

Office of Postsecondary Education
Summary of Response to Public Comments on 30-Day Notice
Guidance 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 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. The Department reviewed each of the comments and concerns and made a number of changes to the guidance letter. Subsequently, the Department published a 30-day notice on October 11, 2016, inviting comments on the new version of the guidance. Four commenters submitted about 15 comments (i.e., multiple comments from individual commenters). Most of the commenters expressed their appreciation for the Department's efforts to address concerns raised about the initial version of the guidance. The majority of the new comments requested that the Department provide additional clarification on some issues that the commenters thought were not properly addressed. Some commenters also raised new concerns in response to the changes made in the revised guidance. A summary of the comments and the actions taken by the Department to address them are presented below.

- 1. Comments (Probation) : *Since some agencies use terms such as “warning” to refer to sanctions related to serious non-compliance, the guidance should require (not request) agencies to report such sanctions regardless of the term used.***

Response/ Action Taken: Section 2 of the guidance (Required Reporting on Probation) has been edited to clarify that probation “includes any sanction indicating significant non-compliance, regardless of the term used by an agency to describe such sanction. For example when an agency uses the term warning to indicate significant non-compliance, such a warning should be categorized as probation and reported as such.”

- 2. Comments (Probation): *Any institutions sanctioned for serious non-compliance should be required by their accreditor to inform students accordingly. They should also provide an explanation for the sanction. Some agencies already have this requirement in their standards. Also, the Department should, as a matter of transparency, include warning flags on the College Scorecard and College Navigator websites to better inform students and the public about schools that have problems with their accreditation.***

Response/ Action Taken: Agencies are currently required to provide notice to the public when they place an institution on probation. For Title IV institutions, we are also making the decision letters of Title IV accreditors available on our public facing website. Additionally, the Department is continuously making improvements to its online resources such as College Scorecard and College Navigator. As part of that continuous improvement, we will continue to consider the inclusion of an institution's accreditation status on the Department's consumer tools to better inform prospective students.

3. **Comments (Probation):** *On page 5 of the guidance, the Department uses the term “probation and equivalent,” but in the glossary it is “probation or equivalent.” The Department should be consistent regarding this. Also, program non-compliance with one or more standards should not be equivalent to probation. A more appropriate definition of probation should indicate that: “the accreditor has concerns about the overall integrity of the program, based on the nature of compliance issues with the standards. When put on probation, the program must take swift and significant action to remedy deficiencies. Probation signals the program that loss of accreditation is a possibility in the short term.”*

Response/ Action Taken: We appreciate the commenter’s careful review, and have edited pages 4-5 of the guidance to reflect “probation or equivalent,” consistent with the glossary. The Department believes that its definition of probation sufficiently addresses the concerns of the commenter. The Department’s current definition of probation duly qualifies the nature of noncompliance by defining probation 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 it is possible that the noncompliance could be remedied by the institution within a period allowed by the agency and the regulations.¹ (emphasis added).

The above definition is accompanied by a footnote (see below) that further clarifies the term “significantly out of compliance.” The clarification states that “at a minimum, noncompliance is viewed as significant if, notwithstanding the agency’s best judgment that the institution or program will achieve compliance within the permissible timeframe, the area of non-compliance implicates institutional integrity.” This clarification is consistent with key elements of the alternative definition offered by the commenter, including the reference to implication of institutional integrity.

4. **Comments (Reporting Portal):** *The drop-down menu in the reporting portal as illustrated in the appendix of the guidance letter does not include a comprehensive list*

¹ The Department notes that when an institution or program is out of compliance with any of the agency’s accrediting standards, the timelines under 34 CFR 602.20 begin 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’s or program’s noncompliance as not significant enough to require the public sanction of probation.

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 or program will achieve compliance within the permissible timeframe, the area of non-compliance implicates institutional integrity; or, for example, the number of areas of noncompliance, institutional finances, or other circumstances 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 for which notice to the public is required in order to serve the best interests of students and prospective students.

of terms used by accreditors and may force them to apply terms that do not accurately capture the action being reported. For example, Continued Accreditation is supposed to be listed as a separate action, different from Renewal of Accreditation. The portal should be used as a pilot for some period, during which a focused group of accreditors would do a beta testing of its usability/functionality. ED should also provide a well-resourced user guide for the portal.

Response/ Action Taken: The Department is committed to further engage accrediting agencies to ensure a good user experience. We recognize that not all terms used by accrediting agencies will be listed on the drop-down menu. In part, this is intended to ensure consistent reporting across agencies, even when those agencies operate under different terms that carry substantially similar meanings. Agencies must report all actions clarified in the guidance; if an agency believes that a term it uses to describe a particular action is not listed in the menu of actions in the online portal, or if the agency is not sure how to report a particular action, it should contact the Department's accreditation analyst responsible for the agency. In addition, during the implementation of this guidance, the help desk for the database contractors will be available to provide technical assistance as necessary, while the Department works with accrediting agencies to collect feedback that will be taken into consideration for future adjustments to the portal as additional resources become available. Furthermore, the Department will conduct trainings on how to use the portal and further address concerns related to the menu of actions in the portal; agencies will be given access to a user guide. The Department is also working to ensure that all the necessary testing is carried out, and that the system will be useable and functional.

