UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

Major Changes Made in Regulations between Publication of the Notice of Proposed Rulemaking and the Final or Interim Final Regulation

The Higher Education Amendments of 1992, Part H, Program Integrity Triad

Following is a brief description of the major changes that were made to the Part H regulations between the publication of the Notices of Proposed Rulemaking and the final regulations. The issues listed represent concerns expressed by individuals and organizations that submitted comments. The language used to describe the final regualtions should not be construed as precise regulatory language, however, it reflects an accurate synopsis of what is included in the final regulations.

<u>State Postsecondary Review Program</u>

ISSUE: Purpose of the State Postsecondary Review Program

Statute	The purpose specified for the State Postsecondary Review Program exceeds the statute.
NPRM	The NPRM stated the purpose as increasing state oversight of institutions which participate in Title IV programs.
Final	The final regulation reflects the purpose as stated in the statute which is to reduce fraud and abuse in Title IV programs.

ISSUE: Definition of Vocational and Professional Programs

NPRM	The NPRM used a definition of vocational program based on the Integrated Postsecondary Education Data System (IPEDS) glossary definition of an occupationally specific program. Institutions already use this definition in reporting enrollment data for various types of vocational education.
Final	The definition for vocational program was modified to correspond more closely to the IPEDS definition. IPEDS does not define professional education in the same way, but the IPEDS form requests data on

specific programs which would correspond to professional programs at the baccalaureate level. Basically, vocational programs are those, below the bachelor's level, which prepare individuals with skills and training for employment; professional programs are those which require a bachelors or first professional degree. Most public and non-profit private institutions already report data to IPEDS. As a result of provisions contained in the Higher Education Amendments, all institutions will now be required to submit data to IPEDS.

ISSUE: SPRE authority over institutions which are not referred for review by the Secretary

NPRM — The preamble of the NPRM made clear that SPREs do not have the authority to require "unreferred" institutions to provide data to the SPREs.

Final — Language was added in 667.4 stating both that SPREs are responsible for providing information to the Secretary only on referred institutions and that SPREs are not authorized to require institutions which are not referred to comply with standards developed for review of referred institutions.

ISSUE: Potential inaccuracy of data used as the basis for referral to SPREs

Final — The final regulation states that the Secretary will notify the institution in advance of referral and that an institution may request the Secretary to confirm the accuracy of the data on which the referral is based. The final regulation also provides institutions 30 days in which to demonstrate that the referral is improper because it was based on records that are not properly maintained or are inaccurate.

ISSUE: Use of completion data to measure success of the institution's method to assess that a student has the ability to complete the educational program applied for

NPRM — The NPRM required that completion data be used in evaluating the method.

Final — The completion data requirement was deleted in the final regulation.

ISSUE: Quantifiable standards concerning completion, placement and pass rates on licensure examination

NPRM — The NPRM specified that SPREs must quantify standards by establishing acceptable percentages for completion/graduation, withdrawal, placement and pass rates on licensure examinations.

Final — The final regulations use the statutory language "rates" as opposed to percentages but maintain the requirement that standards in these areas be establish rates which would be "acceptable."

ISSUE: The relationship of the level of tuition and fees to expected remuneration

NPRM — The NPRM required standards to be developed for all programs preparing students for work.

Final — The final regulations limit the application of the standard to vocational programs and clarify that local, state, or national data on average compensation may be used as opposed to requiring institutions to survey graduates concerning remuneration actually earned.

ISSUE: SPRE selection of alternative peer systems

NPRM — The NPRM provided no guidance on this matter.

Final — The final regulation includes criteria relating to determining whether a particular peer review system is acceptable as an alternative to contracting with an accrediting agency. The criteria require that the system had an established basis for evaluating educational quality, review procedures that include selection of peer reviewers who have experience in evaluating the types of program offered by the institution, and established policies and procedures that guard against bias in conducting reviews.

ISSUE: Particularly where SPRE's are required to develop minimum quantifiable standards, potential unfairness of standards to certain types of institutions such as community colleges, and institutions which serve disadvantaged students

NPRM — The Preamble to the NPRM specified that such standards were not to be viewed as absolutes and that institutions would be given the opportunity to demonstrate why a particular standard was not applicable.

Final — Language included in the final regulation will require SPREs to provide the opportunity for institutions to present evidence that demonstrates that a particular standard should not apply.

Recognition of Accrediting Agencies

ISSUE: Different definition of vocational education between the Accreditation NPRM and the NPRM concerning the State Postsecondary Review Program

Final — The definition provided in the accreditation regulations was changed to correspond to the definition in the SPRE regulations. Both closely correspond to the IPEDS glossary definition of "occupationally specific program." As mentioned previously most public and non-profit private institutions already use this definition in reporting data for IPEDS.

ISSUE: Protection of information that institutions provide accrediting bodies on a confidential basis

NPRM — The language contained in the NPRM required accrediting agencies to provide any information that was not defined as confidential by the accrediting body. However, the preamble suggested the Department was considering requiring accrediting agencies to provide information requested by the Secretary whether defined as confidential or not.

Final — The final regulations narrow that requirement to include only information relating to the institution's Title IV compliance to assist the Secretary in resolving questions concerning an institution's eligibility or compliance.

