

Office of Postsecondary Education
Summary of Response to Public Comments on Clarification of Terminology and Requirements for Accrediting Agency Reporting to the U.S. Department of Education

On April 5, 2016, the Department of Education (Department) published a 60-day Information Collection Request (ICR) in the Federal Register, inviting comments by June 6, 2016, on the proposed guidance letter on the Clarification of Terminology and Requirements for Accrediting Agency Reporting to the U.S. Department of Education (Guidance Letter). Eleven commenters submitted approximately 90 individual comments (i.e., multiple comments from individual commenters). The Department reviewed each of the comments and concerns and has made a number of changes to the Guidance Letter. A summary of the comments on the Guidance Letter as well as information on the actions taken was prepared. This document is being provided as part of the 30-day Federal Register notice which will be published for the purpose of soliciting public comments on the changes that were made to the Clarification of Terminology and Requirements for Accrediting Agency Reporting to the U.S. Department of Education – as a result of the comments received from the 60-day notice.

A summary of the public comments and the Department’s response and clarifications is presented below.

1. ***Comments: Categorization of terms on probation does not align with accreditation function. The definition should focus on “serious noncompliance,” as opposed to “one or more areas of noncompliance.” Program non-compliance with one or more standards isn’t equivalent to probation and would not be considered adverse in most instances. A more accurate description of probation would be when the accreditor has concerns that the overall integrity of the program or institution is in jeopardy and signals that swift action must be taken.***

Response/ Action Taken: The current version of the guidance defines probation or equivalent status as an “action or assessment that indicates an institution is significantly out of compliance with one or more of the accrediting agency’s standards, but that the noncompliance can be remedied by the institution within a period allowed by the agency and the regulations.” The Department believes this definition encompasses the conditions commonly resulting in imposition of probation by recognized accrediting agencies. However, to address concerns about what constitutes probation and when such action may take effect, section 2 of the current version of the Guidance includes the following clarification:

Based on our analysis of the timeline of agency actions, the decision to place an institution on probation or an equivalent or a more severe status as a result of noncompliance with the agency’s standards is not typically made at the time the agency staff or site visitation team observes the issues of concern, but rather when the agency’s decision making body meets, with the reason for that decision then expressed in the agency’s decision letter under 602.25(e), or 602.25(g), as appropriate. At the meeting of the agency’s decision making body, if it determines

that at least one of the issues of concern results in significant noncompliance with the agency standards, such assessment constitutes probation or its equivalent or a more severe status, as defined by this letter, and must be reported to the Department. Conversely, if the decision making body determines that none of the issues of concern indicates that the institution is significantly out of compliance with the agency standards and the institution is not placed on probation, then the requirement for reporting on probation is not applicable.

In addition, section 2 of the new version of the draft Guidance includes a footnote clarifying the term *significantly out of compliance* in relation to the description of probation. That footnote reads:

Based on the practices common to recognized agencies and on the statutory and regulatory requirements that recognized accreditors perform effectively, at a minimum, noncompliance is viewed as significant if, notwithstanding the agency's best judgment that the institution will achieve compliance within the permissible timeframe, the area of noncompliance implicates institutional integrity; or, e.g., the number of areas of noncompliance, agency finances, or other circumstances are such as to cast reasonable doubt on whether compliance can be achieved in the time permitted; or the institution or its affiliates demonstrate recurrent noncompliance with one particular standard or standards; or the area of noncompliance is one as to which notice to the public is required in order to serve the best interests of students and prospective students.

The new version of the draft Guidance also clarifies as follows, in an additional footnote: "when an institution or program is out of compliance with any of the agency's accrediting standards, the timelines under 34 CFR 602.20 begins to run, with adverse action required in the event compliance is not achieved within those timeframes (as extended, if applicable, based on good cause shown in accordance with the agency's published policies) regardless of whether the agency initially regarded the institution or program's noncompliance as not significant enough to require the public sanction of probation."

- 2. *Comments:* Clarify who determines what constitutes the "releasable portions" of documents that would be posted publicly. There are concerns about FOIA and legal risks associated with public posting of information.**

Response/ Action Taken: The guidance letter has provided further clarity. An agency may redact information that would identify individuals or institutions, if the agency believes these are not essential to the Department's oversight of the agency and the institution, as well as information the agency believes in good faith to qualify as non-public confidential commercial or financial business information. If the Department nonetheless concludes it needs this information for oversight purposes, or that redactions made in reliance on 34 CFR 5.11 are not made in good faith, it will require the agency to provide it with a non-redacted copy.

