have discretion to decide how and when the visits took place; they were divided on the definition of institutions that offer vocational education, so they were divided on what institutions should be visited.

Required accreditation standards - §602.26. Participants discussed the standards that accrediting agencies must have for 13 specific areas. They felt that programmatic accrediting agencies and those agencies that do not accredit for purposes of Title IV should be exempt from the standards that address default

rates, institutional compliance with its program responsibilities under Title IV, and refund policies. Their comments on specific standards were as follows:

Program length and tuition and fees - §602.26(b)(7).

Participants felt that accrediting agencies should assess these in relation to the subject matter taught and the objectives of the degrees or credentials offered. They also felt that the proposed regulations should protect agencies against lawsuits alleging violation of anti-trust laws.

Measures of program length in clock hours or credit hours -

§602.26(b)(8). Participants felt that accrediting agencies should be expected to evaluate program length at non-degree granting institutions for consistency with the time required to develop the knowledge base and skills necessary for entry level to the vocation for which the students are being prepared. In the case of degree-granting institutions, participants felt that agencies should evaluate program length for consistency with usual practice in higher education.

Success with respect to student achievement - §602.26(b)(9).

Participants felt that accrediting agencies should be required to consider completion rates, job placement rates, and State licensing examination pass rates for institutions or programs that purport to train individuals for occupations, vocations, or professions. Most participants felt that agencies should be given the flexibility to establish standards for these areas, but a minority felt that the proposed regulations should contain specific requirements.

Default rates - §602.26(b)(10). Most participants felt that accrediting agencies should review schools for compliance with agency standards if their default rate exceeded a certain rate, but some felt that agencies should have to remove accreditation if the default rate exceeded a certain value.

Due process for institutions and programs - §602.28. Participants felt that accrediting agencies should be expected to adhere to principles of fundamental procedural fairness in dealing with institutions or programs. They also felt that any opportunity for a hearing that an agency might provide did not necessarily imply a personal appearance by representatives of the institution or program.

Implementation of the regulations. Participants felt that accrediting agencies should have 8-12 months from the effective date of the regulations to come into compliance.

Preamble. Participants felt that a preamble should be included to establish the context for the interpretation of the regulations.