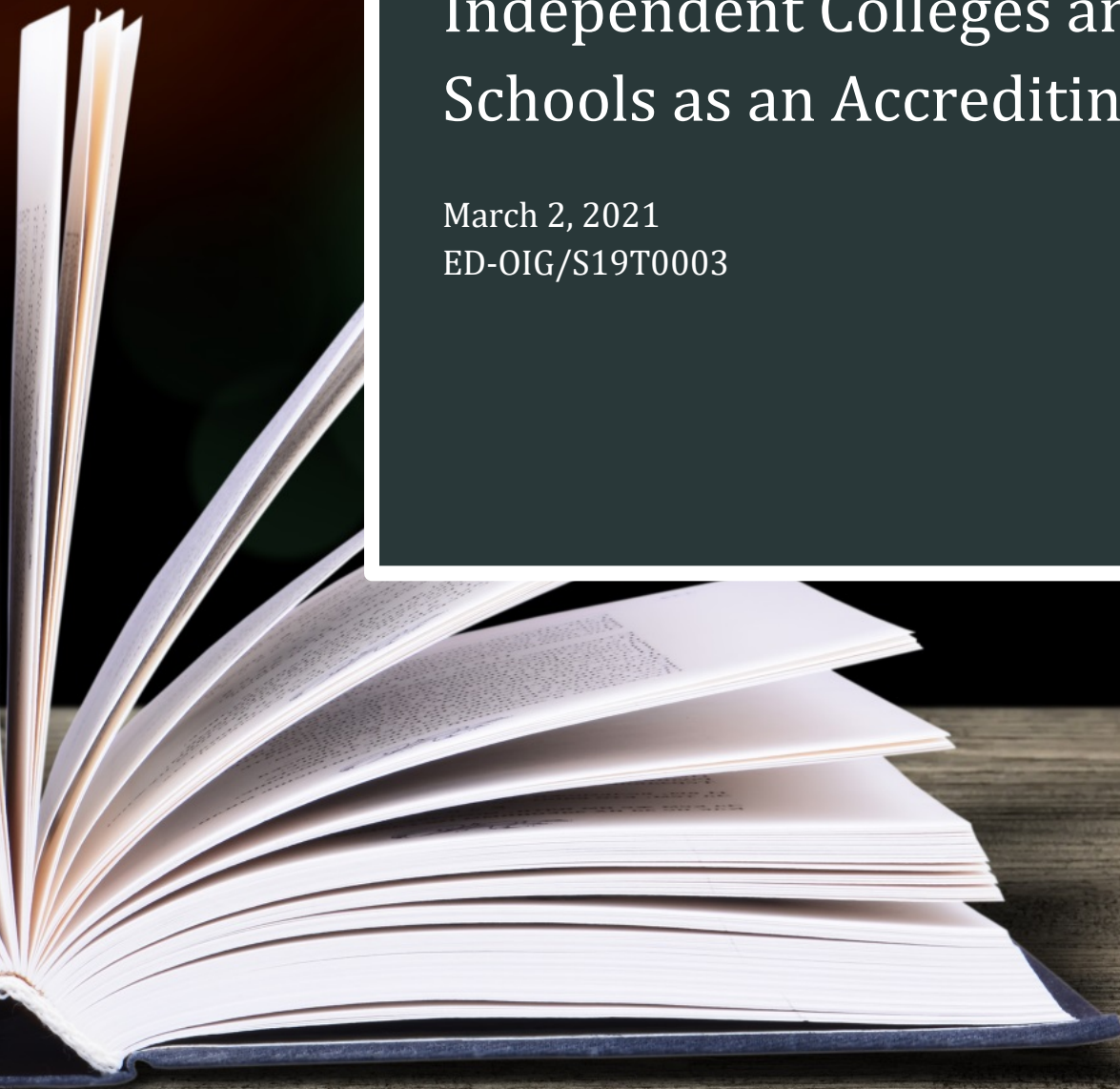




U.S. Department of Education  
Office of Inspector General

# The Department's Recognition of the Accrediting Council for Independent Colleges and Schools as an Accrediting Agency

March 2, 2021  
ED-OIG/S19T0003



## NOTICE

Statements that managerial practices need improvements, as well as other conclusions and recommendations in this report, represent the opinions of the Office of Inspector General. The appropriate Department of Education officials will determine what corrective actions should be taken.

In accordance with Freedom of Information Act (Title 5, United States Code, section 552), reports that the Office of Inspector General issues are available to members of the press and general public to the extent information they contain is not subject to exemptions in the Act.



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF INSPECTOR GENERAL

Audit Services

March 2, 2021

TO: The Honorable Miguel Cardona  
Secretary of Education

FROM: Bryon S. Gordon /s/  
Assistant Inspector General for Audit

SUBJECT: Final Inspection Report, "The Department's Recognition of the Accrediting Council for Independent Colleges and Schools as an Accrediting Agency,"  
Control Number ED-OIG/S19T0003

Attached is the subject final inspection report that consolidates the results of our review of the U.S. Department of Education's recognition of the Accrediting Council for Independent Colleges and Schools as an accrediting agency. We received the Department's comments agreeing with the findings and accepting the recommendations in our draft report.

U.S. Department of Education policy requires that you develop a final corrective action plan within 30 days of the issuance of this report. The corrective action plan should set forth the specific action items and targeted completion dates necessary to implement final corrective actions on the findings and recommendations contained in this final report. Corrective actions that your office proposes and implements will be monitored and tracked through the Department's Audit Accountability and Resolution Tracking System.

In accordance with the Inspector General Act of 1978, as amended, the Office of Inspector General is required to report to Congress twice a year on the reports that remain unresolved after 6 months from the date of issuance.

We appreciate your cooperation during this review. If you have any questions, please contact Michele Weaver-Dugan at (202) 245-6941 or [Michele.Weaver-Dugan@ed.gov](mailto:Michele.Weaver-Dugan@ed.gov).

Attachment

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## Results in Brief

### What We Did

The objectives of our inspection were to determine (1) the U.S. Department of Education's (Department) process for assessing the Accrediting Council for Independent Colleges and School's (ACICS) compliance with Federal regulatory criteria for recognition, and (2) what evidence the Department considered in its review of selected recognition criteria and whether the Department's conclusions were supported by evidence. Our inspection covered the Department's processes for assessing ACICS' compliance with Federal regulatory criteria for recognition as an accrediting agency (agency) from 2016 through 2018. Specifically, we reviewed Department actions and communications during that time period to determine whether it complied with Federal recognition procedures. We also judgmentally selected 6 of the 21 recognition criteria reviewed by the senior Department official (SDO) during the Department's 2018 recognition review of ACICS to determine whether the SDO's conclusions regarding ACICS' compliance were supported by evidence.

### What We Found

We determined that the Department's process for assessing ACICS' compliance with Federal regulatory criteria for recognition followed applicable policies and regulations except during the 2016 recognition review. We determined that the Department did not comply with all regulatory requirements during its 2016 review of ACICS' petition for recognition renewal because its process did not consider all available relevant information during its review as required. Specifically, the Department had requested and received information from ACICS that was relevant to the recognition review but did not include and consider that information as part of its review. We determined that Office of the Under Secretary (OUS) officials under Secretary of Education (Secretary) King decided to move ahead with the recognition process even after being informed by Department staff that doing so would not leave enough time to review the volume of information requested from and submitted by ACICS. As a result, ACICS successfully challenged the Department's 2016 decision to de-recognize ACICS.

We determined that the Department implemented a process for assessing ACICS' compliance with recognition criteria following a court remand in 2018 that was permitted under applicable policies and regulations as well as the court's remand order. This process did not include reviews by the Department's Accreditation Group or the National Advisory Committee on Institutional Quality and Integrity but did include a

focused review by the SDO (DeVos)<sup>1</sup> of evidence submitted by ACICS for each of the 21 recognition criteria that the Department previously determined ACICS noncompliant with. The SDO's (DeVos) review included the information that was originally reviewed in 2016, information that was submitted by ACICS but not reviewed by the Department in 2016, as well as updated information submitted by ACICS in 2018. This process also included a review by Secretary DeVos of the SDO's (DeVos) analysis and recommendations. (For a more detailed description of the Department's recognition process, as well as a list of Federal regulations relevant to this inspection, see "Appendix B. Process for Federal Recognition of Accrediting Agencies" and "Appendix C. Regulations Applicable to the Federal Recognition of Accrediting Agencies.")

We determined that the conclusions of the SDO (DeVos) in the 2018 review regarding ACICS' compliance with each of the six recognition criteria we reviewed were supported by the evidence cited. We did not identify any evidence cited that contradicted the SDO's (DeVos) conclusions. However, we found that the Office of Postsecondary Education's (OPE) "Guidelines for Preparing and Reviewing Petitions and Compliance Reports" (Guidelines) allowed for areas of reviewer subjectivity. Although Federal regulations establish the requirements that agencies must comply with, they generally do not contain instructions or guidance regarding the amount of evidence that is needed to demonstrate compliance. OPE's Guidelines did not contain detailed procedures to guide the review of agency recognition petitions, which can and has led to inconsistencies across agency reviews regarding the amount of documentation that is deemed sufficient to demonstrate compliance with Federal recognition requirements.<sup>2</sup> (For further discussion of the specific criteria reviewed, see "Appendix D. Criteria Review and Related Details.")

## **What We Recommend**

We recommend that the Secretary of Education direct that the Assistant Secretary for OPE and any other officials participating in the accrediting agency recognition process ensure that all available relevant evidence is considered and reviewed in compliance with regulatory requirements and timeframes. Additionally, we recommend that the

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<sup>1</sup> Two different SDOs were involved with the recognition reviews of ACICS during the time period covered by our review. To differentiate between the two, we have labeled the SDO involved in the 2016 review of ACICS under Secretary King as SDO (King), and the SDO involved in the 2018 review of ACICS under Secretary DeVos as SDO (DeVos).

<sup>2</sup> "U.S. Department of Education's Recognition and Oversight of Accrediting Agencies," ED-OIG/A09R0003, June 27, 2018 (<https://www2.ed.gov/about/offices/list/oig/auditreports/fy2018/a09r0003.pdf>)

Secretary require the Assistant Secretary for OPE to review the Accreditation Handbook and determine where additional detail could be added regarding what constitutes a sufficient level of evidence to demonstrate compliance or non-compliance, to ensure consistency in Department recognition reviews. We also recommend that the Secretary, whenever possible, include more than one layer of subject matter expert review in recognition reviews in situations where it is not required, to provide an additional safeguard related to subjectivity risks.

We provided a draft of this inspection report to the Department for comment. In its response, the Department noted its agreement with the findings and its acceptance of the recommendations. It also stated that it will or is taking corrective actions to address the noted concerns.

We did not make any substantive changes to the report as a result of the Department's comments. We did update the Other Matters section of the report to address events involving ACICS that occurred subsequent to the issuance of our draft report. We also provided further clarification to Recommendation 2.2. The corrective actions that the Department described, if properly implemented, are responsive to Recommendations 1.1 and 2.1. The full text of the Department's response is included at the end of this report.

# Introduction

## Background

Postsecondary schools (schools) must be accredited by an accrediting agency (agency) recognized by the Secretary of Education (Secretary) to participate in Higher Education Act of 1965, as amended (HEA), Title IV programs.<sup>3</sup> To be recognized, agencies must demonstrate that they are reliable authorities regarding the quality of education or training offered by the schools or programs they accredit. Agencies, along with States and the U.S. Department of Education (Department), are part of the program integrity “triad” responsible for acting as gatekeepers for the Title IV programs. An agency’s role as part of the triad is to oversee academic quality at schools by applying and enforcing specific standards for the schools it accredits.

Section 496 of the HEA authorizes the Secretary to establish criteria for determining whether agencies are reliable authorities regarding the quality of education or training offered by the schools or programs they accredit. An agency must have accreditation standards that assess a school in 10 areas:

1. success with respect to student achievement;
2. curricula;
3. faculty;
4. facilities, equipment, and supplies;
5. fiscal and administrative capacity;
6. student support services;
7. recruiting and admission practices;
8. measures of program length and objectives;
9. student complaints; and
10. compliance with Title IV program responsibilities.

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<sup>3</sup> The Title IV programs provide financial aid, typically in the form of grants or loans, to eligible students enrolled in eligible programs at eligible schools.



The regulations at 34 Code of Federal Regulations (C.F.R.) Part 602 implement the provisions of section 496 of the HEA. Among other requirements, agencies recognized by the Secretary must

- have effective mechanisms for evaluating a school’s compliance with the agency’s standards before reaching an accreditation decision,
- consistently apply and enforce standards that ensure the education or training a school offers is of sufficient quality to achieve its stated objective for the duration of the accreditation period, and
- reevaluate schools at regular intervals and monitor them throughout their accreditation period to ensure that they remain in compliance with the agency’s standards.

### **Department Recognition Process**

The Department’s Accreditation Group reviews agency petitions for recognition and related supporting documentation to determine whether the agency satisfies eligibility requirements and is also responsible for overseeing the agencies throughout the recognition period. The Accreditation Group is located within the Office of Postsecondary Education (OPE), which reports to the Office of the Under Secretary (OUS) and is staffed with career employees.

There are two basic types of petitions for recognition: initial and renewal. An agency’s application for initial recognition or renewal of recognition consists of a narrative statement, organized by individual criterion, detailing how the agency complies with the regulatory criteria. The Accreditation Group accepts applications for initial recognition at any time, and once recognized an agency must apply for continued recognition at least once every 5 years.

The steps of the Department’s accrediting agency recognition process are prescribed in 34 C.F.R. 602, Subpart C.<sup>4</sup> A petitioning agency submits an application for recognition through the Department’s electronic submission system along with supporting evidence that it complies with the recognition criteria contained in 34 C.F.R. 602, Subpart B. Agencies seeking initial recognition must provide narrative responses and supporting documentation for more than 90 recognition criteria as part of the Accreditation Group’s full review process. For renewal petitions, agencies respond to a subset of recognition criteria pre-selected by the Accreditation Group and believed to be the most relevant to ensuring education quality. Under this “focused review” approach, agencies

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<sup>4</sup> All regulatory citations are from the 34 C.F.R. volume dated July 1, 2016.

need to provide narrative responses and supporting documentation for as few as 22 of the more than 90 recognition criteria, depending on the applicant.<sup>5</sup> For the remaining criteria, agencies can attest that they have made no changes to their policies and procedures since their last review that would bring them into noncompliance with any of the requirements of those criteria.

