Juggling Regulatory Priorities: Adding Another Ball

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Accreditation and Innovation Rulemaking
Speaker Introduction

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• Prior Experience
  • Managing Director at higher education and strategic management consulting firm
  • Director of Policy, Planning and Research at Government of District of Columbia Office of the State Superintendent of Education
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  • Professional staff member for accreditation agency recognized by ED
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Negotiated Rulemaking 101

• The Secretary must obtain **public involvement** in the development of proposed title IV regulations

• The Secretary must obtain the advice of and recommendations from individuals and representatives of groups involved in student financial assistance programs under title IV

• Before publishing proposed regulations in the Federal Register, the Secretary must prepare draft regulations and submit such regulations to a negotiated rulemaking process

HEA 492; 20 U.S.C. 1098a
## Represented Stakeholders

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<td>Four-year public institutions</td>
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<td>Institutions of higher education primarily offering distance education</td>
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<td>State Higher Education Executive Officers</td>
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2019 Negotiators
Consensus

All published proposed regulations must conform to agreements resulting from such negotiated rulemaking unless the Secretary reopens the negotiated rulemaking process or provides a written explanation why she has decided to depart from such agreements.

HEA 492(b)(2); 20 USC 1098a(b)(2)
### Accreditation and Innovation Rulemaking Chronology (as of 6/3/2019)

<table>
<thead>
<tr>
<th>Date(s)</th>
<th>Description</th>
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<tr>
<td>5/9/2018</td>
<td>ED publishes Spring 2018 Agency Rule List</td>
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<td>07/31/2018</td>
<td>ED announces intent to establish negotiated rulemaking committee and schedules three public hearings</td>
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<td>09/13/2018</td>
<td>CECU provides public <a href="#">comments</a> to ED in Sturtevant, WI advocating for regulatory changes</td>
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<td>10/15/2018</td>
<td>ED announces committee topics and requests nominations for individual negotiators</td>
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<td>12/19/2018</td>
<td>Secretary DeVos outlines <em>Rethinking Higher Education</em> principles at American Council on Education</td>
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<td>12/26/2018</td>
<td>ED announces location of negotiations and subcommittee meetings</td>
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<td>1/14-16/2019</td>
<td>Accreditation and Innovation Committee meets for Session 1 (1/14 cancelled due to inclement weather)</td>
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<td>1/17-18/2019</td>
<td>Distance Learning &amp; Educational Innovation, TEACH Grants, and Faith-Based Entities Subcommittees meet for Session 1</td>
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<td>2/12-13/2019</td>
<td>Distance Learning &amp; Educational Innovation, TEACH Grants, and Faith-Based Entities Subcommittees meet for Session 2</td>
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<tr>
<td>2/19-22/2019</td>
<td>Accreditation and Innovation Committee meets for Session 2 (2/20 cancelled due to inclement weather)</td>
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<tr>
<td>3/11-12/2019</td>
<td>Distance Learning &amp; Educational Innovation, TEACH Grants, and Faith-Based Entities Subcommittees meet for Session 3</td>
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<td>3/25-28/2019</td>
<td>Accreditation and Innovation Committee meets for Session 3</td>
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<td>4/1-3/2019</td>
<td>Accreditation and Innovation Committee meets for Session 4 (added at the request of committee members)</td>
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<td>5/4/2019</td>
<td>ED sends White House Office of Management and Budget draft proposed rule on accreditation and related matters</td>
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<tr>
<td>11/1/2019</td>
<td>HEA Master Calendar deadline for July 1, 2020 implementation of new regulations</td>
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Rulemaking Objectives

• Protect students and taxpayers
• Reduce and simplify regulations without creating intolerable risk
• Help stop credential inflation and ensure career mobility
• Better engage employers as pivotal players in workforce preparation
• Develop mechanisms to adjust for risk (e.g., expedited approvals)
• Honor institutional mission
Committee Structure

Distance Learning & Educational Innovation Subcommittee

TEACH Grants Subcommittee

Faith-Based Entities Subcommittee

Accreditation and Innovation Committee
Bucket List

Bucket 1
- Accreditation
- Definition of a Credit Hour
- Byrd Scholarship

Bucket 2
- TEACH Grants
- Religious Freedom

Bucket 3
- Distance Education
- State Authorization for Distance Education
- Competency-based Education
Accreditor Monitoring Report

• Adds new definition of “monitoring report”
• A report an accreditor is required to submit to ED staff when it is found to be “substantially compliant”
• Does not require review by the National Advisory Committee on Institutional Quality and Integrity

Proposed 34 CFR § 602.3 and 602.36(e)(1)(i)
Geographic Area

• Redefines a geographic area to include a region or group of States chosen by the agency in which an agency provides accreditation to a main campus, a branch campus, or an additional location of an institution.

