



Substantive Change Regulations

By Antoinette Flores | January 8, 2019

Substantive change regulations require accreditor oversight of major changes a higher education institution might make to ensure consistency of quality because their operation might change. Under regulation, accreditors are required to review any proposed changes an institution makes that are significant departures from the educational mission, programs, or mode of delivery since the institution's last accreditation review. These regulations cover most major changes an institution could make and include anything from a change in ownership, legal status, or form of control to additional programs, courses, or modes of delivery that are substantively different, or a substantial increase in clock or credit hours.¹

History of substantive change

Following federal investigations of massive fraud in the federal aid programs and high default rates, particularly among for-profit schools in the 1980s, Congress passed the 1992 Reauthorization of the Higher Education Act, in which it laid out a vision for what it expected of accrediting agencies as gatekeepers.² The Higher Education Amendments of 1992 created the first set of federal standards for how accreditors should do their job and aimed to fill gaps in oversight uncovered in investigations.

The passage of the Higher Education Amendments of 1992 created a need for regulations to implement the new provisions in the bill. Substantive change regulations were created in a 1994 rule-making governing the U.S. Department of Education's recognition of accrediting agencies. As written in the draft regulations, the secretary of education believed an accrediting agency "cannot be a reliable authority ... if the agency does not assess those new or substantively changed programs."³

These regulations were created to correct for one of the common tactics used by for-profit colleges to skirt federal and accreditor oversight—the practice of branching.⁴ In order to become accredited, schools must be in existence for at least two years before they are eligible to participate in federal aid programs. Schools avoided the rule by establishing branch campuses that would gain accreditation through the main campus and avoid review by an accrediting agency.⁵

While the 1992 amendments required accreditors to review and visit branch campuses, the amendments did not address the issue of accrediting agencies approving programs that were significantly different from the programs for which the school was initially accredited. For example, one accrediting agency that accredited a cosmetology school extended accreditation to programs that the school offered in jet airplane mechanics and air conditioning and refrigeration without evaluating the quality of those programs—even though the programs were unrelated.⁶ In another example, the American Masonry Institute (AMI), which offered courses on brick and tile laying, was established as a branch campus of a barber school even though the two were unrelated. Over a period of 10 months after it was established, the AMI enrolled more than 600 students with a loan volume of more than \$3 million.⁷ It was alleged that the school bussed in students from other major cities who were homeless.⁸ Shortly after, the school suddenly shut down.

The first draft regulation on substantive changes targeted stemming these types of abuses in the vocational education sector. For nonvocational schools, the education secretary proposed an exception to the requirement that an accreditor must review changes, as long as the institution notified its accreditor of a new or substantively changed program before it was offered, and the school did not offer pre-baccalaureate vocational education.⁹ Vocational programs, the draft regulations reasoned, required special review, because they were fundamentally different. Changes proposed at bachelor and higher degree programs, or public and nonprofit colleges, already undergo thorough review internally by curriculum committees, governing boards, and other units for approval before being offered to students, a process that did not apply to vocational or for-profit programs.¹⁰ However, the exception for nonvocational schools was removed from the final regulations in favor of regulations that did not target one particular sector but instead applied equally to all sectors.¹¹ As a result, agencies had to review substantive changes at all schools, even if the change already underwent review by numerous other entities.

In 2008, Congress further modified substantive change regulations to account for changes occurring in higher education, including the addition of new locations, new curricula, and changes in ownership. One such change the modified regulations sought to accommodate was institutions operating as distributed enterprises with multiple locations within a single administrative system, a setup that was uncommon when the regulations were first written.¹² Substantive change regulations now include the requirement that accreditors review any arrangement where an institution contracts out more than 25 percent of an educational program to an entity that is not eligible to participate in Title IV programs.¹³ Recent changes also aimed at giving accreditors flexibility and reducing burden. Under the 2008 regulations, accreditors could preapprove substantive changes if the institution completed at least one full cycle of accreditation or has been accredited for at least 10 years, as long as the school has not undergone new ownership. The 2008 regulations also created more flexibility for accreditors by specifying that if an institution operates more than

three locations, the agency does not have to visit each location but instead can visit a representative sample. This acknowledges that changes made by more established institutions that have already undergone numerous reviews require less scrutiny than those that had not.

