



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE UNDER SECRETARY

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS

In the matter of:

**ACCREDITING COUNCIL FOR
INDEPENDENT COLLEGES AND SCHOOLS,**

Respondent.

Docket No.: 16-44-O
Accrediting Agency
Recognition Proceeding

SENIOR DEPARTMENT OFFICIAL'S RESPONSE TO ACICS

I. Introduction and Summary of Recommendations

On December 12, 2016, in a written decision, the then-Secretary of Education terminated the Department's recognition of the Accrediting Council of Independent Colleges and Schools (ACICS).¹ Recognition by the Department authorizes an accrediting agency to serve as a gatekeeper which gives its accredited institutions access to federal student aid programs under Title IV of the Higher Education Act of 1965, as amended (HEA). The Secretary's Decision was the culmination in a series of actions taken by the Department that led to ACICS's loss of recognition. The Secretary's written decision affirmed and expressly adopted the findings of the then-Senior Department Official (SDO), whose decision ACICS had appealed pursuant to Department regulations for adjudicating accrediting agency recognition decisions.² The SDO Decision in turn had explicitly adopted the written analysis and findings of Department staff³, staff remarks to NACIQI at its June 23, 2016 meeting,⁴ as well as NACIQI's discussion and concurrence by a 10-3 vote that ACICS's recognition should be revoked because it found ACICS was noncompliant with 21 of the Secretary's recognition criteria and that it could not come into compliance with them within a year.

On December 15, 2016, ACICS sued the Department in the U.S. District Court for the District of Columbia, challenging the Secretary's Decision as a violation of the Administrative Procedure Act (APA). While ACICS alleged that the Department committed numerous APA violations, as relevant here, ACICS claimed the Department erred by not considering tens of

¹ Decision of the Secretary, Docket No. 16-44-O, December 12, 2016 at 14 (hereafter referred to as the "Secretary's Decision").

² 34 CFR § 602.37; Letter to Roger J. Williams, Interim President, ACICS, from Emma Vadehra, Chief of Staff, September 22, 2016 at 3 (hereafter referred to as the "SDO Decision").

³ Staff Report to the Senior Department Official on Recognition Compliance Issues (hereafter referred to as the "2016 Final Staff Report")

⁴ The transcript of the NACIQI meeting is available at <https://sites.ed.gov/naciqi/archive-of-meetings/>

SDO Response to ACICS

thousands of pages of evidence timely submitted by ACICS pursuant to a special request by the Office of the Under Secretary (OUS) (the “Part II submission”), as well as evidence of ACICS’s placement verification and data integrity programs. The court, after considering the cross-motions for summary judgment from ACICS and the Department, granted and denied in part ACICS’s motion.⁵ The court found that the then-Secretary had “violated the APA by failing to consider [ACICS’s] Part II submission and evidence of its placement verification and data integrity programs and procedures” and remanded the case back to the “Secretary for consideration of th[at] evidence.” *Id.* at 65. The court also ruled that the Secretary could consider additional evidence that ACICS had submitted after the NACIQI meeting which the Department had previously refused to review, as well as to “take into account new evidence” submitted by ACICS. *Id.*

As per your order carrying out the court’s directive to reconsider the 2016 Decision, I have reviewed ACICS’s Part II submission and additional evidence the agency has presented (ACICS’s “2018 Supplement”) to determine if or how that evidence does or does not demonstrate compliance with the Secretary’s recognition criteria, including its bearing on whether ACICS should be provided additional time (12 months or less) for the agency to demonstrate or achieve compliance during which time it would remain recognized. See 34 CFR § 602.36(e)(3). The Part II submission and 2018 Supplement cannot be viewed in isolation from the evidence previously submitted by ACICS during the 2016 proceedings and Department staff, NACIQI, and the SDO’s evaluation thereof. Accordingly, in an effort to provide you with the most thorough and thoughtful recommendations based on the full record before the Department, I have also closely reviewed the evidence and considered the findings, reasoning, and conclusions in the Final Staff Report and, where applicable, the SDO and Secretary in their decisions.

Based on my review, I have concluded that ACICS is in compliance with 19 of the 21 applicable recognition criteria. ACICS was likely in compliance with many of these criteria in 2016 at the time of the Secretary’s Decision. For those two areas in which ACICS has not demonstrated full compliance, I recommend that you provide ACICS 12 months in which it must come into or demonstrate compliance with and application of the criteria pursuant to 34 CFR § 602.36(e)(3). Below is a summary of my recommendations.

