777 6th Street NW
Suite 610
Washington DC 20001
tel (202) 618-3900
fax (202) 478-1804
www.pennhillgroup.com

MEMORANDUM

TO: **Interested Parties**
FROM: **Penn Hill Group**
DATE: **August 21, 2026**
SUBJECT: **Department of Education, Notice of Proposed Rulemaking, Accreditation, Innovation, and Modernization (AIM)**

On August 20, the U.S. Department of Education (ED), published a Notice of Proposed Rulemaking (NPRM) in the Federal Register regarding accreditation. The NPRM follows ED's establishment of *The Accreditation, Innovation, and Modernization (AIM)* Negotiated Rulemaking Committee earlier this year, which came to consensus on proposed regulatory changes. The proposed language in the NPRM reflects this agreement with several non-substantive and non-technical changes. This memo provides an overview of the NPRM along with a summary of ED's stated reasons for specific proposed regulatory changes. Public comments to the NPRM are due no later than September 21, 2026 and may be submitted here.

Overview

The agreed upon regulations make the following major changes to current accreditation regulations under the Higher Education Act (HEA):

- Reduces barriers for institutions seeking to move to a new accreditor or have multiple accreditations.
- Reduces barriers for new accreditors to seek and gain recognition in an effort to increase options for institutions and programs.
- Adds additional language around antitrust among accreditors, institutions and programs.
- Allows but does not require "peer review" in the context of defining an accrediting agency.
- Significantly broadens current provisions related to maintaining separation and independence between accreditors and any associated organization.
- Expands conflict of interest rules, including between members of any standards-setting body and decision-making body of accreditors.
- Creates new conditions on any additional standards established by an accreditor. Also prohibits standards that encourage or require institutions or programs to have policies that provide any preference on the basis of race.
- Establishes new and expanded requirements related to the application of standards related to student achievement, including, as appropriate, setting minimum expectation for a broad range of education and employment-related outcomes and economic returns.
- Establishes requirements for the application of standards relating to faculty, including related to performance evaluations, integrity of research, protection of civil rights and First Amendment Rights, and the prioritization of intellectual diversity.
- Establishes requirements for the application of standards related to facilities and equipment by requiring a cost/benefit analysis of institution budgets.

- No longer requires self-study as the process needed to assess quality.
- Requires arbitration to be non-binding unless both parties agree to binding arbitration.
- Reduces instances where accreditors need to approve substantive changes.
- Makes numerous changes to operating procedures accreditors must have including related to antitrust laws, conflict of interest, review of institutional governance and mechanisms for staff and student input on accreditation standards and compliance.
- Expands provisions related to teach-outs including when agreements are required and the types of information students must be provided.
- Expands provisions in several areas related to removing barriers for students seeking to transfer credits.
- Expands information accreditors must make public with respect to agency sections.
- Changes the current process for accreditors seeking recognition, renewal or change of scope, including with respect to timelines and the instances which require a comprehensive review based upon certain risk factors.

Background

In order to be eligible to participate in Federal student aid programs (Title IV) under the Higher Education Act (HEA), institutions of higher education must, among other requirements, be accredited by an agency recognized by ED. Such accreditors are referred to as institutional accreditors. In addition, single-purpose institutions and programs at institutions may be accredited by a programmatic accrediting agency. Programmatic accreditation may be necessary for program graduates to be employed in the field of the program of study or due to State law or other requirements. Both institutional and programmatic accrediting agencies which are seeking to be recognized by ED must periodically have such recognition renewed.

For institutions or programs, the accreditation process is voluntary. Accreditors adopt specific procedures for institutions and programs seeking accreditation. Accreditors also have standards which institutions and programs must meet to be accredited.

Summary of Provisions in the NPRM

§ 600.11 Special rules regarding institutional accreditation or preaccreditation.

Change of accrediting agencies

Current Regulation:

- Requires an institution seeking to change its accreditor to receive prior approval from the Secretary based upon having a reasonable cause. Prohibits such move if during the prior two years, the institution had its accreditation withdrawn, revoked, terminated or has been the subject to a probation, show cause or suspension order, unless the Secretary determines the agency did not provide required due process rights, inconsistently applied its standards or failed to respect institutional mission.

Proposed Regulation:

- Removes the required prior approval and instead allows institutions to change their accreditor unless the Secretary determines it is due to actions such as evading enforcement or oversight by ED or an accreditor, misrepresentation or otherwise undermines the integrity of Title IV programs. Requires notification to the public, current students and recent graduates within 10 days of such a change.

Multiple accreditation

Current Regulation:

- Allows for multiple accreditation if the institution provides to each such agency and the Secretary the reasons for multiple accreditation or preaccreditation and demonstrates to the Secretary reasonable cause.
- States that the Secretary determines such cause to be reasonable unless the institution has, during the preceding two years, had its accreditation withdrawn, revoked, terminated or been subject to a probation, show cause or suspension order. Although in such cases, allows the Secretary to determine reasonable cause if the primary interest is based on that agency's geographical area, program, focus or mission.

Proposed Regulation:

- Allows for multiple accreditation when an institution provides the Secretary materials related to prior accreditation or preaccreditation and provides a written explanation showing reasonable cause for multiple accreditation.
- States that the Secretary will determine such cause to be reasonable unless it is due to actions such as evading enforcement or oversight by ED or an accreditor, misrepresentation or otherwise undermines the integrity of Title IV programs.
- States that the Secretary will not determine the cause of having multiple accrediting agencies to be unreasonable due to a withdrawal, revocation, other termination of accreditation, probation or equivalent, show cause order or suspension order.

ED's Stated Reasons:

- To ease restrictions on institutions wishing to change accrediting agencies or wishing to hold accreditation from multiple agencies and to promote flexibility and innovation while maintaining guardrails.

§ 602.2 How do I know which agencies the Secretary recognizes?

Current Regulation:

- Requires the Secretary to publish a list of recognized agencies along with a notice of when recognition has been limited, suspended or terminated.

Proposed Regulation:

- Requires the Secretary to publish an "announcement" (vs. notice) on ED's website including reasons and dates of any actions.

ED's Stated Reasons:

- To allow ED to more quickly notify the public about accreditation actions once taken.

§ 602.3 What definitions apply to this part?

Current Regulation:

- Includes definitions applicable to this part.

Proposed Regulation:

- Maintains most existing definitions, except:
    - Amends definition of "accrediting agency" to no longer require only the use of peer review to conduct accrediting activities;
    - Adds a definition of "*Related, associated, or affiliated trade association*" as one which is "generally a membership organization; is organized to promote a line of commerce, business, industry, or profession; does not engage in a regular business of a kind ordinarily carried on for profit, and no part of the net earnings of which inures to the benefit of any member; and is related to a particular accrediting agency in that the agency accredits institutions or programs that prepare students to enter the work force of the same or substantially the same line of commerce, business, industry, or profession that organization promotes."

ED's Stated Reasons:

- With respect to dropping the current peer review requirement: To permit innovation in accreditation by allowing agencies to create a unique review process for institutions and programs. ED clarifies they are not precluding an agency from using peer review where the agency sees fit.
- With respect to the addition of a definition of "related, associated, or affiliated trade association": To "successfully apply the new 'separate and independent' requirements in the same manner across all agencies, and so that agencies have clarity on the organizations that the Department expects it to maintain clear firewalls with."

§ 602.10 Link to Federal programs.

Current Regulation:

- Requires an agency to demonstrate that:
    - Its accreditation is a required element in enabling at least one institution to participate in HEA programs; or
    - If the agency accredits institutions of higher education, programs or both, its accreditation is a required element in at least one of those entities to establish eligibility to participate in non-HEA Federal programs.

Proposed Regulation:

- Amends current regulations as follows:
    - Requires an agency "seeking renewal of recognition" to demonstrate that its accreditation is a required element in enabling at least one institution to participate in HEA programs or, for agencies accrediting institutions, programs or both, that its accreditation is a required element, as stated in a Federal law, regulation or notice establishing eligibility requirements for participation in the Federal program, in enabling at least one of those entities to participate in non-HEA Federal programs.
    - Requires an agency seeking initial recognition to demonstrate that an institution or program it accredits is likely to rely on the agency's accreditation to establish or continue participation in an HEA or non-HEA Federal program within two years. If after two years no institution or program relies on the agency for such purposes, the agency ceases to be recognized.

ED's Stated Reasons:

- To focus federal (including the National Advisory Committee on Institutional Quality and Integrity (NACIQI)) resources on the review of those agencies with a Federal (HEA) link.

§ 602.11 Extent of accrediting activities.

Current Regulation:

- Specifies that an agency may conduct accrediting activities within a State, region or group of States and includes special provisions related to branch campuses, including specifying that an agency whose geographic area includes a State in which a branch campus or additional location is located is not required to also accredit a main campus in that State.

Proposed Regulation:

- Removes "region" but allows agencies to operate in a "group of States or all States."
- Adds language that the Secretary may not assign, prefer or limit geography "except as necessary to ensure that the agency has the capacity to carry out its intended accrediting activities." Prohibits the Secretary from assigning institutions to agencies or to favor certain agencies. Also removes current branch campus provisions.