There have been numerous calls to reform substantive change regulations in recent years, but there is very little agreement on exactly what should be changed. Some higher education stakeholders call for reducing the number of changes, including the establishment of branch campuses, accreditors are required to approve.¹⁴ Requirements on establishing branch campuses, however, are in statute and cannot be changed through regulation. Some have called for allowing accreditors to determine whether adding distance education should be subject to substantive change review. For example, the New England Commission of Higher Education, a regional accreditor, found it a waste of time to have to review Yale University's proposal to offer its physician's assistant program online, which went through a governance review process at Yale and approval by a specialized accreditor.¹⁵ Others have proposed allowing accreditors additional flexibility on reviewing substantive changes, particularly for high-performing institutions.¹⁶ Still others have called for strengthening substantive change regulations. For example, the Accrediting Commission of Career Schools and Colleges, a national accreditor overseeing mostly for-profit schools, suggested requiring accreditors to visit and evaluate each campus or location operated by a school, not just a representative sample, if an institution operates more than three locations. In this case, growth of an institution should require greater oversight, not less.¹⁷ Other proposals for reducing burden do not specify exactly which parts of the regulations are burdensome or should be reduced.¹⁸

The draft 1994 regulations hinted at a fundamental difference in the types of changes institutions make and the risk involved with changes, depending on the type of institution and the level of review required. These differences still exist today. For example, for-profit colleges are subject to changes in ownership, a substantive change not seen in other sectors. Program creation and growth are likely to represent more risk at for-profit colleges that do not undergo the same level of oversight and approval as nonprofit and public colleges. Any changes to substantive change regulations should account for both the burden and risk across different institution types.

Antoinette Flores is an associate director for Postsecondary Education at the Center for American Progress.

Section 602.25, Substantive change: 1994 regulations¹⁹

- a. *To be listed by the Secretary as a nationally recognized accrediting agency, an institutional accrediting agency must demonstrate to the Secretary that it maintains adequate substantive change policies that ensure that any substantive change to the educational mission or program(s) of an institution after the agency has granted accreditation or preaccreditation to the institution does not adversely affect the capacity of the institution to continue to meet the agency's standards.*
- b. *The Secretary considers that an accrediting agency meets the requirements of paragraph (a) of this section if—*
 1. *The agency requires prior approval of the substantive change by the agency before the change is included in the agency's previous grant of accreditation or preaccreditation to the institution; and*
 2. *The agency's definition of substantive change includes, but is not limited to, the following types of change:*
 - i. *Any change in the established mission or objectives of the institution;*
 - ii. *Any change in the legal status or form of control of the institution;*
 - iii. *The addition of courses or programs that represent a significant departure, in terms of either in the content or method of delivery, from those that were offered when the agency most recently evaluated the institution;*
 - iv. *The addition of courses or programs at a degree or credential level above that included in the institution's current accreditation or preaccreditation;*
 - v. *A change from clock hours to credit hours or vice versa; and*
 - vi. *A substantial increase in—*
 - A. *The number of clock or credit hours awarded for successful completion of a program; or*
 - B. *The length of a program.*
- c. *The agency has discretion to determine the procedures it will use to grant prior approval of the substantive change, which may, but need not, require an on-site evaluation before approval is granted.*

Section 602.22, Substantive change: Current regulations²⁰

- a. *If the agency accredits institutions, it must maintain adequate substantive change policies that ensure that any substantive change to the educational mission, program, or programs of an institution after the agency has accredited or preaccredited the institution does not adversely affect the capacity of the institution to continue to meet the agency's standards. The agency meets this requirement if—*
 1. *The agency requires the institution to obtain the agency's approval of the substantive change before the agency includes the change in the scope of accreditation or preaccreditation it previously granted to the institution; and*
 2. *The agency's definition of substantive change includes at least the following types of change:*
 - i. *Any change in the established mission or objectives of the institution.*
 - ii. *Any change in the legal status, form of control, or ownership of the institution.*
 - iii. *The addition of courses or programs that represent a significant departure from the existing offerings of educational programs, or method of delivery, from those that were offered when the agency last evaluated the institution.*
 - iv. *The addition of programs of study at a degree or credential level different from that which is included in the institution's current accreditation or preaccreditation.*
 - v. *A change from clock hours to credit hours.*
 - vi. *A substantial increase in the number of clock or credit hours awarded for successful completion of a program.*
 - vii. *If the agency's accreditation of an institution enables the institution to seek eligibility to participate in title IV, HEA*