⁵ *Accrediting Council for Independent Colleges and Schools*, Memorandum Opinion, 16-2448, March 23, 2018 (D.D.C.). The court’s decision also provides an exhaustive chronology of the facts and events leading to its ruling in pages 6 to 16.

SDO Response to ACICS

Summary of Recommendations				
#	<u>Regulation</u>	<u>Compliant/ Noncompliant</u>	<u>Compliance Report Due</u>⁶	<u>Annual Update Report</u>
1	602.13 – Acceptance of the Agency by Others	Compliant		
2	602.15(a)(1) – Administrative and Financial Resources	Compliant		Audited Financials for 3 years; staffing update, including total number of members and an organization chart of the agency staff.
3	602.15(a)(2) – Competency of Representatives	Noncompliant	I believe ACICS will achieve compliance with this criterion in 12 months.	
4	602.15(a)(3) – Academic/Administrator Representatives	Compliant		
5	602.15(a)(5) – Public Representatives	Compliant		
6	602.15(a)(6) – Conflict of interest	Noncompliant	I conclude ACICS will achieve compliance with this criterion in 12 months.	
7	602.16(a)(1)(i) – Accreditation and Pre-Accreditation Standards – Student Achievement	Compliant		Annual report on Placement Verification Program
8	602.16(a)(1)(v) – Accreditation and Preaccreditation Standards: Fiscal/Administrative Capacity	Compliant		
9	602.16(a)(1)(vii) – Recruiting and admissions practices, academic calendars, catalogs, publications, grading and advertising	Compliant		Annual ARIG Report
10	602.16(a)(1)(ix) – Record of student complaints received by, or available to, the agency	Compliant		

⁶ Recommendation for Secretary to require agency to submit compliance report, per the requirements of 34 CFR § 602.37(e)(3).

SDO Response to ACICS

Summary of Recommendations				
#	<u>Regulation</u>	<u>Compliant/ Noncompliant</u>	<u>Compliance Report Due</u>⁶	<u>Annual Update Report</u>
11	602.16(a)(1)(x) – Records of compliance regarding Title IV	Compliant		
12	602.17(a) – Application of standards in reaching an accrediting decision	Compliant		Recommend that staff observe a meeting of the decision-making body in the next 12 months
13	602.17(c) – Onsite Reviews	Compliant		
14	602.18(d) – Reasonable assurance of accurate information	Compliant		
15	602.19(b) – Monitoring	Compliant		Annual ARIG Report
16	602.20(a) – Enforcement of standards (timeframes)	Compliant		
17	602.20(b) – Enforcement of standards (adverse action)	Compliant		
18	602.21(a)-(b) – Review of standards	Compliant		
19	602.22(a)(3) – Substantive change	Compliant		
20	602.24(c)(1) – Teach-out Plan Triggers	Compliant		
21	602.27(a)(6)-(7), (b) – Fraud and Abuse	Compliant		

II. Overarching Issues

1. Explanation of Review of ACICS’s Part II Submission and 2018 Supplement

District Court’s Opinion:

The court’s assessment of how the Department erred previously in its consideration and decision regarding ACICS’s 2016 petition for continued recognition strongly inform my recommendations to you. The court was clear that in not taking into account ACICIS’s Part II submission and the placement verification and data integrity procedures, the Department “violated the HEA and the implementing regulations” that require consideration of “all available relevant information concerning the compliance of” the agency. Memorandum Opinion at 32 (quoting 20 U.S.C. § 1099b(n)(3)).⁷ The Department also violated the APA by not abiding by the legal requirement that an agency examine all relevant data and there was “no dispute” that the

⁷ The court used similar language at pages 48-49 in its assessment of the placement verification and data integrity procedures.

SDO Response to ACICS

Part II submission and placement verification and data integrity procedures were relevant to this decision. Memorandum Opinion at 34.

Specifically, the court found that the Part II submission contained information “relevant to the Secretary’s determination [ACICS] would be unable to come into compliance with the recognition criteria within twelve months” as well as relevant information to the issues associated with Corinthian’s Everest College and the Michigan Jewish Institute. Id. at 34-35. The Part II submission was also “indisputably relevant to assessing” the extent of ACICS’s past track record of violations. Id. at 39.

Further, the court found that the evidence presented by ACICS regarding placement verification and data integrity contradicted the Secretary’s conclusion.

The evidence of the Accrediting Council’s placement verification and data integrity procedures is not only relevant to the Secretary’s determinations in this case, but it appears to contradict the Secretary’s conclusions regarding the Accrediting Council’s “lack of evident progress” and its “track record,” which formed the basis for the Secretary’s determination that the Accrediting Council could not come into compliance within twelve months, and ultimately, her decision to deny it recognition.