• 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.

• An agency whose geographic area includes a State in which only a branch campus or additional location is located is not required to accept an application for accreditation from other institutions in such State.

Proposed 34 CFR § 602.11 and 602.12(b)(1)
Retroactive Accreditation

• Codifies the permissibility of retroactive accreditation in regulation

• As long as the student was enrolled in the institution or program during the period of preaccreditation that resulted in the final decision, all credits earned during that enrollment are considered to have been earned from an accredited institution or program

Proposed 34 CFR § 602.18(a)(6)
Separate Standards

• New provisions clarifying accreditors may have separate standards regarding:
  • An institution’s process for approving curriculum in order to more effectively meet the recommendations of advisory boards, industry, credentialing or occupational licensure, or employers
  • Faculty standards for instructors teaching courses within a dual or concurrent enrollment program or career and technical education courses

Proposed 34 CFR § 602.16(g)
Alternative Requirements

• New provision allows an accreditor to use its professional judgement to establish secondary, equally rigorous but different standards, policies, and procedures than the agency ordinarily applies
• Accommodates innovative program delivery approaches or undue hardship on students
• Does not waive legal requirements
• Must be approved by agency’s decision-making body and set forth in published accreditation manuals

Proposed 34 CFR § 602.18(b)
Noncompliance

• New provision allows an accreditor to permit an institution or program to be out of compliance with one or more standards, policies, and procedures, as determined annually, not to exceed three years if:
  • Circumstances are beyond the institution’s or program’s control (e.g., natural disaster),
  • Period of non-compliance is approved by accreditor’s decision-making body,
  • Resources available to achieve compliance within time allotted, and
  • Non-compliance will not contribute to cost without student consent, create undue hardship or harm on students, or compromise the program’s academic quality

Proposed 34 CFR § 602.18(c)
Compliance Timeline

• Provides an institution or program additional time beyond current requirements to bring itself into compliance with its accreditor’s standards
• Maximum time period doubled from two years to four years
• May include intermediate checkpoints
• Good cause extensions still permitted

Proposed 34 CFR § 602.20(a)(2)
Adverse Actions

• Clarifies an accreditor may limit an adverse action (e.g., denial, withdrawal, suspension, revocation, or termination) to particular programs or to additional locations

• Prevents an accreditor from having to take action against an entire institution and all of its programs when noncompliance is limited to a particular program or location

Proposed 34 CFR § 602.20(d)
Oversight Responsibilities

• Clarifies an accreditor is not responsible for enforcing requirements related to:
  • Program Participation Agreement
  • Factors of financial responsibility
  • Standards of administrative capability
  • Reporting and disclosure of information
  • Institutional security policies and crime statistics

Proposed 34 CFR § 602.20(f)
Substantive Changes

• Revises definition of substantive changes to limit the actions that require accreditor pre-approval to high-impact, high-risk activities

• Includes a list of other changes that institutions in good standing can implement without prior accreditor approval

  • Good standing defined as not placed on probation or equivalent status, subject to negative action by the accreditor over the prior three years, or under provisional certification

Proposed 34 CFR § 602.22
Reportable Changes

- Change in an existing program’s method of delivery
- Change of 25 percent or more of a program since the agency’s most recent accreditation review
- Development of customized pathways or abbreviated or modified courses or programs
- Entering into a written arrangement under 668.5 under which an institution or organization not certified to participate in the title IV programs offers up to 25 percent of one or more of the accredited institution’s educational programs
- Adding subsequent additional locations after receiving agency approval for at least two and in good standing

Proposed 34 CFR § 602.22(b)-(c)
Staff-level Approval

- New provision allows an accreditor to designate its “senior staff” to approve or disapprove select substantive changes in a timely, fair, and equitable manner:
  - Addition of programs that represent a significant departure from the existing offerings or educational programs, or method of delivery
  - Change in the way an institution measures student progress
  - A substantial increase in the number of clock hours or credit hours awarded, or an increase in the level of credential awarded
  - Addition of a permanent location at a site at which the institution is conducting a teach-out
  - Entering into a written arrangement with an ineligible institution or organization

Proposed 34 CFR § 602.22 (a)(3)(i)
Teach-out Plans

• An accreditor must require an institution submit a teach-out plan based on new triggering events:
  • Independent audit expresses doubt with the institution’s ability to operate as a going concern or indicates an adverse opinion or a finding of material weakness related to financial stability
  • Agency acts to place the institution on probation or equivalent status
  • Participating in the title IV programs under a provisional program participation agreement
  • Placed on the reimbursement payment method or the heightened cash monitoring payment method