3. **Comments:** *Clarify who determines, or what constitutes, when an institution is “at-risk.” Would such “risks” include every request for follow-up information when institutions are up for their regular reviews? Would this requirement include required reporting for nominal “risks?”*

Response/ Action Taken: Section 3 (Requested Reporting on Other Factors That Affect Student Success) of the initial version of the Guidance has been reordered as section 4 in the new draft version, and has been retitled “Requested Reporting on Other Factors That Affect Academic Quality.” The new version of the draft guidance clarifies that the reporting of requested information is voluntary (except where 34 CFR § 602.27(a)(6) or (a)(7) apply), and that failure by agencies to provide the requested reporting warrants no negative action by the Department.

The requested information includes agency actions (that are less severe than probation) regarding issues that affect academic quality, particularly warnings, notations, or admonitions about an institution’s potential noncompliance in areas such as retention and completion of course, program, and certificate or degree; job placement; licensure exam participation and passage; student debt repayment and default; and student satisfaction. The Department’s goal is to obtain relevant information that may contribute to the ongoing monitoring of the Title IV, HEA federal financial aid programs, as well as increased availability of consumer information to the public. The determination regarding when an institution is at risk of noncompliance with accreditation standards is typically made by the agency.

4. **Comments:** *Define “Other Documents” with regard to reporting. Do they include correspondence between an institution and each accreditor/ all accreditation staff analysis and reports? There are concerns about reporting burden.*

Response/ Action Taken: The current version of the draft guidance clarifies that information about institutions describing concerns about potential noncompliance with the agency’s standards or with Title IV would be shared with the Department of Education in accordance with the current procedures. To address agencies’ concerns about burden, references to “other documents” have been deleted. Furthermore, the guidance letter clarifies that though agencies recognized for Title IV purposes must submit to the Secretary the final decision letter withdrawing accreditation or placing an institution on probation, other agencies may either submit the final decision letter on withdrawal or other summary describing the basis for the action against the institution or program as provided in 34 CFR 602.25(e), or 602.25(g), as applicable, together with any official comments from the institution or program (or evidence that the institution has been provided with an opportunity to submit such comments).

5. **Comments:** *Clarify “required” vs. “requested” information collection. Does “required” information apply to Title IV institutional accreditors only or to all accrediting agencies? Are there repercussions for agencies that fail to provide non-required information?*

Response/ Action Taken: The new version of the draft guidance letter clarifies further that the “required” information (in sections 1-3) must be submitted to the Department by all Title

IV institutional accreditors. Section 4 of the current version of the draft guidance (Requested Reporting on Other Factors That Affect Academic Quality) clarifies that the reporting of “requested” information is voluntary (except where 34 CFR § 602.27(a)(6) or (a)(7) apply), and that failure to report information requested in this section will not warrant negative actions by the Department. All federally recognized accreditors are also encouraged to provide the information requested by the guidance letter in section 4, as such information will assist the Department in ongoing oversight of institutions participating in the Title IV program, as well as assist in the oversight of the quality of institutions and programs accredited by recognized accrediting agencies for other federal purposes, and will be of value to the public.

6. Comments: *Provide statutory basis for the collection of “required” information. Without explicit Congressional authority, ED may only “request,” and not “require,” agencies to provide this additional information.*

Response/ Action Taken: The clarification of terminology and reporting requirements outlined in this guidance is in accordance with the Department’s statutory authority under HEA Sections 487(a)(15) and 496(a)(7), (a)(8), (c)(7), (c)(8) and its regulatory authority under 34 CFR 602.26 and 602.27. Recognized accreditors must provide all required information in this guidance, as well as fulfill all other basic reporting requirements under 34 CFR 602.26 and 602.27. All recognized accreditors are also highly encouraged, as the Department’s partners in the oversight and monitoring of an institution, to provide the information requested by the guidance letter.

7. Comments: *The Department needs to develop an automated system for agencies to upload documents digitally, because an Excel spreadsheet with PDF documents would be too large and may constitute technical and reporting burden.*

Response/ Action Taken: To address this concern, the Department has developed an online reporting portal that allows agencies to post links to documents from their website. Agencies will use this system to submit accrediting actions as well as decision letters.