Following an Accreditation Group staff review, an agency's petition for Department recognition is reviewed during a public meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI).<sup>6</sup> During each meeting, NACIQI reviews information the Accreditation Group prepared and considers comments from Department staff, agency officials, and the public, and makes a recommendation on agency recognition. Based on the recommendations from the Accreditation Group and NACIQI, a senior Department official (SDO) designated by the Secretary makes the decision regarding agency recognition. The SDO may choose to recognize an agency without conditions for the maximum 5-year recognition period, choose a shorter recognition period if the agency needs to correct significant deficiencies, or reject the agency's petition for recognition. The agency can appeal to the Secretary if it disagrees with the SDO's decision. If the Secretary denies an agency's appeal, the agency can contest the Secretary's decision in Federal court. (For a more detailed description of the Department's recognition process, see "Appendix B. Process for Federal Recognition of Accrediting Agencies.")

### **ACICS Recognition History**

The Accrediting Council for Independent Colleges and Schools (ACICS) is a national accrediting organization of primarily degree-granting institutions that was founded in 1912 and was first recognized by the Department as an accrediting agency in 1956.

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<sup>5</sup> The Accreditation Group may ask an agency to respond to additional criteria based on different factors including, but not limited to, the Department receiving information that could indicate an agency is non-compliant in another area.

<sup>6</sup> NACIQI is a Federal advisory committee that advises the Department's Secretary on matters related to postsecondary accreditation, including if and to what extent an agency should be recognized. The Department, House of Representatives, and Senate each appoint 6 of the 18 committee members.

According to the latest Accreditor Dashboard, ACICS had 97 member institutions with \$930 million in Title IV volume for award year 2017–2018.<sup>7</sup>

Since 1956, the Department had periodically reviewed ACICS' compliance with recognition criteria and granted it continued recognition until it denied ACICS' petition for recognition renewal in 2016.<sup>8</sup> On December 12, 2016, ACICS' recognition was terminated in a written decision by Secretary King.<sup>9</sup> Secretary King's decision adopted the findings of the SDO (King), who had adopted the evaluation analysis, findings, and recommendations of the Accreditation Group, as well as NACIQI's recommendation, to deny ACICS' recognition renewal. After ACICS' recognition was terminated in 2016, ACICS contested Secretary King's decision in Federal court.<sup>10</sup>

On December 15, 2016, ACICS challenged the Department's decision to terminate its recognition in the U.S. District Court for the District of Columbia. ACICS claimed that Secretary King's decision violated the HEA and its implementing regulations, and the Administrative Procedure Act, as the Department did not consider a significant amount of evidence it timely submitted. The court agreed with ACICS' argument that Secretary King's failure to consider that evidence violated the HEA's and the implementing regulations' requirement that the Secretary consider all available relevant information, as well as the Administrative Procedure Act's requirement that an agency must examine the relevant data. On March 23, 2018, the court remanded the case of ACICS' recognition renewal decision to Secretary DeVos for consideration of the evidence noted and ruled that Secretary DeVos could consider additional evidence submitted by ACICS when making the determination.

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<sup>7</sup> In June 2016, the Department created accreditor dashboards to help inform the NACIQI review of performance and outcomes measures for institutions within each institutional accrediting agency, and to increase the utility of this information for the public. At the time of writing of this report, the latest accreditor dashboard was from the July 2019 NACIQI meeting with data as of November 2018.

<sup>8</sup> After a June 2011 NACIQI meeting, the Department continued the recognition of ACICS but required that a compliance report regarding 14 criteria be submitted within 12 months. As a result of the agency's review at the June 2013 NACIQI meeting, the compliance report was accepted by the Department as establishing full compliance and the agency's recognition was renewed for the remaining 3 years of the 5-year recognition period.

<sup>9</sup> ACICS appealed the SDO's (King) decision to Secretary King, as permitted under 34 C.F.R. § 602.37, resulting in Secretary King making the final decision regarding ACICS' recognition.

<sup>10</sup> Under 34 C.F.R § 602.38, an agency may contest the Secretary's decision in the Federal courts.

## **Finding 1. The Department's Accreditation Review Process for ACICS Followed Applicable Policies and Regulations Except During its 2016 Recognition Review**

### **2016 Review Process for Recognition Renewal**

We determined, as was also stated in the related Court Order, that the Department did not comply with all regulatory requirements during its 2016 review of ACICS' petition for recognition renewal, because its process did not consider all available relevant information during its review as required under 34 C.F.R. § 602.32. Specifically, the Department had requested and received information from ACICS that was relevant to the recognition review but did not include and consider that information as part of its review. The Department's process included a review by the Accreditation Group of ACICS' petition for recognition renewal, and the Accreditation Group's evaluation analysis, findings, and recommendations sent forward to NACIQI for review. The process also included a review by the SDO (King) of the Accreditation Group's analysis, findings, and recommendations and NACIQI recommendations regarding ACICS' recognition, along with a review by Secretary King of the SDO's (King) decision, after ACICS' appeal, as required. (For a more detailed description of the Department's recognition process, see "Appendix B. Process for Federal Recognition of Accrediting Agencies.")

On January 8, 2016, ACICS submitted its petition for recognition renewal.<sup>11</sup> Accreditation Group staff reviewed ACICS' petition for renewal which included information and data for 34 recognition criteria under 34 C.F.R. Part 602, Subpart B. This included the 24 focused review criteria and 10 additional criteria selected by the Accreditation Group, per Department policy allowing for focused reviews of petitions for recognition renewal. Accreditation Group staff reviewed ACICS' narrative and supporting documentation, observed an agency meeting regarding accreditation of an institution, and reviewed written complaints and third-party comments the Department had received regarding ACICS' accreditation policies and practices. Accreditation Group staff stated that they use the OPE "Guidelines for Preparing/Reviewing Petitions and Compliance Reports" (OPE Guidelines), dated January 2012, as a reference when conducting a petition review, but mainly use the regulations at 34 C.F.R. Part 602 as their criteria. In addition, the Accreditation Group Director explained that he reviews

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<sup>11</sup> The Department had notified ACICS previously that its petition for recognition renewal was due to be reviewed at the Spring 2016 NACIQI meeting.

and signs off on all final Accreditation Group analyses and recommendations for quality control purposes and to ensure analysis consistency for different accrediting agencies.

On March 3, 2016, under the direction of OUS officials under Secretary King,<sup>12</sup> the Accreditation Group notified ACICS that the Department had developed additional questions regarding ACICS' compliance with recognition criteria. In its request, the Department noted that it was providing these questions given its responsibility to conduct a thorough analysis of ACICS in preparation for ACICS' recognition review in June and that the response was due no later than April 1, 2016. The questions were divided into two parts: Overall Questions ("Part I");<sup>13</sup> and questions related to specific standards in ACICS' January 2016 submission ("Part II"). The Accreditation Group Director explained that his group had requested and received information from ACICS during the initial stages of its recognition review as part of the normal recognition process, without OUS involvement. The OUS officials under Secretary King had contacted the Accreditation Group Director during the recognition process noting that they had questions they wanted to ask accreditors of Corinthian Colleges, one of which was ACICS.<sup>14</sup> The Accreditation Group Director stated that this involvement from OUS was not part of the normal recognition review process. He added that the original versions of the questions generated by the OUS officials under Secretary King did not align with any particular recognition criteria, and that his group had to reword the questions to make sure the questions did align with particular recognition criteria while still communicating what the officials wanted to ask about and for.

On March 10, 2016, ACICS requested an extension to May 16, 2016 (45 days), to submit its response to the supplemental questions. The Accreditation Group Director had concerns with the Accreditation Group's ability to review additional information and meet the regulatory timeframe requirements when the questions from OUS were

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<sup>12</sup> The OUS officials were no longer employed by the Department as of 2017, due to the change in administration. Therefore, while email correspondence was reviewed, the officials were not interviewed and their views were not obtained as part of our review.

<sup>13</sup> Part I contained questions regarding ACICS-accredited institutions that have been the subject of major investigations and lawsuits from multiple federal agencies and state attorneys general.

<sup>14</sup> Corinthian Colleges was a large for-profit college company that shut down in 2015 amid lawsuits, investigations, and the previous administration's sanctions over deceptive recruiting, poor quality programs, and other infractions.

provided to ACICS.<sup>15</sup> He explained that as soon as ACICS asked for the extension he became aware that the Accreditation Group would not be able to review the requested information and meet the timeframe requirements. We found that the Accreditation Group Director made his concerns known to the OUS officials under Secretary King in related communications. The Accreditation Group Director informed ACICS that Department staff could not fully review and analyze information received as late as May 16, 2016, for the June NACIQI meeting, and that ACICS should be prepared to return at the fall NACIQI meeting for further discussion and possible action as warranted.<sup>16</sup> On March 15, 2016, under the direction of the OUS officials under Secretary King, the Accreditation Group denied ACICS an extension for its Part I submission, but granted ACICS an extension for its Part II submission.<sup>17</sup>

On May 4, 2016, the Accreditation Group provided ACICS with its draft analysis and report regarding ACICS' petition for recognition renewal. Accreditation Group staff instructed ACICS to respond to the draft report by June 3, 2016. On May 16, 2016, ACICS provided the Department with its Part II response. At this time, Accreditation Group staff notified ACICS that it would consider the Part II submission separately, outside of the recognition process. The Accreditation Group Director explained that his group did not have enough time to review the Part II submission as part of the spring 2016 recognition process given how late it was received and how much information was included, and it had already made well-developed conclusions regarding ACICS' non-compliance given the evidence already provided by ACICS during the normal recognition process.

On June 3, 2016, ACICS requested and was denied an extension to submit its response to the Accreditation Group's draft analysis and report. In its letter to ACICS, the Accreditation Group Director stated that ACICS would not be compelled to respond at the June NACIQI meeting to any analysis by Department staff of its Part II submission, however, the deferral of consideration of that material did not postpone the need for ACICS to establish its compliance with recognition criteria for purposes of renewal. As a result, ACICS proceeded to provide the Department with its response to the

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<sup>15</sup> Per 34 C.F.R. § 602.32, the Accreditation Group was required to provide ACICS with 30 days in which to respond to a draft report on its petition for recognition renewal and was required to provide ACICS its final report at least 7 days prior to ACICS' NACIQI meeting, which was scheduled for June 22, 2016.

<sup>16</sup> Per 34 C.F.R. § 602.33, Department staff may review the compliance of a recognized agency with the criteria for recognition at any time based on any information that, as determined by Department staff, appears credible and raises issues relevant to recognition.

<sup>17</sup> ACICS timely submitted its response to Part I on April 1, 2016.

Accreditation Group's draft analysis and report that same day. Accreditation Group staff explained that ACICS could have used information from its Part II submission to respond to the Department's draft report, but it did not do so.

On June 15, 2016, after reviewing ACICS' response to the draft report, the Accreditation Group issued its final analysis and report. The Accreditation Group found ACICS noncompliant with 21 separate recognition criteria and issued a recommendation to NACIQI and the SDO (King) to deny ACICS' petition and withdraw ACICS' recognition. The report noted that the staff recommendation was to withdraw recognition as it was believed that ACICS could not remedy its compliance issues within 12 months.<sup>18</sup> The Accreditation Group did not review the Part II submission during or after the spring 2016 recognition process for ACICS nor did it provide the contents of the Part II submission to NACIQI, the SDO (King), or Secretary King. On June 23, 2016, in a 10-to-3 vote, NACIQI concurred with the Accreditation Group's recommendation to deny ACICS' petition for renewal of recognition and withdraw the agency's recognition.

As prescribed in regulations, the SDO (King) considered the Accreditation Group's final report and recommendations, the transcript of ACICS' appearance before NACIQI, NACIQI's recommendation, and the comments provided by both ACICS and Department staff after the NACIQI meeting when making a decision regarding ACICS' petition for recognition renewal. After taking these items into consideration and based on the record compiled, the SDO (King) concurred with the recommendations of Department staff and NACIQI and denied ACICS' petition for recognition on September 22, 2016.

On September 23, 2016, ACICS appealed the SDO's (King) decision to Secretary King, as permitted under 34 C.F.R. § 602.37.<sup>19</sup> Secretary King considered the recommendations of Department staff and NACIQI as part of the record compiled to make a final decision on ACICS' petition for recognition renewal. After review of the record, Secretary King adopted the SDO's (King) decision. Secretary King concluded that ACICS was not capable of coming into compliance with the applicable recognition criteria within 12 months and

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<sup>18</sup> Under 34 C.F.R. § 602.36(e)(3)(i), if a recognized agency fails to demonstrate compliance with or effective application of a criterion or criteria, but the SDO concludes that the agency will demonstrate or achieve compliance within 12 months or less, the SDO may continue the agency's recognition, pending submission of a compliance report demonstrating agency compliance.

<sup>19</sup> Under 34 C.F.R. § 602.37(a), the agency must notify the Secretary and the SDO in writing of its intent to appeal the decision of the SDO no later than 10 days after receipt of the decision and submit its appeal to the Secretary in writing no later than 30 days after receipt of the decision.

terminated the Department's recognition of ACICS as an accrediting agency on December 12, 2016.

On December 15, 2016, ACICS contested Secretary King's decision to terminate ACICS' recognition as an accrediting agency in the United States District Court of the District of Columbia, as permitted by 34 C.F.R. § 602.38. ACICS requested that the court stay Secretary King's decision to terminate ACICS' recognition and return ACICS' petition for continued recognition to the Department for reconsideration. Among the issues noted in the lawsuit, ACICS maintained that the Department's actions in terminating ACICS' recognition violated the Administrative Procedure Act because the termination decision was arbitrary and capricious by failing to consider relevant evidence.

### **2017–2018 Review Process for Initial Recognition**

We determined that the Department followed applicable policies and regulations during ACICS' subsequent application for initial recognition until the process was discontinued by Secretary DeVos. While awaiting the court's decision regarding its appeal, ACICS announced that it would apply for initial recognition and that it had asked the Department to be included on the agenda for the spring 2018 NACIQI meeting. ACICS submitted a petition for initial recognition in the fall of 2017 and the Accreditation Group began its review of ACICS' compliance with all recognition criteria, as required for an initial recognition review. Accreditation Group staff reviewed ACICS' narratives and supporting documentation and observed select agency committee meetings in November 2017. Accreditation Group staff also observed two on-site reviews performed by ACICS in January and February of 2018.<sup>20</sup> The Accreditation Group issued a draft analysis of the petition to ACICS in March 2018, with a NACIQI meeting to discuss the petition scheduled for May 2018.

On March 23, 2018, the court hearing ACICS' challenge of Secretary King's December 2016 decision concluded that the Department violated the Administrative Procedure Act in 2016 by failing to consider ACICS' Part II submission. The court determined that the proper remedy for the violation was to remand the case to Secretary DeVos for consideration of that evidence. The court directed Secretary DeVos to consider the Part II submission by ACICS, which was not considered by Department staff or NACIQI, the SDO (King), nor Secretary King when the December 2016 decision was issued. In addition, the court ruled that Secretary DeVos could consider additional evidence

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<sup>20</sup> Under 34 C.F.R 602.12(a)(2), an agency seeking initial recognition must demonstrate that it has conducted accrediting activities for at least two years prior to seeking recognition.



submitted by ACICS when making the decision on ACICS' 2016 petition for recognition renewal.

