

# U.S. Department of Education Staff Report to the Senior Department Official on Recognition Compliance Issues

## Recommendation Page

1. **Agency:** Council On Occupational Education

( 1969 / 2021 )

(The dates provided are the date of initial listing as a recognized agency and the date of the agency's last grant of recognition.)

2. **Action Item:** Compliance Report

3. **Current Scope of Recognition:**

The accreditation and preaccreditation throughout the United States of postsecondary occupational education institutions offering non-degree and applied associate degree programs in specific career and technical education fields, including institutions that offer programs via distance education.

4. **Requested Scope of Recognition:**

Same as above.

5. **Date of Advisory Committee Meeting:** 02/27/2024

6. **Staff Recommendation:**

Renew the agency's recognition for 2 years and 5 months.

7. **Issues or Problems:**

None.

## Executive Summary

### PART I: GENERAL INFORMATION ABOUT THE AGENCY

The Council on Occupational Education (COE) is a national institutional accrediting agency. Its current scope of recognition is for the accreditation and preaccreditation ("Candidacy status") throughout the United States of postsecondary occupational education institutions offering non-degree and applied associate degree programs in specific career and technical education fields, including institutions that offer programs via distance education. COE was originally established in 1968 as a committee of the Southern Association of Colleges and Schools (SACS). In 1971 the Committee became the Commission on Occupational Education Institutions. In 1995, the agency formally separated from SACS, adopted its present name, and began to accredit and preaccredit institutions throughout the United States. COE currently accredits 518 institutions and 46 candidate institutions in 44 states, the District of Columbia and Puerto Rico. COE's accreditation enables the institutions it accredits to establish eligibility to participate in Title IV programs; thus it must meet the Secretary's separate and independent requirements.

## **Recognition History**

The U.S. Commissioner of Education first listed COE as a recognized accrediting agency in 1969, and the last full review of the agency was conducted in 2021 and the SDO continued to recognize the agency, providing up to 12 months for the agency to achieve compliance and requiring the agency to submit a compliance report within 30 days after the compliance period. The required compliance report is the subject of this staff analysis.

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## **PART II: SUMMARY OF FINDINGS**

### **602.15 Basic Eligibility, Organizational and Administrative Requirements**

#### **Description of 602.15(a)(3)**

(3) Academic and administrative personnel on its evaluation, policy, and decision-making bodies, if the agency accredits institutions;

#### **Analyst Remarks to Narrative:**

As indicated in the Senior Department Official's (SDO) letter dated October 27, 2021, the agency must demonstrate that it has both academic and administrative personnel included on all site visit teams. In response, the agency provided a list of accreditation site visits that occurred during November 2021 through October 2022 and a visiting team roster sheet for each visit (Exhibit 2), which clearly demonstrates all visiting teams included academic and administrative personnel. The agency indicated in the narrative that it resolved the malfunction issue with its accreditation management software, and the agency also provided site visit coordination software and spreadsheet screen prints that is used to ensure academic and administrative categories are filled for every evaluation visit (Exhibit 3). The agency's response is satisfactory and no additional information is needed.

### **602.20 Required Standards & Their Application**

#### **Description of 602.20(a)**

(a) If the agency's review of an institution or program under any standard indicates that the institution or program is not in compliance with that standard, the agency must—

(1) Follow its written policy for notifying the institution or program of the finding of noncompliance;

(2) Provide the institution or program with a written timeline for coming into compliance that is reasonable, as determined by the agency's decision-making body, based on the nature of the finding, the stated mission, and educational objectives of the institution or program. The timeline may include intermediate checkpoints on the way to full compliance and must not exceed the lesser of four years or 150 percent of the—

(i) Length of the program in the case of a programmatic accrediting agency; or

(ii) Length of the longest program at the institution in the case of an institutional accrediting agency;

(3) Follow its written policies and procedures for granting a good cause extension that may exceed the standard timeframe described in paragraph (a)(2) of this section when such an extension is determined by the agency to be warranted; and

(4) Have a written policy to evaluate and approve or disapprove monitoring or compliance reports it requires, provide ongoing monitoring, if warranted, and evaluate an institution's or program's progress in resolving the finding of noncompliance.