ED's Stated Reason:

- To clarify that an agency may "limit where it chooses to accredit, whether that be via State or group of States by geographic extent, but it is not a requirement for recognition by the Department, nor can an agency so term itself "regional" because of a self-imposed limitation on scope of recognition."

§ 602.12 Accrediting experience.

Current Regulation:

- Specifies the experience an agency must have prior to seeking initial recognition from the Secretary, including demonstrating it has granted accreditation or preaccreditation to one or more institutions or programs and has conducted accrediting activities for at least two years prior to seeking recognition unless as part of an already recognized agency.
- Requires a recognized agency seeking an expansion of its scope to follow the requirements related to expansion of scope and demonstrate it has policies in place that meet the criteria for areas in which it seeks recognition and can show support for the expansion.
- Does not consider a change to an agency's geographic area to constitute an expansion of scope but requires notification to ED and the public.
- An agency that cannot demonstrate experience may be limited in the number of institutions or programs it may grant accreditation.

Proposed Regulation:

- Strikes current language related to what an agency must demonstrate when seeking initial recognition.
- Requires "sufficient" accreditation experience as defined by:
    - Being legally established to operate in the relevant jurisdiction;
    - Having adopted standards and operating procedures (consistent with these regulations); and

    - Having a process to accept applications and having had at least one institution or program submit an application.
- Prior to having its application for recognition considered by the Advisory Committee, an agency must undergo the Secretary's recognition process and an evaluation of compliance with the Secretary's recognition criteria.
- Maintains the requirement of demonstrating the agency has granted accreditation or preaccreditation to one or more institutions or programs (as applicable).
- Strikes the requirement that the agency has conducted accrediting activities, including deciding whether to grant or deny accreditation or preaccreditation, for at least two years prior to seeking recognition.
- Generally, maintains requirements related to an agency seeking expansion of scope, except also covers cases in which there is a contraction of scope.
- Adds a new provision that demonstrating experience is not limited to the accreditation of institutions within a particular geographic area and may include experience obtained on a national, State, group of States or programmatic basis.

ED's Stated Reason:

- To reduce overall regulatory burden for accrediting agencies seeking initial recognition and to increase competition in the accreditation marketplace.

§ 602.13. Previously reserved section number. Under the proposed regulation "Effect of recognition."

Current Regulation: None

Proposed Regulation:

- Adds new provisions stating that an agency's recognition does not:
    - Confer immunity or any relief from Federal or State antitrust laws;
    - Authorize collective action among accrediting agencies, institutions or programs that would otherwise be subject to oversight under Federal or State law.
    - Create a property interest or entitlement to continued recognition.

ED's Stated Reasons:

- To minimize any potential for an accrediting agency to improperly construe the Secretary's recognition to allow for activities which may violate Federal or State antitrust laws. ED argues that accreditors are subject to antitrust laws based upon a Department of Justice "statement of interest" in a private lawsuit in 2025. ED notes the proposed language is important for multiple reasons, including that agencies must have a "voluntary membership" and that "one form of interference which would preclude an agency or association's membership from being truly voluntary is that agency or association engaging in anti-competitive behavior prohibited by Federal or State antitrust laws, as such actions undermine the efficiency and fairness of the accreditation marketplace and limit the choices of market participants."
- With respect to language related to "property interest": To "provide the Department with protection in the event an accrediting agency who is denied recognition pursues legal action against the Department."

§ 602.14 Purpose and organization.

Current Regulation:

- Requires any agency offering accreditation which is used to provide a link to programs under the HEA, to satisfy separate and independent requirements.
- Defines “separate and independent” to mean that:
    - Members of the decision-making body may not be selected or elected by the board or CEO of any related, associated or affiliated trade association, professional organization or memberships organization and are not staff of such groups;
    - At least one member of the decision-making body is a representative of the public, and at least one-in-seven members of the body are representatives of the public;
    - Agencies have guidelines for the members of the decision-making body for avoiding conflicts of interest;
    - Agency dues are paid separately from those paid to any related, associated or affiliated trade association or membership organization; and
    - The agency develops and determines its own budget, with no review by or consultation with any other entity or organization.
- Specifies that any joint use of personnel or association does not violate these requirements if certain conditions are met, such as paying fair market value for the proportionate share of joint use and allows a waiver of such requirement in certain instances and in which case and agency must apply for the waiver each time the agency seeks recognition or continued recognition.

<u>Proposed Regulation:</u>

- Amends definition of “separate and independent”, including by:
    - Requiring “mandatory conflict of interest controls” (which are further expanded under § 602.15(e)), for members of the decision-making body.
    - Requiring the agency dues are paid “and held separately” from any dues paid to any related, associated, or affiliated “trade association or professional organization”
    - Requiring the agency to develop and determine its own budget, without review by or in consultation with any other entity or organization, including any “related, associated or affiliated trade association or professional organization”.
    - Requiring the authorized representative of the agency to submit a signed statement certifying that it has met the requirements to be “separate and independent” within each petition for recognition submitted to ED and includes in that statement information regarding any complaints received during the current recognition period that are material.
- Strikes prior provisions related to exceptions and waivers of separate and independent requirements.

<u>ED’s Stated Reasons:</u>

- To strengthen the fiscal and administrative requirements that an agency must meet for an agency to demonstrate that it is “separate and independent.” ED clarified that removal of the waiver does not affect the statutory waiver authority under HEA, which covers institutional agencies recognized by the Secretary before 1991.
- With respect to striking waiver provision: ED notes it believes the current regulatory waiver has the potential to enable certain negative consequences, such as credential inflation, restrictions on entry into occupational fields, restrictions on the capacity of educational institutions, and slower adoption of innovations.

§ 602.15 Administrative and fiscal responsibilities.

Current Regulation:

- Requires agencies to have administrative and fiscal capability to carry out its accreditation activities, as demonstrated by having:
    - Adequate staff and financial resources;
    - Qualified, competent and knowledgeable individuals trained by the agency on their responsibilities regarding the agency's standards, policies and procedures;
    - Academic and administrative personnel on evaluation, policy and decision-making bodies if the agency accredits institutions;
    - Educators, practitioners and/or employers on evaluation and decision-making bodies if the agency accredits programs or single purpose institutions;
    - Representatives of the public on all decision-making bodies;
    - Guidelines to prevent or resolve conflicts of interest or the appearance of conflicts of interest among agencies members, consultants, staff and representatives; and
    - Records related to institutional reviews and decisions.

Proposed Regulation:

- Amends current requirements for demonstrating administrative and fiscal capability and adds the requirement to demonstrate "conflict of interest controls." These changes include:
    - Striking provisions which further clarified areas of required competency on the part of staff;
    - Striking the required types of experts currently required on evaluation, policy, and decision-making bodes for institutional and programmatic accreditors;
    - Requiring staff training on topics such as best practices in various educational modalities;
- Requires agencies to avoid unnecessary burden for institutions (such as duplicative reporting).
- Requires agencies to cooperate with other agencies and ED in developing common templates for institutions seeking to change accreditors.
- Requires agency to have guidelines, which:
    - Ensure that "members of the standards-setting body, which may include members of the decision-making body, do not vote as members of the decision-making body on the setting of standards or policies that affect any institution or program of which such a member is an officer, director, or employee."
    - Determine its dues without review by any related, associated, or affiliated trade association or professional organization;
    - Disallow shared resources, such as personnel, services, equipment, facilities, or information technology, nor have office space in the same building as any related, associated, or affiliated trade association or professional organization, effective one year after the effective date of this section;
    - Ensure that "any officers, directors, employees, or volunteers of the agency do not share or solicit feedback regarding the agency's policies, standards, or decisions with respect to any institution or program from any related, associated, or affiliated trade association or professional association;"
    - Prominently disclose on its website all relationships with related, associated, or affiliated trade associations or professional organizations; and
    - Not act to restrict access to employment in a profession, occupation, or vocation unless the agency provides notice of clear and convincing evidence to the Secretary that the restriction is necessary to protect the public interest; the expected public benefits outweigh the costs to the public from reduced access to the profession, occupation, or vocation; and no less restrictive alternative would adequately protect the public interest.

    - The agency's accreditation standards, policies, and enforcement practices must not restrict public institutions from fulfilling their obligations under the First Amendment to the Constitution of the United States. These standards similarly also must not restrict any private institutions that, through their institutional policies, guarantee the same or similar protections for students or faculty, unless the institution has a religious mission.

<u>ED's Stated Reasons:</u>

- To provide additional flexibility to agencies with respect to current personnel requirements and allow them to adopt necessary structures and be responsive to their membership.
- With respect to required guidelines:
    - To address concern regarding conflicts of interest and collusion which could lead to agencies engaging in anticompetitive behavior that would compromise the "voluntary" membership of the agency and taint the agency's ability to apply and enforce its standards in a consistent manner.
    - To ensure that agencies do not attempt to establish a monopoly over the accreditation of certain types of programs or institutions, particularly those that may lead to credential inflation, resulting in increased costs to students and lengthier time to credential.
    - To ensure that all institutions or programs are treated in a consistent manner by accrediting agencies and that agencies do not take actions that would unnecessarily restrict free inquiry and academic discourse at institutions or programs.