Proposed 34 CFR § 602.24(c)
Schools Performing Teach-Out

• New provision allows, with agreement from the institution’s accreditor and State, the Secretary to permit an institution to continue to originate, award, and disburse title IV aid following the end of the institution’s participation in the title IV programs

• Limited to previously enrolled students who can complete within 120 days of the institution's participation ended

• Conditioned on written assurances to the Secretary

Proposed 34 CFR § 668.26(e)
Credit Hour

• Leaves in place the Federal definition of a credit hour, including time-based requirements relative to classroom instruction and other academic work and out-of-class work component

• Incorporates clarifying guidance from Dear Colleague Letter GEN-11-06
Distance Education

• Creates new definitions of the concepts “regular” and “substantive” as they pertain to the definition of distance education
• Clarifies regular and substantive interaction may occur between an instructor or multiple instructors
• Defines instructor as an individual who meets the qualifications established by the institution’s accreditor

Proposed 34 CFR § 600.2
Substantive Interaction

Substantive interaction is engaging students in teaching, learning, and assessment, consistent with the content under discussion, and also includes at least two of the following:

- Providing direct instruction
- Assessing or providing feedback on student coursework
- Providing information or responding to questions about course content or competency
- Facilitating group discussion regarding course content or competency
- Other instructional activities approved by the accreditor

Proposed 34 CFR § 600.2
Regular Interaction

• An institution ensures regular interaction between a student and instructor by, prior to the student’s completion of a course or competency:

  Providing the opportunity for substantive interactions with the student on a predictable and regular basis commensurate with the length of time and the amount of content in the course or competency

  &

  Monitoring the student’s academic engagement and success and ensuring that an instructor is responsible for promptly and proactively engaging in substantive interaction with the student when needed, on the basis of such monitoring, or upon request by the student

Proposed 34 CFR § 600.2
State Authorization

• Leaves in place several provisions from the 2016 State authorization rule, including the definition of State authorization reciprocity agreement

• Incorporates a single verification of a student’s location upon initial enrollment at the institution and a requirement to update the student’s location upon formal receipt of information from the student of a change

• Eliminates institutional disclosures for distance education programs and replaces some provisions with general disclosures that apply to all institutions

Proposed 34 CFR § 600.2, 600.9, and 668.50
Disclosures for Professional Licensure

• New provision requires all programs – regardless of delivery modality – to disclose to enrolled and prospective students whether programs that are intended to lead to professional licensure would meet educational requirements for licensure or certification in a State.

• Direct disclosures must be made in writing if a program does not meet educational requirements in the State in which a prospective student is located or the institution has not made a determination.

Proposed 34 CFR § 668.43(a)(5)(v) and (c)
Clock-to-credit Conversion

• Restores the clock-to-credit hour conversion formula that existed prior to the 2010 program integrity regulations:
  • Semester or trimester hour = at least 30 clock hours of instruction
  • Quarter hour = at least 20 clock hours of instruction
Certification Procedures

New provision automatically grants an institution renewal of certification, **which may be provisional**, in the event the Secretary does not make a determination to grant or deny certification within 12 months of the expiration of the current period of participation.
Limitations on Length of GE Programs

State in which institution located:
- 150% of minimum number of clock hours

State adjacent to institution:
- Minimum number of clock hours

Proposed 34 CFR § 668.14(b)(26)(i)
Locations of Closing Institutions

• Removes the two-year requirement in circumstances where the applicant institution and the original closed institution are not related parties, have no commonality of ownership, control, or management, and the applicant institution agrees to accept liability for the closed institution’s prior actions and its unpaid refunds during the current term and for one prior academic year, and to abide by the closed institution’s refund policies.

• Permits an institution to apply to have a location that does not meet the two year requirement added to its Program Participation Agreement if the institution is conducting a teach-out pursuant to a teach-out plan approved by both accrediting agencies.

Proposed 34 CFR § 600.32(c)-(d)
Competing Priorities

- Gainful Employment
- Accreditation and Innovation
- Borrower Defense to Repayment
- Title IX

November 1, 2019
Next Steps

• Do not wait for notice of proposed rulemakings
• Read and understand consensus-based language already available
• Consider regulatory provisions your organization supports or opposes based on impact
• Start developing *data and facts* to inform your positions (sound science and reasoning is key)
• Reach out to CECU with questions
Resources

• CECU negotiated rulemaking [webpage], including public comments, daily summaries from each of the four sessions, and all final consensus-based language
• ED’s negotiated rulemaking [webpage], including transcripts, video recordings, and redlined language
Questions & Answers
Contact Information

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