Id. at 49 (citation cleaned up) (the court quoting from the Secretary’s Decision); see also Id. at 51 (“[T]he evidence implicates, and appears to contradict, conclusions upon which the Secretary relied in determining that the Accrediting Council could not come into compliance within twelve months.”).

The court was instructive in its finding that Secretary King erred in not considering evidence of ACICS’s placement verification and data integrity procedures. The court ruled that this evidence was relevant to assessing compliance with multiple recognition criteria, including 34 CFR §§ 602.16(a)(1)(i), .17, .19(b). Id. at 48.

Finally, the court also makes clear that “although . . . [the] Secretary was not required to consider the evidence of [ACICS’s] purported improvements made after the Advisory Committee meeting, that is not to say that she may not decide on remand to consider some or all of that evidence, or take into account new evidence.” Id. at 65. Per your order, ACICS did submit additional materials (the previously identified “2018 Supplement”) which I have found to be relevant to the 21 recognition criteria in which the Secretary’s Decision found ACICS noncompliant.

2017 Petition for Recognition:

Your order stated that the Department “will not conduct any further review of the full petition for recognition submitted by ACICS in December 2017” Accordingly, this review does not include consideration of the draft staff analysis provided to ACICS in response to that petition. When the court remanded the Secretary’s Decision back to you, the application for initial recognition filed in 2017 was no longer relevant, especially since a petition for initial

SDO Response to ACICS

recognition is evaluated under a different standard than one reviewed for continuing recognition and includes the review of many additional criteria.⁸ In addition, because of the court's remand, ACICS never had an opportunity to respond to the draft staff analysis to correct factual errors, which makes it impossible to know if the staff analysis was correct or if additional evidence may have resolved any concerns.

Failure to Properly Consider Progress and ACICS's Ability to Come into Compliance:

In reviewing the 2016 decision (including the SDO's Decision and Final Staff Report) to terminate ACICS's recognition, I am concerned by the number of times that the decision-makers admit that ACICS had taken numerous, aggressive, and comprehensive actions to correct past failures, and yet still conclude that ACICS was not in compliance with at least some of the relevant 21 criteria or was not able to come into compliance within 12 months. The justifications for this finding fall into three general categories: (1) because of prior acts, omissions, or misrepresentations (alleged or proven) that took place before those new standards were implemented; (2) because the new standards have simply not been in place long enough to prove that they are effective; or (3) because of a belief that ACICS would not continue to adhere to these standards despite being compliant at the time of review.

For example, the SDO Decision points to the "number of recent actions the agency has taken to address areas of non-compliance . . . including by revising various policies and restructuring internal governance bodies." SDO Decision at 2. Secretary King also admits that ACICS could fix some of the 21 compliance problems, but provides no explanation of which of the 21 compliance problems he believes could be remedied, which could not, or how he came to that conclusion. In the end, Secretary King relied on the opinion of staff and NACIQI to conclude that, despite evidence of taking aggressive action, ACICS could not come into compliance with all criteria within 12 months. (However, Secretary King did state that the renewal for 12 months "is not an agency's right but is an option available to the Secretary at his or her discretion when warranted by the circumstances." Secretary's Decision at 8.)

Reconsideration of the 2016 Decision and an analysis of the materials provided in the Part II submission and the 2018 Supplement prove those opinions and conclusions to be wrong. More importantly, given the investment of time and resources required of ACICS to compile the Part II submission, and the importance of that document to the recognition review, the choice by the Department to then not review the Part II Submission is an example of government strong-arming that is simply unacceptable and, in my opinion, is a strong sign that the Department had predetermined ACICS's destiny, whether or not the evidence provided did or did not justify the determination. ACICS was found by Staff, the SDO, and the Secretary to have made notable progress towards compliance, so it is hard to understand how the Department could be so certain that the agency would not, at a minimum, continue to make progress sufficient to come into full compliance within 12 months.

⁸ <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2018/a09r0003.pdf>

SDO Response to ACICS

Other Relevant Issues:

The SDO Decision cites to 34 CFR §§ 602.32(b) and 602.36(e) in stating that in order to be found compliant with the Department's recognition criteria, "it requires evidence of effective application and implementation of those **new** policies, practices and governance structures, which the agency simply cannot provide for all those criteria within 12 months." SDO Decision at 3 (emphasis added). However, that is not a correct recitation of the Department's written regulations. As the court noted, what the regulation states is that Department staff will analyze all "**available** relevant information concerning the compliance of the agency with th[e]criteria and in the agency's effectiveness in applying the criteria." 34 CFR § 602.32(b) (emphasis added).⁹ In instances when evidence is simply not available, perhaps because the agency has not had the occasion or need to apply a given policy, the regulations do not call for an automatic finding of noncompliance.