Analyst Remarks to Narrative:

As indicated in the Senior Department Official's (SDO) letter dated October 27, 2021, the agency's compliance report must demonstrate that it has meaningfully engaged with its obligations under section 602.20 to enforce its accreditation standards with respect to complaints of fraud and criminal activity at Florida Career College (FCC).

In addition, the SDO letter indicated the agency should provide evidence that it is monitoring compliance with its standards and evidence of actions the agency is taking to evaluate compliance in light of the FCC lawsuit regarding predatory recruiting and job placement fraud.

As indicated in the final staff analysis, the agency has adequate policies regarding enforcement timelines, monitoring, good cause extension, and evaluation/monitoring procedures for institutions found non-compliant with standards (Exhibit 5, Handbook of Accreditation, page 18-19).

The agency has not established a timeline for FCC to come into compliance because it has not determined the institution is not compliant with its accreditation standards, policies and procedures. The agency placed the institution on monitoring status and issued a notice of apparent deficiency on May 2020 (Exhibit 4A), which presented the evidence of apparent violation relative to two news report articles and court case, and FCC responded within the required 30-day period, which was reviewed by the commission and continued the monitoring status (Exhibit 4A). The agency's handbook of accreditation outlines requirements of a notice of apparent deficiency (Exhibit 5,

page 18).

As part of its monitoring efforts, the agency has taken several actions to investigate the issues and allegations against FCC, such as requiring periodic arbitration status reports/ultimate outcome and quarterly update reports that provided the progression of litigation, court filings and rulings, written notification of final resolution of lawsuit, and non-disclosure or confidentiality agreements with plaintiffs. The commission met and reviewed the quarterly reports and required subsequent information. The agency also interviewed complainants in the lawsuit and allowed the institution to respond. In addition, the agency has also reviewed FCC relative to the Department's Title IV program reviews, compliance audits, heightened cash monitoring, and pending investigation by the enforcement division. The agency also conducted a focused review to address FCC's standards related to educational programs, financial resources, human resource, student personnel services, and requirements relating to recruiting and advertising, and the focus review report, dated January 2022, indicated there were no findings of non-compliance (Exhibit 4F). Focus reviews may be prompted by a complaint, as indicated in the handbook of accreditation (Exhibit 5, page 17). The agency also responded to a general inquiry under CFR 34 602.33 from the Director of the Accreditation Group (June 2020) regarding a class-action lawsuit that was filed in the U.S. District Court against FCC alleging FCC engaged in unfair and deceptive practices including deceiving students into taking out Direct Loans; inducing students to enroll using false promises of job placement outcomes; and engaging in reverse redlining (Exhibit 4B). The Department stated in its inquiry closeout letter (December 2020) that the agency was following its standards, policies, and procedures in its review of the institution (Exhibit 4C).

However, it has been noted that the agency treated the lawsuit and news allegations in accordance with its complaint policy, and it appears the agency did not follow its compliant policy before it issued the notice of apparent deficiency. The agency specifically did not provide evidentiary documentation of conducting a compliant inquiry (before issuing the notice of apparent deficiency) that involved notifying FCC of the lawsuit and news allegations and allowing the institution to respond within 21 days. The notice of apparent deficiency was supposed to be issued after the commission reviewed and decision regarding FCC's response to the complaint inquiry. The agency stated in the narrative that its actions addressed the lawsuit and news allegations in accordance with its complaint policy and procedures, which indicates lawsuit charges against institutions can be considered a complaint for practical purposes and necessitate further inquiry and/or action by the commission (Exhibit 5, Handbook of Accreditation, page 49 and Exhibit 1, Policies and Rules of the Commission, page 50). Department staff could not determine if the agency followed its complaint policy and procedures without evidentiary documentation relative FCC's compliant.

The agency provided a chronological chart of monitoring activities and evidentiary documentation (Exhibits 4, 4A-G).

Department staff cannot determine if the agency has thoroughly addressed the allegations against FCC according to its standards, policies and procedures because the agency has not concluded its monitoring/investigation, and the agency is also awaiting final resolution of the lawsuit, matters involving the Consumer Protection Directorate, the September site visit for reaffirmation of accreditation and other pending items/actions. This information would allow the Department to thoroughly assess if the agency complies with enforcement requirements. The agency must provide documentation of the recent full-cycle review of FCC (self-study, FCC's response to site visit report, and decision letter). The agency did not provide the last annual report for FCC.

