

# Accreditation and Innovation Neg Reg Makes Slow Progress

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The negotiated rulemaking committee charged with considering rules affecting accreditation and innovation concluded its second session last week, during which the panel of negotiators focused heavily on revisions the US Department of Education has made to some of its most controversial accreditation proposals. For the most part, these revisions, discussed below, represent a significant retreat from ED's earlier positions, with the federal negotiators' comments throughout the second session suggesting that the department may be willing to concede even more ground in the hope of reaching consensus.

With little progress having been made on accreditation and distance education proposals central to the rulemaking, it has become evident that the negotiators can only agree that time is running out. ED was hesitant to add an additional session, and suggested that extending the rulemaking would reduce the time the department would have to draft its own proposed rule, should the committee not reach consensus. However, ED ultimately agreed to schedule a fourth and presumably final session of the Accreditation and Innovation Committee for the first week of April. The federal negotiator commented that ED intends to put new rules into effect on July 1, 2020, which would require publishing its final rule by November 1.

## Geographic Scope

ED had [originally proposed](#) to narrowly define the geographic scope of regional accreditors as not less than three nor more than 10 contiguous states, including states where additional locations and branches are located, which would have required a dramatic realignment of regions or an abandonment of regional accreditation in favor of more national accreditors. In response to strong pushback, ED presented the negotiators with two scaled-back proposals, both of which would still require agencies to include within their scope each state where an accredited institution, branch campus or additional location of an accredited institution is located. The non-federal negotiators responded with a third option, which would not specify the number of states included in a region and, instead, would define a region as the states within which an agency provides institutional accreditation. Importantly, under the non-federal negotiators' proposal, an agency would not be forced to extend its scope to states in which additional locations or branch campuses are located. ED appears ready to abandon its more aggressive approach, with its negotiators emphasizing only that it would expect agencies to clearly disclose and identify on their websites and other publications the states in which they accredit institutions.

## Accrediting Experience

During the first session, a number of the non-federal negotiators questioned ED's proposal to significantly reduce requirements for accrediting agencies seeking initial recognition, asserting that this would result in unproven and perhaps unqualified agencies becoming Title IV gatekeepers. In particular, they challenged the ED proposal to remove the requirement that an accrediting agency seeking federal recognition must have conducted accreditation activities for at least two years prior to being eligible for recognition.

While ED stuck with its accelerated approach to recognition, it sought to respond to the negotiators' concerns by adding additional procedures for newly recognized accrediting agencies, which would increase scrutiny of an accreditor at the time of its first review after its initial recognition. Under this proposal, ED staff would observe the agency's accreditation activities during its initial recognition period – which is not limited to a certain number of years under the current proposal – to evaluate whether the agency conducted those activities consistent with ED's criteria for recognition and the agency's own standards. Additionally, if ED found deficiencies in the agency's first accreditation review, the agency would be prohibited from accrediting other schools until the deficiencies were corrected. An adverse finding could also require additional reporting from the agency or result in the limitation, suspension or termination of its recognition.

Despite this proposal to revise the process, the non-federal negotiators remain skeptical that the post-recognition review process sufficiently protects against unproven agencies becoming Title IV gatekeepers. ED explained that any risk associated with new accrediting agencies would be minimal, since ED would be able to identify deficiencies in the agency's process while the first school it accredits is in the candidacy phase and, thus, not Title IV-eligible. However, it was quickly pointed out that, where the first school a new agency accredits is a public or nonprofit institution, it would

secure Title IV eligibility immediately upon a grant of candidacy phase. Likewise, where the new agency accredits an already eligible school, Title IV participation would continue. In a rare show of unanimity, all of the non-federal negotiators supported maintaining the two-year requirement, with the federal negotiators appearing willing to reincorporate this requirement into the next draft.

## **Distance Education**

While the committee received full reports on the proposals considered by the Faith-Based Entities and TEACH Grant Subcommittees, there was not enough time for the Distance Education and Learning Subcommittee to fully report to the committee, limiting discussion to only two of the 20 topics under consideration.

## **Definitions**

ED's original proposal would have delegated to accrediting agencies that include distance education within their scope of recognition the authority to develop and apply their own definitions of key regulatory terms, such as "correspondence," "distance education" and "regular and substantive interaction." After receiving feedback from the Distance Education and Learning Subcommittee, ED reversed course and reverted to providing its own fleshed-out definitions instead.

Significantly, ED's revised proposal would keep the department squarely in the middle of the definition of "regular and substantive interaction." ED did expand the definition to incorporate the concept of an "instructional team," which would need to consist of a least one "instructor," defined as a "subject-matter expert," as determined by the institution's accrediting agency. An instructional team could also include one or more staff members who perform an "instructional function." Interaction between students and an instructor or members of an instructional team would be deemed "regular" if interaction with students is initiated at least once for each week of instruction for a course worth three or more credit hours, or at least once every two weeks of instruction for a course worth less than three credit hours. ED proposed to define "substantive" as "related to the subject matter under discussion for the course."

An alternative proposal offered by three members of the Distance Education and Learning Subcommittee would collapse the definition of "instructor" to include the members of an instructional team, without the need to identify an "instructor." There was broad support on the committee to include the concept of an instructional team in the revised rules, but the negotiators' lengthy discussion of definitions demonstrates that there is a long way to go before there is any chance of reaching consensus.

## **Written Arrangements**

Under current regulations, institutions may enter into written arrangements with unaffiliated, non-Title IV-eligible entities to provide up to a quarter of an instructional program, with that proportion going up to half if the institution's accrediting agency approves the arrangement. ED originally proposed to allow institutions to enter into written arrangements with unaffiliated entities to provide the entirety of a program, only requiring the institution's accrediting agency to approve of arrangements in excess of 25%.

After the Distance Education and Learning Subcommittee made clear its concerns regarding the opportunity for abuse by non-Title IV entities and questioned the need for the proposed change, ED revised its proposal to allow an institution to arrange for any entity, even a related ineligible one, to offer up to 75% of a program, with accreditor approval required for arrangements in excess of 50%. While the Distance Education and Learning Subcommittee has not yet discussed ED's revised proposal, most of the non-federal negotiators echoed the subcommittee's concerns and questions regarding both ED's original and revised proposal, and were skeptical that any change to the current 25-50% caps are necessary.

The Accreditation and Innovation Committee will reconvene on Monday, March 25, at 8:00 am for its third and next-to-last session. Stay tuned.

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