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Accreditation definitions

Issues: During the first subcommittee session, the subcommittee reviewed the proposed definitions and raised concerns about the Department’s intent behind the changes to the definitions and movement of the definitions to Part 600. In addition, the subcommittee members provided edits and comments to proposed changes to definitions, which the Department took back for review.

During the second subcommittee session, the Department presented revised definitions based on the edits and comments of the subcommittee. Again, the subcommittee reviewed the new proposals and provided edits and comments. The subcommittee raised a number of concerns including specifically about the effect of the change in the definitions to include the public availability of documents and decisions, the usage of compliance and monitoring reports, and the access to title, IV funds by non-compliant institutions via preaccreditation. In addition, the subcommittee made decisions on how to present the subcommittee’s recommendation for each proposed definition to the main committee.

The subcommittee reported its decisions related to the definitions to the main committee. The main committee had comments and edits to the proposed definitions. Those edits are reflected in this document. The main committee asked the subcommittee to review the definitions based on their comments and edits for a final recommendation.

§602.3 What definitions apply to this part?

* * * * *

Compliance report means a written report that the Department requires an agency to file ~~to~~ when ~~that~~ agency is found to be out of compliance to demonstrate that the agency has addressed corrected deficiencies specified in a decision letter from the senior Department official or the Secretary. Compliance reports must be approved in order for the agency’s recognition to be granted or continued. Compliance reports must be reviewed by the Department staff and the Advisory Committee and approved by the senior Department official (and, in the event of an appeal, by the Secretary) to continue renew or grant, in the case of an award of initial award, the agency’s grant recognition.

Final accrediting action means a final determination by an accrediting agency regarding the accreditation or preaccreditation status of an institution or program. A final accrediting action is not appealable within the agency. the decision made by the agency, including at the conclusion of any appeals process made available to the institution or program under by the agency’s due process policies and procedures.

Commented [A1]: NOTE TO NEGOTIATORS: The Department proposes to codify the distinction between compliance reports and monitoring reports. A compliance report is required if the agency is not compliant, but the Department believes that the agency can come into compliance within 12 months. Staff and NACIQI must review and the SDO must approve a compliance report in order for recognition to be granted or continued. A monitoring report is required if the agency is substantially compliant but the Department wishes to closely monitor that agency’s performance to ensure that an improvement plan is in place and effective, or that the agency operates in continuous compliance. The report must be reviewed by staff and approved by the SDO for recognition to continue.

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

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

~~(2) The agency has had more time to document that it is c~~Compliant in practice but needs to provide additional documentation; or

(3) The agency, which is ~~c~~Compliant in practice, ~~but needs to~~ has updated its policies to align ~~conform~~ with those compliant ~~its~~ practices.

Commented [A2]: The Department is proposing to remove this option as it believes the other two capture it.

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

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

~~(1) Geographic area of accrediting activities; such that the inclusion of a particular geographic area (including but not limited to a State or tribal lands) in one accreditor agency's scope does not preclude the inclusion of that same or a similar geographic area in another accreditor agency's scope;~~

(2) Types of degrees and certificates covered;

(3) Types of institutions and programs covered;

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

(5) Coverage of accrediting activities related to distance education or correspondence education courses.

Commented [A3]: In order to end the monopoly of the current regional accreditation system, and to acknowledge that distance learning, additional locations, and branch campuses have expanded the reach of regional agencies far beyond their historic geographical scope, it is important for agencies to acknowledge every state in which they accredit an institution, branch campus, or additional location, and to allow for more than one agency to include a particular State or tribal nation in its scope. Note that this definition would also enable, for example, tribal nations to form their own regional agency in which one or more tribal nations could define the geographic scope of the agency.

Commented [A4]: Based on the concerns of the subcommittee and main committee, the Department is proposing to remove geographic area from an agency's scope of recognition.

Commented [A5]: NOTE TO NEGOTIATORS: Substantial compliance could indicate that an agency's practices are compliant, but a minor correction or addition is needed to its written policies or other documents, or to the way in which it has implemented its policies in some circumstances. For example, when an institution is serving as a teach-out provider to students at a closing or closed campus, the agency may need to waive certain policies in order to allow that institution to accommodate additional students and to more generously accept credits earned by students at the closing or closed institution. There may also be instances where the agency cannot apply its standards to a particular institution due to extenuating circumstances, such as local or regional economic challenges, natural disaster, differences in state or tribal laws, the implementation of certain innovations, or the unique nature or mission of an institution (e.g. an aviation program or a conservatory may have very different performance requirements – including physical performance requirements - or employment outcomes than a more traditional institution).

