Policy & Process Recommendations

Policy Subcommittee of the National Advisory Committee on Institutional Quality and Integrity, U.S. Department of Education

Introduction

At the Winter 2023 meeting of the advisory committee, held from February 28 to March 2, committee members raised various questions and concerns about the processes and policies of accreditor recognition. During the policy discussion the chair of the committee proposed the establishment of a subcommittee to explore the various topics and report back. Members indicated interest in serving and the subcommittee was established with the following members:

Jennifer Blum, co-chair
Robert Shireman, co-chair
David Eubanks
Debbie Cochrane
Mary Ellen Petrisko
Zakiya Smith Ellis

Over the subsequent four months, the subcommittee members quickly agreed on the topics on which to focus, drafted issue papers, sought input from the Department staff, and discussed the topics at several meetings. In addition, the subcommittee reached out to stakeholders – institutional accreditors, including both former regional and national accreditors, programmatic accreditors, faith-based accreditors, and consumer representatives – to seek their thoughts on the policy areas of interest. The issues were then summarized and consolidated into this report.

Through discussion, the subcommittee was generally able to reach consensus regarding most of the conclusions and recommendations in this report. The subcommittee very much appreciates the assistance of the Department of Education staff in setting up our meetings, and in providing the background information necessary to the deliberations.

The subcommittee's report should not be interpreted as a comprehensive review of all accreditation policy topics worthy of examination. Many important topics are not covered. For example, the question of the federal role in issues involving academic freedom and institutional governance were among the policy topics discussed at the Winter 2023 NACIQI meeting. With limited time and resources, the subcommittee did not attempt to take on that topic or other issues.

Accreditor complaint policies

Information included in complaints may be the first indications of larger systemic problems at an institution effective complaint monitoring and review processes are therefore critical to ensuring quality, focusing on student success, and promoting fair and ethical treatment of students and consumers. Some

complainants may be dependent on the accreditor as a final resort to have their concerns taken seriously and have their complaints addressed.

Two provisions of the federal accreditor regulations pertain to accreditor treatment of complaints. One relates to the accreditor's standards for institutions, and the other relates to complaints the accreditor receives:

- **Required standard**: 34 CFR 602.16(a)(1)(ix) requires that "the agency's accreditation standards must set forth clear expectations for the institutions or programs it accredits in the following areas:… (ix) Record of student complaints received by, or available to, the agency."
- **Complaints to accreditors**: 34 CFR 602.23(c) requires that "the accrediting agency must… review in a timely, fair, and equitable manner any complaint it receives against an accredited institution or program that is related to the agency's standards or procedures…"

Concerns

The standard required under 602.16 seems to have been interpreted as simply a documentation requirement, rather than a normative expectation regarding the integrity of an institution's complaint-handling practices. Yet the statute states that agencies must have standards that *assess* an institution's record with respect to complaints, beyond confirming that such standards exist. It is unclear that accreditors are reviewing institutional complaint processes – which should include consideration of the treatment of and outcomes for complaints submitted - in a consistent, robust, and equitable manner.

Similarly, NACIQI has seen examples of accreditor complaint policies that impose time, form and content requirements that are needlessly restrictive which may severely limit the extent to which an inquiry is treated substantively. As an example, we've seen at least one agency that provides only one method for filing a complaint, rather than providing flexibility. Other examples involve complaints that simply cannot be resolved at the institution level, such as concerns about a merger or external influences on governance. Agency policies must strike the appropriate balance to provide enough flexibility and discretion to take complaints at any time, without outright rejection. An oversight entity should treat complaints with seriousness and respect in order to fulfill its compliance-monitoring obligations to students, stakeholders, and its triad partners.

Recommendations

Required standard: The language of the regulation – referring to a "record" and to complaints received by "the agency" (rather than the institution) – does not make sense. To address the problem, the provision could be amended so that it is clearly a standard that institutions are expected to meet, as follows:

> (ix) *Institutional complaint processes that are clearly stated, readily available, fair and equitable for receiving and handling complaints received by the institution.* ~~Record of student complaints received by, or available to, the agency.~~

Complaints to accreditors: The current regulation requires that accrediting agencies handle complaints they receive in a "timely, fair, and equitable manner." Unfortunately, some agencies have, in our view, failed to meet this requirement, with deficiencies including:

- Unreasonable restrictions on the method, timing, or signature requirements for the filing of complaints.
- Inflexible prohibitions on accepting anonymous complaints.
- Inflexible requirements that complaints must always be filed first with the institution, or must exhaust the institution's complaint procedures.
- Absolute requirements that the complainant must identify the standard that is alleged to be violated.

While these examples might not meet any reasonable definitions of "timely, fair, and equitable," it can be challenging for the Department to successfully enforce requirements, such as fairness, that lack specificity. The subcommittee recommends the accreditation group staff use their professional judgement to identify such misalignments and make recommendations to enhance the regulations with examples of policies and practices that are *not* fair and equitable, in addition to retaining the current general language. For example, a complaint policy that results in the rejection of the vast majority of complaints would not be considered fair or equitable.