On April 3, 2018, Secretary DeVos issued an order which stated that the Department would not conduct any further review of the full petition for initial recognition submitted by ACICS in 2017, and that ACICS' status as a federally recognized accrediting agency would be retroactively restored until a final decision on its January 2016 petition for recognition renewal could be reached. As a result, the petition for initial recognition submitted by ACICS and any corresponding analysis performed by the Accreditation Group was rendered moot by Secretary DeVos' Order. Secretary DeVos restored ACICS' status as a federally recognized accrediting agency effective as of December 12, 2016, referencing 34 C.F.R. § 602.37(h) as the regulatory authority in doing so.<sup>21</sup>

### **2018 Remanded Review Process for Recognition Renewal**

We determined that the Department implemented a process for assessing ACICS' compliance with recognition criteria following the court's remand in 2018 that was permitted under applicable policies and regulations. Specifically, Secretary DeVos referred the matter to the SDO (DeVos), foregoing a Department Accreditation Group staff review and NACIQI review, as permitted by 34 C.F.R. § 602.37(f) and the court's remand order.<sup>22</sup> Secretary DeVos provided ACICS an opportunity to explain whether and to what extent the Part II submission documents were relevant to its compliance with the regulatory criteria or its ability to come into compliance within 12 months. Additionally, ACICS was to provide any additional evidence that was relevant to the criteria where it was previously determined to be noncompliant. Secretary DeVos noted that the SDO (DeVos) may respond in writing to ACICS' submission. As part of her analysis, the SDO (DeVos) reviewed evidence previously submitted pertaining to the 21 recognition criteria that the Department had determined ACICS to be non-compliant with in 2016, the Part II submission provided by ACICS in 2016, supplemental information and documentation that ACICS provided in May 2018 following the court

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<sup>21</sup> According to 34 C.F.R. § 602.37(h), if the Secretary does not reach a final decision on appeal to approve, deny, limit, suspend, or terminate an agency's recognition before the expiration of its recognition period, the Secretary automatically extends the recognition period until a final decision is reached.

<sup>22</sup> Under 34 C.F.R. § 602.37(f), if the Secretary concludes the recognition decision should not be made without consideration of relevant information not included in the record, the Secretary either refers the matter to Department staff for review and analysis, the Advisory Committee for review, and the SDO for consideration; or issues a recognition decision based on the agency's response, to include additional evidence relevant to the issue; and the SDO's response to the agency's submission.

ruling, the final staff report and NACIQI meeting transcript regarding ACICS' 2016 petition, the SDO's (King) decision, and Secretary King's decision.

According to the SDO (DeVos), the Office of the General Counsel (OGC) informed her that the Department's Accreditation Group staff would not review ACICS' remanded case. When asked why an Accreditation Group review was not performed, the SDO (DeVos) stated that she believes the Department realized that it had to review the materials as quickly as possible and come to a final decision so that situations faced by institutions and students could be stabilized, and that institutions and students could make informed decisions.

The SDO (DeVos) stated that she used the 2012 OPE Guidelines as her primary policy handbook when conducting her review of the evidence submitted by ACICS, and the regulations at 34 C.F.R. Part 602 as a secondary source. She explained that she wrote her own analysis of the evidence with editing assistance from two Department attorneys from OGC. Based on her analysis, the SDO (DeVos) found ACICS to be in compliance with 19 of the 21 recognition criteria reviewed and determined that ACICS could come into compliance with the other two criteria within 12 months.<sup>23</sup>

On September 28, 2018, the SDO (DeVos) recommended that Secretary DeVos grant ACICS continued recognition with the condition that it submits a compliance report within 12 months demonstrating compliance with the two areas in which ACICS had not demonstrated full compliance.<sup>24</sup> Secretary DeVos agreed with and adopted the SDO's (DeVos) recommendations and granted ACICS continued recognition on November 21, 2018.

Section 496 of the HEA authorizes the Secretary to establish criteria for determining whether agencies are reliable authorities regarding the quality of education or training offered by the schools or programs they accredit. The regulations at 34 C.F.R. Part 602 implement the provisions of section 496 of the HEA. Subpart B of 34 C.F.R. Part 602 includes the criteria that an accrediting agency must establish compliance with to be recognized by the Department as an accrediting agency. In addition to Subpart B, OPE's

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<sup>23</sup> Secretary DeVos' April 3, 2018, order provided that if full recognition was not warranted, she would consider allowing ACICS to be granted continued recognition for a period not to exceed 12 months to demonstrate compliance with any criteria for which it was determined to be noncompliant, as allowed by 34 C.F.R. §§ 602.36(e)(3) and 602.37(d).

<sup>24</sup> Due to an editorial error, the SDO (DeVos) provided a corrected analysis to Secretary DeVos on October 15, 2018. This did not affect the SDO's (DeVos) recommendation to Secretary DeVos. The editorial error is discussed in further detail in "Appendix D. Criteria Review and Related Details."

Guidelines were developed to assist in the review of petitions and compliance reports.<sup>25</sup> The guidance is described as providing a framework that can help to ensure a more transparent process by providing greater insight into what Department staff generally look for in a review of an agency petition but it by no means represents the only accepted practice for complying with the specific regulatory requirement.

According to a June 2013 letter issued by the Department, the Department will perform a focused review for accrediting agencies that are submitting a petition for renewal of recognition in 2015 and thereafter. The review will include a select subset of the criteria that the Department believes are the most relevant to ensuring quality education. Petitions for initial recognition will still be required to provide full and documented responses to the more than 90 criteria.

The procedures for Department reviews of agency petitions for recognition are prescribed in 34 C.F.R. Part 602, Subpart C. This multistep process includes review of an agency's petition by Department staff, submission of the Department staff review analysis, findings, and recommendations to an independent panel (NACIQI) for discussion, review of the compiled record and a decision by the SDO, and further review of the compiled record by the Secretary, if the agency appeals the SDO's decision.

See "Appendix C. Regulations Applicable to the Federal Recognition of Accrediting Agencies" for a list of additional Federal regulations from 34 C.F.R. Part 602, Subpart C, that are relevant to this inspection.

The Government Accountability Office's (GAO) "Standards for Internal Control in the Federal Government," Principle 5.07 states that excessive pressure can result in personnel "cutting corners" to meet the established goals. Paragraph 5.08 states that management is responsible for evaluating pressure on personnel to help personnel fulfill their assigned responsibilities in accordance with the entity's standards of conduct. Management can adjust excessive pressures using many different tools, such as rebalancing workloads or increasing resource levels.

We determined that the Department had formal processes in place for assessing ACICS' compliance with recognition criteria and that procedural requirements for the accreditation recognition process are clearly defined. However, we found that Department staff conducting the review of ACICS' petition for recognition renewal stated that they felt pressured and perceived a lack of concern for specific regulatory

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<sup>25</sup> The Department updated the guidelines in June 2019. The SDO (DeVos) noted that the Department is in the process of making further updates to the guidelines to reflect the changes to regulations that went into effect on July 1, 2020.

timeframe requirements from OUS officials under Secretary King during the Department's review of ACICS in 2016, which resulted in Department staff not considering all available relevant information and denying extension requests. We determined that the OUS officials under Secretary King decided to move ahead with the recognition process even after being informed by the Accreditation Group Director that doing so would not leave enough time to review the volume of additional information requested from and submitted by ACICS and still meet regulatory deadlines.

According to the Accreditation Group Director, his group tried to follow the regular recognition process as closely as possible when reviewing ACICS' petition for recognition renewal but stated that what occurred during that review was not the norm. Accreditation Group staff stated that OUS' level of involvement was unprecedented during that review and has not happened in that way since. Accreditation Group staff also believed that the lack of understanding of the recognition criteria by the OUS officials under Secretary King and their disregard for the timeframes required by regulations, even after being explained by Accreditation Group staff, unnecessarily slowed and negatively affected the recognition process for ACICS.

The Accreditation Group Director stated that this level of involvement from OUS led the Accreditation Group to feel that the OUS officials under Secretary King did not trust them to do their job. Accreditation Group staff stated that the supplemental questions from OUS appeared to be piling on ACICS, were unnecessary, and were not always relevant to the review. The Accreditation Group Director explained that Accreditation Group staff would have come to the same conclusions without the OUS interference or questions, and therefore, the questions were not helpful.

When asked about what happened with the Part II submission under ACICS' petition for recognition renewal, the Accreditation Group Director explained that he provided the Part II submission to OGC, and that OUS was informed when the information was received. When asked if the Department had a responsibility to provide the Part II documentation to NACIQI for its review prior to the June 2016 meeting, the Accreditation Group Director answered that it did not because the Part II submission was not reviewed by the Accreditation Group and therefore was not part of the official record of documentation reviewed by Department staff as part of the recognition process.

Failure to consider all available and relevant evidence when making a recognition decision may hinder the Department's ability to make an informed, correct decision regarding an agency's petition for accreditation recognition. The Department may make an incorrect conclusion regarding an agency's compliance with one or more recognition criteria if it does not consider all relevant evidence that is available at the time. Further, by not following procedures established in applicable regulations, the Department runs

the risk of legal action by the agency, as was the case with ACICS, and affected students. Failure to consider all available and relevant evidence when making a recognition decision could also call into question the integrity of the accreditation process and damage the Department's reputation. Specifically, the Department's recognition practices and objectivity during the process, and overall competence, could be called into question. In addition, the Department may lose credibility if accrediting agencies are incorrectly denied or granted recognition, or if its recognition practices cause significant, unjustified costs to students and taxpayers. Students' abilities to obtain quality education and/or employment opportunities may be negatively impacted, and millions of taxpayers' dollars may be put at risk in the event of unnecessary school closures resulting in students seeking loan discharge.

## **Recommendation**

We recommend that the Secretary of Education—

- 1.1 Direct that the Assistant Secretary for OPE and any other officials participating in the accrediting agency recognition process ensure that all available relevant evidence is considered and reviewed in compliance with regulatory requirements and timeframes.

## **Department Comments**

The Department noted that it agrees with the finding and accepts the recommendation, and will or is taking corrective actions to address the Office of Inspector General's (OIG) concerns. The Department stated that in the future, it will ensure that all available relevant evidence is considered and reviewed in compliance with regulatory requirements and timelines, and added that the recently updated regulations provide very clear instructions to both the Department and agencies about the timeline of the review process. It noted that the revised regulations extend the timeline by 1 full year, that should, in many cases, provide staff with sufficient time to complete the review of all materials, and if staff do not have sufficient time to complete a thorough review of all materials, the Department will provide a good cause extension to the agency so that the Department can complete that review and issue a recognition decision only after considering all of the evidence provided by the agency.

## **OIG Response**

OIG acknowledges the Department's plans to implement the appropriate actions to address the recommendation. The corrective actions that the Department described, if properly implemented, are responsive to Recommendation 1.1.

## **Finding 2. The Senior Department Official's Conclusions Regarding ACICS' Compliance Were Supported by Evidence Cited, However, Review Guidelines Allowed for Reviewer Subjectivity**

We determined that the SDO's (DeVos) conclusions regarding ACICS' compliance with each of the six recognition criteria we reviewed were supported by the evidence cited. We did not identify any evidence cited that contradicted the SDO's (DeVos) conclusions.<sup>26</sup> Further, we determined that based on the evidence reviewed, an error made in the SDO's (DeVos) initial analysis and recommendation to Secretary DeVos, resulting in the issuance of an amended SDO analysis and recommendation, appears to have been an honest mistake made during the editing process and was subsequently corrected when it came to the attention of the Department. (See "Appendix D. Criteria Review and Related Details," for further discussion of the specific criteria reviewed.)

In addition to the evidence previously submitted by ACICS in 2016 and the Department's and NACIQI's evaluation of that evidence, the SDO (DeVos) considered evidence as instructed in the applicable Court Order and Secretary DeVos' Order, consisting of the 2016 Part II Submission as well as additional documents the Department permitted ACICS to submit to cover the time between the Part II Submission and the SDO's (DeVos) review, referred to as the 2018 Supplement. The additional documentation was to relate to the regulatory criteria that the SDO (King) identified as noncompliant as part of the 2016 Decision, and ACICS was to provide an explanation of its relevance to particular criteria. The SDO (DeVos) stated that she used the 2012 OPE Guidelines as her primary policy handbook when conducting her review of the evidence submitted by ACICS, and the regulations at 34 C.F.R. Part 602 as a secondary source.

While we determined that the evidence cited by the SDO (DeVos) did support the resulting conclusions, we found that OPE's Guidelines allowed for areas of reviewer subjectivity. We determined that the 2012 OPE Guidelines provided examples of ways

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<sup>26</sup> Our conclusion cannot be projected to recognition criteria we did not review or to evidence the SDO (DeVos) did not cite in her review. Additionally, a Federal Register notice dated November 5, 2020, disclosed that Department staff (Accreditation Group staff) identified noncompliance by ACICS with several recognition criteria in separate reviews performed after the Secretary granted ACICS continued recognition. The timeframe covered by the Accreditation Group reviews was after the timeframe covered by the SDO's (DeVos) remanded review of ACICS in 2018. Therefore, the information included in these Accreditation Group reviews was not included in the scope of our inspection.

that agencies could demonstrate compliance with recognition criteria and examples of types of documentation that agencies typically submit to support compliance. However, the 2012 OPE Guidelines did not always establish parameters that would further assist with decision-making during the reviews, to include what constitutes a sufficient level of evidence to demonstrate compliance or non-compliance. For example, the OPE Guidelines were not explicit in describing the breadth and depth of acceptance of an agency's standards, policies, procedures, and accreditation decisions that would be sufficient to demonstrate wide acceptance; whether letters of support must explicitly state support for the agency to demonstrate acceptance of the agency; and how recent a letter of support would have to be dated to be considered current acceptance of an agency.<sup>27</sup> The OPE Guidelines were also not explicit in describing how many examples are sufficient to demonstrate implementation and enforcement of agency standards, or whether taking monitoring action only as a result of information obtained from other entities would be considered sufficient agency monitoring. Further, the OPE Guidelines did not reflect regulatory requirements with regard to whether information collected by the Department outside of the recognition process or other publicly available information not submitted by the agency should be included as part of the review and how that information should be evaluated.

The 2012 OPE Guidelines note that the staff approach to the review of any criterion is not a checkbox of the elements and that the review elements and typical documentation listed generally represent what the Department has found to be commonly accepted accreditation practice, but they by no means represent the only accepted examples and documentation for complying with the specific regulatory requirement.