Senior Department official means the ~~senior~~ official in the U.S. Department of Education ~~who reports directly~~ designated by the Secretary who has appropriate seniority and relevant subject matter knowledge to ~~the Secretary regarding~~ make independent decisions on accrediting agency recognition.

Substantial compliance: means having the agency demonstrated to the Department staff and the Advisory Committee that it has the necessary policies, practices and standards in place, and in all but a few of those cases, generally adheres with fidelity to those policies, practices and

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standards; or ~~having~~ the agency has policies, practices, and standards in place that need minor modifications ~~in order to become fully~~ reflect its generally compliant practice.

§600.2 Definitions.

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Preaccreditation (sometimes referred to as candidacy ~~status~~) means the status of accreditation and public recognition that an accrediting agency grants to an institution or program for a limited period of time that signifies the agency has determined that the institution or program is progressing towards a full term of accreditation and is likely to attain a full term of accreditation before the expiration of that limited period of time.

§602.23 Operating procedures all agencies must have.

* * * * *

(f) If offered, the agency's preaccreditation policies and procedures must include the following:

(1) An agency's preaccreditation standards should predict success for an institution or program seeking accreditation.

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

(3) All institutions or programs holding preaccreditation must have a teach-out plan agreement in place with an institution or program that is accredited by a nationally recognized agency, and meets applicable requirements for professional licensure. If an agency denies accreditation to an institution or program it has preaccredited, the agency may maintain the institution's or program's preaccreditation until the institution or program has had a reasonable time to complete the activities in its teach-out agreement ~~to undertake~~ to assist students in transferring or completing their program(s); and

(4) An accredited institution or program cannot be moved from accredited to preaccredited status unless, following the loss of accreditation, the institution or program applies for initial accreditation and is awarded preaccreditation status under the new application. Institutions that participated in the Title IV, HEA programs before the loss of accreditation are subject to the requirements of 34 CFR 600.11(c).

Commented [A6]: The Department is considering a move of this clause to another section of the regulations.

Commented [A7]: The Department believes it is not feasible for an institution or program to have a teach-out agreement in place as that is a contract with the other institution or program. The execution of a teach-out agreement would only occur once an institution or program were to close.

Commented [A8]: The Department is proposing to insert the preaccreditation policies and procedures in the regulations at 602.23 from the definition, as proposed by main committee.

The main committee asked the subcommittee to specifically review the language in (3) and take into account the following comments/questions:

- Does the use of "may" give agencies enough latitude as to when to provide such an extension?
- How to provide better guidance on the length of time of such an extension? The use of "until" seemed problematic and not specific enough.
- Add a limit of an extension to currently enrolled students.
- How does this apply to an institution or program that was not closing after the loss of preaccreditation?
- Can the closing institution serve as the teach-out institution?

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Definitions of “teach-out,” “teach-out agreement,” and “teach-out plan”

Issues: During the first subcommittee session, the subcommittee reviewed the proposed definitions and raised a number of questions about the Department’s intent behind adding a definition of “teach-out,” moving the definition of a “teach-out agreement” to Part 600, and making changes to the definitions to “teach-out plan” and “teach-out agreement.” The Department indicated that it would provide additional context to the subcommittee prior to the next discussion. The intent of the proposed definitions and regulatory changes by the Department is to provide more clarity to the teach-out procedures and processes, as well as to provide greater flexibility to agencies and institutions in assisting students affected by such events.

Since the initial discussion, two members of the subcommittee provided an issue paper and redline edits to the related definitions in Section 600.2 and the regulations related to accrediting agency policy and procedures related to these issues in Section 602.24(c). Those documents are attached. The document with redline edits to Sections 600.2 and 602.24 also include the Department’s comments and edits in response.

§600.2 Definitions.

* * * * *

Teach-out: A period of time during which a program, institution, or institutional location that provides one hundred percent of at least one program offered engages in an orderly closure or when, following the closure of an institution or campus, another institution provides an opportunity for the students of the closed school to complete their program, regardless of their academic progress at the time of closure.

Teach-out agreement: A written agreement between institutions that provides for the equitable treatment of students and a reasonable opportunity for students to complete their program of study if an institution, or an institutional location that provides one hundred percent of at least one program offered, ceases to operate or plans to cease operations before all enrolled students have completed their program of study. An accrediting agency~~es~~ is permitted to waive requirements regarding the percentage of credits which must be earned by a student at the institution awarding a degree or certification when a student is completing his or her program through a written teach-out agreement.