Federal link

In addition to recognizing accreditors for the purpose of Title IV financial aid, the Secretary of Education recognizes accreditors that have some other federal reason to need recognition. The statutory provision in the Higher Education Act (20 USC 1099b) says (emphasis added):

> No accrediting agency or association may be determined by the Secretary to be a reliable authority as to the quality of education or training offered for the purposes of this chapter **or for other Federal purposes**, unless the agency or association meets criteria established by the Secretary pursuant to this section.

The relevant section of regulation (34 CFR 602.10) pertaining to non-Title IV situations says that to be eligible for federal recognition, the agency must demonstrate that its accreditation "is **a required element** in enabling at least one [college or college program] to establish eligibility to participate in non-HEA Federal programs." For *new* – but not renewing – programmatic accreditors, the regulations that became effective in July 2020 require letters affirming the federal link:

> 602.32(b)(2) Letters from at least one program or institution that will rely on the agency as its link to a Federal program upon recognition of the agency or intends to seek multiple accreditation which will allow it in the future to designate the agency as its Federal link.

No new programmatic accreditors have come before NACIQI since the letter requirement has been in effect.

Concerns

While some of the federal links cited by applicant agencies are in statute or regulation, other links are more tenuous. The primary purpose of the recognition of accreditors is to ensure quality at institutions using Title IV aid and relevant provisions of college aid for the military and veterans. Each additional agency that the Department must review adds to the workload of the accreditation group and of NACIQI. In some circumstances, agencies seeking federal recognition seem to be stretching to cite a federal link,

perhaps indicating that they are seeking federal endorsement for reputation reasons. The purpose of federal recognition, however, is not to confer marketability or reputation.

A second concern is that the Department of Education's oversight of an accreditor is failing to achieve the intended purposes of the other federal agency. For example, federal immigration laws allow aliens to enter the U.S. to study at an "accredited language training program . . . approved by the Attorney General after consultation with the Secretary of Education." In implementation, the Department of Homeland Security allows for enrollment not only at accredited English training programs, but also at any school *institutionally* accredited by a recognized accreditor.[i] However, some institutional accreditors do not assess all programs at schools they accredit, meaning that the English programs may not receive the scrutiny necessary to ensure that they are appropriately rigorous in their acceptances.
Recommendations

We recommend that the regulations be amended to require accreditors seeking new or renewed recognition to submit a copy of a letter from a federal agency, dated not longer than five years prior, describing the federal agency's purpose in using the Secretary's recognition for a federal purpose. (Being more rigorous in confirming the federal program link may not reduce the number of accreditors undergoing reviews. Instead, it could prompt those specialized accreditors to become Title IV conduits in order to maintain recognition, an outcome we do not necessarily seek or need from a policy perspective.)

Further, the Department should inform DHS that their use of institutional accreditation to presume programmatic quality may not meet the DHS objectives. In addition, the Department should examine other federal references to the Department of Education recognition and alert agencies that may be misinterpreting the scope of the recognition.

ED Recognition of State Agencies for Nurse Education

For the purpose of determining eligibility for Federal assistance, pursuant to 42 U.S.C. § 296, the U.S. Secretary of Education is required to publish a list of recognized accrediting bodies *and State agencies* – currently five--that the Secretary determines to be reliable authorities regarding the quality of training offered by schools and programs for diplomas, and associate, baccalaureate and graduate degrees in nursing.

The criteria for recognition of State agencies were published in the January 16, 1969, Federal Register and are more limited in scope than the criteria for recognized accrediting agencies (see below),[ii] yet these are the sole criteria to be applied by the Secretary in determining whether a State agency is a reliable authority as to the quality of training offered by schools of nursing.

The list of recognized accrediting agencies and State agencies that have been determined by the Secretary of Education to be reliable authorities as to the quality of training offered by schools of nursing will be published periodically in the FEDERAL REGISTER. For purposes of institutional and program accreditation, as provided for in the Nurse Training Act, the appropriate accrediting

associations designated by the Secretary as "Nationally Recognized Accrediting Agencies and Associations " will be included on the list.

The maximum period of recognition that may be granted to a State agency for the approval of nurse education is four years. Recognition of an agency will not be denied or withdrawn without affording the agency an opportunity for a hearing by the National Advisory Committee on Institutional Quality and Integrity.

Concern/Recommendation

The Subcommittee is raising the policy question whether the Department or Congress should take steps to better ensure the quality of nursing programs in those states in which it is currently possible to earn a nursing credential from a school approved only by the state nursing board or a school accredited by a nursing program accreditor that does not include certain certifications or degree levels in its scope. The current outdated system is reliant on scant criteria that do not cover all aspects of quality assurance with which other accredited programs/institutions must comply, Assuming the current recognition system remains, Congress should consider amending the 1969 criteria so that all aspects of educational quality are part of those criteria.