Although the Federal regulations establish the requirements that agencies must comply with, they generally do not contain instructions or guidance regarding the amount of evidence that is needed to demonstrate compliance. OPE's Guidelines did not contain detailed procedures to guide the review of agency recognition petitions, which can and has led to inconsistencies across agency reviews regarding the amount of documentation that is deemed sufficient to demonstrate compliance with Federal recognition requirements.<sup>28</sup>

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<sup>27</sup> The "widely accepted" requirement was removed from the Department's regulations as of July 1, 2020.

<sup>28</sup> See footnote 2.

OPE's Guidelines were revised in June 2019 and published in a document titled the Accreditation Handbook. We determined that while the revised guidelines did include some additional detail regarding the types and amount of evidence sufficient to establish compliance with certain recognition criteria, the revised guidelines still allow for areas of reviewer subjectivity as noted above.

GAO's "Standards for Internal Control in the Federal Government," state that management should design control activities, such as appropriate documentation of internal control, to achieve objectives and respond to risks. The standards state that management should implement those control activities through policies and that internal control procedures may be documented in writing in management directives, administrative policies, or operating manuals.

OPE has not historically considered subjectivity within the Department guidelines covering the recognition process to be a significant risk as to whether a sufficient level (types and amount) of evidence has demonstrated accrediting agency compliance during recognition reviews. The SDO (DeVos) explained that there can be differences of opinion on the relevance of evidence between Department staff and the SDO, and because certain recognition criteria do not have exact requirements, there can be a subjective determination made on evidence submitted and used to support compliance or non-compliance. The SDO (DeVos) added there are many instances over the last several years when she has disagreed with either the Department staff analysis or the NACIQI recommendation, or both, and has come to a different decision based on her review of the evidence. The SDO (DeVos) stated that even during a typical review, the staff recommendation is just that—a recommendation—and it is the SDO that has the authority to make the final decision (except in the case of an appeal, in which case the Secretary makes the final recognition decision).

When asked if the regulations were subjective in terms of what evidence can be used to show accrediting agency compliance, the Accreditation Group Director stated that, "some criteria are cut-and-dried and some are subjective." The Accreditation Group Director stated that some areas, such as the wide acceptance criterion, are open to interpretation making them troublesome to handle, which is why his group made suggestions during the rulemaking process to attempt to clarify and specify certain supporting numbers and relevance of evidence for that criterion. The Accreditation Group Director added that the usual accrediting agency recognition process that the Department has in place—OPE staff review, NACIQI meeting, and then the SDO review and potentially a Secretary review—alleviates some concern about subjectivity regarding compliance with criteria because of the multiple levels of review.



The SDO (DeVos) noted that because OPE's Guidelines are sub-regulatory guidance, their purpose is to communicate to agencies the kinds of evidence that would result in an agency's finding of compliance, although agencies are not limited to providing only the evidence included in the guidelines and the guidelines provide no parameters or specific instructions for exactly how the evidence should be presented (e.g., how letters should be worded). The SDO (DeVos) noted she is hopeful that under the new Federal recognition regulations and the Department's recognition review guidelines issued in June 2019, the review of all agencies will become more consistent. The SDO (DeVos) added that the implementation of the new regulations provides new opportunities to improve these procedures and train staff on their use.

The SDO (DeVos) stated that the point of having multiple layers of review is not simply to rubber-stamp the findings of the previous reviewer, but instead to ensure that each agency gets a comprehensive review, and that where disagreements exist, all viewpoints are considered by the SDO when he or she issues a final decision. The SDO (DeVos) noted that evidence can be viewed differently by reasonable people given the subjective nature of this review, so the point of multi-layered review is to get all the viewpoints on the table so that the SDO can consider all of them and make a reasoned decision based on the sum total of the review—and all reviewer comments.

The lack of specificity in Department recognition review guidelines allows for differences in opinion when evaluating an accrediting agency's compliance with recognition criteria and can result in reviewers inconsistently weighing evidence from an agency's petition. Without the safeguard in place of having more than one reviewer and more than one level of review of all evidence included in an agency petition, as was the case with the Department's remanded recognition review of ACICS in 2018, the recognition review process lends itself to only one reviewer's interpretation of the evidence. As a result, what the Department considers to be a sufficient level of evidence to substantiate a recommendation and decision of recognition or derecognition may be inconsistent amongst accrediting agency reviews.

After the exit conference with Department officials conducted for this review, the Principal Deputy Under Secretary that served under Secretary DeVos provided us with a draft of an updated Accreditation Handbook. She stated that the Department hoped to post the updated handbook in the near future to match the updated regulations as of July 1, 2020. Additionally, she explained that the Department tried to be more specific about the standards of evidence with the update, but that there are a few places where conversations are ongoing regarding further specifics, and where the Accreditation Group has been asked to develop scoring rubrics to get into the specifics about not just what evidence should be reviewed, but how it should be reviewed and what differentiates a good example from a bad one.

## Recommendations

We recommend that the Secretary of Education—

- 2.1 Require the Assistant Secretary for OPE to review the Accreditation Handbook and determine where additional detail, to include the areas noted above, could be added regarding what constitutes a sufficient level of evidence to demonstrate compliance or non-compliance, to ensure consistency in Department recognition reviews.
- 2.2 Whenever possible, include more than one layer of subject matter expert review in recognition reviews in situations where it is not required, to provide an additional safeguard related to subjectivity risks.

## Department Comments

The Department noted that it agrees with the finding and accepts the recommendations, and will or is taking corrective actions to address the OIG's concerns. Regarding Recommendation 2.1, the Department stated that an updated Accreditation Handbook was posted to the Department's website on December 22, 2020, that provides greater specificity about the types of evidence the Department expects to receive as part of its review and the number of pieces of such evidence that are required. It noted that staff are continuing to review the Accreditation Handbook and intend to complete their review by August 1, 2021, identifying criteria that could be perceived to rely on subjective judgment in deciding about what constitutes acceptable or unacceptable evidence. Staff will develop a scoring rubric for each such criteria where it is deemed necessary to ensure that there is consistency in the review of evidence across the Accreditation Group. Staff will also seek to identify circumstances where specific words must be included in a particular letter or policy and how evidence that is missing those words will be evaluated. The Department also noted that it plans to perform inter-reviewer reliability assessments in which it will provide a sample of evidence to each analyst to understand how each performs the required review, and to ensure that there is consistency among analysts about the validity, or lack thereof, of certain evidence.

Regarding Recommendation 2.2, the Department stated that it agrees that adding additional layers of subject matter expertise would be helpful; however, given the need to be fiscally responsible, it did not believe it had the capacity to add an additional level of review for each petition for recognition. It noted that it currently has two attorneys in the Office of the General Counsel that provide advice and support to the Accreditation Group and that those attorneys will continue to work with the staff to identify standards of evidence appropriate to apply during recognition review and will assist the staff in developing standards where scoring rubrics are appropriate.

## **OIG Response**

The corrective actions that the Department described, if properly implemented, are responsive to Recommendation 2.1.

We would like to clarify that Recommendation 2.2 is specific to unique circumstances, such as the 2018 review, where there was only one layer of review. We are not recommending that the Department require any additional layers of subject matter expertise in its normal recognition review process. We recognize that Department management can choose to mitigate subjectivity risk through other methods as they deem appropriate.

## Other Matters

### Review of Ethics Requirements and Conflict of Interest Rules

We determined that the Department complied with ethics requirements and conflict of interest rules related to the role of the SDO (DeVos) in the Department's recognition of ACICS as an accrediting agency in 2018. Because of Congressional concerns regarding a potential conflict of interest in this area, we met with the Designated Agency Ethics Official (DAEO) and reviewed the SDO's (DeVos) ethics file to determine whether the Department met related requirements.

We found that the SDO (DeVos) provided a signed Ethics Pledge upon her arrival at the Department and provided public financial disclosure information for the 2 years preceding her employment, which was reviewed by Ethics Division staff within OGC, as required. Additionally, we found that the Ethics Division responded to Congressional concerns regarding a potential conflict of interest in this area. In a July 9, 2018, letter, the DAEO explained that upon the SDO's (DeVos) arrival at the Department, the SDO (DeVos) participated in an ethics briefing that is required of all new employees to the Department, and that the DAEO spoke with the SDO (DeVos) regarding her specific recusal obligations under both the Federal criminal conflict of interest statute at 18 United States Code § 208, as well as the Standards of Conduct for Employees of the Executive Branch at 5 C.F.R. § 2635.502, and the President's Ethics Pledge under Executive Order 13770. We found evidence of these actions maintained in the SDO's (DeVos) ethics file. In addition to the briefing, we found evidence of communications between the DAEO and the SDO (DeVos) regarding specific recusal obligations and past relationships with former employers, the dates of activity for those previous employers, and the signed Ethics Pledge. As such, the Ethics Division did not have any concerns regarding a potential conflict involving the SDO's (DeVos) role with the Department's recognition decision for ACICS because the SDO (DeVos) was determined to be clear of any requirements that would preclude her from working on such a matter. The DAEO stated that based on this information, and per her signed Ethics Pledge, the SDO (DeVos) was not required to recuse herself.

The DAEO stated that an employee can still recuse him or herself from certain matters involving a specific outside party, even if the regulations allow for the employee to work on that matter, if the employee feels they could not be objective or unbiased in that role. In addition, the DAEO explained that it is the employee's responsibility to ensure that the Ethics Division is notified and consulted if a potential conflict arises. During our review of the SDO's (DeVos) ethics file we noted that she consulted the Ethics Division on a few occasions but that none were related to ACICS.

## Events Subsequent to Draft Report Issuance

On January 22, 2021, subsequent to the issuance of our draft report, the Accreditation Group publicly released the first of four reports recommending that the Department terminate ACICS' recognition as an accrediting agency. This recommendation was based on the Accreditation Group's review of a compliance report and a monitoring report that ACICS was required to submit as a result of the 2018 review by the SDO (DeVos), as well as ACICS' responses to a June 19, 2019, inquiry and a February 24, 2020, inquiry that the Accreditation Group initiated based on concerning information in media coverage. Table 1 lists the recognition criteria covered in these reports for which the Accreditation Group determined that ACICS failed to demonstrate compliance.

**Table 1. Recognition Criteria For Which ACICS Was Deemed Noncompliant in Subsequent Accreditation Group Reports**

Recognition Criteria at 34 CFR 602	Summary of Criteria
602.15(a)(1)	Administrative and Financial Resources
602.15(a)(2)	Competency of Representatives
602.16(c)	Standards for Distance Education ( <i>not 1 of the 21 recognition criteria reviewed by the SDO (DeVos)</i> )
602.17(c)	Onsite Reviews
602.17(e)	Analysis of Compliance with Agency Standards ( <i>not 1 of the 21 recognition criteria reviewed by the SDO (DeVos)</i> )
602.18(c)	Base Decisions on Agency's Published Standards ( <i>not 1 of the 21 recognition criteria reviewed by the SDO (DeVos)</i> )
602.19(b)	Monitoring and Reevaluation of Accredited Institutions and Programs

In the 2018 review, the SDO (DeVos) found ACICS to be noncompliant with 2 of the 21 recognition criteria reviewed—sections 602.15(a)(2) and 602.15(a)(6). As previously stated in our report, the SDO (DeVos) recommended that Secretary DeVos grant ACICS continued recognition with the condition that it submits a compliance report within 12 months, demonstrating compliance with the two areas in which ACICS had not demonstrated full compliance in order to continue its recognition. Secretary DeVos accepted the recommendation of the SDO (DeVos). ACICS subsequently submitted the

required compliance report on December 19, 2019. Upon completion of its review of ACICS' compliance report, the Accreditation Group determined that ACICS was still failing to demonstrate compliance with one of the two criteria—section 602.15(a)(2)—and therefore recommended that the Department terminate ACICS' recognition as an accrediting agency. Our inspection did not include section 602.15(a)(2) as part of our review of the evidence the SDO (DeVos) considered in the 2018 review of selected recognition criteria and whether the conclusions were supported by evidence because the SDO's (DeVos) 2018 review had determined ACICS to be noncompliant with this criterion. As a result of this determination, this criterion was slated to be subject to further review by the Department in conjunction with additional information, covering a timeframe outside of that covered by our review, that was to be submitted by ACICS via the compliance report.

The SDO's (DeVos) 2018 review also identified four criteria for which ACICS was deemed compliant but for which additional monitoring was recommended via annual reporting (sections 602.15(a)(1), 602.16(a)(1)(i), 602.16(a)(1)(vii), and 602.19(b)). Secretary DeVos accepted the SDO's (DeVos) recommendation. ACICS submitted the monitoring report on December 20, 2019. After reviewing the report, the Accreditation Group determined that ACICS failed to demonstrate compliance with sections 602.15(a)(1) and 602.19(b), and therefore recommended that the Department terminate ACICS' recognition as an accrediting agency. We did not select section 602.15(a)(1) for review due to an Accreditation Group review that had been initiated on this criterion shortly after the start of our inspection. Although we did select section 602.19(b) for review, the monitoring report covered a timeframe that was after the timeframe covered by the SDO's (DeVos) review of ACICS in 2018. Therefore, the information in the monitoring report was not included in the scope of our inspection.

On June 19, 2019, the Accreditation Group initiated an inquiry based on information concerning ACICS' financial situation and its review of two institutions, Virginia International University and San Diego University for Integrative Studies, that came to its attention in media coverage and appeared credible and raised concerns relevant to certain recognition criteria. The Accreditation Group determined that ACICS' response to the inquiry failed to demonstrate compliance with sections 602.15(a)(1), 602.16(c), 602.17(c), and 602.17(e), and therefore recommended that the Department terminate ACICS' recognition as an accrediting agency. The inquiry covered a timeframe that was after the timeframe covered by the SDO's (DeVos) review of ACICS in 2018, as well as criteria that were not part of the SDO's (DeVos) review, and was therefore not included in the scope of our inspection.

The Accreditation Group initiated another inquiry on February 24, 2020, concerning ACICS' accreditation of Reagan National University based on information that came to its attention in media coverage and that appeared credible and raised concerns relevant to certain recognition criteria. The Accreditation Group determined that ACICS' response to the inquiry failed to demonstrate compliance with sections 602.15(a)(1), 602.15(a)(2), 602.17(c), 602.18(c), and 602.19(b), and therefore recommended that the Department terminate ACICS' recognition as an accrediting agency. The inquiry covered a timeframe that was after the timeframe covered by the SDO's (DeVos) review of ACICS in 2018, as well as criteria that were not part of the SDO's (DeVos) review, and was therefore not included in the scope of our inspection.