<u>Directed Questions:</u>

With respect to this section, ED is seeking feedback about the extent to which the "conflict of interest" requirements impact accrediting agencies in relation to 401K, health insurance, and other areas." Specifically, ED is requesting information that considers the length of time it would take to unwind these benefits from a related, associated, or affiliated association.

§ 602.16 Accreditation and preaccreditation standards.

<u>Current Regulation:</u>

- Requires agencies to meet the following conditions to demonstrate having standards for accreditation or pre-accreditation, that are "sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or programs it accredits."
    - Requires standards which set forth clear expectations for institutions and programs in ten specific areas, including:
        - Success with respect to student achievement in relation to the institution's mission, which may include different standards for different institutions or programs, as established by the institution, including, as appropriate, consideration of State licensing examinations, course completion, and job placement rates
        - Curricula
        - Faculty
        - Facilities, equipment, and supplies
        - Fiscal and administrative capacity as appropriate to the specified scale of operations
        - Student support services

        - Recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising
        - Measures of program length and the objectives of the degrees or credentials offered
        - Record of student complaints received by, or available to, the agency
        - Record of compliance with the institution's program responsibilities under title IV of the Act, based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and any other information that the Secretary may provide to the agency.
    - Requires that, if offered, an agency's preaccreditation standards must be related to the agency's standards, and an agency may not permit preaccreditation status of an institution for more than five years.
- Specifies that agencies do not need to apply standards to institutions which do not participate in Title IV, HEA programs
- Requires agencies to have standards addressing distance education, correspondence courses, or direct assessment, if applicable to their scope of recognition, but agencies are not required to have separate standards in these areas.
- Specifies agencies are not required to have standards related to program length or Title IV compliance if none of its institutions participate in any Title IV program.
- Clarifies the regulatory intent not to restrict:
    - Agencies from setting and applying accreditation standards;
    - Institutions from developing and using institutional standards to show success with respect to student achievement;
    - Agencies from having separate standards for approving curriculum; or
    - Agencies from having separate faculty standards for instructors teaching courses within a dual or concurrent enrollment program or career and technical education courses, if the instructors are qualified by education or work experience for that role.

Proposed Regulation:

- Maintains current language with several exceptions, including:
    - Replaces that accreditation standards "set forth clear expectations" with "establish requirements" with respect to each of the required standards.
    - With respect to the standard on student achievement, requires success at both the institutional and programmatic levels and ties this clause to § 602.17(a)(1).
    - Limits any additional standards to those which are "lawful" and that are "consistent with ensuring institutional or programmatic quality and integrity as it deems appropriate."

ED Stated Reasons:

- With respect to adding "establish requirements", to eliminate subjectivity and increase the clarity of the regulations under § 602.16(a)(1). ED notes this does not change the effect of the regulation.
- With respect to the proposed cross reference to § 602.12(a)(1): To provide accrediting agencies with clarity on the application of standards.
- To ensure that accrediting agencies do not force institutions or programs to violate State laws, unless those conflict with Federal law or the Constitution.

§ 602.17 Application of standards in reaching accreditation decisions.

<u>Current Regulation</u>:

- Requires agencies to have mechanisms for evaluating institutional compliance with their standards and demonstrate that they will evaluate whether an institution or program maintains clearly specific educational objectives and requirements that conform to commonly accepted academic standards. Agencies must also:
  - Require institutions or programs to engage in a self-study to assess education quality and success and conduct an analysis of the self-study;
  - Conduct at least one on-site review of the institution or program;
  - Provide a written compliance report to the institution or program; and
  - Require a process for verifying the identity of online students and for notifying students of any additional charges associated with doing so.

<u>Proposed Regulation</u>:

- Amends current regulation by establishing specific criteria to be used by agencies in reviewing the application of standards by institutions or programs as specified under § 602.16, as follows:

  With respect to <u>student achievement,</u> this includes requiring agencies to:

  - *Evaluate whether an institution or program maintains "*clearly specified educational objectives, which may include credit for prior learning, that are consistent with its mission and appropriate in light of the degrees or certificates awarded that are developed, regularly reviewed, and updated using reliable data."
  - "As appropriate to its own standards, review, "an institution's student success with respect to student achievement at both the institutional and program levels, including minimum expectations, by assessing outcomes related to licensure exams; retention, completion, graduation, employment or continued education, scores on assessments taken for higher degrees; and "educational and economic returns aligned to the program's credential level, length, and occupational context relative to the total cost of attendance. Such returns shall be assessed using the earnings data calculated under 34 CFR 668 Subpart Q [Financial Value Transparency], enhanced Unemployment Insurance wage records, or other reliable earnings data available to the agency."

  With respect to <u>faculty,</u> this includes new requirements for agencies to evaluate when an institution or program maintains:

  - Sufficient number of qualified staff;
  - Applies written faculty performance evaluation polices;
  - Academic freedom protections;
  - Flexible staff policies to respond to demand or financial conditions;
  - In the case of public institutions, consistently applies policies that protect the First Amendment;
  - Policies regarding the integrity of scholar activities and research;
  - Policies that protect civil rights and as applicable First Amendment rights and whether such policy or policies include academic freedom protections and freedom of inquiry protections for faculty in teaching, scholarship and research within the subject matter of a course and research with their academic discipline, "including conditions under which a range of academic perspectives may be expressed and examined without adverse action based on lawful viewpoints unrelated to professional or academic competence, unless the institution has a religious mission;"

- A policy for “institutions and programs that is designed to support, promote and appropriately prioritize intellectual diversity and the free exchange of ideas amongst faculty.”

With respect to standards related to <u>facilities, equipment, and supplies and student support services,</u> this includes new requirements for agencies to:

- Review a cost/benefit analysis consisting of the institutions’ budgets and if the benefits justify the cost and impact on future operating expenses;
- Review practices and capabilities regarding administration of student aid programs; and
- Review maintenance of facilities and compliance with applicable safety requirements.

With respect to standards related to <u>program length and the objectives of the degrees or credentials offered:</u>

- Seeks to ensure program length is appropriate to the objectives of the credential awarded, and in applying this standard, may not categorically prohibit or unreasonably restrict the accreditation of a short-term program eligible for Federal student aid or shorter-term certificates and degrees which traditionally require a longer time.

- The NPRM also makes several other changes with respect to the application of standards, including:
  - Allowing institutions to engage in a “comprehensive process that may include a self-study” but not specifically requiring a self-study that assesses an institution or program’s quality;
  - Requiring that, when applying standards, agencies must seek to reduce unnecessary barriers for adopting practices such as innovative models of education, including program length;
  - Removing the cost notification currently required to be provided to students with respect to verifying online education identity;
  - Adding a requirement that an agency adopts policies and procedures which seek to ensure accuracy, completeness and integrity of all representation made by the agency;
  - Adding a requirement that an agency has a policy that it does not make false, misleading, or materially incomplete statements related to the accreditation of an institution or program; has procedures for prompt correction of inaccurate statements or disclosures; investigates allegations of misleading representations; and takes actions in cases where such misrepresentations have occurred; and
  - Prohibiting standards that that “encourage, direct, or otherwise require institutions or programs to violate Federal or State law, including by having policies that provide any preferences on the basis of race.”

<u>ED Stated Reasons:</u>

- To codify in regulation that the stipulations for review and evaluation under this section are how accrediting agencies must evaluate and monitor its established standards in accordance with § 602.16 for its recognized institutions and programs.
- With respect to the requirement for evaluating credit for prior learning: To ensure programs become stackable, shorten time to completion, and keep credits earned from outside learning while enrolled at a program.

- With respect to the requirement to regularly review degree or certificate offerings using reliable data: To ensure there are objective measures of quality utilized alongside of subjective measures. ED notes they may provide more clarity on how an agency may assess “relevant standardized assessments” taken for admission to a higher-level degree in the future sub-regulatory guidance.
- With respect to student achievement: To set expectations that accrediting agencies must adhere to when evaluating institutions and programs for standards related to student achievement.
- With respect to standards related to faculty: To “support academic freedom and intellectual diversity on college campuses as a critical component of educational quality. ED notes, that diversity of thought and perspectives help inform students’ decision-making, research, and practices.” ED also notes “The intent is not to prescribe specific institutional policies or override institutional autonomy, but rather to ensure that sufficient consideration is given to ensuring intellectual diversity is present on campus.”
- With respect to provisions related to the First Amendment: To ensure institutions have and apply policies consistent with legal requirements. ED notes they “are not intended to make accrediting agencies the arbiters of constitutional law. ED also notes “accrediting agencies are not expected to investigate or enforce civil rights law but to ensure institutions have policies and respond appropriately to findings by competent authorities. The accrediting agency’s role is to ensure institutions have and apply appropriate policies, not to adjudicate legal disputes or act as enforcement agencies.”
- With respect to the requirement that agencies adopt and implement standards for evaluating if an institution has a policy for academic freedom: ED notes the term is not defined and there was not consensus on adding a definition during negotiated rulemaking. However, in the NPRM, ED includes “for reference” their “non-binding proposed language for adoption.” ED notes they are “not requiring agencies or institutions to apply this definition; however, if an agency or institution does apply this definition, we believe that would meet the requirements of the EO and our proposed regulations.” ED’s definition is as follows:

> *Academic Freedom:*
>
> *(1) Means the freedom of faculty to:*
>
> > *(i) conduct research, publish their findings, and teach without undue interference and engage in discussion of any matter germane to the subject of the course being taught; and*
> >
> > *(ii) speak and write in their personal capacity, provided that such activities are lawful and comply with applicable institutional rules and policies, and that faculty do not represent their views as those of the institution.*
>
> *(2) Does not include the freedom to introduce, or solicit discussion of, material that is not germane to the subject of the course being taught.*
>
> *(3) Nothing in this definition shall be construed to prohibit institutions or accrediting agencies from adopting and enforcing policies reasonably designed to promote intellectual diversity, the exposure of students to a range of scholarly viewpoints, or the balanced presentation of competing perspectives, so long as such policies do not infringe the core protections of academic freedom described in this section.*

- With respect to required standards related to research misconduct: To require accrediting agencies to ensure institutions have policies in place to prevent faculty members from engaging in improper authorship attribution, citation manipulation, or coordinated practices intended to inflate or misrepresent scholarly impact. ED notes "research misconduct includes, but is not limited to, plagiarism, material misrepresentation of research findings, including through undisclosed selective reporting or other practices that distort the accuracy or reliability of results." ED further elaborates on this language by encouraging the use of AI but that it should not degrade methods in the conduct and presentation of research.
- With respect to requiring accrediting agencies to conduct a cost/benefit analysis: "To review and ensure institutions have sufficient flexibility in instructional staffing policies and policies regarding integrity of scholarly activity." ED notes the intent is not to require burdensome analyses for every expenditure, but to encourage prudent, evidence-based decision-making.
- With respect to requiring agencies to evaluate the length of a program: To ensure that program length is not artificially extended to seek additional revenue from a student.
- With respect to eliminating the requirement that an institution or program engage only in a "self-study": To allow new approaches for reflection and evaluation.
- With respect to prohibiting accrediting agencies from engaging in practices that result in credential inflation: To "encourage agencies and institutions to think about and enact policies that reduce a student's need to borrow more"
- With respect to the requirement that agencies have a policy that ensures that accredited institutions only present factual information to stakeholders: To ensure "transparency and consistency, while also protecting taxpayers and students by adding requirements regarding misrepresentation and fraud."
- With respect to requiring integrity and transparency in the public communications and policy of accrediting agencies: To have accurate statements from accrediting agencies about accredited and preaccreditation institutions which serve to protect and safeguard students, taxpayers and postsecondary institutions.
- With respect to provisions to ensure higher education programs are free from unlawful discrimination or other violations of Federal law: To ensure agencies evaluate any glaring violations of such laws. ED restates they do not intend to make the agency the arbiter of any violation of Federal law. ED notes these provisions are not intended to prohibit lawful single-sex or mission-based practices.
- With respect to language which confirms that these regulations do not require an accrediting agency to violate applicable Federal or State law to demonstrate compliance: To provide flexibility when taking into account institutional mission, program type, and other contexts.

§ 602.18 Ensuring consistency in decision-making.

Current Regulation:

- Requires agencies to consistently apply and enforce standards that ensure the education provided is of sufficient quality to achieve its stated objective and specifies how the agency meets this requirement.
- Allows agencies, when special circumstances exist, to allow for innovative program delivery, and when undue hardship on students occurs, to apply equivalent standards and polices when other requirements are met.
- Establishes enforcement mechanisms and timelines, including permitting agencies to allow an institution to be out of compliance for a period not to exceed three years unless the agency determines good cause for a longer period and:

  - Such cause is due to uncontrollable circumstances, including natural disasters; accepting teach-out students; national economic conditions; changes to State licensure requirements; the application of standards which create undue hardship on students; or qualified instructors otherwise not meeting agency standards to teach dual enrollment;
  - The decision is approved by the agency's decision-making body;
  - There are the necessary resources to achieve compliance; and
  - The institution or program demonstrates that noncompliance will not contribute to cost or hardship to students.

Proposed Regulation:

- Maintains much of current regulations, with the following notable exceptions:
  - Requires agencies to ensure decisions are neutral with respect to viewpoint and ideology that are unrelated to its accrediting policies or standards, with an exception for agencies with a religious mission;
  - Replaces language related to innovative program delivery by striking requirement for special circumstances to first exist, and replaces the current focus of "program delivery" with practices that advance completion and new models of education;
  - Removes undue hardship requirement when applying equivalent standards; and
  - Moves current provisions related to enforcement of timelines to § 602.20 (see below).

ED's Stated Reasons:

- To ensure that accrediting agencies remain neutral towards viewpoint diversity and prioritize diversity of thought on campuses. Note, the NPRM further clarifies that ED recognizes that there are several accrediting agencies or associations with religious missions and clarifies this does not apply to institutions accredited by these agencies, in the name of respecting the mission of such an agency.
- With respect to language related to innovative program delivery: To encourage new education models to accelerate innovation and improve accountability.

§ 602.20 Enforcement of standards.

Current Regulation:

- Specifies the actions agencies must take when an institution or program is out of compliance with any of its standards. Such actions and policies relate to notification; timeline for coming into compliance; consideration of good cause extensions; and the evaluation of progress in resolving noncompliance which must involve consideration of monitoring or compliance reports.
- Requires agencies to have a policy for taking immediate adverse action when warranted, including taking adverse action when an institution or program fails to bring itself into compliance in the required period of time, while allowing for continued accreditation to fulfill teach-out activities.
- Specifies that all adverse actions are subject to the arbitration requirement in 20 USC 1099b(e), which conditions institutional accreditation on agreeing to submit any dispute involving the final denial, withdrawal or termination of accreditation to initial arbitration prior to any other legal action.
- Specifies agencies are not responsible for enforcing requirements under certain other sections of the HEA such as program participation agreements; standards of administrative

capability; reporting and disclosure of information; and institutional security policies and crime statistics.

Proposed Regulation:

- Generally, maintains current regulations with several exceptions and additions, including:
    - Removes requirement that an agency approve or disapprove monitoring or compliance reports and provide ongoing monitoring, if warranted, for an institution or program that is non-compliant, and instead requires an agency have a written policy to evaluate an institution's or program's progress in resolving the finding of noncompliance.
    - Establishes new requirements with respect to arbitration, including that it be nonbinding unless both parties agree to binding arbitration after a dispute arises on a case-by-case basis. Also requires that If an agency has an arbitration policy or standard, it must apply to all final adverse actions, however, an agency may require the institution or program to first exhaust the agency's appeal process; ensure that the arbitration process is fair and impartial; and provide for a transparent and reasonable period of time for resolution of disputes.
    - Requires agencies to have policies for restoring accreditation in cases which the agency determines are appropriate, including if required by an applicable judicial decision; and
    - Moves enforcement timelines from § 602.18 (see above), requires the agency to enforce intermediate checkpoints and allows an extension only if circumstances constitute a new and independent cause for the non-compliance.

ED's Stated Reasons:

- Eliminates confusion with respect to the terms "monitoring and compliance reports" which under the current definition, are applicable to agencies, not institutions or programs.
- With respect to arbitration: To more closely align with the statutory text.
- With respect to restoring accreditation: ED notes current regulations already allow for such a policy, but this proposal now requires an accrediting agency to have such a policy and "is necessary because retroactive accreditation may be appropriate based on unseen circumstances that might arise.

§ 602.21 Review of standards.

Current Regulation:

- Requires agencies to maintain a systematic "program of review" of its standards which must be comprehensive; occur at regular intervals; examine standards as a whole; and involve input from constituencies.
- Requires any change needed during the review to be initiated within 12 months.
- Requires, prior to any change to its standards, that the agency provide notice and opportunity to comment to interested parties and that such comments are taken into account.

Proposed Regulation:

- Maintains a requirement for a comprehensive systematic program of review that must occur at regular (although need not be "reasonable") intervals and involve all relevant constituencies "including students."
- Strikes all other current regulatory requirements with respect to the review of standards.

ED Stated Reasons:

- With respect to review of standards at regular intervals: To ensure that accrediting agencies continually and consistently review standards dynamically. “Without regular review of standards, an accrediting agency and institutions that it accredits could become obsolete and ineffective in producing positive outcomes.
- With respect to striking currently regulatory requirements for the review of standards, ED notes that current regulations are not based on statute and removing them eliminates burdensome and complex regulations that are not only difficult for accrediting agencies to implement but also difficult for ED to enforce.

§ 602.22 Substantive changes and other reporting requirements.

