

§ 602.33 How may an agency appeal a recommendation of the Advisory Committee?

(a) Either the agency or the senior Department official may appeal the Advisory Committee's recommendation. If a party wishes to appeal, that party must—

(1) Notify the Secretary and the other party in writing of its intent to appeal the recommendation no later than 10 days after the Advisory Committee meeting;

(2) Submit its appeal in writing to the Secretary no later than 30 days after the Advisory Committee meeting; and

(3) Provide the other party with a copy of the appeal at the same time it submits the appeal to the Secretary.

(b) The non-appealing party may file a written response to the appeal. If that party wishes to do so, it must—

(1) Submit its response to the Secretary no later than 30 days after receiving its copy of the appeal; and

(2) Provide the appealing party with a copy of its response at the same time it submits its response to the Secretary.

(c) Neither the agency nor the senior Department official may include any new evidence in its submission; i.e., evidence it did not previously submit to the Advisory Committee.

(Authority: 20 U.S.C. 1099b and 1145)

REVIEW AND DECISION BY THE
SECRETARY

§ 602.34 What does the Secretary consider when making a recognition decision?

The Secretary makes the decision regarding recognition of an agency based on the entire record of the agency's application, including the following:

(a) The Advisory Committee's recommendation.

(b) The senior Department official's recommendation, if any.

(c) The agency's application and supporting documentation.

(d) The Department staff analysis of the agency.

(e) All written third-party comments forwarded by Department staff to the Advisory Committee for consideration at the meeting.

(f) Any agency response to the Department staff analysis and third-party comments.

(g) Any addendum to the Department staff analysis.

(h) All oral presentations at the Advisory Committee meeting.

(i) Any materials submitted by the parties, within the established timeframes, in an appeal taken in accordance with § 602.33.

(Authority: 20 U.S.C. 1099b)

§ 602.35 What information does the Secretary's recognition decision include?

(a) The Secretary notifies the agency in writing of the Secretary's decision regarding the agency's application for recognition.

(b) The Secretary either approves or denies recognition or defers a decision on the agency's application for recognition.

(1)(i) The Secretary approves recognition if the agency complies with the criteria for recognition listed in subpart B of this part and if the agency is effective in its performance with respect to those criteria.

(ii) If the Secretary approves recognition, the Secretary's recognition decision defines the scope of recognition and the recognition period.

(iii) If the scope or period of recognition is less than that requested by the agency, the Secretary explains the reasons for approving a lesser scope or recognition period.

(2)(i) If the agency fails to comply with the criteria for recognition in subpart B of this part, or if the agency is not effective in its performance with respect to those criteria, the Secretary denies recognition, unless the Secretary concludes that a deferral under paragraph (b)(3) of this section is warranted.

(ii) If the Secretary denies recognition, the Secretary specifies the reasons for this decision, including all criteria the agency fails to meet and all areas in which the agency fails to perform effectively.

(3)(i) The Secretary may defer a decision on recognition if the Secretary concludes that the agency's deficiencies do not warrant immediate loss

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of recognition and if the Secretary concludes that the agency will demonstrate or achieve compliance with the criteria for recognition and effective performance with respect to those criteria before the expiration of the deferral period.

(ii) In the deferral decision, the Secretary states the bases for the Secretary's conclusions, specifies any criteria for recognition the agency fails to meet, and identifies any areas in which the agency fails to perform effectively with respect to the criteria.

(iii) The Secretary also establishes a deferral period, which begins on the date of the Secretary's decision.

(iv) The deferral period may not exceed 12 months, either as a single deferral period or in combination with any expiring deferral period in which similar deficiencies in compliance or performance were cited by the Secretary, except that the Secretary may grant an extension of an expiring deferral period at the request of the agency for good cause shown.

(c) The recognition period may not exceed five years.

(d) If the Secretary does not reach a final decision to approve or deny an agency's application for continued recognition before the expiration of its recognition period, the Secretary automatically extends the recognition period until the final decision is reached.

(Authority: 20 U.S.C. 1099b)

§ 602.36 May an agency appeal the Secretary's final recognition decision?

An agency may appeal the Secretary's decision under this part in the Federal courts as a final decision in accordance with applicable Federal law.

(Authority: 20 U.S.C. 1099b)

Subpart D—Limitation, Suspension, or Termination of Recognition Limitation, Suspension, and Termination Procedures

§ 602.40 How may the Secretary limit, suspend, or terminate an agency's recognition?

(a) If the Secretary determines, after notice and an opportunity for a hearing, that a recognized agency does not comply with the criteria for recogni-

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tion in subpart B of this part or that the agency is not effective in its performance with respect to those criteria, the Secretary—

(1) Limits, suspends, or terminates the agency's recognition; or

(2) Requires the agency to take appropriate action to bring itself into compliance with the criteria and achieve effectiveness within a timeframe that may not exceed 12 months.

(b) If, at the conclusion of the timeframe specified in paragraph (a)(2) of this section, the Secretary determines, after notice and an opportunity for a hearing, that the agency has failed to bring itself into compliance or has failed to achieve effectiveness, the Secretary limits, suspends, or terminates recognition, unless the Secretary extends the timeframe, on request by the agency for good cause shown.

(Authority: 20 U.S.C. 1099b).

§ 602.41 What are the notice procedures?

(a) Department staff initiates an action to limit, suspend, or terminate an agency's recognition by notifying the agency in writing of the Secretary's intent to limit, suspend, or terminate recognition. The notice—

(1) Describes the specific action the Secretary seeks to take against the agency and the reasons for that action, including the criteria with which the agency has failed to comply;

(2) Specifies the effective date of the action; and

(3) Informs the agency of its right to respond to the notice and request a hearing.

(b) Department staff may send the notice described in paragraph (a) of this section at any time the staff concludes that the agency fails to comply with the criteria for recognition in subpart B of this part or is not effective in its performance with respect to those criteria.

(Authority: 20 U.S.C. 1099b)

§ 602.42 What are the response and hearing procedures?

(a) If the agency wishes either to respond to the notice or request a hearing, or both, it must do so in writing no later than 30 days after it receives the