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Accreditation and Innovation Neg Reg Opens to Controversy over Significant ED Proposals

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Despite winter weather that shut down the remaining parts of the federal government on Monday, the US Department of Education and the panel of 20-plus negotiators this week concluded their first round of discussions on a sweeping set of proposed new rules affecting the regulation of accrediting bodies, distance education and other matters. The frigid weather matched the chilly atmosphere in the negotiating room, as the Accreditation and Innovation Committee began its deliberations.

This negotiated rulemaking has been marked by several significant procedural changes from prior sessions. Typically, ED provides negotiators with issue papers intended to initiate discussion and generate proposals before developing regulatory language, but in this case, ED distributed advance copies of its proposed rules to launch the discussions, with full details of the desired changes. In a major procedural change, ED abandoned the usual approach of seeking consensus on an *entire* slate of regulations, and instead divided the proposed revisions into three groups or "buckets," with the intent of seeking consensus on each one separately. They are:

- Accreditation
- Distance Education/State Authorization/Direct Assessment
- TEACH Grants/Faith-Based Entities

This approach prompted some contention, and several negotiators expressed doubt that the proposals in any bucket could be separated and considered in isolation from proposals in other buckets, especially given the interrelated nature of the accreditation and distance education issues. However, ED held to its position that this approach provides the committee greater flexibility to reach consensus on one or more set of proposals, since disagreement on one item in one area would not block consensus on another set of rules organized in a separate bucket. Despite contrary opinions, the committee ultimately voted to approve the agenda, and by implication, the three-part approach.

As with any other negotiated rulemaking, if the entire committee does not reach consensus on any provision within a bucket of proposed rules, ED has a free hand to propose its own regulatory language for that entire bucket, which will be published in the Federal Register for further public comment.

This negotiation session was also marked by the fact that it took place immediately after ED released its decision on a major Inspector General audit involving Western Governors University which clearly laid the groundwork for ED's policy position on a number of the accreditation and distance education-related issues set forth in ED's proposals.

The first two days of active discussion focused on ED's accreditation proposals, which ED explained were intended to encourage innovation and provide a greater role for employers in determining institutional effectiveness without diminishing the quality and integrity of the accreditation process. There was no lack of dissenting voices, including on these issues:

- **602.10 – Link to Federal Programs**
  - ED would allow an accrediting agency that accredits a Title IV-eligible school to use its accreditation of that school to establish a "federal link" even if the accredited school has designated a different accreditor for Title IV eligibility purposes. An accrediting agency must establish a federal link in order to apply to ED for recognition.
  - ED characterized this revision as an attempt to remove barriers to innovation and increase competition among accrediting agencies by easing the ability of an accrediting agency to secure ED recognition. Several negotiators questioned that rationale, suggesting that the revision could ultimately allow unproven accrediting agencies to more easily become recognized Title IV "gatekeepers."
- **602.11 – Geographic Scope**
  - ED proposed that a regional accrediting agency would be required to cover at least three states, but could not include more than 10 states, all of which must be contiguous. Also, and even more controversial, all additional locations and branch campuses must be located with the region's covered states. Alternatively,

ED suggested that a regional accreditor that seeks a broader scope could become a national accrediting agency instead.
    - This would have a major impact on the current regional accrediting agencies, their member institutions and students. Two regional agencies (the Higher Learning Commission and the Southern Association of Colleges and Schools) currently accredit institutions in more than 10 states, and all of the regional accrediting agencies accredit institutions with additional locations and branches outside of the borders of their regions. In addition, the Western Association of Schools and Colleges, Senior College and University Commission only covers two states, so it would be obligated to pick up at least one additional state to remain eligible for recognition, or convince ED that it satisfies the requirement by its current inclusion of Guam and other US Pacific possessions within its region.
    - Under this proposal, HLC and SACS would be required to reduce their geographic scope, presumably with the states that are shed picked up by one of the remaining regionals. ED did not explain how that would be accomplished without leaving institutions in those states in limbo without an accrediting agency, and students attending those institutions with serious concerns about the validity of their coursework and credentials.
    - Several negotiators pushed back forcefully against this revision. But ED maintained the proposal is intended to return regional accreditation to its original purpose – to accredit institutions within a specified region – and regional agencies that wanted to maintain their current scope of operations in more than 10 states could become national accrediting agencies instead. This suggestion, to put it mildly, did not sit well with the representatives of the regional agencies.

- **602.12 – Accrediting Experience**
    - ED's proposal would remove some requirements for accrediting agencies seeking initial recognition and agencies seeking to expand their scope of recognition, such as requiring two years of accreditation experience prior to recognition.
    - While ED characterized these revisions as an attempt to remove burdensome requirements, several negotiators questioned whether the requirement that the agency have conducted accreditation activities (such as deciding whether to grant or deny accreditation) for at least 2 years would affect the quality of the process and adequately protect the interests of students.
- **602.13 – Acceptance of the Agency by Others**
    - Accrediting agencies currently have to demonstrate that their standards are reviewed and widely accepted by educators and educational institutions as well as licensing bodies, practitioners, and employers in relevant fields, but ED's proposal would narrow this requirement to practitioners and employers only. ED explained that this change is needed to reduce the influence of licensing bodies which it asserts contribute to credential inflation by requiring students to earn a higher credential than necessary in order to sit for professional or trade licensure.
- **602.14 – Purpose and Organization**
    - ED's revisions would prohibit accrediting agencies from sharing any personnel, services, equipment or facilities with an affiliated trade association or member association under all circumstances. Currently, agencies can share these services and facilities so long as the agencies pay fair market value and the joint use does not compromise the independence and confidentiality of the accreditation process. This is an expansion of an earlier revision to the recognition rules which required accrediting bodies to become "separate and independent" from associations representing the institutions they accredit.

- **602.15 – Administrative and Fiscal Responsibilities**
    - Uncontroversially, ED's proposal would require accrediting agencies to include a practitioner or employer on its decision-making bodies.

- **602.16 – Accreditation and Preaccreditation Standards**
    - ED's proposals in this area focus on changes to the definitions of key regulatory terms, such as "correspondence," "distance education" and "regular and substantive interaction." Agencies that include distance education within their scope of recognition would be required to develop and apply their own definitions of these terms in accordance with new federal definitions that will be discussed as part of the Distance Education bucket of regulations. These definitional changes, which appear elsewhere in the broader Neg Reg, would materially change the regulatory impact of correspondence study, expand the definition of distance education and allow for significant reformulation of the faculty role in distance education. Given the importance of these issues, they will be addressed in a separate post.
    - ED's revisions would also give accrediting agencies the flexibility to recognize institutions that have alternative governance structures that take into account recommendations or requirements of relevant industries and employers.

The Accreditation and Innovation Committee will reconvene February 19-22, following separate meetings of its three subcommittees that will engage in more detailed discussions regarding Distance Education and Learning, TEACH Grants and Faith-Based Entities. These subcommittee meetings are intended to facilitate more in-depth discussions and elicit specific recommendations and revisions to the ED proposals, but the final vote on any proposals will be taken by the full committee, acting on each of the buckets. Unlike the Accreditation and Innovation Committee, the subcommittee meetings will not be open to the public. However, as information becomes available we will continue our posts on these subjects.

See the full negotiated rulemaking agenda, negotiator rosters and initial proposed regulations here. Further, for true diehards, the negotiations can be livestreamed from that same website.

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