In addition, the Department received one third-party comment. The commenter questioned FCC's inconsequential monitoring status, integrity, recruitment practices, program cost and quality, instructional resources and equipment, and job placement rates. The commenter also questioned the agency's monitoring and evaluation of FCC, enforcement of its benchmarks, and its posting accreditation decision on its website.

**The commenter indicated that the Department should ascertain why FCC has remained in the relatively inconsequential monitoring status of “Notification of Apparent Deficiency” since June 2021.** As noted previously in this analysis, the lawsuit allegations were processed by the agency as a complaint and the complaint process allows the agency to put FCC on monitoring status. The agency's policy indicates the notice of apparent deficiency monitoring status may be removed at any time by the commission upon clarification or remediation of the apparent deficiency (Exhibit 5, page 18). The policy does not have a specific timeline for institutions to resolve its monitoring status. Department staff reminds the agency that it must establish enforcement timelines if the institution is determined to be noncompliant during the period the agency is monitoring the institution as prescribed in 602.20(a)(2)). The commission has the discretion to determine the length of time it needs to fully investigate an institution's compliance with standards, policies and procedures, as well as the discretion to determine how long it will allow an institution to remedy its monitoring status and when the monitoring status will be escalated to a violation. The agency has demonstrated that the commission has met several times to review a multitude of information that was provided by FCC in response to its monitoring status, and the commission decided to continue FCC's monitoring status several times to obtain additional information. The agency's notice of apparent deficiencies highlighted allegations presented in the two news report articles and the lawsuit as the basis for the institution's placement on monitoring status. The commenter referenced COE approving a new campus for FCC; however, the agency

has not identified a violation/non-compliant issue that would have impacted the opening of a new campus because FCC remains on monitoring status. The commenter questioned the agency's application of monitoring status as a means to avoid alerting the public and appropriate oversight agencies about serious concerns with FCC's compliance; however, COE followed its complaint policy, which specifies a lawsuit is handled as a complaint. The compliant policy allows the agency to put an institution on monitoring status.

**The commenter indicated that the agency should provide documentation demonstrating it has evaluated all job placement rates reported by FCC to COE, and that it has enforced its policies with respect to program benchmarks.** The agency provided the site visit report (conducted in 2022) for FCC's reaffirmation of accreditation, and the report did not have any findings relative to benchmarks (Exhibit 4G). The report determined the institution provided accurate data on completion, job placement and licensing exam rates under Standard 3, and the team also assessed the quality of placement services under Standard 10. The agency did not provide documentation of a full-cycle review of FCC (self-study, FCC's response to site visit report, and decision letter). The agency indicated the commission was scheduled to review all materials related to the reaffirmation of accreditation at its December 2022 meeting. In addition, the agency did not provide the last annual report for FCC and assessment documentation to demonstrate it adequately evaluated FCC's student achievement/program outcomes. However, as noted previously, Department staff has asked that all documentation to be provided in COE's response to the draft staff analysis.

**The commenter indicated the agency should provide evidence of its monitoring and evaluation of FCC's compliance with accreditation criteria pertaining to integrity, recruitment practices, program cost and quality, and instructional resources and equipment.** The agency provided documentation of monitoring activities, as previously outlined in this analysis, for FCC conducted under the notice of apparent deficiencies. The agency conducted a focused review in 2022 to address allegations against FCC, and the commission customized the criteria for the site visiting team, specific to allegations in the news articles and lawsuit. The focused review report addressed several requirements, such as the institution's integrity of recruiting, advertising, and admissions, program length and tuition relative to entry level earnings, and financial and human resources. There were no findings of non-compliance presented in the focused review report (Exhibit 4F). The agency also conducted a site visit in 2022 for reaffirmation of accreditation. The site visit report addressed several requirements, such as the adequacy of learning resources (Standard 5) and physical resources and technical infrastructure (Standard 6), and quality of educational programming (Standard 2). The site visit report demonstrated FCC recruitment practices were compliant with agency requirements (Exhibit 4G under Items 18 & 19). The site visit report did not cite any negative findings of

noncompliance (Exhibit 4G). The agency indicated in its narrative that the commission was scheduled to review all materials related to reaffirmation of accreditation at its December 2022 meeting. However, as noted previously, Department staff has asked that all documentation to be provided in COE's response to the draft staff analysis.