programs, the entering into a contract under which an institution or organization not certified to participate in the title IV, HEA programs offers more than 25 percent of one or more of the accredited institution's educational programs.

viii. A. If the agency's accreditation of an institution enables it to seek eligibility to participate in title IV, HEA programs, the establishment of an additional location at which the institution offers at least 50 percent of an educational program. The addition of such a location must be approved by the agency in accordance with paragraph (c) of this section unless the accrediting agency determines, and issues a written determination stating that the institution has-

1. Successfully completed at least one cycle of accreditation of maximum length offered by the agency and one renewal, or has been accredited for at least ten years;
2. At least three additional locations that the agency has approved; and
3. Met criteria established by the agency indicating sufficient capacity to add additional locations without individual prior approvals, including at a minimum satisfactory evidence of a system to ensure quality across a distributed enterprise that includes -
 - i. Clearly identified academic control;
 - ii. Regular evaluation of the locations;
 - iii. Adequate faculty, facilities, resources, and academic and student support systems;
 - iv. Financial stability; and
 - v. Long-range planning for expansion.

B. The agency's procedures for approval of an additional location, pursuant to paragraph (a)(2)(viii)(A) of this section, must require timely reporting to the agency of every additional location established under this approval.

C. Each agency determination or redetermination to preapprove an institution's addition of locations under paragraph (a)(2)(viii)(A) of this section may not exceed five years.

D. The agency may not preapprove an institution's addition of locations under paragraph (a)(2)(viii)(A) of this section after the institution undergoes a change in ownership resulting in a change in control as defined in 34 CFR 600.31 until the institution demonstrates that it meets the conditions for the agency to preapprove additional locations described in this paragraph.

E. The agency must have an effective mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations approved under paragraph (a)(2)(viii)(A) of this section.

ix. The acquisition of any other institution or any program or location of another institution.

x. 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.

3. The agency's substantive change policy must define when the changes made or proposed by an institution are or would be sufficiently extensive to require the agency to conduct a new comprehensive evaluation of that institution.

b. The agency may determine the procedures it uses to grant prior approval of the substantive change. However, these procedures must specify an effective date, which is not retroactive, on which the change is included in the program's or institution's accreditation. An agency may designate the date of a change in ownership as the effective date of its approval of that substantive change if the accreditation decision is made within 30 days of the change in ownership. Except as provided in paragraph (c) of this section, these procedures may, but need not, require a visit by the agency.

c. Except as provided in paragraph (a)(2)(viii)(A) of this section, if the agency's accreditation of an institution enables the institution to seek eligibility to participate in title IV, HEA programs, the agency's procedures for the approval of an additional location where at least 50 percent of an educational program is offered must provide for a determination of the institution's fiscal and administrative capacity to operate the additional location. In addition, the agency's procedures must include -

1. A visit, within six months, to each additional location the institution establishes, if the institution -
 - i. Has a total of three or fewer additional locations;

- ii. Has not demonstrated, to the agency's satisfaction, that it has a proven record of effective educational oversight of additional locations; or*
 - iii. Has been placed on warning, probation, or show cause by the agency or is subject to some limitation by the agency on its accreditation or preaccreditation status;*
- 2. An effective mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations of institutions that operate more than three additional locations; and*
 - 3. An effective mechanism, which may, at the agency's discretion, include visits to additional locations, for ensuring that accredited and preaccredited institutions that experience rapid growth in the number of additional locations maintain educational quality.*
- d. The purpose of the visits described in paragraph (c) of this section is to verify that the additional location has the personnel, facilities, and resources it claimed to have in its application to the agency for approval of the additional location.*