ISSUE: Limiting the requirement of unannounced site visits requirement to institutions which offer vocational programs

NPRM — The NPRM simply restated the unannounced site visit as a requirement.

Final — The Department looked seriously at the option of limiting the requirement to institutions which offer vocational education predominately. However, the intention of the Congress in extending this to all institutions which offer vocational education was clear in the conference report. The final regulation clarifies the type of visit which the Department would regard as responsive to the requirement, refers to such a visit as an on-site inspection, and specifies that the inspection does not have to be as comprehensive as the on-site visit connected with a full review of an institution.

ISSUE: Substantive change policy

NPRM — The NPRM contained the requirement that an accrediting agency must have a policy that would require institutions to report changes to accrediting bodies and to seek preapproval for certain types of programs.

Final — The final regulations clarify the kinds of changes which should be encompassed in a substantive change policy. Preapproval of substantive changes is maintained as an important feature of the policy requirement. Since 5 - 10 year periods of accreditation are common, the Department continues to believe that some means of evaluating changes made in the institution over the period of accreditation is important to insuring institutions continue to meet accrediting agency standards.

ISSUE: Further defining the twelve required accreditation standards exceeds the requirements of the statute

NPRM — Language clarifying several of the twelve standards was included in the NPRM.

Final — The final regulations do not contain language clarifying the required standards. An appendix specifies the kinds of standards which the Secretary would consider appropriate for eight of the required standards which have a particular relationship to other Title IV requirements but does not make such standards a requirement.

ISSUE: Refund policy as an additional required standard

NPRM — The NPRM added refund policy to the list of required standards.

Final — This requirement was deleted in the final regulations.

ISSUE: Inappropriate time limit for institutions or programs to come into compliance with agency standards

NPRM — The NPRM specified a maximum period of 18 months but provided for extension of the period by the accrediting agency with good cause.

Final — The final regulations provide a maximum period of 12 months for programs of less than one year in length; 18, for those 1 - 2 years in length; and 24 for programs over 2 years in length. The regulations maintain the good cause extension provision.

<u>Subpart 3</u>

ISSUE: The Secretary's management of the gatekeeping process

Final — Each of the three regulations contains a lengthy discussion relating to how the Secretary intends to view the various responsibilities of the triad agencies and how he intends to carry out the responsibilities for the gatekeeping process. In addition, regulations dealing with the information the Secretary would provide and information sharing among the triad agencies were added to the accreditation and SPRE regulations.

ISSUE: If ED does not process an application for a renewal of participation before the school's participation expires, the school should not be punished.

Final — The school must have application submitted at least 90 days before participation expires, and if Ed does not process by the expiration date, certification is extended on a monthly basis.

ISSUE: Provisional certification of institutions which meet the exceptions to the general standards of financial responsibility such as by providing a letter of credit.

NPRM — It was unclear in the NPRM whether institutions which met the exception for the general standards of financial responsibility were to be certified provisionally and would receive full certification.

Final — The regulation makes clear that such institutions may receive full certification.

ISSUE: Unclear cash reserve requirement

NPRM — The NPRM required a cash reserve of 10% of deferred tuition as a condition of financial responsibility.

Final — The cash reserve requirement was changed to 25% of the amount the institution paid in refunds in the previous year.

ISSUE: Ratio of assets to liabilities proposed for-profit institutions unnecessary for the Secretary's purposes and unduly disadvantageous to for-profit institutions

Final — The ratio was changed to an acid test ratio of 1:1 but excludes unsecured or uncollateralized related party receivables. Cash reserve may be included in cash equivalents for this ratio.

ISSUE: Financial responsibility requirement for public institutions insufficient

NPRM — The NPRM proposed that a public institution would be judged as financially responsible if it could show it was backed by the full faith and credit of the state.

Final — The final regulation provides three additional avenues to financial responsibility for public institutions. These are a positive unrestricted current fund balance in a single audit report, a positive unrestricted current fund balance in a state's Higher Education Fund, and the submission of a statement by the State Auditor General that the institution has sufficient resources to meet its financial obligations.

ISSUE: Alternatives desired for determining financial responsibility for institutions having significant financial strength

Final — The final regulations provide for an institution to demonstrate financial responsibility by submitting evidence of a bond rating at or above the second highest level of rating given by a nationally recognized rating organization.

ISSUE: **Standards for administrative capability too detailed, exceed the statute, and unrelated to the Secretary's interest in insuring capable administration of Title IV funds**

NPRM The NPRM contained a number of requirements taken from the list of standards SPREs are required to develop for review of triggered institutions. These included regulations concerning student support services; student complaints; advertising, promotion and recruitment practices; outstanding liability; and completion, placement and pass rates.

Final The final regulations do not include regulations governing the areas mentioned above. The regulations also specify that the problems identified in reviews that the Secretary will take into account in determining administrative capability, relate to administration of Title IV funds.

ISSUE: **Inconsistent default rate requirements**

NPRM The NPRM included a default rate of 20% in the FFEL program and 15% in the Perkins Loan Program as standards of administrative capability.

Final The final regulations specify a 25% cohort default rate for the FFEL programs over a three-year period which is consistent with other default rate requirements.