Teach-out plan: A written plan developed by an institution that provides for the equitable treatment of students if an institution, or an institutional location that provides 100 percent of at least one program, ceases to operate or plans to cease operations before all enrolled

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students have completed their program of study, ~~and may include, if required by the institution's accrediting agency, a teach-out agreement between institutions.~~

§602.24 Additional procedures certain institutional agencies must have.

* * * * *

(c) Teach-out plans and agreements.

(1) The agency must require an institution it accredits or preaccredits to submit a teach-out plan to the agency for approval upon the occurrence of any of the following events:

(i) The Secretary notifies the agency that the Secretary has initiated an emergency action against an institution, in accordance with section 487(c)(1)(G) of the HEA, or an action to limit, suspend, or terminate an institution participating in any title IV, HEA program, in accordance with section 487(c)(1)(F) of the HEA, and that a teach-out plan is required.

(ii) The agency acts to withdraw, terminate, or suspend the accreditation or preaccreditation of the institution.

(iii) The institution notifies the agency that it intends to cease operations entirely or close a location that provides one hundred percent of at least one program, **including if the location is being moved** (which, depending upon State requirements, may or may not be treated as a **teach-out or closed school**) ~~to a new location.~~

(iv) A State licensing or authorizing agency notifies the agency that an institution's license or legal authorization to provide an educational program has been or will be revoked.

(2) The agency must evaluate the teach-out plan to ensure it ~~provides for the equitable treatment of students under criteria established by the agency, specifies additional charges, if any, and provides for notification to the students of any additional charges.~~ includes a list of academic programs offered by the institution, and the names of other institutions that offer similar programs and that could potentially enter into a teach-out agreement with the **institution.**

(3) If the agency approves a teach-out plan that includes a program that is accredited by another recognized accrediting agency, it must notify that accrediting agency of its approval.

(4) The agency may require an institution it accredits or preaccredits to enter into a teach-out agreement as part of its teach-out plan.

(5) The agency must require an institution it accredits or preaccredits that enters into a teach-out agreement, either on its own or at the request of the agency, to submit that teach-out agreement for approval. The agency may approve the teach-out agreement only if the agreement ~~is between institutions that are accredited or preaccredited by a nationally recognized accrediting agency,~~ is consistent with applicable standards and regulations, and provides for the equitable treatment of students by ensuring that ~~— the teach-out institution accepting students through the teach-out agreement—~~

Commented [A9]: NOTE TO NEGOTIATORS: The Department seeks to clarify that moving to a new location may or may not be considered a teach-out or closure, depending upon agency and State requirements regarding travel distance between campuses, and access to public transportation lines, etc.

Commented [A10]: NOTE TO NEGOTIATORS: The Department has learned through recent teach-out experiences that, while teach-out agreements cannot be executed until an institution has formally entered into a teach-out, it is important to know which institutions may have comparable programs that would enable those institutions to serve as potential teach-out partners.

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(i) ~~The teach-out institution has~~Has the necessary experience, resources, and support services to—

~~(A) Provide~~ provides an educational program that is of acceptable quality and reasonably similar in content, ~~structure, delivery modality,~~ and scheduling to that provided by the institution that is ceasing operations either entirely or at one of its locations; ~~however, while an online option may be made available to students enrolled in a closing ground-based program, such an option is not sufficient unless ground-based options are also provided;~~

(ii) Is able to remain stable, carry out its mission, and meet all obligations to existing students;

~~(B) Remain stable, carry out its mission, and meet all obligations to existing students; and~~

~~(ii) The teach-out institution demonstrates~~

(iii) Has not been subject to ~~a negative action~~ show cause, probation, or an equivalent action by the agency ~~over~~ during the prior two years, unless the action was rescinded by the agency or resolved by the institution to the satisfaction of the agency; and

(iv) Demonstrates that it can provide students access to the program and services without requiring them to move or travel for substantial distances or durations ~~(by mileage or travel time)~~ and that it will provide students with information about additional charges, if any.

Commented [A11]: NOTE TO NEGOTIATORS: The Department believes that it must clarify that it is insufficient to limit a teach-out plan or teach-out agreements to providers that offer programs using a different instructional modality than the closing institution. For example, students enrolled in a ground-based program may be offered the opportunity to complete the program online, but must also be offered the opportunity to complete the program at another institution that will provide a ground-based opportunity. An online program must include, among potential teach-out options, other online programs that are similar to the program being taught out.