Proof that the Department's recognition standards do not require an agency to provide evidence that it has effectively implemented every single one of its policies, procedures or standards in order to be found compliant is found in 34 CFR § 602.12, which states that an agency seeking recognition must have granted accreditation or preaccreditation to only one institution in order to qualify for recognition. Clearly an agency would not have had the opportunity to apply each and every one of its policies, or prove the effectiveness of most of its policies, if it has provided a pre-accreditation decision to only one institution.

I have deep concerns that, over time, a repertoire of sub-regulatory standards, personal opinions, and potential best practices have evolved among staff, all of whom are trying to do their jobs well in performing reviews that are highly subjective and in the face of considerable public scrutiny. We must be careful to apply all of the Department's criteria in a fair and equitable manner to all agencies we consider for recognition. However, as pointed out by the Office of Inspector General in its recent review of the Accreditation Program, the Department has not always applied its standards equitably.¹⁰ In part this is because the Department has never developed Standard Operating Procedures to guide an analyst's review of materials, nor has the Department clearly defined its evidentiary standards, which means in some cases if an agency provides one document as evidence of implementation of a particular criterion, that is deemed to be sufficient, but in others, an agency that provides four documents as evidence of implementation of a particular criterion (as is the case in several instances in ACICS's petition).

In many instances, had the Accreditation Staff reviewed the Part II submission, which was never provided to them by Department officials and which they did not have in their possession when this review commenced, staff would have found sufficient evidence that ACICS had implemented new policies and practices and had taken action based on those new policies and practices with fidelity. The 2018 Supplement further demonstrates continuing implementation, action, and enforcement of those policies and practices.

⁹ This provision is also found in statute at 20 U.S.C. § 1099b(n)(3).

¹⁰ <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2018/a09r0003.pdf>

SDO Response to ACICS

2. Job Placement Rate Analysis

The Department's criticism of ACICS and the ultimate decision to terminate recognition in 2016 is based largely on allegations of widespread misrepresentation of job placement rates by several institutions accredited by ACICS. Many, but not all of these allegations were made by a group of attorneys general through a coordinated litigation effort that involved numerous proprietary institutions. In some limited instances, job placement errors or misrepresentations were self-reported by institutions to the accreditor and/or the Department, and in even more limited instances, misrepresentations were identified by the Department. These allegations of widespread job placement rate misrepresentations served as a factor in the finding of non-compliance for 11 of the 21 criteria for which ACICS was deemed to be non-compliant.¹¹ The analysis of these criteria, while somewhat tailored to the particular recognition criterion for which the finding of non-compliance was made, cites to ACICS's alleged failures to detect, respond to, verify, inform the Department of, and require corrections to job placement rates reported to it by the institutions it accredits, or that ACICS-accredited schools publicly disclosed and/or included in advertising materials made available to the public.

In one way or another, both staff and NACIQI claimed that by the time the agency implemented necessary corrective actions, it was essentially too late. For example, the SDO's Decision states that "the agency still has not fully addressed issues originally identified in 2013, such as its verification of placement information from institutions." SDO Decision at 2. However, as discussed here in my recommendations, ACICS has provided evidence that it engaged in a thorough and thoughtful process to develop the new placement verification system, and as required by the Department's recognition criteria, took the time to include the input of its members and to consult with experts in the auditing field to be sure that the placement verification system would be accurate, efficient, and reliable. Given that few accreditors have such systems in place, the development of the ACICS process was a *de novo* experiment, and one that was fraught with a number of challenges inherent to the complexity of contacting students by phone in the age of caller-ID, verifying self-reported data provided by students and employers who have no obligation to provide such information and may have concerns about privacy, and making determinations of what qualifies a job as being an in-field placement, which is a highly subjective matter.

Because of how central these issues are to so many of the criteria at issue, it is important to further assess some of the assumptions upon which the issue of job placement rate misrepresentations rely and the degree to which the Department's assumption that ACICS's past shortcomings in this area made it impossible for ACICS to demonstrate compliance at the time of its recognition decision or in the near future.