**The commenter also indicated the agency's website does not provide adequate notice to the public of accreditor decisions. Section 602.26b outlines notification requirements for negative decisions. The agency handbook (Exhibit 5, page 18) specifies that violation statuses are a matter of public record and will be published on the website in the form of a notification. The agency includes commission actions under the Resources tab on its website. The Department staff uploaded documentation of the agency's December 2022 post of commission actions on its website, which included FCC. The agency satisfies notification requirements of 602.26b.**

Analyst Remarks to Response:

As noted in the draft staff analysis the Senior Department Official's (SDO) letter dated October 27, 2021, the agency's compliance report must demonstrate that it has meaningfully engaged with its obligations under section 602.20 to enforce its accreditation standards with respect to complaints of fraud and criminal activity at Florida Career College (FCC). In addition, the SDO letter indicated the agency should provide evidence that it is monitoring compliance with its standards and evidence of actions the agency is taking to evaluate compliance in light of the FCC lawsuit regarding predatory recruiting and job placement fraud.

While the SDO decision letter mentions monitoring it did not specifically list the agency as being noncompliant with the monitoring criteria in 602.19. However, in order to demonstrate that it has conducted continuous review and evaluation of the situation and concerns at FCC and that FCC continues to comply with the agency's standards, the agency has provided an ample amount of documentation. In addition, the SDO decision letter cited noncompliance with 34 CFR Part 602.20, therefore, the agency provided responses to all subsection in 602.20.

Specifically, the draft staff analysis indicated that the agency must provide evidentiary documentation demonstrating that per its complaint policies and procedures, it conducted an inquiry (including all steps) before issuing the notice of apparent deficiency. In response, the agency indicated that its policy allows for a complaint of a certain magnitude or seriousness in nature to require immediate action. Such complaints may be taken directly to the commission executive committee or the commission via telephone conference call for review and appropriate action. When

neither the commission nor the commission executive committee is in session, the executive director may act on behalf of the commission in response to such an emergency situation. Matters such as front-page news stories involving alleged improprieties, for example, may require an immediate inquiry on the part of the Commission. (Exhibit 1, page 54). The handbook of accreditation also indicates instances where the nature of the complaint requires immediate action, the executive director, with concurrence from the chair of the commission, may take emergency measures to determine the facts and present them either to the executive committee or to the commission Exhibit 5, page 49. The commission approved an update to its policy on September 7 & 8, 2023 to further clarify issues of serious public concern process relative to the executive director's authority and notification of apparent deficiency. The agency provided a sufficient explanation as to why an inquiry was not conducted before issuing the notice of apparent deficiency to FCC. The agency's response to this issue is satisfactory and no additional information is required.

The draft staff analysis also indicated that upon completion of the agency's complaint investigation and monitoring efforts, the agency must provide documentation outlining remaining monitoring activities and resolution (commission decision) and provide enforcement timeline/actions, if it determines FCC did not comply with requirements. The agency has not implemented any enforcement timelines/actions because FCC's notification of apparent deficiency was extended last by the commission on 9/8/23, and the agency provided an updated chronology of monitoring activities that occurred after 11/28/22 (Exhibit 7). Department staff uploaded supporting documentation the agency emailed to demonstrate continued monitoring efforts (Exhibits 15-42). The commission is scheduled to meet on 12/6-7, 2023 to review FCC outstanding issues. The three outstanding matters are : 1) the on-going Federal lawsuit against the institution in the Southern District of Florida Court (Britt et al. v. IEC Corporations, et al.); 2) current investigation by the Departments FSA Partner Enforcement and Consumer Protection Directorate; and 3) current program review by the Department for the 2017/18 year that disclosed significant findings.

In addition, the draft staff analysis indicated that the agency must provide documentation of the recent full-cycle review of FCC (self-study, FCC's response to site visit report, and decision letter). The agency must provide the last annual report for FCC. In response, the agency provided 2022 full-cycle documentation for FCC: self-study (Exhibit 10) team report (Exhibit 11) and FCC's response to the team report (Exhibit 12). The agency also provided the 2022 annual report for FCC (Exhibit 13).