Current Regulation:

- Requires agencies to have substantive change policies that ensure any substantive change does not adversely affect the capacity of the institution to continue to meet the agency's standards.
- Agencies meet this requirement if the agency requires approval of any “high-impact, high-risk” change including at least:
    - Change to mission;
    - Change in legal status, control or ownership;
    - Addition of programs representing a departure from existing offerings or method of delivery;
    - Addition of graduate programs if the institution previously only offered undergrad or certificate programs;
    - Change in measuring student progress;
    - A substantial increase in clock or credit hours awarded or an increase in credential level;
    - The acquisition of any other institution, program or location of another institution;
    - The addition of a location conducting a teach-out;
    - The addition of a new location or branch campus (with certain exceptions) and which must include an assessment of fiscal and administrative capability including verification that academic control is clearly identified and that the location has adequate staff, facilities, resources, is financial stable and has engaged in long-range planning for the expansion;
    - Written arrangement in which a non-certified institution offers more than 25 percent but less than 50 percent of one or more of the institution’s educational programs; and
    - The addition of each direct assessment program.
- Allows agencies to designate senior staff to approve or disapprove substantive changes when related to new programs (where a departure); measuring student progress; increases in credit/clock hours; additions of a teach-out location; and written arrangements.
- Requires agency to make a decision within 90 days unless significant circumstances necessitate up to 180 days.
- Requires that institutions placed on probation or equivalent status or negative action over the prior three years, or that are under a provisional certification, must receive prior approval for any of the following changes, while other institutions must report the change within 30 days or as directed by their agency:
    - Change in a program’s method of delivery;

  - Aggregate change of 25 percent or more of a program;
  - Development of customized, abbreviated or modified courses or programs to recognize knowledge obtained through employment or military service and to close competency gaps between prior knowledge and the full requirements of a course or program; and
  - Entering into a written arrangement in which a non-certified institution offers up to 25 percent of one or more of the institution's educational programs.
- Allows institutions successfully completing one cycle of accreditation that have approved at least two additional locations and have not been placed on probation or other negative action over prior three years or provisional certification to not be required to apply for approval for subsequent additional locations if they provide evidence of identifying academic control; regular evaluation of the location; adequate faculty, resources and financial stability; and long range planning for the expansion.
- Requires agencies to conduct visits to a representative sample of additional locations.
- Allows agencies to determine procedures used to grant prior approval of a substantive change. These procedures must address certain issues related to the effective dates of such changes and may require a visit prior to granting approval except in cases where accreditation of an institution enables Title IV participation.
- Requires that an agency has procedures for approval of a location where at least 50 percent of the program is offered and such approval must include a visit within six months to each additional location if the institution has three or fewer locations; has not demonstrated that the additional location is meeting the agency's standards; or has been placed on warning or other limitation. Requires the agency to also have a mechanism for conducting visits to a representative sample of additional locations of an institution that operates more than three additional locations and, at the agency's discretion, include additional visits for institutions that experience rapid growth.
- Specifies the purpose of site visits is to verify claims made in the institution's application with respect to personnel, facilities and resources.
- Requires the agency's substantive change policy to define when the changes made would be sufficiently extensive to require a comprehensive evaluation.

<u>Proposed Regulation</u>:

- Strikes reference to definition covering "high-impact, high-risk" and amends the current regulatory list of changes covered in the definition, including by:
  - Limiting language with respect to a change in ownership to only include cases resulting in a change of control;
  - Removing change in measuring student progress;
  - Removing substantial increase in clock or credit hours awarded (but leaves an increase in level of credential awarded);
  - Limiting changes regarding the acquisition of any other institution, program or location of another institution to those not otherwise reviewed as part of a change of control or additional location;

  - Maintaining the addition of a new location or branch campus but removing requirement for the agency to assess fiscal and administrative capability to operate a new location or branch campus and instead requiring the institution to document such capability including verification of currently required criteria (academic control, financial stability, etc.); and

    - Adding the addition of the first prison education programs at the first two additional locations and the first additional prison education program offered by a new method of delivery.

- Amends provision related to allowing agencies to designate senior staff to approve certain changes by removing reference to measuring student progress to conform with other changes.
- Amends requirements related to changes which institutions placed on probation or equivalent status (etc.) must seek approval and which other institutions must report the change within 30 days or as directed by their agency by:

    - Adding a change in which an institution measures student progress and when there is a substantial increase in the number of clock or credit hours awarded (formerly "high-impact, high-risk" changes); and

    - Removing other currently required changes (including method of delivery, change of program and prior knowledge).

- Amends language related to institutions successfully completing one cycle of accreditation and having approval of at least two additional locations. Such institutions need only provide satisfactory evidence of ensuring quality and do not need evidence in the currently required specific areas (such as academic control, financial stability, etc.)
- Removes requirement that agencies conduct visits to a representative sample of additional locations.
- Maintains language allowing agencies to determine procedures used to grant prior approval of a substantive change but removes language related to prior visits.

<u>ED's Stated Reasons:</u>

- With respect to substantive change: ED notes the revised definition of substantive change "applies to a more precise set of situations, arrives at a better balance of needed oversight, and returns some degree of deference to the agencies to make the decisions on what the substantive changes are and how they are processed.
- With respect to prison education programs (PEP): ED notes the regulatory addition is required under § 668.237(b) and ensures the addition of specified PEP programs will be considered a substantive change.
- The additional deletions are generally in support of removing prescriptive regulations, reducing burden and improving accountability while streamlining required quality assurances.

§ 602.23 Operating procedures all agencies must have.

<u>Current Regulation:</u>

- Specifies the information agencies are required to make available to the public, including the type of accreditation it grants; procedures used for accreditation; its accreditation standards and procedures; the institutions and programs it accredits; and names, qualifications and relevant affiliations of its decision-making body and key staff.
- Requires agencies to:
    - Provide an opportunity for third-party comments when an institution or program is being considered for accreditation;
    - Review any complaint and take any necessary follow up after providing the opportunity for an institution or program to respond and review; and

    - Review and apply unbiased judgement to any complaint against itself and take appropriate follow up action.
- In a case where an institution or program elects to make a public disclosure regarding its accreditation, the agency must ensure the information is accurate.
- Publicly correct incorrect or misleading information released involving the accreditation status; contents of on-site reports; and accreditation actions.
- If preaccreditation is offered, the agency must:
    - Have policies which limit the status of institutions and programs likely to succeed in gaining accreditation; and
    - Require teach-out plans which ensure certain protections for students completing the teach-out and include the names of institutions offering similar programs to complete a teach-out.
- In cases where a preaccredited institution is denied accreditation, the agency may allow preaccreditation to continue in order for all students to complete their activities.
- Agencies may not move an accredited institution or program from accredited to preaccredited status unless going through an initial application process.
- States that all credits and degrees earned from a preaccredited institution or program are considered to be from an accredited institution or program.
- Allows agencies to have additional operating procedures including unannounced inspections.

<u>Proposed Regulation</u>:

- Amends current regulations, including by:
    - Requiring that agencies review complaints against themselves, including those related to conflict of interest violations and that such review and actions be documented.
    - Expanding language which currently requires agencies to ensure the information an institution or program elects to make public is accurate by requiring institutions or programs to disclose enforcement actions.
    - Removing provisions related to agency requirements when preaccreditation is offered.
    - Replacing “degree” with “credential” with respect to being recognized as being from an accredited institution or program.
- Adds new provisions that:
    - Prohibit agencies from having policies requiring institutions or programs to have policies that violate Federal or State law and further stipulates this to mean not having unlawful preferences based upon race, color, national origin or sex, including in admissions, hiring, and the selection of contracts.
    - Require agencies to have internal controls to ensure compliance with antitrust laws, including those which unnecessarily restrict access to employment in an occupation;
    - Require agencies to refrain from reviewing aspects of institutional governance of public institutions that are established by State law, including the appointment of institutional directors or officers by elected or appointed State officials;
    - Require agencies to have a process to accelerate accreditation in certain circumstances including when an institution holds accreditation from another recognized accreditor and meets the requirements under § 602.11 (Geographic Area Extent of Accrediting Activities) or is impacted by the termination of an agency’s recognition; and
    - Require agencies to have a structured mechanism for students, staff and others to communicate concerns regarding the agency’s standards and compliance. The types of allowable mechanisms include but are not limited to structured meetings during visits or randomized panels to participate in interviews or focus groups.

ED's Stated Reasons:

- With respect to complaints: To clarify that "all complaints must be reviewed and documented in a timely, fair, and equitable manner.
- With respect to public disclosure: To promote transparency and consistency among accrediting agencies.
- With respect to referring broadly to "credentials" rather than only "degrees": ED notes "the regulations recognize the growing importance of certificates and other high-value postsecondary credentials that prepare students for employment and further education.
- With respect to language related to unlawful discrimination: ED notes the intent to further the Administration's effort to "eliminate illegal diversity, equity and inclusion requirements throughout the Federal government and its programs…"
- With respect to language which allows an agency to prioritize the accreditation of an institution or program changing accrediting agencies: To provide support for agencies that chose to prioritize in this manner. As accrediting agencies are one part of the title IV eligibility process for an institution, we want to encourage continuity of access for students when an institution seeks to change accrediting agencies so that there is a seamless transition.
- With respect to language related to communication between impacted stakeholders and accrediting agencies: ED notes the process could help agencies "address concerns and adjust its policies or procedures to avoid receiving formal complaints regarding its accredited or preaccredited institutions or programs."

§ 602.24 Additional procedures certain institutional agencies must have.