Endnotes

- 1 § 34 CFR 602.22, available at <https://www.law.cornell.edu/cfr/text/34/602.22>.
- 2 Antoinette Flores, "Hooked on Accreditation: A Historical Perspective" (Washington: Center for American Progress, 2015), available at <https://www.americanprogress.org/issues/education-postsecondary/reports/2015/12/14/127200/hooked-on-accreditation-a-historical-perspective/>.
- 3 U.S. Department of Education, "34 CFR Part 602: Secretary's Procedures and Criteria for Recognition of Accrediting Agencies; Proposed Rule," *Federal Register* 59 (15) (1994), available at <https://www.govinfo.gov/content/pkg/FR-1994-01-24/html/94-1459.htm>.
- 4 U.S. Department of Education Office of Educational Research and Improvement, "Abuse in Federal Student Aid Programs: Hearings Before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, United States Senate" (Washington: 1990), available at <https://files.eric.ed.gov/fulltext/ED334956.pdf>.
- 5 Ibid
- 6 U.S. Department of Education, "34 CFR Part 602 Proposed Rule."
- 7 U.S. Department of Education Office of Educational Research and Improvement, "Abuse in Federal Student Aid Programs: Report Made by the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, United States Senate" (Washington: 1990), available at <https://files.eric.ed.gov/fulltext/ED332631.pdf>.
- 8 Ibid
- 9 U.S. Department of Education, "34 CFR Part 602: Secretary's Procedures and Criteria for Recognition of Accrediting Agencies; Proposed Rule."
- 10 Ibid.
- 11 Mark L. Pelesh, "Regulations Under the Higher Education Amendments of 1992: A Case Study in Negotiated Rulemaking," *Law and Contemporary Problems* 57 (4) (1994): 151–170, available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4257&context=lcp>.
- 12 *Federal Register*, "34 CFR Parts 600 and 602," August 6, 2009, available at <https://www.govinfo.gov/content/pkg/FR-2009-08-06/pdf/E9-18368.pdf>.
- 13 § 34 CFR 602.22.
- 14 Council for Higher Education Accreditation International Quality Group (CHEA), "Position Paper: Regulatory Relief for Accreditation" (Washington: 2017), available at <https://www.chea.org/userfiles/Occasional%20Papers/Regulatory-Relief.pdf>.
- 15 Barbara Brittingham, "Testimony Before the Senate Committee on Health, Education, Labor and Pensions (HELP), United States Senate, Reauthorizing the Higher Education Act: Access and Innovation," January 25, 2018, available at <https://www.help.senate.gov/imo/media/doc/Brittingham.pdf>.
- 16 U.S. Department of Education National Advisory Committee on Institutional Quality and Integrity (NACIQI), "Report to the U.S. Secretary of Education: 2018 Accreditation Policy Recommendations on Regulatory Reform" (Washington: 2018), available at <https://sites.ed.gov/naciqi/files/2018/02/Regulatory-Reform-Recommendations-FINAL.pdf>.
- 17 Michele McComis, "Strengthening Accreditation to Better Protect Students and Tax Payers," April 25, 2017, available at https://webcache.googleusercontent.com/search?q=cache:ApRkbcOvnZYJ:https://edworkforce.house.gov/uploadedfiles/mccomis_written_testimony.pdf+&cd=1&hl=en&ct=clnk&gl=us&client=firefox-b-1-ab.
- 18 CHEA, "Position Paper"; NACIQI, "Report to the U.S. Secretary of Education"; Task Force on Federal Regulation of Higher Education, "Recalibrating Regulation of Colleges and Universities: Report of the Task Force on Federal Regulation of Higher Education" (Washington: 2015), available at https://www.help.senate.gov/imo/media/Regulations_Task_Force_Report_2015_FINAL.pdf.
- 19 U.S. Department of Education, "34 CFR Part 602: Secretary's Procedures and Criteria for Recognition of Accrediting Agencies; Proposed Rule."
- 20 Ibid.