

April 22, 2016

Subject: Flexibility in Application of Accrediting Agency Review Processes; and Emphases in Departmental Review of Agency Effectiveness

Summary: This letter provides clarification for federally recognized accrediting agencies on the flexibility that they have in differentiating their reviews of institutions and programs, and encourages use of that flexibility to focus monitoring and resources on student achievement and problematic institutions or programs.

Dear Federally Recognized Accrediting Agencies:

Students, families, employers, and taxpayers depend on accreditation as a critical marker of educational quality. In November 2015, the Department announced a series of executive actions and legislative proposals “to improve accreditors’ and the Department’s oversight activities and move toward a new focus on student outcomes and transparency.” In a January 20, 2016, memorandum, the Department outlined a number of areas for further action, including the need to provide clarification to accrediting agencies on the flexibility they have in applying their standards and review processes. This letter provides that clarification. A separate letter will be issued to federally recognized accrediting agencies in spring 2016 to clarify terminology used by accreditors and provide additional guidance to accreditors on information to report to the Department.

This letter is directed to all accrediting agencies recognized by the Department, whether institutional or programmatic, as applicable.

Background

Accrediting agencies have varying practices on how they approach their reviews of institutions and programs and how they apply their standards. Some agencies expend approximately the same resources in their accreditation reviews of each school or program, or require all of their schools or programs to provide approximately equal weight to and evidence for each of the required standards. Other agencies have a base review for all institutions or programs but then spend far more time in their inspections and monitoring of those they consider to have significant problems or that they consider otherwise worthy of increased scrutiny.

This memorandum seeks to provide clarity on two areas: 1) the flexibility that accreditors have, based on specific criteria they establish (aligned with statutory and regulatory requirements), to vary their processes, investment of resources, and requirements of schools or programs; and 2) the statutory and regulatory requirements of particular importance in demonstrating an accrediting agency’s effectiveness, so as to maximize the use of this flexibility to enhance quality and accountability.

The intent of this guidance is not only to assist agencies in reducing burden on institutions and programs, but to encourage accrediting agencies to focus their resources most heavily on standards that are particularly important to student achievement and on institutions of particular concern. All agencies are expected to be in full compliance with statutory and regulatory requirements.

A. Accreditors May Differentiate Their Reviews of Institutions or Programs Based on Differing Conditions

Statute and regulations allow an accrediting agency to focus its resources on institutions or programs with higher risk due to poor performance, size, volume of student aid, or other factors.

Under the Higher Education Act (HEA) and implementing regulations, an agency granting or renewing accreditation or preaccreditation must apply and enforce all of its required standards (HEA § 496(a)(4)(A) and 34 CFR 602.20). However, neither the statute nor the regulations require that the same resources be used for each institution or program, or for each required accrediting standard. The statute does require that the agency apply effectively the criteria for recognition (20 USC 1099b(l)(1)), and under the regulations the accreditor must base its decisions on its published standards and have a “reasonable basis for determining that the information [it] relies on for making accrediting decisions is accurate” (602.18(c) and 602.18(d)).

Accrediting agencies may adopt this flexible review process on their own initiative, and subject to 34 CFR 602.27(a)(4), do not need prior approval by the Department. However, the agency’s review process, including the specific criteria and risk factors an agency uses to differentiate its processes and requirements, will be analyzed for its effectiveness when accrediting agencies’ recognition is before the Department.

The ability of an agency to differentiate its reviews was the subject of discussion when current requirements regarding effective monitoring were added to the implementing regulations. In the notice of final rulemaking, published in the *Federal Register* on October 27, 2009, the Department said:

The Department recognizes that accrediting agencies and the institutions and programs they accredit are diverse. . . . [W]e expect reasonable and prudent implementation of the statute and regulations by the agencies. For each institution or program accredited, an agency should consider factors such as the size of the institution or program, the number of students, the nature of the programs offered, past history, and other knowledge the agency has about the institution or program, including previous reviews. The regulatory language provides accrediting agencies with flexibility regarding their monitoring of institutions and programs and at the same time ensures they review and analyze key data and indicators.