There are many investigations and lawsuits mentioned in the Final Staff Report and in the Third-Party Comments, but no mention of final judgments on the merits. I am concerned that a presumption of guilt guided the decision-making process, and that this sets a troubling precedent.

¹¹ The Final Staff Report cites the job rate misrepresentation issue as the determinative or a contributing factor in finding noncompliance with the following recognition criteria sections: 34 CFR §§ 602.13; 602.15(a)(2); 602.16(a)(1)(i); 602.16(a)(1)(vii); 602.17(a); 602.17(c); 602.18(d); 602.19; 602.20(a); 602.21(a)-(b); and 602.27.

SDO Response to ACICS

In addition, neither the Department, nor to my knowledge any of the State attorneys general involved in lawsuits involving allegations of misrepresentation have conducted similar reviews of job placement rates reported by a representative number of institutions, including non-profit institutions, to determine what level of error would be considered acceptable or typical of self-reported data of this type. All data collection methodologies are subject to inadvertent error and methodological limitations, with self-reported data well known to be among the least accurate methodologies for gathering data. Without evidence of intent, it is possible that some instances of incorrect job placement rate determinations were the result of human error or the subjectivity of the determination rather than an intent to commit fraud. In some instances, reasonable people could disagree about whether or not a particular job placement should be included as an in-field job placement or a related-field job placement, and the credential inflation that occurred during the time of the Great Recession added to the complexity of making these determinations.

Clearly, scrutiny of the agency's policies and practices with regard to collecting and verifying job placement rates is well warranted, and it along with the other partners in the regulatory triad (the states and the Department) may well have been expected to do better in this regard. But it is unclear to me why such severe action was taken against ACICS and not the other accreditors that accredited institutions known to have committed similar misrepresentations.

There are multiple important factors that must be considered when evaluating ACICS's role in these misrepresentations (alleged or proven). First, there seems to be a misconception that ACICS has been the accreditor for all schools that have been investigated by attorneys general, the Department, or have otherwise been accused of making job placement rate misrepresentations. For example, ACICS is commonly identified as the agency that accredited Corinthian Colleges International ("Corinthian"). While ACICS did accredit many Corinthian schools, it was not the sole accreditor of Corinthian colleges, and yet it seems to be the sole accreditor being held accountable for these misrepresentations. The Department's own findings of job placement misrepresentation rates were largely focused on Corinthian's Heald College and American Career Institute (ACI), but neither of these institutions was accredited by ACICS.¹² Moreover, in the Final Staff Analysis staff admitted that in the Draft Staff Analysis, they had wrongly identified ACICS as the accreditor for certain institutions that were accused of committing misrepresentations. See Final Staff Report at 15.

Unfortunately, the Final Staff Report appears to make the mistake of placing at ACICS's feet the responsibility for all institutions that were subject to investigations or found to misrepresent their job placement rates. For example, the analysis for compliance with 34 CFR § 602.16 (a)(1)(vii) states: "Over the last five years, a significant number of State attorneys general and others have obtained sizeable recoveries against ACICS-accredited institutions based on

¹² <https://www.ed.gov/news/press-releases/us-department-education-fines-corinthian-colleges-30-million-misrepresentation>.

SDO Response to ACICS

misrepresentations to prospective students and abusive recruiting.”¹³ 2016 Final Staff Report at 15. The analysis continues by listing several examples of federal and state investigations and qui tam lawsuits. In its response, ACICS noted that it had not accredited one of the institutions cited and “another institution's problems were resolved before it became ACICS accredited.” *Id.* It was also somewhat unclear the degree to which some of the qui tam lawsuits referenced were related to job placement rate misrepresentations. *Id.* In addition, consent decrees and settlements – including those into which the Department frequently enters – are not normally an admission or finding of wrongdoing or liability, but a business decision based on a variety of factors, including the costs of a prolonged legal proceeding and allocation of staff resources. Settlements cannot be cited as prima facie evidence of wrongdoing unless those settlements are accompanied by admissions of liability or a judgement on the merits. The Final Staff Report also broadly refers to Corinthian on several occasions as evidence demonstrating past noncompliance on the part of ACICS without noting that many Corinthian schools were not accredited by ACICS.