Current Regulation:

- For purposes of accreditation enabling participation in Title IV, an agency must demonstrate it has established and uses procedures including in the following areas:
  - Branch campus – Requires notification and submission of a business plan if an institution plans to establish a branch campus.
  - Site visits – Requires a site visit to a new branch campus following a change of ownership or control.
  - Teach-out plans and agreements –
    - Requires an approved teach-out plan in cases where the Secretary or auditor express concerns about financial stability or other related concerns regarding a non-profit or propriety institution; an institution is placed on probation or equivalent status; or when the Secretary notifies the agency that the institution is required to have a teach-out plan as part of a provisional program participation agreement.
    - Requires a teach-out plan, and if applicable a teach-out agreement, in cases where an institution is on a reimbursement or heightened cash monitoring or has initiated an emergency action; the agency acts to withdraw, terminate or suspend accreditation or preaccreditation; the institution notifies that it will cease operations; or the institution has or will lose State authorization.
    - Requires teach-out plans to include certain information such as a list of students and programs.
    - If the agency approves a teach-out plan that includes another institution accredited by another recognized agency, it must notify that agency of its approval.

        - Requires a teach-out agreement from a closing institution to include certain information such as list of students, record retention plans and the number and type of credits that will be accepted by the teach-out institution.
        - Prior to having agency approval, a teach-out agreement must be consistent with applicable standards and provide for the equitable treatment of students being served and ensure the teach-out institution meets certain specific criteria, including related to having the ability to provide similar programs in nearby locations.
        - Prohibits an institution from being a teach-out institution in certain cases.
        - Requires certain information be provided by institutions to students related to closure or teach-out options to ensure it accurately represents students' ability to transfer credits.
    - Closed institution – Requires the agency to work with ED and the appropriate State agency to assist students at a closed institution in completing their education.
    - Transfer of credit – Requires agencies to confirm institutions have transfer of credit policies that are publicly disclosed and include a statement of the criteria regarding the credit earned at other institution of higher education.
    - Agency designation – Includes certain policies agencies must have with respect to definitions of a branch campus and additional location.

<u>Proposed Regulation</u>:

- Amends current language in the following areas:
    - Site visits – Prohibits site visits being conducted solely by agency staff.
    - Teach-out plans and agreements –
        - Maintains requirement for an approved teach-out plan in cases where the Secretary or auditor expresses concerns about financial stability or other related concerns regarding a non-profit or propriety institution, but amends the language to require such plan within 30 days.
        - Modifies language related to cases where the Secretary notifies the agency the institution is required to have a teach-out plan as part of a provisional program participation agreement and instead requires a plan in all cases where the institution has changed from full to provisional certification.
        - Requires a teach-out agreement (vs. plan) in all cases where an institution is on a reimbursement or heightened cash monitoring or has initiated an emergency action; the agency acts to withdraw, terminate or suspend accreditation or preaccreditation; the institution notifies that it will cease operations (adds an exception in cases where the institution is completing its own teach-out); or where the institution has or will lose State authorization.
        - Adds new language requiring institutions that are unable to secure an agreement within 30 days to provide documentation on why and to provide the information to ED, which may require the institution to provide financial protection.
        - Expands the current information teach-out plans must have to include a plan to maintain and provide access to transcripts in the event of closure.
        - Maintains language which conditions the required approval of a teach-out agreement on it being consistent with applicable standards and providing for the equitable treatment of students being served, but drops the specific criteria the teach-out institution must ensure.
        - Drops language which requires certain information to be provided to students related to closure or teach-out options to ensure it accurately represents students' ability to transfer credits.

  - <u>Closed institution</u> – Expands language related to the requirement that agencies work with ED and the appropriate State agency to assist students at a closed institution in completing their education. Specifically, requires the agency to work with institutions to secure teach-out agreements and in cases where an agreement cannot be arranged, work to secure transfer options with institutions identified in the teach-out plan; make options and information such as transcripts and reimbursements publicly available on the agency's website; and share information with other appropriate State agencies and accreditors.
  - <u>Transfer of credit</u> – Expands required transfer of credit policies to include general policies for specific academic standards, time limits and curricular requirements for acceptance of credits and require the current statement to be comprehensive of all criteria and consider the comparability and applicability of coursework completed or earned by another institution accredited by a recognized accreditor. Further requires that policies –
    - Do not deny transfers based on the institution which credit was completed, so long as from an institution with accreditation from a recognized accreditor;
    - Awards credit for undergraduate programs for coursework that is comparable in content and learning outcomes, unless the institution provides a written basis for denial in accordance with its academic standards or curricular requirements; and
    - Provides the student an opportunity to appeal.

<u>ED's Stated Reasons:</u>

- With respect to site visits: To preserve the independence, integrity, and credibility of the accreditation process by requiring a site visitor alongside accrediting agency staff during on-site visits.
- With respect to the proposed 30-day deadline to submit a teach-out plan: To be responsive to the time sensitivity of these situations.
- With respect to removing the phrasing "plan and, if practicable, teach-out" and add "or a teach-out agreement": To eliminate ambiguity, clearly distinguish between plans and agreements, and ensure accrediting agencies apply teach-out requirements consistently and effectively.
- With respect institutions required to document if it cannot secure a teach-out agreement within 30 days: To address the issue that some institutions may face challenges in securing such agreements and in these cases financial protection such as a letter of credit would serve as an essential safeguard.
- With respect to transcripts: To help affected students transfer credits, obtain licensure, apply for jobs, and continue their education if an institution closes.
- With respect to dropping criteria currently required on the part of teach-out institutions: ED notes the provisions lack a statutory foundation.
- With respect to new proposed expectations for accrediting agencies to coordinate with both ED and State agencies during an institutional closure: To improve the effectiveness, timeliness, and consistency of student protection efforts.
- With respect to new transfer of credit requirements: To address longstanding inequities and inconsistencies in how institutions evaluate credits earned at other institutions accredited by an agency recognized by ED. ED notes these provisions are intended to apply primarily to undergraduate credit, reflecting the reality that most student mobility and credit transfer activity occurs at the undergraduate level.
- With respect to student appeals when transfer of credit is denied: To allow institutions to consider additional academic information that may not have been available during the initial review and improves confidence that credit transfer decisions are based on legitimate academic considerations rather than undisclosed or inconsistently applied criteria.

§ 602.25 Due process.

Current Regulation:

- Requires agencies to demonstrate the procedures used to satisfy due process.

Proposed Regulation:

- Maintains current regulations, except with respect to language related to the opportunity for the institution or program to appeal any adverse action prior to the action becoming final:
    - Strikes language that the appeals panel must not serve only an advisory or procedural role, and has and uses the authority to affirm, amend or remand adverse actions of the original decision-making body; and
    - Strikes language stating that a "decision to affirm or amend the adverse action is implemented by the appeals panel or by the original decision-making body, at the agency's option; however, in the event of a decision by the appeals panel to remand the adverse action to the original decision-making body for further consideration, the appeals panel must explain the basis for a decision that differs from that of the original decision-making body and the original decision-making body in a remand must act in a manner consistent with the appeals panel's decisions or instructions."

ED's Stated Reasons:

- To remove prescriptive regulations that are not required in the HEA.

§ 602.26 Notification of accrediting decisions.

Current Regulation:

- Requires agencies to follow their procedures for providing written notice of its accrediting decisions to the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies and the public, and specifies that the agency provides:
    - Written notice within 30 days of a decision related to initial or renewal of accreditation or preaccreditation;
    - Written notice of a final decision to place an institution on probation or equivalent status to the Secretary, State and appropriate accrediting agencies at the same time as it notifies the programs or institutions and to all current and prospective students within seven days and to the public within one day;
    - Written notice of a decision to deny, withdraw, suspend, revoke, terminate or take any other adverse action to the Secretary, State and appropriate accreditors at the same time it notifies the institution or program but no later than 30 days after it reaches the decision and to the public within one day. Agencies must also require institutions to provide notice to students; and
    - Notice to the Secretary, State and appropriate accreditors in cases where an institution or program voluntarily withdraws or lets its accreditation lapse.

Proposed Regulation:

- Amends current regulations in several areas:

    - Requires a “decision letter or clear explanation in writing” (in lieu of a “written notice”) in cases of a final decision to place an institution on probation or equivalent status and a decision to deny, withdraw, suspend, revoke, terminate or take any other adverse action. In such cases, also requires agencies to update their website directory of accredited institutions or programs.
    - Includes new provision requiring agency website to provide a clear record of all actions taken for each institution or program it accredits or preaccredits for a period of at least five years, including the agency’s decision letters.
    - Includes a new provision which states that “If the agency issues a final decision to withdraw, suspend, revoke, or terminate the accreditation or preaccreditation of the institution, and the institution challenges this final decision, the Department may continue to provide access to title IV, HEA programs to an institution until both arbitration and judicial review (if applicable) has concluded or until relief is denied, whichever occurs first, if failure to do so would result in immediate, irreparable harm to the institution.” The language further notes, “This provision does not authorize the Department to nullify agency decisions that are made in a manner consistent with the agency’s standards, even if the Department disagrees with said decision.”