. . . [S]tudent achievement is one of several areas that an agency must review when monitoring the institutions or programs it accredits. (74 Fed. Reg. 55418)

Section 496 of the HEA and 34 CFR Part 602 provide certain requirements that an agency’s accrediting process must consider for each institution or program, including that the agency establishes appropriate measures for student achievement. Measures widely accepted by accreditors provide one factor in determining agency effectiveness in meeting this requirement. For example, most of the national accreditors have benchmarks for the proportion of students who are expected to be retained from year to year, and for the proportion of students who are placed in employment after leaving postsecondary education.

Section 496 of the HEA provides three criteria that may affect the amount of resources that are spent in the review of an institution or program. Pursuant to these criteria, the review must: 1) be sufficient to

apply effectively the policies and processes required for recognition (sec. 496(b)(1)); 2) “comply with due process procedures,” including clear standards and identification of deficiencies (sec. 496(a)(6)), so that an institution or program cannot be held deficient without a sufficient investigation and opportunity to rebut the identified deficiency; and 3) devote sufficient resources for particular factors specified in section 496(c), such as on-site inspections and reviews at regular intervals with well-trained and knowledgeable accreditation team members.

For each of the inquiries required to evaluate an institution or program against accreditation standards in areas the statute requires agencies to address, the accreditor must have a “reasonable basis for determining that the information . . . is accurate” (34 CFR 602.18(d)).

The statute and the regulations reflect that different circumstances may warrant differing degrees of scrutiny and subsequent monitoring. For example, the HEA says that the agency is to consider licensing exam results, course completion, and job placement rates “as appropriate” (HEA §496(a)(5)(A)). The regulations similarly recognize differing circumstances, for example, in allowing differing degrees of monitoring and differing periods of accreditation by taking into account “institutional or program strengths and stability” (34 CFR 602.19 and 602.20).

Because the statute and regulations emphasize educational quality, the Department believes that accrediting agencies should consider allocating resources—and determining the level of resources and evidence to be required of particular institutions or programs—based on those factors in its review process that emphasize quality. In evaluating an agency’s effectiveness, the Department can look at the agency’s utilization of certain factors that relate closely to “the quality of education or training” (HEA 496(a)). For example, an accrediting agency might look at the rates of student retention from one academic period to the next, graduation rates, some measure of student learning, some measure of postgraduation outcomes, and student loan cohort default rates, as well as metrics of financial responsibility for institutions, to determine the level of resources needed in its review for a particular institution or program, or the relative level of resources or evidence to be required of certain institutions or programs. Track record and verifiability of job placement rates and recruiting practices would be important to consider in making this determination for certain types of institutions or programs. Further discussion of how this flexibility might be applied can be found in section C of this document.

B. Accreditors May Differentiate Their Review of Individual Standards, with a Focus on Those with Particular Relevance to Student Achievement and Accreditor Effectiveness

Overall, the Department notes that certain requirements in the statute and regulations are indicators of the effectiveness of an accreditor. In fulfilling his or her responsibilities under the recognition statute, the Secretary is statutorily charged with determining if an agency has applied effectively the statutory and regulatory criteria (HEA 496(l)(1) and HEA 496(a)). Those criteria include specific requirements for the agency, such as in the nature of its on-site visits and in its review of specific elements of an institution or program, as well as the accrediting standards the agency itself establishes. Section 496(n)(3) requires the Secretary, in the agency recognition process, to take into account deficiencies in performance, and section 496(a) requires the Secretary to determine that the accreditor is a reliable authority on the quality of education offered through measures that the Secretary has promulgated after notice and comment.

While an accreditor must assess institutions or programs for all of the required factors as well as for the agency's own standards and policies, the Department has said that there are certain factors "that we believe are the most relevant to ensuring quality education," and on which the Department will "focus with more depth" (letter from Director, Accreditation Group, Office of Postsecondary Education, United States Department of Education, June 3, 2013). Below we emphasize those criteria that are most relevant, and supplement this list with some of the processes that are provided for in the regulations and that are particularly important for quality assurance.