8. Comments: *There are concerns that actual reporting hours and cost of reporting using the Excel spreadsheet will be exponentially more than ED’s estimate, especially because of the time it would take to manually enter accrediting actions and documents into the spreadsheet and solve unforeseen technical difficulties.*

Response/ Action Taken: The Department has changed the draft guidance letter to address concerns about reporting burden. The new version of the draft version eliminates the request for additional summaries of actions and other documents beyond decision letters. Reporting through an Excel spreadsheet has been replaced with a more simplified online reporting portal that agencies can use to submit their accrediting actions and supporting decision letters. The portal includes a simple menu of agency actions and justification of actions that accreditors can select. Concerns about the submission of “other documents” have been addressed by a more specific request for decision letters, which accreditors can post to their website and provide a URL for in the Department’s portal (please see section 5 and Appendix 1 of the Guidance for further clarifications).

9. **Comments:** *Since agencies are already required to send copies of final Commission decision letters, the new request will result in multiple submissions.*

Response/ Action Taken: The Department does not believe that the clarifications regarding requirements to submit decision letters will result in multiple submissions. All accreditors are required to notify the Department of accrediting decisions, and some agencies already submit decision letters to meet this requirement. This guidance is further highlighting the requirement for those agencies who have not been submitting these letters.

10. **Comments:** *How frequently will agencies be required to submit Excel spreadsheets and supporting documentation? After each commission meeting (e.g. three times a year)? Are submissions also required for actions taken between commission meetings?*

Response/ Action Taken: As already mentioned, the new version of the draft guidance eliminates the use of an Excel spreadsheet for reporting and replaces it with an online web portal that agencies will instead use. The guidance clarifies that the submission of required information and decision letters must be done in accordance with the existing statutory and regulatory time frames outlined under 34 CFR 602.26 and 602.27 – typically following a meeting of the agency’s decision-making body – with the exception of circumstances that require immediate reporting of Title IV issues under 34 CFR 602.27(a)(6) or (a)(7). Agencies are asked to voluntarily share with the Department requested reporting under 34 CFR 602.16(a)(1) when they communicate their concerns to the institution (see section 4 of the new version of the draft Guidance).

11. **Comments:** *Providing “Summary of Justification for Action” in Excel spreadsheet isn’t necessary when Commission decision letters are attached. There are concerns that summaries may not adequately reflect the actions of the Commission and may constitute additional burden.*

Response/ Action Taken: The use of Excel spreadsheet for reporting has been replaced with an online reporting portal. The reporting portal contains a menu of agency actions and justification of actions from which accreditors can simply make selections by the click of a mouse.

12. **Comments:** *The request that accreditors should embed decision letters in the reporting Excel spreadsheet is problematic – there’re concerns about burden as well as technical difficulties associated with attachment/ transmittal of large files.*

Response/ Action Taken: The new version of the draft guidance addresses this issue by replacing Excel spreadsheet (as a reporting tool) with an online reporting portal which collects web addresses (URLs) to decision letters.

13. **Comments:** *The term “accreditation with reporting requirements” does not carry the same concern as an adverse action or probation and should not be included in the same category as warnings, conditions and heightened monitoring.*

Response/ Action Taken: To address this concern, the phrase “accreditation with reporting requirements” has been eliminated from the new version of the draft guidance letter.

14. Comments: *The definition of “certain other accreditor actions” is not clear. Remove requirement for reporting on factors that affect student success if they are not of concern or if the concern is one that the accreditor is closely monitoring and has determined will be addressed by the time allowable in the current regulation.*

Response/ Action Taken: In section 4 of the guidance letter, “certain other accreditor actions” is used to describe accreditor actions relating to factors that affect academic quality. This section states clearly the interest of the Department in these accreditor actions in accordance with 34 CFR 602.16(a)(1): “The Department has a strong interest in understanding the nature of certain other accreditor actions, where they indicate potential issues with the academic quality of the institution, for the purpose of monitoring accredited institutions participating in the title IV, HEA programs. In particular, the Department is interested in accreditors’ concerns about institutions that, while not on probation or an equivalent or a more severe status as described above, are in noncompliance with or at risk of failing to comply with the following accreditation standards, as outlined in 34 CFR 602.16(a)(1)...” For 34 CFR 602.16(a)(1)(i), the Department is particularly interested in issues related to retention and completion of course, program, and certificate or degree; job placement; licensure exam participation and passage; student debt repayment and default; and student satisfaction.

15. Comments: *Is an institutional accreditor required to report decisions taken by a programmatic accreditor at that institution?*

Response/ Action Taken: Actions taken by a programmatic accreditor should be reported by that programmatic accreditor, not by the institutional accreditor, in accordance with the reporting requirements under 602.26 and 602.27.