ED Approval of Military Programs

Military educational institutions seeking to establish, modify, or redesignate degrees are currently required to obtain approval from both NACIQI/USDE and the institution's accrediting body. Governing this requirement are a 1954 policy from the Director of the Bureau of the Budget (sic) to the Secretary of Health, Education and Welfare (sic): *Federal Policy Governing the Granting of Academic Degrees by Federal Agencies and Institutions* and a 2011 Department of Defense Instruction: *Department of Defense Instruction Number 5545.04*, which broadens the requirements of the 1954 policy.

Concerns

These documents are outdated but still in effect. The USDE Accreditation Division's 2019 *Guide for Graduate Degree-Granting Requests from Federal Entities and DoD Components* is not appropriately titled, as undergraduate degrees are also to be reviewed in accordance with the 2011 Instruction. Finally, it is not clear that there is value added by a NACIQI/USDE review and approval process given the need for institutional accreditor approval.[iii]

Recommendation

Working with the DoD Under Secretary for Personnel and Readiness, the Department should determine whether the 1954 Policy, 2008 Directive and 2011 Instruction should be rescinded and whether the approval of military educational institutions by their accreditors should be deemed sufficient for the purposes of quality assurance, relieving USDE of this responsibility. This would reduce the time, bureaucracy and expense of military institutions wishing to establish, modify or redesignate degrees.

Public members

The Higher Education Act says that “among the membership of the board of the accrediting agency or association there shall be one public member (who is not a member of any related trade or membership organization) for each six members of the board, with a minimum of one such public member, and guidelines are established for such members to avoid conflicts of interest.”

The regulations define a representative of the public as someone who is **not**:

> (1) An employee, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that either is accredited or pre-accredited by the agency or has applied for accreditation or pre-accreditation;
>
> (2) A member of any trade association or membership organization related to, affiliated with, or associated with the agency; or
>
> (3) A spouse, parent, child, or sibling of an individual identified in paragraph (1) or (2) of this definition.

The regulations (602.15) also require, generally, that agencies be composed of “Competent and knowledgeable individuals, qualified by education and experience in their own right” and trained in their roles.

In assessing agencies’ compliance with the Department’s requirements, the Department has not applied any expectation regarding the experience or background of public members; it has required only that they have declared that they are not (1), (2) or (3) above.

Concerns

The purpose of public members is to ensure that an accrediting agency, particularly if it is largely composed of school representatives, is adequately focused on the public interest, on student interests, and on reviewing quality, at least in part, in alignment with employment and/or larger societal needs. Some accrediting agencies have taken a minimalist approach to the public member requirement, meeting only the bare prohibitions but violating the spirit of the requirement, by including as public members former college or university or accreditor personnel. It is a valid question whether such representatives or an administrator or faculty member at a college recognized by a different accreditor is truly a “public” representative.

We note that some accrediting agencies have public members with impressive and relevant background, and some have more than the required minimum number of public representatives. At least one agency’s board, the Accreditation Council for Pharmacy Education, is composed of a majority of representatives not affiliated with the accredited schools.[iv]

Recommendations

The spirit and integrity of the public member requirement is not met if the prohibition on current school owners, employees and their family members is the only test. At a minimum, the regulations should be

amended to establish an expectation regarding the background and knowledge of the public members. The current provision could be amended as follows:

> Representative of the public means a person who *has the independence and background to be able to serve competently in the review of academic and institutional quality in the best interests of the public and students, and* is not -
>
> (1) *A current or former employee of or consultant to the agency*;
>
> (2) An *current or former* employee, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that either is accredited or pre-accredited by the agency or has applied for accreditation or pre-accreditation;
>
> (3) A *current or former member employee or representative* of any trade association or membership organization related to, affiliated with, or associated with the agency; or
>
> (4) A spouse, parent, child, or sibling of an individual identified in paragraph (1) or (2) *or (3)* of this definition.

Further, accrediting agencies should consider the inclusion of more than the required minimum number of public members on their boards/commissions to potentially strike a better balance between the benefits of peer review and the benefits of having a different, experienced perspective that isn't institutional. A number of agencies do have more than the minimum requirement without any harm and have indicated benefits to such structure. The Higher Education Act could also be amended to codify the proposed regulatory language and to increase the required proportion.

Widely accepted/Reliable authority

The Higher Education Act requires the Secretary of Education to "publish a list of nationally recognized accrediting agencies or associations that the Secretary determines, pursuant to subpart 2 of part H of title IV, to be reliable authority as to the quality of the education or training offered." (20 USC 1001). Subpart 2 of part H reads (1099b):

> **(a)Criteria required**
>
> No accrediting agency or association may be determined by the Secretary to be a reliable authority as to the quality of education or training offered for the purposes of this chapter or for other Federal purposes, unless the agency or association meets criteria established by the Secretary pursuant to this section. . . Such criteria shall include an appropriate measure or measures of student achievement.

The statute then lists a number of criteria, as well as a list of standards that must be addressed. In the regulations (34 CFR § 602.1), the criteria are those listed in subpart B.

Concerns

The notion that an agency demonstrate that it is a reliable authority to review the quality of education or training is an important statutory requirement.