1. Certain Statutory and Regulatory Standards Are of Particular Importance in Demonstrating That an Accrediting Agency Is Effective

a. Standards of Comparable Agencies

One measure of effectiveness, by necessity, involves a comparison against expected results, including comparison with other agencies' actions or standards. Section 496(l)(2) of the HEA states that the Department may find an agency ineffective if it accredits an institution or program that is the subject of any interim action by another accrediting agency—i.e., compared with another agency's action. Similarly, the Department may consider what standards those other agencies implement and what results they obtain in the aggregate for the standards in the areas that agencies are required by statute to address. For example, if most of a similarly situated group of accreditors has adopted a particular measure of student achievement but one agency has not, the Department might question the effectiveness of that agency relative to its peers.

Example: Accreditors of a certain type of institution or program generally look at four outcome measures: retention rates, graduation rates, licensure rates, and job placement rates. Accreditor X does not have a metric for retention. Accreditor X may be asked to explain how it can be effective, given that it does not consider retention rates when its peers believe that retention is an important factor in gauging institutional or programmatic quality.

Example: The institutions accredited by agency Y, in the aggregate, show lower levels of student achievement on generally accepted measures of student success, such as completion and cohort default rates, than the schools, in the aggregate, accredited by similar agencies. Accreditor Y may be asked to explain how its standards are effective in terms of the results its schools achieve in the aggregate.

b. Specific Regulatory Criteria

34 CFR 602.16(a)(1)(i), student achievement: As noted in the Department's June 3, 2013, letter, to remain recognized, an agency must demonstrate that its standards for accreditation are sufficiently rigorous to ensure the agency is a reliable authority as to the quality of education. To make this demonstration, the agency must show, among other things, that it has a standard or standards that effectively address the quality of each institution's "[s]uccess with respect to student achievement in relation to the institution's mission."

To that end, the agency must show that it has clear standards for success in student achievement in relation to the institution's mission (602.25(a), 602.18(a)), and how it has reviewed institutions according to this criterion (602.31(a)(2)). Many recognized accreditors, especially national accreditors, have set

numerical metrics. We encourage those agencies that currently have that type of metrics to consider whether additional metrics of student achievement that are accurate and effective can contribute to their standards. For example, many accreditors look at completion rates; we encourage those currently without this metric to consider adding it. Similarly, job placement rates have been adopted by many accreditors as a standard of student achievement; success in obtaining employment cannot be ignored in accrediting institutions that offer occupational programs.

Unfortunately, the definition and application of placement standards, along with recruiting practices related to them, have proven to be problematic in many cases. Agencies must assure that the job placement measure is clearly defined, so that an institution cannot claim it misunderstood the agency requirement and so that the agency is consistent in enforcing the requirement; and the agency must assure that strong processes are in place to certify the accuracy of those outcomes, as required under 34 CFR 602.18(d) and 602.19.

Close scrutiny of institutions' processes to evaluate and validate student learning in meaningful ways is an essential responsibility of all accreditors. Regional accreditors tend to use qualitative measures of student achievement, and tend not to have numerical metrics. We encourage them to consider adding objective, transparent, comparable, and actionable quantitative measures. Important measures, such as retention, graduation, and cohort default rates may be utilized if they are not already. In addition, because applied, professional, and occupational programs focus on employment as a primary goal, a regional accrediting agency that does not consider licensing and placement rates in its initial or continuing accreditation of institutions that offer such programs may be failing to ensure that the education or training offered by those institutions is of sufficient quality to achieve the institution's stated objective, as required by law.

Regional accreditors must, regardless of the measures used, clearly state their standards for measuring achievement and in recognition proceedings, and must demonstrate how those standards are applied effectively in the agencies' reviews of institutions.

34 CFR 602.17, objectives and degree and certificate requirements: This regulation requires that recognized accreditors demonstrate that they evaluate whether the institution or program has objectives consistent with its mission, is successful in achieving the objectives, and "[m]aintains degree and certificate requirements that at least conform to commonly accepted standards" (34 CFR 602.17(a)(3)).