The Accreditation Group's subsequent review of these criteria and resulting recommendation does not impact the conclusions presented in our report.

## Appendix A. Scope and Methodology

To answer our first objective, we gained an understanding of the Department's processes for assessing ACICS' compliance with Federal regulatory criteria for recognition as an accrediting agency from 2016 through 2018. Specifically, we reviewed Department actions and communications during that time period to determine whether it complied with Federal recognition procedures. We reviewed applicable Federal regulations and Department guidance, including the 2012 OPE Guidelines as well as the 2019 Accreditation Handbook, and conducted interviews with OPE staff and other officials involved with the Department's accrediting agency recognition review process. Further, we obtained copies of email correspondence between OPE and OUS officials under Secretary King, as well as ACICS' evidence submissions and related Department analyses, Secretary and court orders, and other documentation related to the Department's recognition evaluation processes for ACICS from 2016 through 2018.

To answer our second objective, we judgmentally selected 6 of the 21 recognition criteria reviewed by the SDO (DeVos) during the Department's 2018 recognition review of ACICS to determine whether the SDO's (DeVos) conclusions regarding ACICS' compliance were supported by evidence. For each criterion, we reviewed the SDO's (DeVos) conclusion and recommendation to Secretary DeVos, the evidence the SDO (DeVos) considered and cited as support, what the regulations require, and any other explanations regarding the SDO's (DeVos) published rationale. After our initial review of the SDO's (DeVos) cited evidence and conclusions, we followed up with the SDO (DeVos) to ask specific questions. These questions were informed by our own review of the SDO's (DeVos) analysis and cited evidence as well as our review of the OPE Accreditation Group's 2018 draft analysis of ACICS' petition for initial recognition. We also communicated with Accreditation Group staff to ask for feedback on the evidence cited in the SDO's (DeVos) conclusions.

Because of Congressional concerns regarding a potential conflict of interest, we evaluated Department actions to determine whether it complied with ethics requirements and conflict of interest rules related to the role of the SDO (DeVos) in the Department's recognition of ACICS as an accrediting agency in 2018. Specifically, we reviewed applicable regulations and met with the DAEO to gain an understanding of the Department's ethics requirements and conflict of interest rules and reviewed the SDO's (DeVos) ethics file to determine whether the Department complied with related requirements.



## **Sampling Methodology**

We judgmentally selected for review 6 of 21 recognition criteria reviewed by the SDO (DeVos) during the Department's 2018 recognition review of ACICS based on Congressional interest, public interest, and input from the Department's Accreditation Group. Since we selected the criteria judgmentally, conclusions cannot be projected to recognition criteria we did not review.

## **Use of Computer-Processed Data**

We did not use computer-processed data to answer our objectives. We conducted fieldwork at Department offices in Washington, D.C., and through Microsoft Teams teleconference meetings, from May 2019 through December 2020. We provided our inspection results to OPE and OUS staff and officials during an exit conference conducted on December 17, 2020.

We conducted this inspection in accordance with the Council of the Inspectors General on Integrity and Efficiency's "Quality Standards for Inspection and Evaluation" as appropriate to the scope of the inspection described above. Those standards require that we plan the work to obtain sufficient and appropriate data and other information to provide a reasonable basis for our conclusions. We believe that the information obtained provides a reasonable basis for the conclusions contained in the report.

## Appendix B. Process for Federal Recognition of Accrediting Agencies

The steps of the Department's accrediting agency recognition process are prescribed in 34 C.F.R. section 602, Subpart C.<sup>29</sup> (See Figure 1 below for diagram of key steps.) The following summarizes the process.

### **Accrediting Agency Applies.**

An accrediting agency seeking initial or continued recognition applies for recognition through the Department's electronic submission system. After receipt of an agency's application, Department staff publishes a notice of the agency's application in the Federal Register inviting the public to comment on the agency's compliance with the criteria for recognition and establishing a deadline for receipt of public comment.

### **Department Staff Review, Evaluation and Recommendation.**

Department staff analyzes the agency's application to determine whether the agency satisfies the criteria for recognition, taking into account all available relevant information concerning the compliance of the agency with those criteria and in the agency's effectiveness in applying the criteria. The analysis of an application for recognition includes observations from site visit(s), review of public comments and other third-party information the Department staff receives, the agency's responses to the third-party comments; and review of complaints or legal actions involving the agency.

When Department staff completes its evaluation of the agency, the staff prepares a written draft analysis of the agency and sends the draft analysis, including any identified areas of non-compliance and a proposed recognition recommendation, to the agency. The agency is provided at least 30 days to submit a written response to the draft analysis, at which time Department staff reviews the response and prepares the written final analysis.

The final analysis includes a recognition recommendation to the SDO including, but not limited to, a recommendation to approve, deny, limit, suspend, or terminate recognition; to require the submission of a compliance report and continue recognition pending a final decision on compliance; to approve or deny a request for expansion of scope; or to revise or affirm the scope of the agency.

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<sup>29</sup> All regulatory citations are from the 34 C.F.R. volume dated July 1, 2016.

Department staff provides the final staff analysis to the agency no later than 7 days before the Advisory Committee meeting. Department staff also provides the Advisory Committee with the agency's application for recognition and supporting documentation, the final Department staff analysis, the agency's response to the draft analysis at the request of the agency, any written third-party comments the Department received about the agency on or before the established deadline, any agency response to the third-party comments, and any other information Department staff relied upon in developing its analysis.

### **Advisory Committee Recommendation.**

The Advisory Committee considers the materials provided in a public meeting and a written motion regarding the agency's recognition is made. The Advisory Committee forwards its recommendation to the SDO, which may include, but is not limited to, a recommendation to approve, deny, limit, suspend, or terminate recognition; to grant or deny a request for expansion of scope; to revise or affirm the scope of the agency; or to require the agency to submit a compliance report and to continue recognition pending a final decision on compliance.

### **SDO Decision.**

The SDO makes a decision regarding the recognition of the agency based on the record compiled which includes, but is not limited to, the final Department staff analysis of the agency and the recommendation of the Advisory Committee. Following consideration of the agency's recognition, the SDO issues a recognition decision and notifies the agency in writing of his or her decision. The SDO's decision may include, but is not limited to, approving, denying, limiting, suspending, or terminating recognition; granting or denying an application for an expansion of scope; revising or affirming the scope of the agency; or continuing recognition pending submission and review of a compliance report and review of the report by the SDO.

- If the SDO approves recognition, the recognition period does not exceed 5 years.
- If a recognized agency fails to demonstrate compliance with or effective application of a criterion or criteria, but the SDO concludes that the agency will demonstrate or achieve compliance within 12 months or less, the SDO may continue the agency's recognition, pending submission of a compliance report by the agency due no later than 30 days after the period specified by the SDO, not to be longer than the 12 months, during which the agency must achieve compliance and effectively apply the criteria.

The SDO's decision is the final decision of the Secretary unless appealed by the agency.

The agency may appeal the SDO's decision to the Secretary at which time the decision of

the SDO is stayed until the final disposition of the appeal. On appeal, the Secretary makes a final decision after considering the SDO's decision, the agency's written submissions on appeal, the SDO's response to the appeal, if any, and the entire record before the SDO. The agency may contest the Secretary's decision in the Federal courts. Unless directed by the court, a decision of the Secretary to deny, limit, suspend, or terminate the agency's recognition is not stayed during an appeal in the Federal courts.

**Figure 1. Key Steps in the Accreditor Federal Recognition Process**

<b>ACCREDITOR FEDERAL RECOGNITION PROCESS</b>
<p><b>Department Requests Federal Recognition Applications</b></p> <ul style="list-style-type: none"> <li>• Each accreditor must be reviewed at least every five years once recognized.</li> <li>• An agency seeking initial recognition must submit its application at least six months in advance of the NACIQI meeting being considered.</li> <li>• An agency seeking renewal should plan to submit its application for renewal of recognition approximately two years in advance of the summer or winter meeting of the NACIQI that precedes the expiration date of its recognition period.<sup>30</sup></li> </ul>
<p><b>Accreditors Submit Applications</b></p> <ul style="list-style-type: none"> <li>• Accreditors must demonstrate compliance with the Secretary of Education’s Criteria for Recognition.</li> </ul>
<p><b>Department Announces NACIQI Meeting &amp; Invites Comment</b></p> <ul style="list-style-type: none"> <li>• NACIQI meetings and a notice inviting public comment are announced several months before the meeting.</li> </ul>
<p><b>Department Reviews Applications &amp; Develops Draft Staff Reports</b></p> <ul style="list-style-type: none"> <li>• For each accreditor, Department staff review the accreditor’s application, public comments, and other information.</li> <li>• Department staff assess the accreditor’s compliance and produce a preliminary (draft) report.</li> </ul>
<p><b>Department Sends Draft Staff Reports to Accreditors for Response</b></p> <ul style="list-style-type: none"> <li>• Accreditors have 30 days to respond to the draft report.</li> <li>• Accreditors may share additional documentation to demonstrate compliance.</li> </ul>
<p><b>Department Sends Final Staff Recommendations to NACIQI, Accreditors, &amp; Public</b></p> <ul style="list-style-type: none"> <li>• Department reviews accreditors’ responses and compiles final reports and recommendations.</li> </ul>
<p><b>NACIQI Holds Meeting &amp; Makes Own Recommendation</b></p> <ul style="list-style-type: none"> <li>• Department, accreditors, and public commenters provide input to NACIQI members.</li> <li>• NACIQI makes separate recommendations for each accreditor up for review to the Department SDO.</li> </ul>
<p><b>Department Senior Department Official Makes Recognition Decision</b></p> <ul style="list-style-type: none"> <li>• Both staff and NACIQI recommendations, as well as NACIQI proceedings, are considered.</li> </ul>
<p><b>Accreditor May Appeal Decision to Secretary of Education</b></p> <ul style="list-style-type: none"> <li>• Appeal stays the decision of the SDO until final disposition of the appeal.</li> <li>• Secretary has no deadline by which to decide the appeal.</li> </ul>
<p><b>Accreditor May Contest Secretary of Education Decision in Federal Court</b></p> <ul style="list-style-type: none"> <li>• Decision of the Secretary of Education to deny, limit, suspend, or terminate an agency’s recognition is not stayed during an appeal in the Federal courts unless otherwise directed by the court.</li> </ul>

<sup>30</sup> Prior to the regulations that went into effect on July 1, 2020, agencies should have planned to submit their applications for renewal of recognition approximately 6 months in advance of the NACIQI meeting that precedes their expiration date.

## Appendix C. Regulations Applicable to the Federal Recognition of Accrediting Agencies

The following table lists regulations for the Secretary’s recognition of accrediting agencies contained in 34 C.F.R. Part 602, Subpart C, that are applicable to this inspection.<sup>31</sup>

Subject	Summary of Accreditation Process Relevant Provision	Source
Applying for recognition	An accrediting agency seeking initial or continued recognition must submit a written application to the Secretary. Each accrediting agency must submit an application for continued recognition at least once every five years, or within a shorter time period specified in the final recognition decision. The application must consist of evidence, including documentation, that the agency complies with the criteria for recognition and effectively applies those criteria.	34 C.F.R. § 602.31(a)
Review of available information	Department staff analyzes an agency’s application for initial or continued recognition to determine whether the agency satisfies the criteria for recognition, taking into account all available relevant information concerning the compliance of the agency with those criteria and in the agency’s effectiveness in applying the criteria including observations from site visit(s), review of public comments and other third-party information, and review of complaints or legal actions involving the agency.	34 C.F.R. § 602.32(b)
Department staff’s draft analysis	A written draft analysis of the agency is prepared and sent to the agency when Department staff completes its evaluation of the agency. It includes any identified areas of non-compliance and a proposed recognition recommendation, and all supporting documentation. The agency is then given at least 30 days to provide a written response to the draft analysis, proposed recognition recommendation and third-party comments.	34 C.F.R. § 602.32(f)

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<sup>31</sup> All regulatory citations are from the 34 C.F.R. volume dated July 1, 2016.

Subject	Summary of Accreditation Process Relevant Provision	Source
Department staff's final analysis and recommendation	Department staff reviews the agency's response to the draft analysis, if any, and prepares the written final analysis. The final analysis includes a recognition recommendation to the senior Department official, as the Department staff deems appropriate, including, but not limited to, a recommendation to approve, deny, limit, suspend, or terminate recognition, or require the submission of a compliance report and continue recognition pending a final decision on compliance. The final staff analysis is provided to the agency no later than seven days before the Advisory Committee meeting.	34 C.F.R. § 602.32(f)
Potential for NACIQI review deferral if Department staff fails to provide materials within the timeframes provided	An agency may request that the Advisory Committee defer acting on an application at that Advisory Committee meeting if Department staff fails to provide the agency with the materials described, and within the timeframes provided, in paragraphs (f) of §602.32. If the Department staff's failure to send the materials in accordance with the timeframe described in paragraph (f) is due to the failure of the agency to submit reports to the Department, other information the Secretary requested, or its response to the draft analysis, by the deadline established by the Secretary, the agency forfeits its right to request a deferral of its application.	34 C.F.R. § 602.32(g)
Review of agencies outside of the regular recognition period	Department staff may review the compliance of a recognized agency with recognition criteria at any time, either at the request of the Advisory Committee; or based on any information that appears credible and raises issues relevant to recognition as determined by Department staff.	34 C.F.R. § 602.33(a)
Advisory Committee meetings	Before the Advisory Committee meeting, Department staff provides the committee with the agency's application for recognition and supporting documentation; the final Department staff analysis of the agency and any supporting documentation; the agency's response to the draft analysis if requested by the agency; any written third-party comments the Department received about the agency on or before the deadline; and any other information Department staff relied upon in developing its analysis.	34 C.F.R. § 602.34(c)

Subject	Summary of Accreditation Process Relevant Provision	Source
Advisory Committee recommendations	After each meeting of the Advisory Committee at which a review of agencies occurs, the Advisory Committee forwards to the senior Department official its recommendation with respect to each agency. The recommendation may include, but is not limited to, a recommendation to approve, deny, limit, suspend, or terminate recognition, to grant or deny a request for expansion of scope, to revise or affirm the scope of the agency, or to require the agency to submit compliance report and to continue recognition pending a final decision on compliance.	34 C.F.R. § 602.34(g)
Responding to Advisory Committee's recommendations	The agency and Department staff may submit written comments to the senior Department official on the Advisory Committee's recommendation within ten days following the Advisory Committee meeting.	34 C.F.R. § 602.35(a)
Senior Department official's review	The senior Department official makes a decision regarding recognition of an agency based on the record compiled including, as applicable, the following: The materials provided to the Advisory Committee. The transcript of the Advisory Committee meeting. The recommendation of the Advisory Committee. Written comments and responses submitted after the Advisory Committee meeting permitted by regulations. New evidence submitted after the Advisory Committee meeting permitted by regulations. A communication from the Secretary referring an issue to the senior Department official's consideration.	34 C.F.R. § 602.36(a)
Senior Department official's decision	The senior Department official notifies the agency in writing of the senior Department official's decision regarding the agency's recognition within 90 days of the Advisory Committee meeting. The senior Department official's decision may include, but is not limited to, approving, denying, limiting, suspending, or terminating recognition, or continuing recognition pending submission and review of a compliance report by Department staff and review of the report by the senior Department official.	34 C.F.R. §§ 602.36(d)–(e)