To meet this requirement, previous regulations required that agencies demonstrate, in the recognition process, that they were "widely accepted," a term that was not defined. The 2019 regulatory process repealed that requirement, arguing that it was vague. Deleting the provision, rather than defining it, has left us without any criterion for assessing the core requirement of the Higher Education Act's purpose for recognizing accreditors: whether an agency is a reliable authority.

Some subcommittee members are comfortable with the current regulation. Others are concerned that some evidence should be provided. For example, an agency could provide evidence that entities such as employers, private scholarship providers, state licensing agencies, professional associations, and educational institutions view the agency's accreditation as a meaningful indicator of quality.

Recommendations

A criterion could be added (perhaps a second bullet under 34 CFR 602.12 relating to Accrediting experience) that says an agency must demonstrate that "its accreditation decisions are accepted as an indication of educational quality and student achievement by relevant experts, such as employers, private scholarship providers, state licensing agencies, professional associations of academic disciplines, and educational institutions, including those accredited by other recognized agencies."

Outcomes/student achievement

As the Department has recently summarized in its January 18, 2023, memo to the Accreditor Dashboard Subcommittee, the Higher Education Act lacks internal consistency regarding what the Department of Education can or must require with regard to standards for student achievement.

The introductory paragraph to the statutory section on accreditation recognition criteria (20 USC 1099b(a)) states that the criteria "shall include an appropriate measure or measures of student achievement."

The HEA further states, though, that the student achievement standards set by accrediting agencies must be contextual:

> assess the institution's . . . 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, consideration of course completion, and job placement rates.

Congress then restricted the authority of the secretary regarding the requirements of this section by including the following language:

> Nothing in this section shall be construed to permit the Secretary to establish any criteria that specifies, defines, or prescribes the standards that accrediting agencies or associations shall use to assess any institution's success with respect to student achievement.

There are also additional statutory restrictions imposed on the Secretary in sections 496(o) and (p) of the Act which further complicate any interpretation of the Department or NACIQI's role when evaluating accreditors' work in the area of student achievement. In these provisions, the Congress has restricted

the Department's ability to promulgate explanatory regulatory language beyond that in the statute or to restrict the use of the standards the agencies and their institutions set on student achievement.

The result of these varied statutory provisions is a lack of clarity regarding the ability of the Department or NACIQI to interpret, evaluate, or comparatively relate the assessment work of accrediting agencies in the area of student achievement.

One way to read the statute is that the Department may not *prescribe* standards – it cannot construct or establish the measures - but under the introductory language it is responsible for judging the appropriateness of the criteria being used by accreditors. For example, the Department could not tell an accreditor that it must set a minimum graduation rate or declare what that rate should be. But if an accreditor were measuring student achievement by graduation rates, then presumably the Department and NACIQI can review an aggregate of this measure across its institutions as part of its determination of whether the criteria on student achievement is met.

All of this demonstrates that the statutory provisions with regard to accreditation and student achievement are, in short, a mess.

Concerns

The regulatory language in 34 CFR 602.16 repeats the language from the statute requiring "success. . . in relation to the Institution's mission." However, rather than requiring the accrediting agency to "assess" an institution's success – as required by the statute – the regulations simply require the accrediting agency to "set forth clear expectations." The regulation's wording anticipates no follow-up by agencies on the question of whether expectations were met. (And the change from "assess" to "set forth…" could be a violation of the prohibition on regulations regarding the standards).

Concerns about accreditors' inadequate attention to student achievement are not new. The U.S. Government Accountability Office reported on the topic in 2014, and the Department agreed to do more within the scope of the regulations. The GAO recommended that the Secretary of Education:

> consider further evaluating existing accreditor standards to determine if they effectively address educational quality in key areas, such as student achievement. In carrying out this evaluation, Education could consider whether there are additional actions it could take, within the scope of its existing authority, to assess accreditor standards on an ongoing basis

As a result of the statutory mess, the weak regulation, and the Department's understandable reluctance to ask agencies for anything more, some of the accrediting agencies have made their standards so flexible that each institution can create and apply any of a range of its own student achievement measures, setting its own benchmark for success , and if the peer review team sees a weakness, produce an improvement plan that may or may not lead to improvement. This practice seems to lack or lessen institutional accountability, failing the HEA's core requirement that a recognized agency be a "reliable authority regarding the quality of the education or training" provided by the institution or program. Not only does this latitude risk accountability, it creates an unhealthy and dangerous variety and inconsistency of expectations regarding student achievement across institutions. This appears to be true within single agencies and then also across accreditors. There is an irony that there is a reliance on "peer" review in accreditation and yet, some agencies seem not to use peer/comparative review as a tool when evaluating student achievement.

Recommendations

The regulations should be amended to mirror the statutory requirement that an accrediting agency's standards "assess" institutions, in addition to setting clear expectations. Setting aside the question of the Department's authority to do so, the Subcommittee believes a simple and clear way to make both the statute and regulation more effective would be to better clarify what it means for an agency to have a standard (or standards) that "assess" an institution's success with regard to student achievement. In our collective view, the Subcommittee believes (a) that the accreditors ought to have standards they set that assess student achievement and (b) that the agencies should be able to demonstrate their own assessment of its institutions to NACIQI and the Department (and publicly) through some form of summary information regarding its results. If improvement plans are cited by the agency as a remedy for low success, some measure of the effectiveness of those improvement plans should be included.