Finally, although the agency's review and evaluation of FCC is ongoing, the agency has provided ample information and documentation, which has enabled Department staff to conclude that COE continues to conduct meaningful reviews and evaluation of FCC's compliance with its standards. Therefore, Department staff finds the agency compliant with this criterion. FCC has not been found noncompliant with the agency's

standards, therefore, the enforcement timelines required by this criterion have not been implemented. As noted in the agency's renewal petition, no issues were found with the agency's written policy related to this criterion. Department staff will continue to monitor the agency's oversight and review of FCC.

**Description of 602.20(b-d)**

(b) Notwithstanding paragraph (a) of this section, the agency must have a policy for taking an immediate adverse action, and take such action, when the agency has determined that such action is warranted.

(c) If the institution or program does not bring itself into compliance within the period specified in paragraph (a) of this section, the agency must take adverse action against the institution or program, but may maintain the institution's or program's accreditation or preaccreditation until the institution or program has had reasonable time to complete the activities in its teach-out plan or to fulfill the obligations of any teach-out agreement to assist students in transferring or completing their programs.

(d) An agency that accredits institutions may limit the adverse or other action to particular programs that are offered by the institution or to particular additional locations of an institution, without necessarily taking action against the entire institution and all of its programs, provided the noncompliance was limited to that particular program or location.

**Analyst Remarks to Narrative:**

As indicated in the final staff analysis, the agency has an adequate policy for taking immediate adverse action when the agency has determined that such action is warranted and when the program does not bring itself into compliance within a specified period, as outlined in its handbook for accreditation (Exhibit 5, page 18-20).

FCC is currently on monitoring status and the institution has been notified of an apparent deficiency status, which signifies the institution is apparently deficient with respect to a requirement. This status may be removed at any time by the commission upon clarification or remediation of the apparent deficiency, or it may be changed by the commission to a violation status (Exhibit 5, page 18). As indicated in the narrative, the agency has not taken any adverse action because FCC is currently on monitoring status to determine if FCC is in compliance with the agency's standards, policies and procedures in response to the allegations presented in the news articles. The agency has provided a chronology of its monitoring efforts/activities (Exhibit 4) that were implemented to thoroughly address the allegations. The agency has indicated in the narrative that the commission determines FCC is out of compliance with standards or policies, it has the authority within its stated policies to initiate immediate adverse action as described above.

## **Discovered noncompliance under 602.24 (c)(2)(i) and 602.24(a)(3)**

In the course of Department staff's review of the situation at FCC college and the agency's monitoring activities of FCC, Department staff learned that the agency had not required FCC to submit a teach-out plan in accordance with 602.24(c)(2)(i). After discussion with the agency, it required FCC to submit a teach-out plan and the agency provided the teach-out plan for Department staff's review. Upon further review of the teach-out plan, Department staff informed the agency that the teach out plan was lacking critical elements. Specifically, the teach-out plan failed to list all currently enrolled students, and did not include the names of other institutions that offers similar programs that could potentially enter into a teach-out agreement with the institution, in accordance with 602,24(a)(3 ). It should be noted, the agency has since changed its policy which is now compliant with the aforementioned regulations. The agency has provided its revised policy and teach-out plans for all institutions on HCM2 status to demonstrate the consistent application of its revised policy (Exhibit 7). No additional information or response is required of the agency regarding this particular issue and its compliance with 34 CFR Parts **602.24 (c)(2)(i) and 602,24(a)(3)**.

**Section 602.24(c)(1-2) requires a teach-out plan if an institution is placed on heightened cash monitoring status. The Department placed FCC on heightened cash monitoring status in July 2022** based on serious issues regarding student eligibility and misrepresentations to students that were uncovered during the Office of Federal Student Aid's ongoing investigation of FCC's administration of the Title IV programs.

### Analyst Remarks to Response:

As noted in the previous section, the SDO decision letter mentions monitoring it did not specifically list the agency as being noncompliant with the monitoring criteria in 602.19. However, in order to demonstrate that it has conducted continuous review and evaluation of the situation and concerns at FCC and that FCC continues to comply with the agency's standards, the agency has provided ample documentation. In addition, the SDO decision letter cited noncompliance with 34 CFR Part 602.20, therefore, the agency provided responses to all subsections in 602.20.