16. Comments: *A reference is made to the criterion on student support services in the summary section. For consistency, student support services should be included in the section on “Requested Reporting.”*

Response/ Action Taken: “Student support services” has been included in section 4A of the new version of the draft guidance letter as sub-part (vi). The summary section has been eliminated in the current version of the draft guidance.

17. Comments: *If a program is cited in an annual report, rather than a full accreditation review, with a requirement to address the issue – which may a matter of partial compliance – should actions that include these types of citations be reported, even if there is no change in accreditation status? Would this constitute heightened monitoring?*

Response/ Action Taken: The Department would like to clarify that there is no such term or status as “partial compliance.” An institution is either in compliance with all of the accrediting agency’s standards or not. Based on our analysis of the timeline of agency actions, the decision to place an institution on probation or an equivalent or a more severe

status as a result of significant noncompliance with the agency's standards is not typically made at the time the agency staff or site visitation team observes the issues of concern, but rather when the agency's decision-making body meets, with the reason for that decision then expressed in the agency's decision letter under 602.25(e), or 602.25(g) in the event of an appeal). At the meeting of the agency's decision-making body, if it determines that at least one of the issues of concern results in significant noncompliance with the agency standards, such assessment constitutes probation or its equivalent or a more severe status, as defined by this letter, and must be reported to the Department. Conversely, if the decision-making body determines that none of the issues of concern indicates that the institution is significantly out of compliance with the agency standards and the institution is not placed on probation, then the requirement for reporting on probation is not applicable.

18. *Comments:* *If a program is cited on an issue that does not result in probation or adverse action, are accreditors required to submit the resulting approval or award letters? Current procedures only require notification and documentation for adverse actions and probation decisions.*

Response/ Action Taken: If a citation does not result in probation or other adverse actions, as defined by this guidance, it is not required to be reported. However, agencies are asked to voluntarily share with the Department concerns they express to institutions about factors that affect academic quality (i.e., requested reporting under 34 CFR 602.16(a)(1)) as soon as they communicate such concerns to the institution (see section 4 of the new version of the draft Guidance). Also, pursuant to 34 CFR 602.27(a)(6)-(7), accreditors are required to report Title IV related concerns.

19. *Comments:* *It is not clear what utility the reporting of non-adverse actions offers; clarity is needed as to the purpose for collecting information about the different types of actions taken by an accreditor. It would be inappropriate for the number of adverse or other actions taken to be used as an indicator of quality performance by an accreditor.*

Response/ Action Taken: The Department would like to know when an agency takes specific non-adverse actions such as the removal of an institution from probation status. Information on non-adverse actions is collected to inform the Department's oversight of institutions, as well as in the interest of transparency and accountability of the accreditation system.

20. *Comments:* *Request for letters on other actions (that are not adverse actions) constitutes unnecessary burden. The Department's regulatory authority requires summaries, not full decision letters.*

Response/ Action Taken: Decision letters on adverse actions and probation as well as actions resulting in the removal of an adverse action or probation are required. This reporting requirement arises under 34 CFR 602.26, and the Department's oversight authority under HEA Section 487(a)(15). To address concerns about reporting burden, the Department has introduced the use of an online reporting portal that provides a field for agencies to enter the web address (URL) for decision letters posted on their websites.

21. Comments: *It would be more appropriate to replace decision letters with a summary to reduce burden.*

Response/ Action Taken: The submission of decision letters to the Department is in accordance with 34 CFR 602.26 and HEA Section 487(a)(15). The new version of the draft guidance letter clarifies that though agencies recognized for Title IV purposes must submit final decision letters to the Secretary, other agencies may either submit the final decision letter or other summary describing the basis for the action against the institution or program as provided in 34 CFR 602.25(e), or 602.25(g), as applicable, together with any official comments from the institution or program (or evidence that the institution has been provided with an opportunity to submit such comments). The decision letters to be submitted to the Department are for adverse actions, probation, and removal of adverse status or probation, and are not expected to constitute high burden since the agency is already required to prepare these letters under 34 CFR 602.25(e) and (g). Some agencies already post decision letters to their websites, while others also post summaries of the decision as a matter of practice. To further reduce reporting burden, the Department has introduced the use of an online reporting portal that provides a field for agencies to enter the web address (URL) for decision letters posted on their websites.

22. Comments: *Requiring OPE ID for the submission of information to the Department is additional burden; accreditors don't use it.*

Response/ Action Taken: Every Title IV-participating institution has an OPE ID. We do not believe this constitutes significant burden.