The Subcommittee would like to acknowledge the Department's important steps to address student achievement by restoring and expanding on the accreditor data dashboards. The Department should build on that by explicitly asking agencies – in the same summary report mentioned above - to provide commentary on what data they use to assess student achievement at institutions, with the dashboard providing a foundation but accreditors would be encouraged to provide additional data and to explain how they use them in their processes with institutions. The subcommittee recommends that the Department's procedures for determining an agency's compliance include asking agencies under review to provide comments regarding the dashboard data produced by the Department, data from the College Scorecard, and other student outcomes data the agency uses in its assessment of institutions' compliance, including relevant licensing pass rates. If the agency's accreditation decisions are used for federal purposes other than Title IV, the agency should include data relevant to that purpose.

Beyond these recommendations, a deeper dive into cleaning up the statutory inconsistencies is warranted by Congress. We are not suggesting Congress establish or impose the student achievement standards and measures for accreditation purposes. While we support amendments to clarify the role of the Department and NACIQI when reviewing accreditors' assessment on student achievement, we also respect the accreditor's role to be setting the achievement expectations for their institutions. We are suggesting that the accreditors be required more firmly to establish standards and that the Department and NACIQI have a stronger role in determining whether accrediting agencies are indeed robustly establishing these standards and also reviewing, evaluating, and judging their institutions' performance in a way that ensures institutional quality.

Substantive change (34 CFR 602.22) and written arrangements (34 CFR 668.5)

The Subcommittee focused on substantive change processes and whether there are any needed changes to ensure or encourage consistency across accrediting agencies in this regard, as well as on the substance of what qualifies as a substantive change under the regulations and whether any changes might be needed in this area.

The Department regulations pertaining to accrediting agency operating policies and procedures include provisions regarding accreditors' obligations to review substantive changes at their institutions. These regulations provide a list of eleven activities or events the Department considers to be a substantive change.[v] This list leaves a fair amount of discretion to the agencies and their institutions to determine whether any given change by an institution is subject to review. The Subcommittee considered a number of potential questions relating to both the list and the process for review which are discussed in the next section below.

Among the eleven events potentially needing approval as a substantive change, are written arrangements between an institution and certain ineligible third parties. Given the increased attention to the number of third-party providers working with institutions, the Subcommittee specifically reviewed the approval process requirements under current regulations and guidance. The Department also recently amended related regulations pertaining to written arrangements for Title IV programs under 34 CFR 688.5 and issued guidance in 2022. Under these regulations, an ineligible third-party may "provide" 25% or less of a program without accreditor approval and requires accreditor approval if it provides more than 25% and less than 50% of a program (50% or more is prohibited). The Subcommittee spent time considering the consistency of understanding of these written arrangement regulations and their application in practice. Concerns

The Subcommittee generally supports the need for deference to both accrediting agencies and institutions when determining whether an event or activity requires accreditor approval as a substantive change. We hope that institutions are robust in seeking their accreditor's advice when they are unsure of whether such approval is required.[vi]

There are certain items on the list of eleven where we believe there is inconsistency or insufficiency in treatment across accreditors. Through our own research and conversations, we believe three examples include:

- Inconsistency as to what is considered a "significant departure from existing offerings or educational programs, or methods of delivery" when an institution adds programs in between accreditation reviews,
- Inconsistency as to when a written arrangement under 34 CFR 688.5 with an ineligible entity requires accreditor approval, and,
- Insufficient review of adding new down-level credentials – I.e., the substantial change provisions explicitly require review for new graduate degree offerings, but not for new "down level" degrees.

More specifically with regard to the second example, while the Department provided a helpful guidance letter on written arrangements last summer, we learned from our research and from our conversations with consumer groups and various accrediting agencies that the following aspects of written arrangements may warrant additional clarification.

First, a number of parties the Subcommittee spoke with indicated that it is still not clear how to calculate the 25% threshold. Interestingly, there is a provision in 34 CFR 688.5, (g), on how to calculate the percentage – it appears to be based on the amount of time provided by the third party (as opposed to the content, etc.). Yet, the additional question appears to relate to what gets counted – each course or

programs etc., - and this question relates to the second point below as well. This same provision also in effect defines the term “provides” when considering whether and what a third party is “providing” in a course. This regulatory definition appears clear, indicating that “provided by” is triggered by the third party’s “authority” over certain aspects of a course offering. Yet, even with this definition, at least one agency indicated confusion over "25% of what” when determining the threshold.

The Subcommittee also took note of one agency’s stated practice to consider whether a written agreement (or it seems any possible substantive change) amounts to a “significant departure”, which is another of the eleven events requiring substantive change review and it is an interesting approach by the agency to consider that question of whether the scope of a third-party agreement might require substantive change review under that requirement (in addition to or regardless of the written arrangement regulation).