Example: School X describes for incoming students the objectives of its liberal arts programs. The accreditor must assure that the amount, nature, and content of the work involved conforms both to the institution's stated mission and to the commonly accepted standards for the respective fields. In addition, the accreditor must ascertain that the institution is successful; this entails assuring that student work conforms to the standards and that students achieve the outcomes that the institution intends for students in the program. That success may be demonstrated by such factors as retention, graduation, and employment, pursuit of graduate studies, and measures of progress in internalizing concepts within the field. There are, of course, other measures that may meet this requirement.

Example: Program Y describes for incoming students the objectives of its technical or vocational program, both substantively and in the nature of employment that may follow. For instance, the

program may describe what coursework or field work is involved, and what proportion of students get jobs and with what types of employers, for a credential in medical technology or computer science, or a credential in retail marketing or civil engineering. In addition to the considerations common with a liberal arts program, the accreditor might also look at factors such as employment rates in the field of study, increase in earnings between pre- and post-educational employment, and third-party (e.g., employer or workforce board) recognition of the qualifications of graduates to gauge whether the program has been successful in achieving its employment-related objectives.

34 CFR 602.21, review and revision of standards: This regulation requires that “[t]he agency must maintain a systematic program of review that demonstrates that its standards are adequate to evaluate the quality of the education . . . and relevant to the educational or training needs of students” (34 CFR 602.21(a)). As conditions change, the standards that an agency uses to evaluate quality may need to change with them. 34 CFR 602.21(c) adds that, “If the agency determines . . . that it needs to make any changes to its standards, the agency must initiate action within 12 months to make the changes.” Changes can occur in economic conditions, student academic preparation, occupational requirements, accreditation practice, or other areas. Importantly, this criterion also looks to the educational and training needs of the students, so the accreditor’s program of review should ensure that agency standards remain responsive to those needs. It thus requires that all accreditors clarify and clearly state their view of student needs, and that they be ready to charge institutions or programs with updating their objectives and implementation to better assure that institutions or programs are meeting those needs.

Accreditors must regularly assess the effectiveness and validity of their standards in general: Do the standards (and numerical thresholds, if any) effectively ensure quality outcomes for students? If there have been poor outcomes for students or other concerns that have arisen at accredited institutions or programs, does the agency need to revise its standards and processes to identify and address those issues more effectively?

2. Certain Statutory and Regulatory Processes Are of Particular Importance in Demonstrating That an Accrediting Agency Is Effective

In addition to gauging the effectiveness of specific standards as described in section B.1. above, certain accreditation processes are also of particular importance in determining agency effectiveness.

a. Statutory Requirement for Comprehensive Departmental Review

In discussing the Department’s analysis of an accrediting agency seeking recognition or renewal of recognition, section 496(n)(3) of the HEA states that the Department is to be “comprehensive” and to consider “all available relevant information concerning the compliance of the accrediting agency . . . including any complaints or legal actions.” Therefore, accreditors must respond in a satisfactory way to allegations initially originating outside the recognition process that the agency has not complied with its statutory and regulatory obligations and how it has corrected any deficiencies in that regard.

b. Key Regulatory Processes

In its June 3, 2013, letter, the Department highlighted some of the processes that it believes are most important for accreditors to follow in demonstrating their effectiveness. These include 34 CFR 602.15,

602.19 and 602.20. In this memorandum we also wish to highlight the informational requirements in 34 CFR 602.26 and 602.27.

34 CFR 602.15, 602.18, 602.19: Agencies must pay particular attention to the staffing requirements in §602.15(a) and the requirement in §602.19(b) that they effectively apply a set of monitoring and evaluation approaches that enable them to identify problems with an institution's or program's continued compliance with agency standards. This means assuring that the processes and personnel involved in policymaking, comprehensive reviews, and monitoring can accomplish the task. The agency needs to assure that persons with the appropriate credentials and background are involved. This will often mean that in setting policy, performing site reviews, and monitoring, the agency must involve individuals with expertise in assessing whether an institution or program has appropriately categorized and accurately documented students for retention rates, completion rates, licensure pass rates, and employment status. Under §602.18(d), agencies must have a reasonable basis for determining that the information upon which their accrediting decisions are made is accurate, which would require the skill to audit or verify claims of the institution or program.