Again, the multiple investigations and lawsuits against ACICS-accredited institutions are of concern and are given due consideration in this analysis, but even if the allegations were well-founded, it is also worth noting that a school would obviously work to conceal any intentional misrepresentations not just from its prospective students but also from those entities overseeing the institution such as an accreditor. Accreditors are not investigators. It is also important to consider that a number of institutions, including law schools, elite private institutions, and large public institutions have admitted to a number of misrepresentations, including those involving job placement rates and institutional selectivity, and instances in which athletes were issued grades for courses they never took. Accreditors, including ACICS, have put new policies and procedures in place to look for these sorts of infractions now that they are well known to the public, but since accreditors are not monitors, it is not impossible to believe that an institution would engage in activities unacceptable but unnoticed by its accreditor. Perhaps this is why Congress established a regulatory triad to oversee institutions participating in Title IV programs so that all three entities can share responsibility for monitoring compliance and identifying instances of non-compliance. When there is a failure, it is concerning that two of the triad entities seem to be inclined to point to the third as the one that fell short of its responsibilities.

While problems with the institutions an agency accredits, particularly when they are systemic, are obviously going to be relevant when determining whether or not an accreditor is properly performing its role, they should not be automatically imputed to the accreditor as its failures. In the limited instances in which an institution accredited by ACICS reported on its own findings of errors in its reported job placement rates, the agency took swift and significant negative action. Therefore, the agency demonstrated that it did take its data integrity responsibilities seriously and that it took action against institutions found to be non-compliant with those requirements, including through fines and show cause actions against those institutions.

¹³ See also The 2016 Final Staff Report at 12 (“[M]any investigations & lawsuits were brought against ACICS-accredited institutions for falsified placement rates in the last 5 years, resulting in many judgments/high-dollar settlements.”)

SDO Response to ACICS

In addition, the investigations of job placement rates was targeted to certain institutions, and there were no comparison studies conducted to determine what baseline level error would be deemed typical or permissible in job placement rate reporting. While 100% accuracy is obviously the desire, few data collection efforts meet that standard, and especially when the data being collected are self-reported by busy students and employers. A more comprehensive review of job placement rate reports by a variety of institutions would have been informative, and would have provided further evidence that job placement reporting is difficult to do and far from an exact science. Take, for example, the City Colleges of Chicago, which reported job placement rates in its FY2015 Scorecard based on survey methodologies which the institution admits had a low response rate and may not fully or accurately represent actual outcomes.¹⁴ Or consider community colleges that include any job that pays a wage in their determination of in-field job placement rates as part of their Gainful Employment disclosures. The apparent double-standard for inequitable treatment of institutions, and worse yet, the inequitable application of safeguards to protect students from misinformation are unacceptable, and the Department share's some of the blame.

Next, despite criticism of ACICS's reliance on self-reported data by institutions that may have provided inaccurate data, it is important to note that the Department routinely relies on self-reported data (such as data from the Integrated Postsecondary Education Data System (IPEDS) and gainful employment disclosures) knowing full well that those data include substantial errors. Again, this does not excuse any failures by ACICS to identify inaccurate job placement rate data. However, it does illustrate that ACICS's reliance on self-reported data was not unique to this agency or out of line with commonly used practices. However, now that allegations of widespread misrepresentations have been made, ACICS has reacted appropriately and has moved forward in a careful and methodical way to create a state-of-the-art job placement verification program.

Despite the Department's considerable concern about job placement rate misrepresentation, it failed to take the necessary action to improve the accuracy or standardization of job placement rate determinations and calculations when it had its chance, and in many ways contributed to the problem. The Department was well aware that job placement rate reporting was a high risk activity given the lack of a clear and standardized definition of a job placement or a reliable data source to use in making or verifying a job placement determination. When the 2011 Gainful Employment regulations were promulgated, negotiators raised considerable concerns about inconsistencies in the many different definitions of job placement used by states, institutional accreditors, and programmatic accreditors.¹⁵ As a result, the Department agreed to convene a Technical Review Panel (TRP) to develop a standardized definition of a job placement to ensure that as gainful employment programs reported job placement outcomes to the public, as was required by the new regulation, those data would be accurate and comparable. The Department's

¹⁴ https://www.ccc.edu/news/Documents/DO_FY15_Scorecard.pdf

¹⁵ Andrea Sykes, Background Paper: Calculating Job Placement Rates Under Gainful Employment Regulations, Prepared for IPEDS Technical Review Panel, March 1-2, 2011, Laurium Evaluation Group, February 2011.