<u>ED’s Stated Reasons:</u>

- With respect to the change to a “decision letter”: To “bring the overall notification process in line with current methods of disclosure and notification.”
- With respect to the requirement to post 5-years of actions: To benefit any interested person or entity seeking recent accrediting agency actions at a specific institution or program.
- With respect to allowing for continued HEA funding after a final accreditation decision: To provide “a limited opportunity for the Department to limit the effect of an adverse accrediting action while an institution is seeking arbitration and/or judicial review of the action.”

<u>Proposed Regulation:</u>

Includes only minor and technical changes.

§ 602.30 This section number was previously reserved and now includes regulations from the prior § 602.31. Agency applications and reports to be submitted to the Department.

<u>Current Regulation</u>:

- Requires an agency seeking initial or continued recognition to submit an application 24 months prior to the date on which their current recognition expires and requires the application to be submitted concurrently with the information under § 602.32(a) (related to information such as the programs or institutions currently accredited) and § 602.32(b) (related to required letters of support for agencies seeking initial accreditation). Requires the application to consist of information such as requested scope, documentation of compliance with required recognition criteria and documentation related to distance education or correspondence (where applicable).
- Requires agencies seeking expansion of scope to submit an application to the Secretary specifying the scope requested; information related to relevant standards, policies and procedures; and information required under § 602.32(j), including requiring a statement on the reasons for the request, letters of support and how the agency will address its capacity for the expanded scope.
- Specifies the timing for the submission of any required compliance or monitoring report.

- Specifies steps an agency must take when an institution has indicated an increase in headcount in accordance with § 602.19(e) (involving a 50% year over year increase).
- States that the submission of an application to ED authorizes staff to carry out certain actions such as those involving site visits and obtaining access to necessary documents and records.
- Specifies that agency materials are governed by the Freedom of Information Act (FOIA), the Trade Secrets Act, the Privacy Act of 1974 and all other applicable laws, and specifies steps agencies must take before submission to ED, including the redacting of certain information and the designation of all business information which the agency believes would be exempt from FOIA. Allows agencies the option to redact identities of institutions or programs that it believes are not essential to ED's review of the agency.
- Specifies the Secretary may publish a reasonable, uniform limit on the length of submissions.

Proposed Regulation:

- Amends current regulations as follows:
    - Application for recognition or renewal – Removes the 24-month requirement for the submission of applications.
    - Application for expansion of scope – Requires applications for expansion "or contraction" of scope.
    - Public availability of agency records obtained by ED – Adds "5 U.S.C. Chapter 10" (Federal Advisory Committees) to the laws governing disclosure of agency materials.
    - FOIA – Amends language which currently requires agencies to designate all business information which the agency believes would be exempt from FOIA and not allow such information to be redacted. Amends language which currently allows agencies the option to redact identities of institutions or programs that it believes are not essential to ED's review of the agency and instead maintains language stating agencies may identify any other material it believes would be exempt from public disclosure under FOIA.

ED's Stated Reasons:

- With respect to the recission related to the recognition timeline: To streamline the recognition process and align with other timeline changes in the proposed regulations and enable nascent accrediting agencies to become recognized in a timely manner.
- With respect to the change related to material agencies may identify as exempt from public disclosure under FOIA: To allow the Secretary to "maintain sufficient documentation to support the conclusions reached in the recognition process."

§ 602.31 This section was previously under § 602.32 and entitled "Procedures for submitting applications for recognition, renewal of recognition, expansion of scope, compliance reports, and increases in enrollment."

Under the Proposed Regulation, it is renamed as "Procedures for submitting applications for recognition and renewal of recognition."

Current Regulations:

- Requires an agency to submit an application 24 months prior to the end of its current recognition which includes the materials for recognition under § 602.31 along with additional information such as a list of institutions or programs up for consideration of recognition or that are subject to a review.

- Requires agencies seeking initial recognition to follow the above policies and procedures along with letters of support.
- Requires ED staff to determine if the application satisfies criteria for recognition and specifies what information must be considered.
- Allows ED to view any evidence the agency was part of a concerted effort to unnecessarily restrict the qualifications necessary for a student to sit for a licensure or certification exam or otherwise be eligible for entry into a profession as a negative factor when considering an application for initial recognition or expansion of scope of recognition.
- Allows ED's staff evaluation to include a review of information related to the compliance of institutions or programs accredited or preaccredited by the agency.
- If at any point in its evaluation of an agency seeking initial recognition ED determines the agency fails to demonstrate compliance with the basic eligibility requirements, ED staff must return the application to the agency explaining the deficiencies, require the agency to withdraw its application and instruct the agency to reapply when it's able to demonstrate compliance.
- Requires ED staff to complete an evaluation of an agency and prepare a written draft analysis, send the analysis to the agency along with any identified areas of noncompliance along with any third-party complaints and invite the agency to provide a written response. Requires ED to review the response and prepare a written final analysis indicating that the agency is in full compliance, substantial compliance or noncompliance with the recognition criteria and recommend that the senior ED official approve; continue recognition but require a compliance report be submitted to the ED within 12 months, continue recognition but require the agency to submit a compliance report due in excess of 12 months based on good cause or extraordinary circumstances; approve with monitoring or other reporting requirements; or deny, limit, suspend or terminate recognition and provide the agency the analysis and other available information no later than 30 days before the Advisory Committee meeting.
- In cases where ED staff fails to provide an agency the required materials, the agency may request the Advisory Committee defer acting on its application. However, if the failure of ED providing the information is due to a failure of the agency to provide other information to the Secretary, the agency forfeits its right to such a request.
- An agency seeking expansion of scope must submit an application to the Secretary which among other requirements includes the reasons for the expansion of scope; letters from institutions or programs that would seek accreditation for one or more of the elements of the expansion of scope; and an explanation of how the agency will expand capacity as necessary to support the expansion of scope.
- Allows ED to view evidence the agency was part of a concerted effort to unnecessarily restrict the qualifications necessary for students to sit for licensure or certification examination or otherwise be eligible for entry into a profession as a negative factor when considering an application for initial recognition or expansion of scope.
- ED's staff's evaluation of a compliance report includes, among other information, review of public comments solicited by ED and the agency's responses.
- ED will process an application for expansion of scope in accordance with the process used for recognition (see above).

<u>Proposed Regulation:</u>

- Strikes current requirements related to the information needed to be included as part of agency of recognition and renewal and directs ED to set the application timeline, replacing the current 24-month requirement.
- Includes new language stating that the type of application and the scope and priority of the review is determined by ED as follows:

- Requires an agency to submit a comprehensive application that addresses all criteria in cases where the institutions it accredits receive a substantial portion of Title IV HEA funds.
- Requires an agency not identified above to submit an application that addresses the agency's compliance with § 602.15 (administrative and fiscal responsibilities), § 602.16 (accreditation and preaccreditation standards), § 602.217 (application of standards), § 602.19 (monitoring and reevaluation), § 602.20 (enforcement of standards) and any other required criteria and to attest that since its last comprehensive review, the agency's policies and practices have remained in compliance with the criteria under this part. Requires such agency to submit a comprehensive application that addresses compliance at least once every third cycle of review.
- Requires an agency to submit a comprehensive application that addresses the agency's compliance with all criteria in cases where an agency or its officers or directors have been the subject of legal actions, complaints or other compliance issues that individually or in the aggregate raised substantial concerns regarding the agency's compliance with this part.
- Requires an agency that is exclusively a programmatic accrediting agency, and not identified for review above (related to legal actions), to submit an application that addresses compliance with § 602.10 (link to Federal program), § 602.16 (accreditation and preaccreditation standards), § 602.17 (application of standards), § 602.19 (monitoring and reevaluation) and § 602.20 (enforcement of standards) and to also attest that since its last comprehensive review the agency's policies and practices have remained in compliance with this part. Requires such agency to submit a comprehensive application that addresses compliance at least once every third cycle of review.
- Allows ED to consider factors that include but are not limited to whether any of the agency's institutions closed without an approved teach-out agreement; whether ED has received serious or high proportion of complaints about the institutions or programs the agency accredits; whether the agency has significantly increased the number of institutions or programs that it accredits; and the number and severity of noncompliance findings identified in the senior Department official or Secretary's decision letter for the agency's application for renewal or recognition.

- Strikes current requirements for agencies seeking initial recognition related to letters of support.
- Amends language regarding ED's staff inviting public comment by specifying that such comments may include information concerning performance of the agency in order to assist ED in determining whether the agency meets the required criteria.
- Includes a new provision stating that, within 10 business days, the agency must publish ED's request for information on the agency's website and provide instructions on how comments may be submitted.
- Maintains language for ED staff to determine if an agency's applications satisfy criteria for recognition but amends the requirement related to site visits and file reviews, including by allowing virtual visits or observations.
- Amends language that allows ED to view as a negative factor, evidence of restricting qualifications necessary for a student to sit for a licensure. Specifically, adds new language referencing "anticompetitive conduct that is violative of the antitrust laws, such as collusion between accrediting agencies and any related, associated, or affiliated trade association, professional organization, standard setting organization, State certification organization, or membership organization to unnecessarily inflate the qualifications necessary for a student to sit for a licensure or certification examination or otherwise be eligible for entry into a

profession, occupation, or vocation due to an increase in related education or training requirements."