Subject	Summary of Accreditation Process Relevant Provision	Source
Compliance reports	If a recognized agency fails to demonstrate compliance with or effective application of a criterion or criteria, the senior Department official or Secretary may continue the agency's recognition, pending submission by the agency of a compliance report. The agency must address the criteria specified by the senior Department official or Secretary in a time period not to exceed 12 months. The agency is required to submit a compliance report within 30 days following the end of the period for achieving compliance as specified in the decision of the senior Department official or Secretary, as applicable.	34 C.F.R. §§ 602.36(e)(3)(i), 602.37(d), and 602.31(c)
Review process for information not contained in the record—senior Department official level	If relevant and material information pertaining to an agency's compliance with recognition criteria, but not contained in the record, comes to the senior Department official's attention while a decision regarding the agency's recognition is pending before the senior Department official, and if the senior Department official concludes the recognition decision should not be made without consideration of the information, the senior Department official either –  (1) Does not make a decision regarding recognition of the agency and refers the matter to Department staff for review and analysis and consideration by the Advisory Committee; or  (2) Issues a recognition decision after providing the information to agency and Department staff, permitting the agency to respond in writing, permitting Department staff to respond to the agency submission, and taking all of this into consideration along with the information compiled as part of the original record.	34 C.F.R. § 602.36(g)
Appeal of the senior Department official's decision	An agency may appeal the senior Department official's decision to the Secretary. Such an appeal stays the decision of the senior Department official until final disposition of the appeal.	34 C.F.R. § 602.37(a)
Secretary's decision on appeal	On appeal, the Secretary renders a final decision after taking into account the senior Department official's decision, the agency's written submissions on appeal, the senior Department official's response to the appeal, if any, and the entire record before the senior Department official. The Secretary notifies the agency in writing of the Secretary's decision regarding the agency's recognition.	34 C.F.R. § 602.37(d)

Subject	Summary of Accreditation Process Relevant Provision	Source
Review process for information not contained in the record— Secretary level	<p>If relevant and material information pertaining to an agency's compliance with recognition criteria, but not contained in the record, comes to the Secretary's attention while a decision regarding the agency's recognition is pending before the Secretary, and if the Secretary concludes the recognition decision should not be made without consideration of the information, the Secretary either –</p> <p>(1) Does not make a decision regarding recognition of the agency and refers the matter to Department staff for review and analysis, the Advisory Committee for review, and the senior Department official for consideration; or</p> <p>(2) Issues a recognition decision after providing the information to the agency and the senior Department official, permitting the agency to respond in writing, permitting the senior Department official to respond to the agency submission, and taking all of this into consideration along with the information compiled under 34 C.F.R. § 602.37(d), as noted above.</p>	34 C.F.R. § 602.37(f)
Automatic extension of recognition period	<p>If the Secretary does not reach a final decision on appeal to approve, deny, limit, suspend, or terminate an agency's recognition before the expiration of its recognition period, the Secretary automatically extends the recognition period until a final decision is reached.</p>	34 C.F.R. § 602.37(h)
Contesting the Secretary's final decision	<p>An agency may contest the Secretary's decision in the Federal courts as a final decision in accordance with applicable Federal law. Unless otherwise directed by the court, a decision of the Secretary to deny, limit, suspend, or terminate the agency's recognition is not stayed during an appeal in the Federal courts.</p>	34 C.F.R. § 602.38

## Appendix D. Criteria Review and Related Details

We judgmentally selected 6 of the 21 recognition criteria reviewed by the SDO (DeVos) to determine whether the SDO's (DeVos) conclusions regarding ACICS' compliance were supported by evidence, as follows

- section 602.13—Acceptance of the Agency by Others
- section 602.16(a)(1)(i)—Standards for Student Achievement
- section 602.16(a)(1)(v)—Standards for Fiscal/Administrative Capacity
- section 602.16(a)(1)(vii)—Standards for Recruiting, Admissions, and Other Practices
- section 602.16(a)(1)(x)—Standards for Compliance with Title IV Responsibilities
- section 602.19(b)—Monitoring and Reevaluation of Accredited Institutions and Programs

After our initial review of the SDO's (DeVos) cited evidence and conclusions, we followed up with the SDO (DeVos) to ask specific questions. These questions were informed by our own review of the SDO's (DeVos) analysis and cited evidence as well as our review of the OPE Accreditation Group's 2018 draft analysis of ACICS' petition for initial recognition. We also communicated with Accreditation Group staff to ask for feedback on the evidence cited in the SDO's (DeVos) conclusions that did not appear to be available to them when preparing their draft analysis in 2018, with the understanding that the Accreditation Group's review had only been completed in draft form and that the Accreditation Group's review of ACICS' initial petition for recognition was to make a recommendation for a different time period than the SDO's (DeVos) review of ACICS' petition for recognition renewal.<sup>32</sup>

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<sup>32</sup> Due to the court decision in March 2018, the Accreditation Group's draft analysis was deemed moot by the Department and was never sent to ACICS to respond to and to provide additional evidence. We understand that, as a result, the conclusions contained within the draft analysis were only preliminary. However, given the issues we have noted regarding reviewer subjectivity in the accreditation review process, we determined that it would be prudent to review the Accreditation Group's draft analysis and request feedback from staff on the evidence cited in the SDO's (DeVos) analysis since they are subject matter experts and are normally involved in recognition reviews.

***Recognition Criterion Section 602.13—Acceptance of the Agency by Others***

The SDO (DeVos) recommended a finding of compliance without stipulations for this criterion. We determined that the SDO’s (DeVos) conclusion regarding this criterion was supported by evidence cited.

This criterion requires an agency to demonstrate that its standards, policies, procedures, and decisions to grant or deny accreditation are widely accepted in the United States by—

- (a) Educators and educational institutions; and
- (b) Licensing bodies, practitioners, and employers in the professional or vocational fields for which the educational institutions or programs within the agency’s jurisdiction prepare their students.

OPE’s guidelines note that wide acceptance does not necessarily mean unanimous acceptance by all of the agency’s constituents/communities of interest. OPE’s guidelines note that how “wide acceptance” is demonstrated may assume a wide variety of approaches. However, it is expected that the agency can demonstrate an acceptance/support of its policies, procedures, accreditation standards and decisions by applicable groups, to include individuals/groups beyond those directly involved in the accrediting agency activities in each of the categories, appropriate to the type of accrediting agency.

The evidence considered and cited by the SDO (DeVos) included documentation that appeared to match the typical documentation that OPE would look for under this criterion, as specifically noted in OPE’s guidelines, from each of the groups required by the criterion.

Specifically, we found evidence considered and cited by the SDO (DeVos) included the following:

- letters of support to ACICS from educators and educational institutions within and from outside the agency’s accredited programs or institutions;
- letters of support to ACICS from licensing bodies, practitioners, and employers;
- examples of site visit teams or other committees on which educators, practitioners, and/or employers serve;
- evidence of educator, practitioner, and/or employer participation in the review and revision of agency standards or policies; and

- evidence that accreditation by ACICS is an eligibility requirement for licensure for certification or to sit for examination.

### **Congressional Concerns**

On December 18, 2018, then Ranking Member and current Chairman Bobby Scott of the House Committee on Education and Labor and Ranking Member Patty Murray of the Senate Committee on Health, Education, Labor and Pensions wrote the Acting Inspector General requesting an audit of the Secretary's 2018 re-recognition of ACICS. The letter enclosed a copy of a December 11, 2018, letter from Senator Elizabeth Warren and 9 other members of Congress to Secretary DeVos that raised concerns about a reported "editorial error" in the SDO's (DeVos) recommendation related to the acceptance of ACICS by other accrediting agencies.

We found evidence that the language in the SDO's (DeVos) initial analysis and recommendation to Secretary DeVos, indicating evidence of acceptance by five accrediting agencies, appears to have been an honest mistake made during the editing process and was subsequently corrected when it came to the attention of the Department. The SDO (DeVos) explained that the language in question was intended for a different paragraph of the analysis and resulted from her acceptance of changes made by a Department attorney that should not have been accepted and which was not caught until after the SDO's (DeVos) analysis had been finalized, sent to Secretary DeVos, and published on September 28, 2018. We were able to corroborate that there was a draft version of the analysis that had an edit made by the attorney on September 26, 2018, 2 days before the SDO's (DeVos) analysis and recommendations were due to the Secretary and published. The corrected SDO analysis and recommendation to Secretary DeVos was sent on October 15, 2018. Regardless of the details of how the error occurred, the issue in question had no substantive impact on our analysis and did not affect our overall determination with regard to the conclusion and evidence cited under this criterion.

Additionally, the December 11, 2018, letter noted that five accrediting agencies cited in the "widely accepted" section of Secretary DeVos' final decision were contacted, and four of the five agencies carefully avoided specifically asserting support, endorsement or unequivocal acceptance of ACICS as a peer in their communications to Congress. We reviewed the statements from these agencies and determined that each of the five accrediting agencies noted some form of acceptance or recognition for ACICS as an institutional accrediting agency. We would also note that the widely accepted recognition criterion does not require an agency to submit any evidence of support or acceptance from accrediting agencies as part of the recognition process.

## Questions for the SDO

During our review we identified areas for further discussion with the SDO (DeVos) regarding ACICS' compliance with this criterion. Specifically, we questioned

- whether the information and documentation submitted by ACICS demonstrated that the agency had the breadth and depth of support from educators, licensing bodies, practitioners, and employers throughout the country as would be expected of an agency of the size and scope of ACICS;
- whether letters of support that either were not dated or that were dated before the Department's decision to withdraw ACICS' recognition helped demonstrate that the acceptance of ACICS was current;
- whether letters from organizations that did not explicitly state support of ACICS and its standards, policies, procedures, and accreditation decisions (or that stated blanket acceptance of ACICS due to Department or other agency recognition) helped demonstrate acceptance of ACICS; and
- whether documentation of discussion of training programs and accreditation workshops served as evidence of educator participation.

### *Breadth and Depth of Support*

We noted that evidence of ACICS' acceptance by others appeared to be limited for the scope of the agency's accreditation operations. The SDO (DeVos) stated that the regulations make it clear that it is the diversity of categories listed that, in aggregate, demonstrate wide acceptance. The SDO (DeVos) noted that the Department has never required an agency to demonstrate the full range of diversity within one of those categories and that it is the sum total of the evidence provided that should be used to determine whether or not the agency is widely accepted.

The SDO (DeVos) explained that since the letters provided by educators represent institutions and educators in multiple geographies, that provide credentials at different levels (including graduate studies), and that offer programs in a full range of occupational fields, there is simply no way that these letters could be found to be insufficient to demonstrate that the agency is widely accepted by educators and institutions. The SDO (DeVos) stated that letters from educators are not the only evidence that the OPE guidelines point to and provided references to other forms of evidence provided to indicate wide acceptance by educators such as educator participation as reviewers, educator participation on ACICS' various committees, educator participation in the review of standards, and educator participation on site visit teams.

The SDO (DeVos) noted that there is nothing in the Department's regulations or guidelines that states how many letters of support or how many licensing bodies must accept an agency for it to meet the widely accepted standard. The SDO (DeVos) stated that as a result, the fact that ACICS provided letters from several State agencies and several other licensing bodies means that it met the standard. The SDO (DeVos) explained that regulations simply require that licensing bodies accept the agency's accreditation decisions and the OPE guidelines make clear that any kind of evidence provided by an agency that demonstrates its accreditation meets an eligibility requirement for licensure meets the Department's recognition requirement.

Regarding letters from practitioners, the SDO (DeVos) noted that ACICS provided letters from several professional organizations, programmatic accrediting agencies, State licensing boards and it included site visit participant lists. The SDO (DeVos) also noted that multiple site visit documents provided in the Part II Submission/2018 Supplement included the list of participants in those site visits, and those lists include practitioners in fields relevant to the institution being visited. The SDO (DeVos) stated that even without a single letter from a practitioner, ACICS would have met the standard based on the evidence it provided that practitioners with diverse occupations participated on site visit teams.

Regarding letters from employers, the SDO (DeVos) stated that ACICS-student employers are geographically and occupationally diverse and cover a range of programs that ACICS' institutions offer, and this demonstrates wide acceptance of ACICS. The SDO (DeVos) added that if the agency provided a list of verified job placements, it would have met the standard that it is widely accepted by employers, and therefore, an agency could be found fully compliant with the widely accepted criterion without submitting a single letter.

### *Letters of Support*

We noted that the SDO (DeVos) cited letters of support that were dated before the Department's decision to withdraw ACICS' recognition and questioned whether they would help to demonstrate current wide acceptance. The SDO (DeVos) noted that letters written throughout the recognition period should be included as evidence of current acceptance. The SDO (DeVos) added that these letters should be included in the review since the renewal of recognition is intended to consider the agency's policies, actions, and decisions throughout the review period, and how they have changed or evolved over that period, including to address challenges that arise. The SDO (DeVos) stated that there are no requirements in the regulations or guidelines that suggest to agencies that letters of acceptance must be written during the year of the review. The SDO (DeVos) noted that the letters submitted by ACICS include letters from after the 2016 decision that make it clear to her that ACICS continues to be widely accepted. The

SDO (DeVos) explained that nothing in regulations gives the Department the authority to dictate when the letters should be written, although the Department's practice has been to require documents that correspond to the current recognition period.

We noted that some letters of support were not dated and questioned whether those letters would help to demonstrate current wide acceptance. The SDO (DeVos) explained that deductive reasoning makes clear that certain letters that were not dated were provided no earlier than late 2017 because they noted ACICS' initial recognition review as the reason for the letters and because they were addressed to the current director of the Accreditation Group who was not at the Department during ACICS' previous initial recognition petition review, which indicates that the letters were sent during ACICS' initial recognition review which began in late 2017. The SDO (DeVos) noted that even if undated letters were eliminated, there is still more than sufficient evidence provided in the Part II Submission/2018 Supplement to prove that ACICS is widely accepted.

