

## § 602.28

participation in the Title IV, HEA programs.

(Approved by the Office of Management and Budget under control number 1845-0003)

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

### § 602.28 Regard for decisions of States and other accrediting agencies.

(a) If the agency is an institutional accrediting agency, it may not accredit or preaccredit institutions that lack legal authorization under applicable State law to provide a program of education beyond the secondary level.

(b) Except as provided in paragraph (c) of this section, the agency may not grant initial or renewed accreditation or preaccreditation to an institution, or a program offered by an institution, if the agency knows, or has reasonable cause to know, that the institution is the subject of—

(1) A pending or final action brought by a State agency to suspend, revoke, withdraw, or terminate the institution's legal authority to provide post-secondary education in the State;

(2) A decision by a recognized agency to deny accreditation or preaccreditation;

(3) A pending or final action brought by a recognized accrediting agency to suspend, revoke, withdraw, or terminate the institution's accreditation or preaccreditation; or

(4) Probation or an equivalent status imposed by a recognized agency.

(c) The agency may grant accreditation or preaccreditation to an institution or program described in paragraph (b) of this section only if it provides to the Secretary, within 30 days of its action, a thorough and reasonable explanation, consistent with its standards, why the action of the other body does not preclude the agency's grant of accreditation or preaccreditation.

(d) If the agency learns that an institution it accredits or preaccredits, or an institution that offers a program it accredits or preaccredits, is the subject of an adverse action by another recognized accrediting agency or has been placed on probation or an equivalent status by another recognized agency, the agency must promptly review its accreditation or preaccreditation of the institution or program to determine if it should also take adverse ac-

## 34 CFR Ch. VI (7-1-04 Edition)

tion or place the institution or program on probation or show cause.

(e) The agency must, upon request, share with other appropriate recognized accrediting agencies and recognized State approval agencies information about the accreditation or preaccreditation status of an institution or program and any adverse actions it has taken against an accredited or preaccredited institution or program.

(Approved by the Office of Management and Budget under control number 1845-0003)

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

### Subpart C—The Recognition Process

APPLICATION AND REVIEW BY  
DEPARTMENT STAFF

#### § 602.30 How does an agency apply for recognition?

(a) An accrediting agency seeking initial or continued recognition must submit a written application to the Secretary. The application must consist of—

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

(2) Evidence that the agency complies with the criteria for recognition listed in subpart B of this part; and

(3) Supporting documentation.

(b) By submitting an application for recognition, the agency authorizes Department staff to observe its site visits and decision meetings and to gain access to agency records, personnel, and facilities on an announced or unannounced basis.

(c) The Secretary does not make available to the public any confidential agency materials a Department employee reviews during the evaluation of either the agency's application for recognition or the agency's compliance with the criteria for recognition.

(Approved by the Office of Management and Budget under control number 1845-0003)

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

#### § 602.31 How does Department staff review an agency's application?

(a) Upon receipt of an agency's application for either initial or continued recognition, Department staff—

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

(2) Publishes a notice of the agency's application in the FEDERAL REGISTER, inviting the public to comment on the agency's compliance with the criteria for recognition and establishing a deadline for receipt of public comment; and

(3) Provides State licensing or authorizing agencies, all currently recognized accrediting agencies, and other appropriate organizations with copies of the FEDERAL REGISTER notice.

(b) Department staff analyzes the agency's application to determine whether the agency satisfies the criteria for recognition, taking into account all available relevant information concerning the compliance of the agency with those criteria and any deficiencies in the agency's performance with respect to the criteria. The analysis includes—

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

(2) Review of the public comments and other third-party information the Department staff receives by the established deadline, as well as any other information Department staff assembles for purposes of evaluating the agency under this part; and

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

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

(d) If, at any point in its evaluation of an agency seeking initial recognition, Department staff determines that the agency fails to demonstrate substantial compliance with the basic eligibility requirements in §§ 602.10 through 602.13, the staff—

(1) Returns the agency's application and provides the agency with an expla-

nation of the deficiencies that caused staff to take that action; and

(2) Recommends that the agency withdraw its application and reapply when the agency can demonstrate compliance.