SDO Response to ACICS

National Center for Education Statistics convened such a panel, but in 2013, reported that it was unable to accomplish that goal.¹⁶

The TRP pointed out the complexity of job placement rate reporting, which includes the use of many different definitions for what constitutes an in-field job, which students should be included in the measurement cohort, and which students may be omitted from a reporting cohort.¹⁷ The TRP also concluded that job placement rate determinations are highly subjective and complex.¹⁸ The panel could neither agree upon a single definition of a job placement, nor could it identify a reliable data source that could be used to report or verify reported job placements since current databases do not provide information about the nature of work performed. Therefore, upon the conclusion of the TRP, and as a result of its inability to develop a standardized definition of a job placement or identify a reliable source of data to make such determinations, the Department should have issued a moratorium on the public reporting of job placement rate data. I contend that the Department was at fault for allowing and, in the case of gainful employment disclosures, requiring data it understood to be fraught with errors to be reported to the public.

However, even after all that the Department had learned about erroneous job placements, it has continued to require institutions to self-report job placement rate data to the public and the Department has not itself implemented its own job placement verification program to ensure that these reports are accurate for all gainful employment programs. So the Department shares blame for the problems with job placement rate reports since the Department knowingly required some institutions to continue reporting job placement rates even after the Department's own technical review panel made it abundantly clear that this is an area fraught with challenges, including the lack of a reliable data source to collect or verify this information

ACICS was left to navigate these complexities of job placement determinations on its own. While there is no excuse for the misrepresentations made knowingly by ACICS accredited institutions, it is irrational to put all the blame on ACICS, especially since other accreditors similarly missed misrepresentations committed by accident or intentionally by some institutions they accredit. It is also inappropriate to assume that any and all job placement rate reporting errors were the result of intent to defraud students.

In sum, challenges with job placement rates, including misrepresentations, are certainly not unique to institutions accredited by ACICS. The Department, institutions, and accreditors all have broadly struggled with collecting, reporting, and verifying this information and they should all work together to fix these problems.¹⁹ None of these factors excuse fraudulent activity or lack

¹⁶ Report and Suggestions from IPEDS Technical Review Panel #34 (Calculating Job Placement Rates), available at: https://edsurveys.rti.org/IPEDS_TRP_DOCS/prod/documents/TRP34_Final_Action.pdf

¹⁷ Andrea Sykes, Calculating Job Placement Rates, Background Paper, Andrea Sykes, 2011 available at: <https://www2.ed.gov/policy/highered/reg/hearulemaking/2012/ipeds-summary91013.pdf>

¹⁸ Id.

¹⁹ The Department has recognized the need for it to provide more timely alerts to accreditors when it identifies risks or vulnerabilities through its own monitoring and reviews activities. The Department has created an accreditor dashboard that collects information from a number of sources, and which allows staff analysts to provide timely alerts to accreditors so that they can take action to investigate potential risks. The Department recognizes that the

SDO Response to ACICS

of proper oversight and two wrongs do not make a right. However, these considerations do help put ACICS's position before the Department in its proper context, and mitigate, at least to some degree, the agency's apparent failures and struggles in this regard. This is especially true when ACICS was cited by the Department for problems at institutions it did not accredit or for allegations which were not proven. They also certainly rebut the conclusions by staff, NACIQI, the SDO, and Secretary of the hopelessness of the agency to come into compliance within 12 months. The NACIQI, Department staff, SDO, and Secretary all should be mindful of these factors and ensure they hold all accreditors to the same standards, including ACICS. My recommendations to you aim to do so.

III. Major Improvements Made by ACICS

After reviewing the entirety of the evidence, I am in full agreement with the court that the evidence put forth by ACICS regarding its placement verification and data integrity procedures contradicts the Secretary's Decision regarding the "lack of evident progress" and the presumption that, due to ACICS's "track record," the agency did not have the ability to come into compliance within 12 months. Memorandum Opinion at 32. Evidence of these improvements is vital to a fair and thorough analysis of ACICS's compliance with multiple criteria. This evidence specifically addresses the concerns over placement verification and data integrity, an issue reiterated repeatedly throughout the Final Staff Report, the SDO Decision, and the Secretary's Decision. Therefore, I have described the following improvements in detail in this section, and later reference and discuss them when they are relevant to a particular criterion.

ACICS produced a significant amount of evidence demonstrating it had improved its placement verification and data integrity procedures, most noteworthy in four areas that were also identified by the court: (1) the Placement Verification Program; (2) an "At Risk institution Group"; (3) an enhanced process of onsite reviews through the addition of a dedicated Data Integrity Reviewer; and (4) a Campus Effectiveness Plan (CEP) which espoused a comprehensive approach to evaluating student achievement. The creation and implementation of the first three aforementioned policies, and strengthening of the CEP, provide the necessary tools for ACICS to perform a comprehensive assessment of institutional health and program quality that has dramatically improved ACICS's ability to oversee, monitor, and investigate institutions.