Specifically, the draft staff analysis indicated that upon completion of the agency's complaint investigation and monitoring efforts, the agency must provide documentation outlining remaining monitoring activities and the resolution (commission decision) and provide enforcement timelines/actions, if it determines FCC did not comply with requirements. In response, the agency provided an updated chronology of monitoring activities that transpired since the November 28, 2022 relative to the commission monitoring efforts and actions, the U.S. Department of

Education (ED) Federal Student Aid (FSA) investigation, and institutional responses (Exhibit 14). The agency demonstrated that it continues to monitor FCC under its notification of apparent deficiency for three outstanding matters: 1) the on-going Federal lawsuit against the institution in the Southern District of Florida Court (Britt et al. v. IEC Corporations, et al.); 2) current investigation by the ED FSA Partner Enforcement and Consumer Protection Directorate; and 3) current program review by ED for the 2017/18 year that disclosed significant findings.

## Commission Actions

The commission met on 1/10/2023, 3/10/23, 6/7/2023, and 9/8/2023 to review updated information on the three outstanding issues and decided to continue FCC's monitoring status at that time. The commission is planning to meet again 12/6-7/23 to continue the review and actions regarding the outstanding issues. Several actions of the commission were presented in the activities update to demonstrate monitoring/investigation efforts. On 12/13/22, the commission contacted FSA to request additional information about the FCC investigation. The commission deferred action on reaffirmation of FCC's accreditation until outstanding issues were resolved (12/13/22, 3/10/23, 6/7/23, and 9/8/23).

The agency commission (which is the decision-making body) required an unannounced focused review of FCC's the Houston Southwest campus (3/10/23), the review was conducted on 5/9-10/23, and the focused review report was accepted by the commission on 6/7/23. The commission required the institution to submit a response to the focused review report within 30 days of receipt of the report. The commission accepted FCC's response to the focused review report and the institution's financial viability plan on 9/8/23.

On 6/7/23, the commission denied FCC's request for co-location of the FCC Houston Southwest campus with Sage Truck Driving School, and it ordered a third-party, independent auditor to conduct a review of student achievement data and the institution's financial viability plan.

## FCC Actions/Responses

FCC provided a response (1/26/23, 4/27/23, 7/3/23, 7/20/23) several times to the commission continuation of the notification of apparent deficiency. FCC notified the commission that it was pausing operations at the Houston Southwest campus until FSA approved Title IV funding on 2/13/23. The institution requested approval from the commission for approval of co-location of Sage Truck Driving School at the FCC Houston, Texas (Southwest) campus on 3/2/23. The institution provided an update to the commission on the Britt, et al. v. FCC lawsuit and arbitration on 3/28/23, which demonstrated FCC prevailed on the merits of all claims.

## ED's Federal Student Aid Investigation

The agency provided an update in the chronological monitoring activities that related to ED's Federal Student Aid investigation. The agency requested information from FSA regarding the investigation (12/13/23). The agency was notified by FSA that FCC was denied recertification of application to participate in Federal Student Financial Aid program (4/11/2023). The institution shared its letter with the agency that was sent to FSA for reconsideration of the denial (5/24/23). The agency was notified of a letter from FSA to the institution claiming the institution made inaccurate statements during a public meeting of the Florida Commission for Independent Education (6/5/23). The institution provided its response to FSA's letter to the commission regarding allegations of inaccurate statements made before the State licensing agency at the public meeting (6/6/23). On 8/8/23, the commission issued a request to FCC for additional information regarding FSA's allegations of misrepresentation, and the institution responded to the commission's request on 8/18/23. FCC notified the commission on 9/7/23 that FSA issued a notice to IEC on 7/31/2023 regarding the ongoing investigation into the United Education Institute and UEI College. FCC had a meeting with Senior ED officials on 8/9/23, which resulted in a proposed resolution term agreement between the IEC Corporation and the ED. Department staff uploaded supporting documentation that the agency emailed to demonstrate continued monitoring efforts (Exhibits 15-42).

The agency updated chronology of monitoring activities demonstrates the commission continues to monitor and investigate FCC regarding the three outstanding issues in accordance with its notification of apparent deficiency policy. The commission last continued the notification of apparent deficiency for FCC on 9/8/23 and did not take any adverse action against FCC.

As noted in the agency's renewal petition, no issues were found with the agency's written policy related to this criterion.

### **Description of 602.20(e)**

(e) All adverse actions taken under this subpart are subject to the arbitration requirements in 20 U.S.C. 1099b(e).

Note: 20 U.S.C. 1099b(e) Initial Arbitration Rule. – The Secretary may not recognize the accreditation of any institution of higher education unless the institution of higher education agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration prior to any other legal action.

