MEMORANDUM

To: Interested Persons and Entities
From: Council
Date: December 2019
Re: Changes to Internal Operating Practices Required by New Department of Education Regulations

At the November 2019 Council meeting, the Council approved the following changes to the Internal Operating Practices required by the new Department of Education regulations that were released on November 1, 2019 and become effective on July 1, 2020:

- 5. Notice of Decisions
- 6. Notice to Department
- 7. Maintenance of Records
- 13. Conflicts of Interest

Changes to Internal Operating Practices:

Internal Operating Practice 5. Notice of Decisions

Explanation of Changes:

In new regulations, the Department of Education gives agencies longer than 30 days to provide notice of a final decision of probation or equivalent status, acknowledging that it may take longer than 30 days for an accreditor to prepare the written decision and have it reviewed for accuracy and legal sufficiency before issuing it to an institution or program. In addition, the Department now requires that upon receipt of such a decision, an institution or program must disclose such action within seven business days of receipt of the decision, to all current and prospective students. Finally, the Department replaced “24 hours” with “one business day” to clarify that accreditors are not required to make notifications on weekends or holidays.

The Department also reduced the time from 30 days to 10 business days in which an accrediting agency must notify the Secretary if an institution or program decides to voluntarily withdraw from accreditation or let its accreditation lapse.
Redline:


The Managing Director’s Office shall:

(a) Provide written notification to the Secretary of the Department of Education, the appropriate state licensing agency, and other appropriate accrediting agencies, at the same time the Managing Director’s Office notifies the Law school in writing of any decision to deny, withdraw, suspend, or remove the approval or provisional approval of the law school or to place a law school on probation, to direct specific remedial action, or to find significant non-compliance with one or more Standards under Rule 11(a)(4), but no later than thirty (30) days after the Council reaches the decision.

(b) Provide written notification to the Secretary of the Department of Education, the appropriate state licensing agency, other appropriate accrediting agencies, and the public within thirty (30) days of:

(i) a decision to grant provisional approval or full approval to a law school;

(ii) receiving notification from a decision by an approved or provisionally approved law school of its decision to withdraw from approved or provisionally approved status; or

(iii) receiving notification from an approved or provisionally approved law school of its decision to allow its approval or provisional approval to lapse.

(c) Provide written notification to the public within 24 hours one business day of the time the Managing Director’s Office notifies the law school in writing of any decision to deny, withdraw, suspend, or remove the approval or provisional approval of the law school or to place a law school on probation, to direct specific remedial action, or to find significant non-compliance with one or more Standards under Rule 11(a)(4).

(d) Make available to the Secretary of the Department of Education, the appropriate state licensing agency, the appropriate accrediting agency, and the public within 60 days after final decision, a brief statement summarizing the reasons for the decision to deny, withdraw, suspend, or remove the approval or provisional approval of a law school, and the comments, if any, which the affected law school may wish to make with regard to that decision or evidence that the law school was offered but declined to provide any comments.

(f) Require a law school to provide written notification to current and prospective students of any decision to deny, withdraw, suspend, or remove the approval or provisional approval of the law school within seven business days of receipt of the decision.
Internal Operating Practice 6. Notice to Department

Explanation of Changes:

In new regulations, the Department replaced the requirement that an accreditor provide to the Department a copy of any annual report and a copy of its directory of accredited institutions and programs with a requirement that an accreditor provide an annual list of accredited institutions and programs, in order to reduce administrative burden and the size of an accreditors’ submission.

The Department clarified accreditor enforcement obligations by identifying areas that are the responsibility of the Department to enforce, but requiring the accreditor to notify the Department if it identifies potential instances of non-compliance.

For accreditors that have distance education in the scope of their authority, the Department regulations require that an accreditor must monitor the headcount enrollment of each institution it has accredited that offers distance education. If any such institution has experienced an increase in headcount enrollment of 50% or more within one institutional fiscal year, the agency must report that information to the Secretary within 30 days of acquiring such information. Approved changes below address these requirements.

Redline:

6. Submission of Information to Secretary of Education

(a) The Council shall submit to the Department of Education:

(a) the Section’s Annual Report;

(1) annually, a list of approved law schools;

(2) (b) the name of any school for which the Council serves as an institutional accreditor that the Council has reason to believe is failing to meet its Title IV program responsibilities or is engaged in fraud or abuse, and the reason(s) for the Council’s concern;

(c) annually, revisions to the Standards, Interpretations, or Rules of Procedure;

(d) annually, a list of approved law schools;

(3) (e) upon request by the Department of Education, or an office within the Department of Education under the Secretary’s control, information regarding an approved law school’s compliance with the Standards or its Title IV or HEA responsibilities, including requests for decision letters, site reports, transcripts, or related correspondence; and

(4) (f) upon request by the Secretary of Education, a summary of the Council’s major accrediting activities during the previous year.
(b) The Council shall provide written notification to the Department of Education of identified instances or potential instances of non-compliance with the following requirements under Title IV of the Higher Education Act of 1965, as amended:

1. Program participation agreements;
2. Standards of financial responsibility;
3. Standards of administrative capability;
4. Disclosure of information to students;
5. Annual security reporting; or

(c) The Council shall provide written notification to the Department of Education that a law school for which the Council serves as an institutional accreditor, and that offers a distance education program, has an increase in headcount of 50% or more within one fiscal year.