34 CFR 602.20: In §602.20(a)(2), agencies must, at a minimum, require a noncompliant institution or program to come into compliance with agency standards within maximum timeframes established by the regulation. If the institution or program does not do so, §602.20(b) requires that the agency must take immediate adverse action, unless the period for compliance is extended "for good cause." Thus, the standard is that ordinarily, periods of time to achieve compliance will not be extended. Some agencies more routinely provide extensions. Agencies must scrutinize the reasons for an institution's or program's noncompliance within the provided regulatory periods to assess whether there is a good basis for believing that compliance will be forthcoming in light of the applicable regulatory requirement and the gravity of the issue. This is especially the case for violations of major standards, such as those related to student achievement and financial responsibility, for which extensions of time may put students or Department financial aid funds at particular risk.

34 CFR 602.26: Section 602.26 requires agencies to provide to the Department written notification when an agency has terminated the accreditation of an institution or program or placed an institution or program on probation or equivalent status, with specific timeframes described in that section. Agencies must provide decision letters for those actions to the Department to provide necessary information for the Department's oversight activities.

34 CFR 602.27: Section 602.27(a)(6) requires that the agency provide to the Department the name of any institution or program it accredits that it "has reason to believe is failing to meet its title IV, HEA program responsibilities or is engaged in fraud or abuse, along with the agency's reasons for concern about the institution or program." The number of reports of such issues from accreditors is far smaller than the number of such issues identified through other Department processes or by other sources outside the Department. This is remarkable for at least two reasons. First, many of the monitoring activities of accreditors focus on areas that overlap with or that are corollaries to information gathered directly by the Department, so it would be expected that accreditors would find many of the same indicators as the Department. Second, the reporting standard is only that the agency "has reason to believe," which only requires a rational basis for the belief, rather than requiring any level of probability beyond reasonability. The intent of the regulatory requirement is to provide early warning to the Department of issues that it

must investigate. Such early warning is vital for the protection of students and the safeguarding of taxpayer funds. Agencies themselves need to be attentive to these issues in order to ensure quality education and be prepared to work with institutions to prepare teach-out plans, as well as to fulfill their role as gatekeepers for federal financial aid funds. The Department views prompt reporting by an accrediting agency as a factor in evaluating the agency's reliability.

C. Examples of How This Flexibility May Be Applied

The information provided above outlines the flexibility that agencies have in reviewing individual institutions or programs and standards. While agencies have the authority to determine how to implement that flexibility, we offer a few examples here.

- Differentiation of institutional or program review: Based on previous reviews and ongoing monitoring of institutional or programmatic information, risk factors, and other information, an accreditor may ask that the self-study and on-site visit for a particular institution or program coming up for review emphasize a subset of standards, along with certification of continued compliance and no change in practices with regard to the rest of the standards. Similarly, a site visit for one institution or program may be shorter or longer than that for another on the basis of those reviews and monitoring. Or an accreditor may require more evidence on particular standards for one institution or program than it does for another. Regardless, agencies must comply with all the standards in the regulations, as noted in Section A.
- Differentiation of terms of recognition: An agency may provide a shorter period of recognition (i.e., fewer years) for an institution or program that has met the threshold standards but for which the agency continues to have concerns, and a longer period of recognition for an institution or program that has regularly exceeded the standards with no ongoing concerns. More frequent monitoring or unannounced visits can be applied for institutions or programs with less satisfactory reviews. Accreditors may also develop tiers of recognition, with some institutions or programs denoted as achieving the standards at higher or lower levels than others.

The Department looks forward to continuing to work with accrediting agencies to assure the quality of our institutions and programs of higher education.

Sincerely,

Ted Mitchell
Under Secretary
US Department of Education