(e) Except with respect to an application that is withdrawn under paragraph (d) of this section, when Department staff completes its evaluation of the agency, the staff—

(1) Prepares a written analysis of the agency, which includes a recognition recommendation;

(2) Sends the analysis and all supporting documentation, including all third-party comments the Department received by the established deadline, to the agency no later than 45 days before the Advisory Committee meeting; and

(3) Invites the agency to provide a written response to the staff analysis and third-party comments, specifying a deadline for the response that is at least two weeks before the Advisory Committee meeting.

(f) If Department staff fails to provide the agency with the materials described in paragraph (e)(2) of this section at least 45 days before the Advisory Committee meeting, the agency may request that the Advisory Committee defer acting on the application at that meeting. If Department staff's failure to send the materials at least 45 days before the Advisory Committee meeting is due to the failure of the agency to submit reports or other information the Secretary requested by the deadline the Secretary established, the agency forfeits its right to request a deferral.

(g) Department staff reviews any response to the staff analysis that the agency submits. If necessary, Department staff prepares an addendum to the staff analysis and provides the agency with a copy.

(h) Before the Advisory Committee meeting, Department staff provides the Advisory Committee with the following information:

(1) The agency's application for recognition and supporting documentation.

(2) The Department staff analysis of the agency.

(3) Any written third-party comments the Department received about

**§ 602.32**

the agency on or before the established deadline.

(4) Any agency response to either the Department staff analysis or third-party comments.

(5) Any addendum to the Department staff analysis.

(6) Any other information Department staff relied on in developing its analysis.

(i) At least 30 days before the Advisory Committee meeting, the Department publishes a notice of the meeting in the FEDERAL REGISTER inviting interested parties, including those who submitted third-party comments concerning the agency's compliance with the criteria for recognition, to make oral presentations before the Advisory Committee.

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

REVIEW BY THE NATIONAL ADVISORY COMMITTEE ON INSTITUTIONAL QUALITY AND INTEGRITY

**§ 602.32 What is the role of the Advisory Committee and the senior Department official in the review of an agency's application?**

(a) The Advisory Committee considers an agency's application for recognition at a public meeting and invites Department staff, the agency, and other interested parties to make oral presentations at the meeting. A transcript is made of each Advisory Committee meeting.

(b) When it concludes its review, the Advisory Committee recommends that the Secretary either approve or deny recognition or that the Secretary defer a decision on the agency's application for recognition.

(1)(i) The Advisory Committee recommends approval of recognition if the agency complies with the criteria for recognition listed in subpart B of this part and if the agency is effective in its performance with respect to those criteria.

(ii) If the Advisory Committee recommends approval, the Advisory Committee also recommends a recognition period and a scope of recognition.

(iii) If the recommended scope or period of recognition is less than that requested by the agency, the Advisory Committee explains its reasons for rec-

ommending the lesser scope or recognition period.

(2)(i) If the agency fails to comply with the criteria for recognition in subpart B of this part, or if the agency is not effective in its performance with respect to those criteria, the Advisory Committee recommends denial of recognition, unless the Advisory Committee concludes that a deferral under paragraph (b)(3) of this section is warranted.

(ii) If the Advisory Committee recommends denial, the Advisory Committee specifies the reasons for its recommendation, including all criteria the agency fails to meet and all areas in which the agency fails to perform effectively.

(3)(i) The Advisory Committee may recommend deferral of a decision on recognition if it concludes that the agency's deficiencies do not warrant immediate loss of recognition and if it concludes that the agency will demonstrate or achieve compliance with the criteria for recognition and effective performance with respect to those criteria before the expiration of the deferral period.

(ii) In its deferral recommendation, the Advisory Committee states the bases for its conclusions, specifies any criteria for recognition the agency fails to meet, and identifies any areas in which the agency fails to perform effectively with respect to the criteria.

(iii) The Advisory Committee also recommends a deferral period, which may not exceed 12 months, either as a single deferral period or in combination with any expiring deferral period in which similar deficiencies in compliance or performance were cited by the Secretary.

(c) At the conclusion of its meeting, the Advisory Committee forwards its recommendations to the Secretary through the senior Department official.

(d) For any Advisory Committee recommendation not appealed under § 602.33, the senior Department official includes with the Advisory Committee materials forwarded to the Secretary a memorandum containing the senior Department official's recommendations regarding the actions proposed by the Advisory Committee.

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