### *Explicit Statements of Support*

We noted that some of the letters cited as evidence do not explicitly state support of ACICS or its standards, policies, procedures, and accreditation decisions. This included letters from entities that made general statements indicating that they accepted any agency that was recognized by the Department or by The Council for Higher Education Accreditation (CHEA).<sup>33</sup> The SDO (DeVos) noted that the regulations do not require that an agency itself obtains the support of other entities—only that its accreditation decisions (by virtue of its standards, policies, and procedures) are accepted by others. The SDO (DeVos) stated that most of the letters submitted explicitly state that the author accepts the standards, policies, procedures, and decisions of ACICS. The SDO (DeVos) noted that while it is true that many agencies do make “blanket” decisions about which accreditors they accept based on that agency's recognition by the Department or CHEA, regulations neither dictate to nor consider how those agencies come to those decisions. The SDO (DeVos) stated that acceptance by virtue of recognition is precisely how most licensing bodies determine which agencies they will or will not accept, as these organizations typically do not perform a new review of each agency's policies, procedures, or standards, but instead look to the Department or CHEA to perform that review. We noted that ACICS and its standards were not usually specifically mentioned in letters of acceptance from employers. The SDO (DeVos) stated that employer letters generally do not mention an accrediting agency or its standards

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<sup>33</sup> The Council for Higher Education Accreditation is an institution that carries out periodic reviews of institutional and programmatic accrediting organizations.



and instead typically talk about their satisfaction with employees who are graduates of schools accredited by an agency.

The SDO (DeVos) added that letters of acceptance are not the only evidence that the guidelines point to as typical documentation to show that the agency is in compliance and referenced other types of evidence submitted by ACICS that establish compliance, including examples of site visit teams or other committees on which educators serve, and evidence of educator participation in the review and revision of agency standards or policies. The SDO (DeVos) also noted that it is possible that an agency could fully demonstrate that it is widely accepted and provide no letters of acceptance, so the importance of letters depends on what other kinds of evidence the agency provides.

### **Assessment of SDO's Response**

The SDO's (DeVos) response addressed our questions and the evidence she cited supported her response. We do note that deciding what adequately demonstrates "wide acceptance" is a particularly subjective process. The SDO (DeVos) noted that this criterion has been subject to the greatest level of inconsistency since it is a highly subjective determination and the Department has never developed clear guidelines or an appropriate scoring metric to evaluate the evidence provided. The "widely accepted" requirement was removed from the Department's regulations during its recent negotiated rulemaking effort that ended in consensus and which took effect on July 1, 2020. The SDO (DeVos) noted that the removal of this requirement was due to its highly subjective nature and the long history of inconsistency in the review of the evidence.

### ***Recognition Criterion Section 602.16(a)(1)(i)—Standards for Student Achievement***

The SDO (DeVos) recommended a finding of compliance for this criterion with additional monitoring. The SDO (DeVos) recommended that ACICS be required to submit an annual report on its placement verification protocol for the next 3 years to notify the Department of any changes made to the system or the protocol, to identify continuing strengths or weaknesses of the system, to provide a plan for addressing those weaknesses, and to report on the percentage of placements each year which are found to be invalid during third party review and are not resolved by the institution through the submission of additional information. In addition, the SDO (DeVos) recommended that the report should include a description of programs where it appears to be particularly difficult to obtain email verification of employment from either the graduate or the employer, and a plan for trying to reach those individuals through alternative means. The SDO (DeVos) also recommended that this report should include a table indicating which institutions were cited for high error rates or lack of data integrity, the action the agency took in those instances, and the results of that action. We determined

that the SDO's (DeVos) conclusion regarding this criterion was supported by evidence cited.

This criterion requires an agency to demonstrate that it has standards for accreditation that are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or programs it accredits. The agency meets this requirement if its accreditation standards effectively address the quality of the institution or program with respect to student achievement in relation to the institution's mission, which may include different standards for different institutions or programs, as established by the institution, including, as appropriate, consideration of course completion, State licensing examination, and job placement rates.

The evidence considered and cited by the SDO (DeVos) included documentation of student achievement standards established by ACICS and a rationale for how ACICS determined the sufficiency of those standards. The SDO (DeVos) also considered and cited evidence of ACICS' implementation and enforcement of its student achievement standards. Specifically, we found evidence considered and cited by the SDO (DeVos) that appeared to match the typical documentation that OPE would look for under this criterion, as specifically noted in OPE's Guidelines, including

- a copy of ACICS' relevant standards addressing institutional or program goals and objectives;
- sample self-study demonstrating that ACICS expects institutions/programs to address the relevant standards;
- sample site visit team evaluation reports demonstrating the evaluation of institutions/programs against the relevant standards;
- an assessment of institutions' or programs' performance with respect to student achievement;
- outcomes assessment plan and results;
- annual review of outcomes results;
- decision letters demonstrating evaluation based on student achievement standards;
- a copy of written interpretations ACICS published about its standards;
- a copy of guidance to institutions/programs and team members on the standards and their application; and

- a copy of training materials ACICS produced on its standards and their application.

### **Questions for the SDO**

During our review we identified areas for further discussion with the SDO (DeVos) regarding ACICS' compliance with this criterion. Specifically, we questioned

- whether ACICS' student achievement standards were sufficient to demonstrate compliance with this criterion; and
- whether ACICS provided sufficient guidance on how to evaluate institutions to determine compliance with its standards with respect to student achievement while on-site.

### ***Sufficiency of Student Achievement Standards***

We noted that the SDO (DeVos) cited ACICS' draft guidelines on review of graduation rates as part of the evidence to demonstrate ACICS' compliance with the student achievement standards criterion, and we questioned whether draft guidelines that have not yet been finalized or implemented could be used as evidence to demonstrate agency compliance. The SDO (DeVos) stated that ACICS had an appropriate student achievement policy in place that included the measurement of student retention and job placement rates at its member institutions, and that such a student achievement plan is not inconsistent with metrics used by other agencies or the Department to evaluate student success. The SDO (DeVos) also noted that ACICS explained in the Part II Submission/2018 Supplement that it had adopted a retention rate standard in its student achievement measures because this aligns with the Department's requirements for calculating satisfactory academic progress. The SDO (DeVos) added that the agency provided evidence that it was compliant with the student achievement standard regardless of whether ACICS' standards might be stronger if they included graduation rates, and that information included in the Part II Submission/2018 Supplement makes clear that the agency was following its published policies to develop, implement and test the new graduation rate policy.

### ***Sufficiency of Guidance Provided to On-Site Reviewers***

We noted that ACICS' guidance to on-site reviewers on how to evaluate institutions to determine compliance with its standards with respect to student achievement while on-site may not be sufficient. The SDO (DeVos) explained that ACICS provided evidence describing how to perform such reviews and how to evaluate the evidence. The SDO (DeVos) noted that the recognition review process is a subjective process and regulations prohibit the Department from dictating to an agency what standards it should have in place for evaluating curricula, but that in the various training guides and presentations included in the Part II Submission/2018 Supplement it is clear that ACICS

provides training to reviewers on what to look for when performing the review. The SDO (DeVos) stated that there was clear guidance in ACICS' various training materials and instructions for completing site visits, Campus Effectiveness Plan reviews, and site visit reports about how the site visit chair should perform this review, and what kinds of things should be included in that review and captured in the report. The SDO (DeVos) stated there was also evidence in the exhibits that ACICS required institutions to respond to site visit reports, and if the response was not satisfactory, ACICS took action against those institutions, including through suspension actions.

### **Assessment of SDO's Response**

The SDO's (DeVos) response addressed our questions and the evidence she cited supported her response.

#### ***Recognition Criterion Section 602.16(a)(1)(v)—Standards for Fiscal/Administrative Capacity***

The SDO (DeVos) recommended a finding of compliance without stipulations for this criterion. We determined that the SDO's (DeVos) conclusion regarding this criterion was supported by evidence cited.

This criterion requires an agency to demonstrate that it has standards for accreditation that are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or programs it accredits. The agency meets this requirement if its accreditation standards effectively address the quality of the institution or program with respect to fiscal and administrative capacity as appropriate to the specified scale of operations.

The evidence considered and cited by the SDO (DeVos) included documentation of fiscal and administrative capacity standards established by ACICS and implementation and enforcement of ACICS' fiscal and administrative capacity standards. Specifically, we found evidence considered and cited by the SDO (DeVos) that appeared to match the typical documentation that OPE would look for under this criterion, as specifically noted in OPE's guidelines, including

- a copy of ACICS' relevant standards excerpts;
- sample self-study excerpts demonstrating that ACICS expects institutions/programs to address the relevant standards (e.g., the financial review section addressing recent financial audits); and
- sample site evaluation report excerpts demonstrating the evaluation of institutions/programs against the relevant standards (e.g., team review of financial audits).

## Questions for the SDO

During our review we identified areas for further discussion with the SDO (DeVos) regarding ACICS' compliance with this criterion. Specifically, we questioned

- how ACICS determined that the use of its fiscal capacity standards are sufficiently rigorous; and
- whether ACICS sufficiently monitored its institutions' financial responsibilities and took appropriate action when necessary.

### *Rigor of Fiscal Capacity Standards/ Sufficiency of Monitoring of Accredited Institutions' Financial Responsibilities*

We questioned whether the information and documentation that ACICS provided on how it determined that the use of its fiscal capacity standards and monitoring approaches are sufficiently rigorous was sufficient. We also questioned whether ACICS was collecting sufficient information in specific areas to enable the agency to identify problems with an institution's continued compliance with agency standards and that takes into account institutional strengths and stability.

The SDO (DeVos) explained that ACICS provided evidence in the Part II Submission/2018 Supplement that it used multiple tools to monitor its member institutions' financial responsibility and to take appropriate action when an institution's financial capacity is in question or insufficient. The SDO (DeVos) noted that the agency reviews annual financial reports to ensure that financial data submitted in the Campus Accountability Report aligns with the audited financial statements and that the agency also reviews auditor notes to identify any concerns the auditor raised. The SDO (DeVos) stated that ACICS reviews Annual Financial Reports through its Financial Review Committee, and for institutions that have deficiencies, it uses financial show cause, special visits, and required quarterly financial reporting. The SDO (DeVos) provided references to the related evidence exhibits. The SDO (DeVos) stated that ACICS also monitors compliance audits, institutional cohort default rates, and 90/10 scores, and takes appropriate actions, including requiring institutions to submit teach-out plans when they are put on Heightened Cash Monitoring status, and revoking accreditation if an institution fails to submit its audited financials. The SDO (DeVos) added that ACICS also provided evidence that, when it detects potential instances of Title IV fraud or abuse, it performs its own review and also notifies the Department of its concerns, and therefore, that ACICS provided evidence that it is diligent in the financial review of its institutions.

The SDO (DeVos) explained that it is primarily the Department's role, not the accrediting agency's role, to monitor an institution's financial responsibility and determine whether or not the institution can continue to participate in Title IV programs. The SDO (DeVos) stated that accreditors are supposed to be focused on ensuring academic quality and

the Department is supposed to ensure that an institution is financially responsible, and that the appropriate role for accrediting agencies is to ensure that the institution has sufficient financial resources to provide the educational opportunities it promises to students. The SDO (DeVos) added that when an institution's financial position changes rapidly, periodic reviews of audited financial statements may not catch those changes quickly enough, and while the SDO (DeVos) agrees that accreditors should take swift action to report to the Department their concerns about the financial health of an institution, it is the Department's job to investigate the concern and apply the sanctions available to it through heightened cash monitoring, letters of credit, temporary program participation agreements, or denial of continuing participation. The SDO (DeVos) stated that when relying on the periodic program review and the annual financial audit to evaluate the financial health and regulatory compliance of participating institutions, sometimes you can miss the signs of trouble, which is not an excuse for missing the signs of trouble, but periodic review has its limitations, and one of them is that events that take place between reviews may not be detected until the next review occurs.

### **Assessment of SDO's Response**

The SDO's (DeVos) response addressed our questions and the evidence she cited supported her response.

#### ***Recognition Criterion Section 602.16(a)(1)(vii)—Standards for Recruiting, Admissions, and Other Practices***

The SDO (DeVos) recommended a finding of compliance for this criterion with additional monitoring. The SDO (DeVos) recommended that ACICS submit an annual report to the Department that includes a table outlining problems or concerns identified by its at-risk working group, actions taken to address those concerns, and any Council decisions regarding the institutions identified by the at-risk working group as being at-risk institutions or institutions violating ACICS requirements regarding advertising, recruiting, publication of student achievement data, or any other ACICS requirement, especially as they relate to administrative or fiscal capacity of an institution. We determined that the SDO's (DeVos) conclusion regarding this criterion was supported by evidence cited.

This criterion requires an agency to demonstrate that it has standards for accreditation that are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or programs it accredits. The agency meets this requirement if its accreditation standards effectively address the quality of the institution or program with respect to recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising.

The evidence considered and cited by the SDO (DeVos) included documentation of standards established by ACICS for recruiting, admissions, and other practices and implementation and enforcement of ACICS' standards for recruiting, admissions, and other practices. Specifically, we found evidence considered and cited by the SDO (DeVos) that appeared to match the typical documentation that OPE would look for under this criterion, as specifically noted in OPE's Guidelines, including

- a copy of ACICS' relevant standards excerpts;
- sample self-study excerpts demonstrating that ACICS expects institutions/programs to address the relevant standards; and
- sample site evaluation report excerpts demonstrating the evaluation of institutions/programs against the relevant standards.

We did not identify any areas for further discussion with the SDO (DeVos) regarding ACICS' compliance with this criterion.

***Recognition Criterion Section 602.16(a)(1)(x)—Standards for Compliance with Title IV Responsibilities***

The SDO (DeVos) recommended a finding of compliance without stipulations for this criterion. We determined that the SDO's (DeVos) conclusion regarding this criterion was supported by evidence cited.

This criterion requires an agency to demonstrate that it has standards for accreditation that are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or programs it accredits. The agency meets this requirement if its accreditation standards effectively address the quality of the institution or program with respect to its record of compliance with the institution's program responsibilities under Title IV, based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and any other information that the Secretary may provide to the agency.

The evidence considered and cited by the SDO (DeVos) included documentation of Title IV compliance standards established by ACICS and implementation and enforcement of ACICS' Title IV compliance standards. Specifically, we found evidence considered and cited by the SDO (DeVos) that appeared to match the typical documentation that OPE would look for under this criterion, as specifically noted in OPE's Guidelines, including

- a copy of ACICS' relevant standards excerpts;

- sample self-study excerpts demonstrating that ACICS expects institutions/programs to address the relevant standards; and
- sample site evaluation report excerpts demonstrating the evaluation of institutions/programs against the relevant standards.

We did not identify any areas for further discussion with the SDO (DeVos) regarding ACICS' compliance with this criterion.