Analyst Remarks to Narrative:

The agency has an adequate policy regarding arbitration requirements that is provided in the handbook of accreditation, which requires candidates for accreditation and accredited institutions to agree to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration prior to any other legal action (Exhibit 5, page 22).

**Description of 602.20(f-g)**

(f) An agency is not responsible for enforcing requirements in 34 CFR 668.14, 668.15, 668.16, 668.41, or 668.46, but if, in the course of an agency's work, it identifies instances or potential instances of noncompliance with any of these requirements, it must notify the Department.

(g) The Secretary may not require an agency to take action against an institution or program that does not participate in any title IV, HEA or other Federal program as a result of a requirement specified in this part.

Analyst Remarks to Narrative:

The agency has an adequate policy relative to non-compliance with Parts of 34 CFR 668. The agency's handbook of accreditation stipulates that it will provide the Department with any information it may have that relates to an institution's participation in Title IV, HEA programs, which includes information relating to issues involving program participation agreements, standards of administrative capability, reporting and disclosure of information regarding institutional and financial assistance, and institutional security policies and crime statistics (Exhibit 5, page 51). The agency indicated in the narrative that it has not identified any instances or potential instances of noncompliance with Parts of 34 CFR 668 with regards to Florida Career College that require notification to the Department. The agency also indicated in the narrative that it applies its standards, conditions, policies and procedures consistently to all member institutions regardless of whether or not they participate in any Title IV, HEA programs or other Federal programs.

**PART III: THIRD PARTY COMMENTS**

**Staff Analysis of 3rd Party Written Comments**

The Department received two third-party comments for this agency. The first commenter (Justice Della) questioned FCC's inconsequential monitoring status, integrity, recruitment practices, program cost and quality, instructional resources and equipment, and job placement rates. The commenter also questioned the agency's monitoring and evaluation of FCC, enforcement of its benchmarks, and its posting accreditation decision on its website. The Department staff analysis of this third-party comment is provided in 602.20(a). The second comment for this agency was mostly unrelated to the agency's compliance with the recognition regulations. The commenter (Edward Conroy) stated that the Department's solicitation of

written third-party comments occurred without access to the agency's the compliance report or related materials. The Department's solicitation of written third-party comments sought comment on the agency's compliance with the regulation in question pursuant to 34 C.F.R. §§ 602.32(c) and (l), not on the agency's compliance report or related materials. The purpose of the call for written third-party comment is to allow anyone who has any knowledge of an agency undergoing a recognition review by the Department and the agency's compliance or non-compliance with Departmental regulations to provide that information and/or documentation so that Department staff can utilize it in the comprehensive analysis of the agency. The comment also stated that complaint processes used by accrediting agencies should be more accessible to complainants. The Department's recognition review process assesses whether or not an accrediting agency meets the Secretary's Criteria for Recognition (Criteria) at 34 C.F.R. Part 602. The Criteria include a requirement that an agency must review in a timely, fair, and equitable manner any complaint it receives against an accredited institution or program or itself, per 34 C.F.R. § 602.23(c)(1-3). The scope of this review is to assess the agency in the specific areas of noncompliance noted in the senior Department official's decision on recognition dated October 27th, 2021. Therefore, only information and documentation concerning actions or examples in 34 C.F.R. § (§) 602.15(a)(3) and 34 C.F.R. §602.20 of the Criteria would be applicable to this analysis. No matter, the agency may wish to respond to the comment in its response to the draft staff analysis. The comment noted the Sweet v. Cardona case and settlement and stated that NACIQI should review accrediting agencies and their actions related to individual institutions included in the case. The Criteria include a requirement that an agency must submit to the Department any institution or program it accredits that it has reason to believe is failing to meet its title IV, HEA program responsibilities, per 34 C.F.R. § 602.27(a)(5). Department staff use information and documentation related to individual institutions and programs to ensure that an accrediting agency acts in accordance with both its own policies and procedures and with the Criteria. The recognition review process is not intended to review individual institutions or programs that are accredited by the agency, but the agency itself. As noted above, the scope of this review is to assess the agency in 34 C.F.R. § (§) 602.15(a)(3) and 34 C.F.R. §602.20 of the Criteria. The agency may still wish to respond to the comment in its response to the draft staff analysis.