Commented [A12]: NOTE TO NEGOTIATORS: The Department believes that it is important for students involved in a teach-out or campus closure to be provided with teach-out options at institutions or programs that can accommodate the additional students, help them through the transition between campuses, and will be likely to be operational until the student can complete his or her program.

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Changing accrediting agencies and multiple accreditation

Issues: The Department believes the existing language is open to subjective interpretation. The Department also believes that an institution should have the right to seek accreditation from any agency it chooses. The intent of the proposed regulatory changes by the Department is to provide clarity of the factors used by the Department to determine if the cause for an institution to either change accrediting agencies or to hold accreditation with multiple agencies is reasonable in determining eligibility to participate in title IV, HEA programs.

§600.11 Special rules regarding institutional accreditation or preaccreditation.

* * * * *

(a) *Change of accrediting agencies.* For purposes of §§600.4(a)(5)(i), 600.5(a)(6), and 600.6(a)(5)(i), the Secretary does not recognize the accreditation or preaccreditation of an otherwise eligible institution if that institution is in the process of changing its accrediting agency, unless the institution provides to the Secretary—

(1) All materials related to its prior accreditation or preaccreditation; and

(2) Materials demonstrating reasonable cause for changing its accrediting agency. *The Secretary determines such cause to be reasonable unless the institution -*

(i) Has had its accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months, unless such withdrawal, revocation, or termination has been rescinded by the same accrediting agency; or

(ii) Has withdrawn from accreditation voluntarily under a show cause or suspension order during the preceding 24 months, unless such order has been rescinded by the same accrediting agency.

(iii) Notwithstanding paragraphs (i) and (ii), the Secretary may determine the institution's cause for changing its accrediting agency to be reasonable if the agency did not provide the institution its due process rights, the agency applied its standards and criteria differently to one institution over another, or was the result of an agency's act of discrimination against an institution or program as a result of the institution's religious mission.

(b) *Multiple accreditation.* The Secretary does not recognize the accreditation or preaccreditation of an otherwise eligible institution if that institution is accredited or preaccredited as an institution by more than one accrediting agency, unless the institution—

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(1) Provides to each such accrediting agency and the Secretary the reasons for that multiple accreditation or preaccreditation;

(2) Demonstrates to the Secretary reasonable cause for that multiple accreditation or preaccreditation; ~~and.~~

The Secretary determines the institution's cause for multiple accreditation to be reasonable unless the institution –

(i) Has had its accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months, unless such withdrawal, revocation, or termination has been rescinded by the same accrediting agency; or

(ii) Has withdrawn from accreditation voluntarily under a show cause or suspension order during the preceding 24 months, unless such order has been rescinded by the same accrediting agency;

(iii) Notwithstanding paragraphs (i) and (ii), the Secretary may determine the institution's cause for seeking multiple accreditation or preaccreditation to be reasonable if the institution's primary interest in seeking multiple accreditation is based on that agency's ~~accreditor's~~ geographic area, ~~scope and national accreditation based on that accreditor's~~ program-area focus, or mission ; and

(3) Designates to the Secretary which agency's accreditation or preaccreditation the institution uses to establish its eligibility under this part.

(c) *Loss of accreditation or preaccreditation.* (1) An institution may not be considered eligible for 24 months after it has had its accreditation or preaccreditation withdrawn, revoked, or otherwise terminated for cause, unless the accrediting agency that took that action rescinds that action.

(2) An institution may not be considered eligible for 24 months after it has withdrawn voluntarily from its accreditation or preaccreditation status under a show-cause or suspension order issued by an accrediting agency, unless that agency rescinds its order.

(d) *Religious exception.* (1) If an otherwise eligible institution loses its accreditation or preaccreditation, the Secretary considers the institution to be accredited or preaccredited for purposes of complying with the provisions of §§600.4, 600.5, and 600.6 if the Secretary determines that its loss of accreditation or preaccreditation —

(i) Is related to the religious mission or affiliation of the institution; and

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(ii) Is not related to its failure to satisfy the accrediting agency's standards. (2) If the Secretary considers an unaccredited institution to be accredited or preaccredited under the provisions of paragraph (d)(1) of this section, the Secretary will consider that unaccredited institution to be accredited or preaccredited for a period sufficient to allow the institution to obtain alternative accreditation or preaccreditation, except that period may not exceed 18 months.