***Recognition Criterion Section 602.19(b)—Monitoring and Reevaluation of Accredited Institutions and Programs***

The SDO (DeVos) recommended a finding of compliance for this criterion with additional monitoring. The SDO (DeVos) recommended that ACICS be required to submit to the Department an annual report of the actions and activities of its at-risk working group including any follow-up actions taken by the ACICS as a result of the group's work. We determined that the SDO's (DeVos) conclusion regarding this criterion was supported by evidence cited.

This criterion requires an agency to demonstrate it has, and effectively applies, a set of monitoring and evaluation approaches that enables the agency to identify problems with an institution's or program's continued compliance with agency standards and that takes into account institutional or program strengths and stability. These approaches must include periodic reports, and collection and analysis of key data and indicators, identified by the agency, including, but not limited to, fiscal information and measures of student achievement.

The evidence considered and cited by the SDO (DeVos) included documentation of ACICS' written policies regarding its monitoring activities and evidence of implementation of various processes used by ACICS to monitor institutional compliance with agency standards. The SDO (DeVos) also considered and cited evidence demonstrating that ACICS engages in appropriate follow-up actions, as identified through its monitoring activities. Specifically, we found evidence considered and cited by the SDO (DeVos) that appeared to match the typical documentation that OPE would look for under this criterion, as specifically noted in OPE's Guidelines, including

- ACICS' written policies/procedures regarding monitoring activities;
- sample excerpts from relevant letters, decision-making minutes and site visit team evaluation reports that demonstrate ACICS analyzes the information it gathers through reports, visits, and other means;
- data samples gathered throughout the period of accreditation, and evaluation reports; and



- examples of significant compliance problems noting how they were identified by ACICS.

### **Questions for the SDO**

During our review we identified areas for further discussion with the SDO (DeVos) regarding ACICS' compliance with this criterion. Specifically, we questioned

- how ACICS has determined that the use of its fiscal capacity standards and monitoring approaches are sufficiently rigorous, and whether ACICS has effective mechanisms to adequately monitor and evaluate its institutions or only took action when another third-party entity took a monitoring action;
- the sufficiency of ACICS' monitoring of curricula standards and campus accountability reports; and
- the sufficiency of ACICS' implementation of specific policies and procedures, to include the use of unannounced site visits and site visits based on ACICS' at-risk working group.

### ***Sufficiency and Effectiveness of Monitoring Approaches***

We noted that the monitoring and evaluation mechanisms used by ACICS did not appear to identify certain compliance issues similar to those noted by other regulatory or approval entities. We questioned whether ACICS had effective mechanisms to adequately monitor and evaluate its institutions, or if it only took action when another entity took an action. The SDO (DeVos) explained that her review of the Part II Submission/2018 Supplement provided ample evidence of ACICS' monitoring actions. The SDO (DeVos) stated that nothing in regulations assumes or requires that the accrediting agency be the first to identify every instance of financial instability among its member institutions, and in fact, it is more likely that the Department would be the first to discover signs of financial instability, and it is the Department that should be notifying accrediting agencies of concerns and findings. The SDO (DeVos) also stated that the Part II Submission/2018 Supplement includes numerous examples that ACICS had many effective mechanisms to monitor and evaluate its institutions and that it is incorrect to determine that one piece of evidence is not sufficient to demonstrate that the agency has implemented its policies. The SDO (DeVos) explained that if an agency has not had the need or opportunity to apply a given policy, then it is still compliant as long as it has a sufficient policy in place.

The SDO (DeVos) noted that her review of the Part II Submission/2018 Supplement suggests that it would be inaccurate to review those documents and conclude that ACICS only takes actions as the result of information obtained from other agencies. The SDO (DeVos) stated that ACICS took monitoring actions on its own initiative and in a

reasonable amount of time as a result of their review of financial reports and audits, their review of institutional data, their review of schools during accreditation visits, and student complaints. The SDO (DeVos) added that ACICS provided evidence of instances when they notified the Department or other entities of findings that they made, as well as instances when they responded to findings made by others. The SDO (DeVos) stated that ACICS provided exhibits in the Part II Submission/2018 Supplement that serve as evidence of its efforts to notify the Department when it found evidence of potential fraud related to Title IV, and to provide information in response to the Department's requests. The SDO (DeVos) added that there are numerous examples in the exhibits that demonstrate ACICS' actions to put institutions on compliance monitoring when investigations were launched against them, to follow the progress of those investigations, and to take action against the agency if they did not comply with monitoring requirements or if additional areas of non-compliance were discovered.

### ***Sufficiency of Monitoring of Curricula Standards and Campus Accountability Reports***

We noted that ACICS did not include evidence of curricula standards reviews and questioned whether that lack of evidence would affect ACICS' compliance with this criterion. The SDO (DeVos) explained that in the Part II Submission/2018 Supplement, ACICS makes it clear that its member institutions are required to conduct an annual review of their curricular standards as part of the process for writing/updating their annual plan. The SDO (DeVos) noted that the agency does not perform an annual review of each member's curricular standards and to her knowledge, no agency recognized by the Secretary does that. The SDO (DeVos) stated that instead, ACICS requires schools to document their annual review which is reviewed by subject matter experts during site visits, including for quality assurance monitoring, renewal of accreditation reviews, and in response to negative findings or student achievement insufficiencies. The SDO (DeVos) added that the Part II Submission/2018 Supplement also provided numerous examples of campus effectiveness plans and reviews, as well as training materials to prepare site visit chairs and program specialists to perform a thorough review of the campus effectiveness plans, and actions that the agency has taken against institutions that did not have appropriate plans on file, or that did not engage in the required processes to create the plan and monitor progress in implementing it.

We noted that evidence of ACICS' monitoring guidelines related to its Campus Accountability Reports alone may not be sufficient documentation to demonstrate implementation. The SDO (DeVos) explained that the Part II Submission/2018 Supplement included evidence in addition to the Campus Accountability Report monitoring guidelines, such as examples of completed reports, minutes from meetings that provide evidence that ACICS reviewed report data and applied sanctions accordingly, minutes of decision making bodies that considered report data when

evaluation requests for a new location or the addition of a new program, correspondence with institutions that showed how ACICS enforces its student achievement standards and meetings of decision bodies where those sanctions were discussed and applied in the context of reviewing report data, as well as site visit reports that included the data integrity reviewers findings during his or her quality assurance review of the report.

### ***Sufficiency of Announced, Unannounced, and At-Risk Working Group Site Visits***

We questioned whether ACICS demonstrated the use of unannounced site visits as a result of reviews of fiscal capacity and questioned whether that lack of evidence would affect ACICS' compliance with this criterion. We also questioned the accuracy of the number of at-risk working group site visits noted. The SDO (DeVos) explained that in the materials provided in the Part II Submission/2018 Supplement, the agency very clearly stated that there were a number of actions it could take to respond to findings of financial instability. The SDO (DeVos) added that ACICS' policies include announced or unannounced visits, and that the "or" in that sentence is important. The SDO (DeVos) noted that since the agency provided evidence that it had conducted announced visits in response to a financial review, they demonstrated that they had applied the policy as written.

We also noted that the SDO (DeVos) originally noted that ACICS had conducted 54 visits based on its at-risk working group reviews since the committee was first established. We found a visit summary listing over 50 investigations and evidence of over a dozen at-risk working group investigations but we had not found evidence that ACICS had conducted 54 visits based on the working group's reviews among the exhibits provided to us. In follow-up correspondence with the SDO (DeVos), she explained that when reviewing the document, she thought that the 54 visits listed in the exhibit were all initiated by the at-risk working group. However, the SDO (DeVos) explained that she may have been mistaken and the table may include visits initiated by other ACICS reviews. The SDO (DeVos) stated that regardless, at least 12 of those reviews were initiated by the at-risk working group and therefore, the agency has provided evidence that, through the group review process, it initiates reviews based on negative information. The SDO (DeVos) noted that she still finds the agency to be in compliance as it provided ample evidence that it initiates visits based on at-risk working group reviews.

### **Assessment of SDO's Response**

The SDO's (DeVos) response addressed our questions and the evidence she cited supported her response. We do note that neither the Department's regulations nor the OPE Guidelines have specific guidelines to assess what constitutes sufficient monitoring.

## Appendix E. Acronyms and Abbreviations

ACICS	Accrediting Council for Independent Colleges and Schools
agency	accrediting agency
C.F.R	Code of Federal Regulations
CHEA	The Council for Higher Education Accreditation
DAEO	Designated Agency Ethics Official
Department	U.S. Department of Education
GAO	U.S. Government Accountability Office
HEA	Higher Education Act of 1965, as amended
NACIQI	National Advisory Committee on Institutional Quality and Integrity
OGC	Office of the General Counsel
OIG	Office of Inspector General
OPE	Office of Postsecondary Education
OPE Guidelines	OPE “Guidelines for Preparing/Reviewing Petitions and Compliance Reports”
OUS	Office of the Under Secretary
schools	postsecondary schools
SDO	senior Department official
Secretary	Secretary of Education

# Department Comments



THE SECRETARY OF EDUCATION  
WASHINGTON, DC 20202

January 19, 2021

Michele Weaver-Dugan, Regional Inspector General for Audit  
Internal Operations/Philadelphia Audit Team  
U.S. Department of Education  
Office of Inspector General  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202-1510

Dear Ms. Weaver-Dugan:

Thank you for your careful review of the Department's 2016 decision to deny renewal of recognition to the Accrediting Council for Independent Colleges and Schools (ACICS), and the subsequent 2018 review of the Part II Submission and 2018 Supplement. The subsequent review resulted from a decision of the United States District Court for the District of Columbia which remanded Secretary King's December 2016 withdrawal of ACICS's recognition back to Secretary DeVos for further proceedings. We appreciate the time and attention you gave this matter, including the review of thousands of pages of documents provided by ACICS in the Part II Submission as well as the 2018 Supplement.

We agree with your findings and accept your recommendations, and will or are taking the following corrective actions to address your concerns:

1.1 In the future, the Department will ensure that all available relevant evidence is considered and reviewed in compliance with regulatory requirements and timelines.

The Department recently completed negotiated rulemaking to update the Department's regulations regarding the recognition of accrediting agencies, and included in those regulations is a revised, and clearly articulated timeline under which agency reviews will take place. This new timeline extends the review period to ensure that staff have sufficient time to review documents provided as part of the agency's petition, and to perform a site visit to the agency's offices where staff analysts can randomly select and review additional documents. The new regulations provide very clear instructions to both the Department and agencies about the timeline of the review process. By extending this timeline by one full year, staff should, in many cases, have sufficient time to complete the review of all materials. If staff do not have sufficient time to complete a thorough review of all materials, the Department will provide a good cause extension to the agency so that the Department can complete that review and issue a recognition decision only after considering *all* of the evidence provided by the agency.

2.1 That the Assistant Secretary for OPE review the Accreditation Handbook and determine where additional detail, to include the areas noted above, could be added regarding what constitutes a sufficient level of evidence to demonstrate compliance or non-compliance, to ensure consistency in Department recognition reviews.

U.S. Department of Education  
Office of Inspector General  
ED-OIG/S19T0003

The Department has revised the Accreditation Handbook<sup>1</sup> to align with the new accreditation regulations promulgated on July 1, 2020. The Handbook provides greater specificity about the types of evidence the Department expects to receive as part of their review, and the number of pieces of such evidence that are required. The updated Handbook was posted to the Department website on December 22, 2020. However, the staff are continuing to review the Handbook to identify areas where additional precision regarding evidentiary requirements would be appropriate. Where those areas exist, staff will develop a scoring rubric that more carefully explains what elements or characteristics of that evidence are required to distinguish between acceptable and unacceptable documentation. This follow-up review also seeks to identify circumstances where specific words must be included in a particular letter or policy and how evidence that is missing those words will be evaluated.

The new regulations have eliminated one of the regulations that was subject to the greatest degree of subjectivity in prior reviews – 34 CFR § 602.13 (“Acceptance of the agency by others”). Recognizing the potential problems in the way that information was reviewed, and the amount of evidence needed to show compliance with this standard, negotiators agreed that this criterion should be eliminated. Under our new regulations, we provide greater clarity about when letters are required, who must provide those letters, and what content must be included in those letters to satisfy the recognition criteria.

We also believe that there were potential difficulties in our review of an agency’s compliance with the student achievement standard under 34 CFR § 602.16(1)(1)(i). Under our new Recognition Criteria, regional and national accrediting agencies are held to the same set of standards. In addition, we have expanded the new Recognition Criteria to make it clear that all institutional accrediting agencies, and not just the former national accrediting agencies, must review a sample of academic programs offered by the institutions in performing their review of an institution’s compliance with the agency’s learning and student achievement standards.

The Department intends to complete its follow-up review of the new Accreditation Handbook by August 1, 2021, identifying criteria that could be perceived to rely on subjective judgment in deciding about what constitutes acceptable or unacceptable evidence, and to develop a scoring rubric for each such criteria (where Department staff determines a scoring rubric is necessary) to ensure that there is consistency in the review of evidence across the Accreditation Group. We will also perform inter-reviewer reliability assessments in which we provide sample of evidence to each analyst to understand how each performs the required review, and to ensure that there is consistency among analysts about the validity, or lack thereof, of certain evidence.

2.2 Whenever possible, include more than one layer of subject matter expert review in recognition reviews in situations where it is not required, to provide an additional safeguard related to subjectivity risks.

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<sup>1</sup> <https://www2.ed.gov/admins/finaid/accred/accreditation-handbook.pdf>

The Department agrees that adding additional layers of subject matter expertise would be helpful; however, given the need to be fiscally responsible, we do not believe we have the capacity to add an additional level of review for each petition for recognition. Currently, two attorneys in the Office of the General Counsel provide advice and support to the Accreditation Group. Those attorneys will continue to work with the staff to identify standards of evidence appropriate to apply during recognition review and will assist the staff in developing standards where scoring rubrics are appropriate.

Given the timing of this report, we note that there could be confusion about who it is that the OIG is referring to when using the designation of “former” in describing personnel involved in various decisions. It is especially confusing on pages 12 and 13 where both Secretary King and Secretary DeVos are referred to as “former” secretaries. We appreciate your use of the (A) and (B) designations to try to be clearer as to which Secretary you are referring in each statement, but with the coming change in administration, this can become even more confusing. It would be helpful if you could add a footnote to clarify what is meant by the term “former” in each instance of its use, or perhaps by including in parentheses whether it was the official that was involved in the 2016 or the 2018 decision, or whether it was an official in the Obama Administration or the Trump Administration.

We thank you for the time you devoted to this review and your recommendations for how to improve our work.

Sincerely,

A handwritten signature in blue ink that reads "Mitchell M. Zais". The signature is written in a cursive style with a horizontal line through the middle.

Mitchell M. Zais, Ph.D.

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