Second, we learned through our research and conversations that accrediting agencies and institutions view a number of third-party relationships as outside the scope of accreditation review because the services being provided are for short-term, non-degree, non-title IV certificates/programs. In some cases, a third party may provide a meaningful percentage of the content or instruction and would otherwise meet the definition under 688.5(g) but the courses/certificates are not Title IV eligible. Because they are not Title IV eligible and subject to 688.5, it appears some agencies are viewing them as outside the scope of accreditation for many institutions (including for example when these programs are housed in an entire college of continuing education within a university).

While these offerings are currently not Title IV eligible, they may make up a significant part of an institution’s offerings or revenue. In addition, some of these certificates are increasingly stackable into a Title IV eligible degree at the same institution, and at some point, these certificates may become Title IV eligible if Congress approves short-term Pell Grant eligibility. While currently non-title IV, this quandary does raise the question of whether an institutional accreditor is obligated to review, or at least consider, an entire institution’s offerings and whether the institution likewise has this obligation to be accredited under its Program Participation Agreement. Even if this quandary falls outside the Department’s authority to resolve, it seems that states and accrediting agencies ought to consider the importance of accreditation review of these offerings, especially if provided by a third-party arrangement. The Subcommittee feels this has the potential to harm or mislead students and the public if there is no gatekeeper reviewing these certificates/programs and an institution’s disclosure of accreditation implies these programs have been considered.

Finally, we learned of concerns relating to which substantive change approvals may be considered by agency staff as opposed to by their commissions. Recent regulatory changes explicitly outlined which events can be approved by staff and which may not, but we received conflicting input on whether a good balance has been created by that regulatory change. More specifically, we heard from consumer groups that any event that is considered a substantive change should be considered at the commission level, not by staff; whereas accreditors expressed appreciation for the ability of staff to review some substantive change requests. If staff level decisions are permitted, the question remains on whether they have been delegated the right types of events. For example, under the new regulations, staff may approve both the addition of new programs that represent a “significant departure” from existing offerings, as well as written agreements with 25%-50% provided by third parties.

Recommendations

While the current list under 602.22 for substantive change is comprehensive and while we respect the need for some deference to agencies and the institutions they accredit, the Subcommittee believes the Department should consider whether some adjustments in the language would provide needed clarity in some areas. Of particular note:

- The Department could consider whether subsection (a)(1)(ii)(C) on the addition of programs representing a "significant departure" from existing offerings (including by method of delivery) needs to be clarified since it appears there's inconsistency in application.
- Likewise, per the one agency's process, Department should consider the relationship of the subsection on "significant departures" to the requirements of written arrangements review under (a)(1)(ii)(J) – i.e., if an institution is adding numerous down-level certificates to their offerings (whether with a third party or not), at what point does this amount to a significant departure requiring review and approval?
- The Subcommittee believes subsection (a)(1)(ii)(J) on written arrangements could be clarified regarding the 25% and 50% thresholds and calculations. Specifically, perhaps the regulation could more clearly state the types of arrangements/contracts to which this provision applies and cross reference to 34 CFR 688.5's definition of how to calculate the percentages and what activities are considered.
    - In addition, the Department should consider a technical change in (a)(1)(ii)(J) to use the verb "provide" instead of "offer" to match the language of 688.5.

In addition to these recommendations for consideration, we believe the Department should review the list of substantive change approvals that may be reviewed by accreditors' staff versus their commissions to determine whether they are appropriately categorized. As noted above, we heard conflicting reviews of whether the approval processes through staff and also whether the resulting additional notification requirements under 602.22 are helpful or not. It seems the Department should consider where there may be a middle ground regarding the substantive change process, the types of activities that result in review, and the delegation of decision-making.

602.33 complaint processes

The "complaints" topic above referred to accreditor standards regarding complaints filed with accreditors and institutions. This section refers to complaints filed with the Department of Education regarding accreditors.

Under 34 CFR § 602.33, the Department's accreditation group can review agencies outside of the recognition renewal process based on information, including complaints filed with the Department, that the staff determines "appears credible and raises concerns relevant to the criteria for recognition." Staff analysis of the complaint and communication with the agency may lead to the staff rejecting the complaint, the agency resolving the concerns, and/or further monitoring. If, after raising the issue with the agency, the staff remain concerned that the agency is not in compliance with federal requirements,

the issue may be referred to NACIQI as a compliance report, which has happened on several occasions in the past.

Concerns

The 602.33 process seems like an important way to ensure that problems at agencies are addressed in a timely manner rather than awaiting a recognition review. However, information about the process is not available to the public nor to NACIQI.

- Nowhere on the Department of Education's website is there any intake form or process for complaints about accreditors.
- There is no public reporting regarding the number and topics of reviews initiated by staff, the number and type of complaints received from the public, nor about how and when complaints were resolved.

In at least one instance, a NACIQI member's request for information about the disposition of a complaint was treated as a FOIA request and has been outstanding for almost two years.

Recommendations

The accreditation group should report regularly – at least at each NACIQI meeting – regarding the number and type of complaints received under 602.33, the number of and types of reviews conducted, and the disposition of the complaints and other inquiries. Documents relating to the disposition of complaints against accreditors should be made available to NACIQI members along with the report.