5. **Comments (Risk of Noncompliance):** *Could the Department second-guess agency decisions regarding the riskiness of an institution? The Department should provide further clarification on the following statement: “The determination regarding when an institution is at risk of noncompliance with accreditation standards is typically made by the agency.” The Department should provide examples of when such determination would not be made by the agency.*

Response/ Action Taken: The guidance letter does not include any language regarding when the Department determines an institution is at risk. However, the Department agrees that an accrediting agency is responsible for determining when an institution or program it accredits is at risk of non-compliance with the agency's standards.

6. **Comments (Decision Letter):** *The guidance states that accreditors should redact privacy information in decision letters prior to posting to the reporting portal; but it also states that the Department may require accreditors to provide a non-redacted copy for oversight purpose or if it's determined that the redaction was not made in good faith. Please clarify who would have access to the information in the non-redacted copy.*

Response/ Action Taken: If the Department requires an agency to provide a non-redacted copy of a decision letter to enhance its oversight function, it will ensure that any information in the letter protected from disclosure by federal law is not accessible to the public.

7. **Comments (Burden Estimate):** *The Department should provide a more realistic burden estimate. The estimate provided in the ICR does not reflect what could be the true annual reporting burden. The Department did not explain that accreditation actions can occur more often than quarterly and therefore reporting more often than quarterly may be necessary.*

Response/ Action Taken: The estimation of burden outlined in the supporting statement of the ICR package for the 30-day notice is accompanied by an explanation of how the estimate was derived. The Department estimated burden by the number of actions, regardless of the schedule for submitting those actions. The Department's response to question 12 in the supporting statement includes detailed narrative, table, footnotes, and calculations that justify the burden estimate. However, the Department may be open to reviewing the estimate in the future if there is evidence from changing circumstances associated with the use of the portal. The Department may consider revising the estimate if the collection instrument changes.

8. **Comments (Public Posting of Negative Actions):** *Longitudinal data that will be stored in ED's database will be accessible to researchers whose conclusions regarding schools and accrediting agencies will not necessarily produce valid and reliable results. If made publicly available, negative actions could lead to the unwarranted destruction of an institution's reputation. Institutions should be able to provide context for a negative action that is made publicly available.*

Response/ Action Taken: Federal regulations at 34 CFR 602.26 require agencies to provide written information regarding accreditation decisions, not just to the Secretary, but also to the public. Much of the required information is already made public. For example, many accrediting agencies already post decision letters (for both negative and non-negative actions) to their websites; others list only the actions. Therefore, the Department believes that the enforcement of transparency regarding the reporting of adverse actions and probation status is not only consistent with regulations but also necessary to advance the goal of accountability in the higher education accreditation, as well as to better protect taxpayers' money and ensure that the accreditation system serves students and families well.

9. **Comments (Outreach to Stakeholders):** *The Department “acted inequitably” by consulting only a few agencies and associations (such as CHEA, ASPA, C-RAC, ACCET and ACCSC) during the review of comments on initial version of the guidance. The Department should have, at least, consulted all 11 commenters. The special nature of small accrediting agencies was not considered.*

Response/ Action Taken: The Department seeks to be fair and equitable in its engagement with stakeholders. The Department has conducted two public comment periods, and carefully considered all comments received during the public comment period. Members of the public and all accreditation stakeholders were given equal opportunities to submit public comments on the 60-day Federal Register notice as well as the 30-day notice. The Department dedicated equal attention to review all of the comments, regardless of the individual or the size of the entities that submitted them. However, during the Department's review of comments on the 60-day notice, there were specific comments from a few agencies (such as ACCET and ACCSC) and associations (such as CHEA, ASPA, and C-RAC) for which the Department needed additional clarity in order to better respond to their specific concerns. The Department engaged these entities separately for the purpose stated above, and such engagement should by no means be characterize as acting "inequitably." Furthermore, on October 27th, the Department organized a webinar to further discuss with all accrediting agencies any questions and concerns that they might have had regarding the changes proposed in the 30-day notice.

10. Comments (Usefulness of Proposed Collection): *The Department should clarify how the proposed collection system would have prevented such episodes as the failure of Corinthian Schools.*

Response/ Action Taken: The Department believes that this system will provide critical information that, along with other information from state and federal agencies and from institutions themselves, can be used in the broader framework of information-sharing required for effective oversight and monitoring and for consumer protection.