- Amends language requiring ED staff to prepare a written draft analysis of the agency's application by requiring the draft to be completed within 120 days of the submission deadline set by ED.
- Amends language related to when an agency may seek to have the Advisory Committee defer acting on its application by expanding the circumstances in which ED will not grant the agency such a request, including in cases where ED staff observes site visits, obtains copies of all documents the staff deems necessary and gains access to agency records, personnel and facilities.
- Establishes that if ED staff do not conclude their review of the application for recognition before the expiration of an agency's recognition, such recognition automatically extends until a recognition decision is made.
- Strikes language related to information an agency seeking expansion of scope must provide (see new § 602.32).
- Strikes language related to what ED staff's evaluation of a compliance report includes (see new § 602.32).
- Strikes language that ED will process an application for expansion of scope in accordance with the process used for recognition (see new § 602.32).

<u>ED's Stated Reasons:</u>

- With respect to changes to the application process: To enable ED to implement a risk-based type of review and ensure that new agencies are not held to requirements beyond those applied to those currently recognized.
- With respect to the inclusion of a new subsection under requiring accrediting agencies to post the request for third-party information from ED on their own websites: To increase the transparency of the review process and better promote the public's participation.
- With respect to changes related to the current requirement for ED staff to conduce three site visits: To address the current burden for accrediting agencies and ED.
- With respect to what ED may view as a negative factor for initial recognition: ED notes its intent that agencies "make decisions independently to prevent any conflict of interest or anticompetitive conduct." This section also is to ensure accreditors are "prohibited from engaging in practices that result in credential inflation."

§ 602.32 This section was previously § 602.33 and entitled "Procedures for review of agencies during the period of recognition, including the review of monitoring reports."

Under the Proposed Regulation, it is renamed "Procedures for review of an expansion of scope, a contraction of scope,-compliance reports, or increases in headcount enrollment."

<u>Current Regulation</u>:

- This is a new section but pulls from provisions above related to procedures for the expansion of scope.

<u>Proposed Regulation</u>:

- Renumbers current section § 602.33
- Moves current regulatory provisions related to procedures of expansion of scope to this section with the following changes to policy:
    - Adds "or contraction" of scope to "expansion of scope;"

- Allows applications for the expansion or contraction of scope only in conjunction with an application for recognition except, on a case-by-case basis ED may review such application independent of a renewal application;
- Expands the situations which ED may view as a negative factor to include anticompetitive conduct using same language included as part of the regulations pertaining to the review of applications for recognition or renewal (see above).
- Requires ED staff to prepare a written draft analysis of the agency's compliance report within 90 days of the submission deadline set by the senior Department official; send the agency the draft analysis inviting the agency to provide a written response by a deadline which must be at least 45 days; review the response and indicate if the agency is in full, substantial or noncompliance; provide a recommendation for action to the senior Department official; and provide the agency the final staff analysis no later than 30 days before the Advisory Committee meeting.

<u>ED's Stated Reasons:</u>

- Wtih respect to the addition of this section: To allow for "clearer, quicker, and more specific processing requirements related to reviews of scope, compliance reports, and increase in headcount enrollment."
- With respect to changes related to scope: To make clear ED will "not permit agencies to expand or contract scope in a manner that would violate antitrust laws or cause inappropriate credential inflation.
- With respect to changes to procedures for the review of compliance reports: To expedite the time of review for such reports and increase the efficiency of the accreditor recognition review process

§ 602.33 Procedures for review of agencies during the period of recognition, including the review of monitoring reports.

<u>Current Regulation:</u>

- Allows ED staff to review the compliance of an agency at any time based upon a monitoring report or information regarding credible concerns relevant to recognition. The review may also cover activities stemming from information gathered during ED staff visits to the agency or institutions which it accredits or any other information regarding institutions accredited by the agency.
- If after providing documentation concerning an inquiry and consulting with the agency ED staff notes any deficiencies, ED staff must prepare a draft analysis of the concern; send the analysis to the agency, inviting a response within 90 days; review the response, including any monitoring report submitted; and either conclude the review, continue monitoring or note the analysis will be finalized for the Advisory Committee if the agency's response does not satisfy the staff, in which case ED puts out a notice for public comment on the agency's compliance in the Federal Register; provide the agency a copy of comments received and invite a response; finalize the analysis; and provide the final analysis no later than 30 days before the Advisory Committee meeting.

<u>Proposed Regulation:</u>

- Amends current regulations as follows:
    - In cases where a compliance review is initiated due to credible concerns relevant to recognition, the proposed regulation requires ED staff to provide the agency with documentation concerning the inquiry, provide an opportunity for the agency to respond and conclude the review if staff determine the agency is in compliance.

    - Strikes provision regarding inviting public comments in the Federal Register.

<u>ED's Stated Reasons:</u>

- To "promote greater transparency and due process for accrediting agencies. ED notes this is not a significant change from current practice."
- With respect to changes related to public comments: ED notes current regulations reflect a lack of statutory authority and that the public will still have an opportunity to provide third-party comments as part of the recognition process.

§ 602.34 Advisory Committee meetings.

<u>Current Regulation:</u>

- Specifies the process for Advisory Committee meetings, which involves ED staff providing a proposed schedule; the Chairperson of the Committee establishing an agenda; and ED staff providing the Committee with the agency's application and supporting documentation, the final staff analysis, the agency response, third-party comments along with agency's response and any other information relied upon for the analysis.
- Requires a public meeting notice at least 30 days in advance of a meeting.
- Requires the Committee to consider the information provided by ED in a public meeting and provide a written motion regarding each agency's recognition during the meeting.
- Requires the Committee to forward the recommendation to the senior Department official, which may include approval if fully compliant or the continuation of recognition with a required compliance report within 12 months (or longer in exceptional circumstances or good cause). In the case of substantial compliance, grant recognition or renewal and recommend a monitoring report, or deny, limit, suspend or terminate recognition.

<u>Proposed Regulation</u>:

- Generally, maintains current regulations but includes several technical and conforming amendments.
- Adds a new requirement that within 10 days of a notice of a NACIQI meeting, an agency under review must publish the meeting notice on their website and include instructions on how the public can participate.

<u>ED's Stated Reasons:</u>

- The requirement that accrediting agencies post NACIQI meeting information on their own websites is intended to increase transparency and public input.

§ 668.43 Institutional and programmatic information.

<u>Current Regulation:</u>

- Requires that institutions make readily available to enrolled and prospective students a description of the transfer of credit policies established by the institution and a statement of the institution's current transfer of credit policies that includes, at a minimum:
    - Any established criteria the institution uses regarding the transfer of credit earned at another institution and any type of institutions or source from which the institution will not accept credits;
    - A list of institutions with which the institution has established an articulation agreement; and

    - Written criteria used to evaluate and award credit for prior learning experience including but not limited to service in the armed forces, paid or unpaid employment or other demonstrated competency or learning.

Proposed Regulation:

- Expands upon current notification requirements related to transfer of credit as follows:
    - Requires institutions to disclose the timeline by which a transcript must be submitted for timely review so that a prospective student can make an informed decision prior to a non-refundable financial commitment, enrollment or registration; and
    - Requires a statement regarding whether the institution considers credit earned in a non-degree program or hours completed in a non-credit program for transfer or articulation to a degree program.
- Adds new requirements, including:
    - In cases where a student provides a transcript to an institution during the timeline provided by the institution, requires the institution to:
        - Inform the student of the credit that will be awarded for courses on that transcript;
        - Inform the student of the credit that the institution declines to award for courses on that transcript; and
        - Disclose the estimated time and, when applicable, courses that would be needed to replace the courses for which the institution declined to award credit.
    - Requires such disclosures to be provided to the student by the earlier of the date that the student signs an enrollment agreement, completes registration or makes a non-refundable financial commitment to the institution.
    - In cases where the institution declines to award credit to a student, requires the institution to provide the student a written rationale specific to each course that does not result in transfer of credit.
    - Requires that all disclosures under this section be made directly to the student in writing, which may include through email or other electronic communication.

ED’s Stated Reasons:

- With respect to the proposed timeline for students to submit transcripts: To enable institutions to complete transfer credit evaluations before a prospective student makes any binding financial or enrollment commitment.
- With respect to the proposed requirement that an institution disclose whether it considers credit earned in a nondegree program, or hours completed in a noncredit program, for transfer or articulation to a degree program: To ensure students have accurate, up-front information about whether learning they have already completed would count toward a degree program at the institution.
- ED notes that changes in this section are also intended to help prospective students understand credit acceptance before making a financial commitment and provide students and borrowers with timely, accurate information necessary to make informed decisions. ED notes that “by establishing a uniform disclosure framework, ED aims to enhance transparency, strengthen consumer protection, and improve administrative efficiency while minimizing compliance burdens for institutions.”
- With respect to the addition of the word “nonrefundable”: To prevent institutions from charging nonrefundable deposits and creating financial liability before students receive information about whether their academic credits will transfer.”