The Department should establish a web page regarding the public's ability to file complaints regarding federally recognized accreditors. Models include the GI Bill complaint intake site (https://www.va.gov/education/submit-school-feedback/introduction), Federal Student Aid (https://studentaid.gov/feedback-center/), and the Consumer Financial Protection Bureau (https://www.consumerfinance.gov/complaint/).

Transparency & public/NACIQI input

Department of Education regulations lay out a timeline for the recognition or renewal of recognition of an accreditor:

- At least 24 months before expiration of an agency's recognition (which is limited to five years), the agency must submit a petition for renewal (or, for a new agency, initial recognition), and the accreditation group staff begins to have interactions with the agency regarding each criterion.
- The Department publishes a notice in the Federal Register seeking public comment on the agencies slated to appear before NACIQI. The notice typically appears **a year or so** before the meeting, in order to accommodate:
    - The regulations, which state agencies must be provided with at least 180 days to respond to public comments.
    - The public's need for time to prepare comments after the notice (typically 30 days).
    - The accreditation group staff's need to be able to assess the public comments and the agencies' responses.

- Not later than 30 days before the NACIQI meeting, the Department must provide the final staff analysis and related materials to the agency and to NACIQI members, and notify the public of the opportunity to observe and to provide oral comments at the meeting.
- The NACIQI meeting occurs, with public oral comments.
- Once the transcript and other materials from the meeting are complete, the Senior Department Official has up to 90 days to make a decision.
- A negative decision may be appealed by the agency to the Secretary (the agency must notify within ten days and file the appeal within 30 days, with the SDO then providing a response).

The regulations spell out the information that agencies may and may not submit, and the materials the SDO and Secretary may consider in making the recognition decision.

- Agencies are prohibited from submitting materials that are not relevant to a recognition criterion.
- Materials must be FOIA-ready (personal information redacted).
- Except for materials submitted by the agency in its interactions with the accreditation group staff, no new written materials may be added to the written record after the public input period about a year before the NACIQI meeting.
- In the appeal process, neither the agency nor SDO may provide any new information. If the Secretary is considering additional information, the regulations provide a process for getting an agency response, but the regulations encourage use of the 402.33 process instead.

Note that there are no restrictions on the information *NACIQI* may consider in making its recommendations, but the SDO may only rely on materials consistent with the regulations and under the recognition criteria. So if, for example, a written document received two months before the NACIQI meeting plays a role in the SDO's decision, the decision could be subject to challenge.

Concerns

The review timeline is too long, and too little information is provided to the public regarding the agencies seeking recognition or renewal of recognition.[vii]

Agencies are too restricted in the information they may provide. For example, they may not use slides at the NACIQI meeting because of the restriction on new written information being entered into the SDO's record after the public comment period nearly a year before.

The public's opportunities to provide input are too restricted, occurring too early (a year before the NACIQI meeting) and then too late (the day of the meeting, and oral only).

NACIQI members have too little time to review the reports and background materials.

Recommendations

As a starting point for consideration, a revised process could work something like this:

- An agency submits its application to the Department (15 months for renewals, 20 months for new agencies or expansions of scope).
- Accreditation group staff provide feedback, including a copy of most recent dashboard and any other relevant outcomes information the staff consider relevant, and the agency submits (9 months before NACIQI):

- A revised renewal/recognition application.
- The agency's commentary regarding the dashboard and other student outcomes data, including the agency's analysis of data from the College Scorecard, relevant licensing pass rates, and other data available to the agency (see Student Achievement recommendation).
- A link to a website where the agency makes available to the public copies of the (redacted) documents submitted to the Department (unless the Department commits to making the documents available).

- The Department seeks public comments about the agency, making public the materials in the bullet above (six months before NACIQI, allowing a 30-day comment period).
- The Department announces, in the Federal Register, the NACIQI meeting, and makes available the final agency analyses, making available to the public and NACIQI members any additional information provided by the agency, including any presentation materials (e.g., a slide deck) the agency intends to use at the meeting (45 days).
- Providing NACIQI members with an optional method for informing accrediting agencies of questions ahead of the meeting.

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[i] See https://studyinthestates.dhs.gov/guide/f-1/f-1-english-language-training

[ii] Criteria for State Agencies

The State agency:

1. Is statewide in the scope of its operations and is legally authorized to accredit schools of nursing.

2. Makes publicly available:

a. Current information covering its criteria or standards for accreditation;

b. Reports of its operations;

c. Lists of schools of nursing which it has accredited.