**Internal Operating Practice 7. Maintenance of Records**

**Explanation of Changes:**

To reduce administrative burden, the Department no longer requires accreditor to retain every record of conversations or interim decisions when superseded by a final decision or determination.

**Redline:**

7. Maintenance of Records

The Managing Director’s Office shall maintain a complete set of records for a period to cover at least the last two reviews of a law school or a law school’s programs. The records shall include site evaluation and fact finder inspection reports, law school responses to site evaluation and fact finder reports, the law school’s most recent self-study, and any other reports and responses related to the review of a law school. Periodic review reports, including the law school’s completed annual questionnaire, shall be retained for a period of one accreditation review.

The Managing Director’s Office shall maintain the following records indefinitely: Council decision letters, Appeals Panel decision letters, the former Accreditation Committee decision letters, and the law school’s responses to such decision letters, and all other correspondence significantly related to those decisions.

**Internal Operating Practice 13. Conflicts of Interest**

**Explanation of Changes:**

The Department requires that an accreditor have a policy in place for members of its decision-making bodies, staff, and site team members regarding conflicts of interest. After a discussion with the Department and review of another accreditor’s final staff analysis, the Council decided to add a procedure to IOP 13 to document its practice.
13. Conflicts of Interest

(a) It is the Council’s policy to avoid any conflict of interest or perceived conflict of interest arising because a person involved in the accreditation process has an interest in the law school or law school program under review by the Council or the Appeals Panel.

(b) Council members, Managing Director’s Office staff, members of the Appeals Panel, site team members, and fact finders (in each case when used in this IOP, a “Member”) should avoid the appearance of a conflict of interest by recusing himself or herself from participating in any matter in the accreditation process related to a law school under review without the necessity of stating a reason for recusal.

(c) If any of the following conditions are met, a Member is required to recuse himself or herself from participating in such a matter:

(1) The Member:

   (i) is currently the dean, a faculty member, other employee, or a student of a law school under review (or its parent institution); a former dean of a law school under review; a former full-time faculty member of the law school under review, for a period of ten years following the termination of faculty status with that law school; a former employee of the law school under review other than as a full-time faculty member, for a period of two years following termination of such employment; or a graduate of the law school under review;

   (ii) is currently a member of any board of the law school or its parent institution or has been within the last two years; or

   (iii) has a current business or professional relationship (including consulting with or without compensation) with the law school (or its parent institution) or has had such a relationship within the last two years.

(2) The Member’s spouse, child, parent, domestic partner, or sibling:

   (i) is an employee or student of the law school under review (or its parent institution) or has been within the last two years;

   (ii) is currently a member of any board of the law school or its parent institution or has been within the last two years; or

   (iii) has a current material business or professional relationship with the law school (or its parent institution) or has had such a relationship within the last two years.

(d) A Member of the Appeals Panel shall recuse himself or herself from participating in the review of a matter before the Appeals Panel in any case where the Member of the Appeals Panel participated in
making the decision on such matter as a member of the Council or served on the site team which visited the law school.

(e) In addition to the conditions set forth in subparts (b), (c), and (d) above, if, in a matter before the Council or the Appeals Panel related to a law school under review, a meaningful conflict exists or could be reasonably perceived to exist in view of the Member’s office or other position, previous or current relationship with the law school, or other circumstances (including geographic distance between the Member’s residence or place of employment and the law school under review or circumstances involving the Member’s spouse, child, parent, domestic partner, or sibling), then the Member shall disclose the relationship to the Chair of the Council or the Chair of the Appeals Panel, as applicable, and the relevant Chair shall determine whether the Member shall be recused from participating in the matter under consideration. For purposes of this subpart, a relationship with a law school includes, but is not limited to, a relationship with the members of the law school’s faculty, staff, students, graduates, or its parent institution.

(f) A Member who is recused with regard to a matter related to a law school under review:

1. may not be present in the room (nor participate in the meeting by means of telecommunications) when the law school appears before the Council or the Appeals Panel or when the Council or the Appeals Panel is discussing the matter related to the law school;

2. shall refrain from participating in any discussions, formal or informal, with other Members regarding the matter related to the law school; and

3. shall not read but instead shall destroy or delete any materials received from the Managing Director or Managing Director’s staff concerning the law school.

(g) A current dean, faculty member, other employee, or student of the law school under review (or its parent institution); a former dean of the law school under review; a former full-time faculty member of the law school under review, for a period of ten years following the termination of faculty status with the law school; a former employee of the law school under review other than as a full-time faculty member, for a period of two years following termination of such employment; or a graduate of the law school under review may not serve on a site evaluation team or as a fact finder visiting that law school or law school program.

(h) For good cause stated, the dean of a law school (or law school program) under review may request that a member of a site evaluation team, or a Member of the Council, or the Appeals Panel, recuse himself or herself from acting in such capacity with respect to the dean’s law school. With regard to a member of a site evaluation team, the Managing Director shall grant or deny such request based on the merits of the claim. With regard to a Member of the Council or the Appeals Panel, the Chair of the Council, or the Appeals Panel, as the case may be, shall grant or deny such request based on the merits of such claim.

(i) Annually, Council members, Managing Director’s Office staff, and Appeals Panel members certify in writing that they agree to abide by this IOP. When a site team member agrees to serve on a site evaluation team, the site team member certifies in writing that he or she has no conflict of interest and agrees to abide by this IOP.