3. Has an adequate organization and effective procedures, administered by a qualified board and staff, to maintain its operation on a professional basis. Among the factors to be considered in this connection are that the agency:

a. Uses experienced and qualified examiners to visit schools of nursing to examine educational objectives, programs, administrative practices, services and facilities and to prepare written reports and recommendations for the use of the reviewing body - and causes such examinations to be conducted under conditions that assure an impartial and objective judgment;

b. Secures sufficient and pertinent data concerning the qualitative aspects of the school's educational program;

c. Requires each school of nursing accredited to follow clearly defined refund policies governing all fees and tuition paid by students;

d. Enforces a well defined set of standards regarding a school's ethical practices, including recruitment and advertising;

e. Requires each school of nursing accredited to submit a comprehensive annual report, including current data on:

(1) Progress toward achievement of its stated objectives in nursing education:

(2) Qualifications and major responsibilities of the dean or director and of each faculty member:

(3) Policies used for selection, promotion, and graduation of students:

(4) Practices followed in safeguarding the health and well-being of students:

(5) Current enrollment by class and student-teacher ratios:

(6) Number of admission to school per year for past 5 years:

(7) Number of graduations from school per year for past 5 years:

(8) Performance of students on State board examinations for past 5 years:

(9) Curriculum plan:

(10) Brief course description:

(11) Descriptions of resources and facilities, clinical areas and contractual arrangements which reflect upon the academic program.

f. Regularly, but at least every 2 years, obtains from each accredited school of nursing:

(1) A copy of its audited fiscal report, including a statement of income and expenditures:

(2) A current catalog.

g. Makes initial and periodic on-site inspections of each school of nursing accredited.

4. Has clear, written procedures for (a) the accreditation of a school of nursing or institution, (b) placing it on a probationary status, (c) revoking the accreditation, and (d) reinstating accreditation.

[iii] Example:

The 1954 policy requires that new institutions created by the federal government are to be accredited by an accreditor determined by the Commissioner of Education. It states that prior to the establishment of any graduate programs by a federal institution the Department of Health, Education and Welfare is to determine whether the desired degree could be offered by other existing institutions. There is no mention of NACIQI, which did not exist in 1954. "For the purpose of such exploration [of a new graduate program], the services of the Department…will be available, on request, to the agency concerned or to the Bureau of the Budget. In order to regularize the matter, each such request would be referred by this Department to the Commissioner of Education who…would convene an impartial group of representative educators appointed by him…to consider the relevant evidence and make recommendations to him in accordance with the procedure outlined below… It is proposed that the Review Committee consist of three continuing members, each to serve for a period of three years, plus six additional members to serve on an ad hoc basis—all to be appointed by the Commissioner of Education after consultation with the appropriate associations." Although none of what is proposed here aligns with current federal agencies, employees, or the NACIQI, the five review criteria included in this policy are still the governing criteria for USDE staff and NACIQI reviews.

[iv] The ACPE board is ten members, three appointed by state regulators, three representing practitioners (i.e. former students), three representing educators, and one public member appointed by the American Council on Education.

[v] The relevant section of 34 CFR 602.22 includes the following list: (a)(1)… (ii) The agency's definition of substantive change covers high-impact, high-risk changes, including at least the following:

(A) Any substantial change in the established mission or objectives of the institution or its programs.

(B) Any change in the legal status, form of control, or ownership of the institution.

(C) The addition of programs that represent a significant departure from the existing offerings or educational programs, or method of delivery, from those that were offered or used when the agency last evaluated the institution.

(D) The addition of graduate programs by an institution that previously offered only undergraduate programs or certificates.

(E) A change in the way an institution measures student progress, including whether the institution measures progress in clock hours or credit-hours, semesters, trimesters, or quarters, or uses time-based or non-time-based methods.

(F) A substantial increase in the number of clock hours or credit hours awarded, or an increase in the level of credential awarded, for successful completion of one or more programs.

(G) The acquisition of any other institution or any program or location of another institution.

(H) The addition of a permanent location at a site at which the institution is conducting a teach-out for students of another institution that has ceased operating before all students have completed their program of study.

(I) The addition of a new location or branch campus, except as provided in paragraph (c) of this section. The agency's review must include assessment of the institution's fiscal and administrative capability to operate the location or branch campus, the regular evaluation of locations, and verification of the following:

(1) Academic control is clearly identified by the institution.

(2) The institution has adequate faculty, facilities, resources, and academic and student support systems in place.

(3) The institution is financially stable.

(4) The institution had engaged in long-range planning for expansion.

(J) Entering into a written arrangement under 34 CFR 668.5 under which an institution or organization not certified to participate in the title IV, HEA programs offers more than 25 percent but less than 50 percent of one or more of the accredited institution's educational programs.

(K) Addition of each direct assessment program.

[vi] The Subcommittee also heard from accreditors that they are receiving an increased number of notifications from institutions, unsure of whether certain new actions constitute a substantive change or not. While the Subcommittee understands the potential burden attached to these increased notifications, such inquiries to the accreditor may be important for accountability and consumer protection purposes. It may be important to ensure further clarity around which activities constitute substantive changes – as noted in the recommendations, this could be done by Department guidance or by the accreditors' own standards.

[vii] Despite the requirement that agencies submit documents that are redacted and FOIA-ready, the Department has noted concerns with posting them publicly without doing its own review for FOIA-readiness. However, this step is duplicative with agencies' efforts and sufficiently time-consuming to keep submitted documents from the public. The subcommittee recommends the Department confer with federal agencies regarding how they handle timely disclosures without FOIA review.