1. Placement Verification Program (PVP)

As explained in the Part II submission, in response to the failures of their earlier methods, ACICS had developed, with significant input from various stakeholders and experts in auditing, a new Placement Verification Program (PVP) that included testing (by ACICS staff) of a minimum of 20 percent of the member institution's job placement data, randomly selected each year to confirm their accuracy and validity. Exhibit 124 (ACICS Responses to Part II Supplement Information Request). In other words, instead of limiting independent validation of job placement data to renewal of accreditation reviews or intermittent site visits, which may have

oversight responsibility is not solely the accreditors, and as such, the Department must work with accreditors to identify institutions that require additional monitoring, corrective action or sanctions and to work with agencies to resolve those problems.

SDO Response to ACICS

been the fatal flaw of their prior methodology, ACICS expanded monitoring to include the years between accreditation reviews using this new PVP process.

As discussed below, ACICS also added a dedicated student achievement data evaluator to review 100 percent of the job placement data reported by an institution as part of every site visit and it implemented a data integrity test to assess CAR results that are uploaded annually to the ACICS platform. ACICS reported in its Part II submission that it had already verified a 20 percent sample of placement data from randomly selected campuses, particularly those that exhibited risk.

At the time of the 2016 review, ACICS had not fully implemented the new PVP system, which was then in beta testing at a number of institutions. ACICS reported in its 2018 Supplement that designing and implementing the PVP system was challenging, but through the beta testing process, ACICS was able to address problems with the system. By 2017, the PVP system had been fully implemented, and institutions were required to upload their job placement data each month so that ACICS staff could review and verify job placement data in real time, as opposed to after an entire year of CAR data had been submitted, at which time students may have moved or changed phone numbers and could be too difficult to locate for verification purposes.

According to the information provided, ACICS uses an automatic email generation system to query graduates about reported job placements, and it captures the IP address of the submitter to prevent abuse. ACICS makes three attempts over a period of two weeks to contact the graduate, the employer, or both, to validate the employment. If there are discrepancies between the reported placement and the response received from either the employer or the graduate, or if the employer and graduate provide conflicting information, the placement is marked “INVALID.” The institution can monitor the verification of placements, and in the event a potentially invalid placement is identified, the institution can contest the determination by completing a web based form and providing supporting documentation. In the event of a discrepancy, the institution may not include that particular job placement in its annual CAR report until it first resolves the discrepancy to the satisfaction of ACICS staff.

In its supplemental materials, ACICS provided a full report of the development, implementation and initial review of the PVP system, including its strengths and challenges. Exhibit A-O-3 (ACICS Placement Verification Program Report (2018)). While ACICS notes an 80 percent response rate generally, there are some demographic groups that have a lower response rate to email than others, which can skew the results of some institutions. If neither the graduate nor the employer responds to the three email attempts, the placement is marked as “INVALID.” The placement may have, in fact, been accurate, but since the student and employer are under no obligation to provide information to ACICS, it is eliminated due to the lack of confirmation of its accuracy. In such a case, no act of fraud was committed. Instead, it is the lack of a valid data source to use in determining or confirming job placement rates that makes it incredibly challenging to verify all job placements.

ACICS plans to conduct a full review of the PVP program now that it has been fully in place for an entire CAR reporting year, and explore ways to link the PVP system with the employer

SDO Response to ACICS

satisfaction survey that is a required element of the Campus Effectiveness Plan. ACICS included in its supplemental materials sample correspondence between the agency and institutions in instances where inaccurate placements were identified and the institution did not correct those data within 10 days. This correspondence demonstrates that the institutions were required to resolve the inconsistencies to the satisfaction of ACICS in order to include a questioned job placement rate in the CAR report. See Exhibit B-O-159 (Communication to Institutions-PVP Submissions). The exhibit included in the supplemental materials also provides screenshots of the PVP system to illustrate the way in which data are stored, flagged and can be searched to inform staff, the Council and schools of the PVP results.

The PVP is also allows employers to submits comments regarding the satisfaction of confirmed graduates of ACICS accredited programs. See Exhibit B-O-54 (Employer Comments from PVP). This is another source of data ACICS can use in its oversight function.

Although the PVP system was still in beta testing at the time of the 2016 review, the supplemental materials show the system to be state-of-the-art and one that ensures data integrity and provides institutions with real-time feedback on their job placement statistics so that the institution can monitor the performance of its employees and quickly identify any individuals who are reporting erroneous data in time to correct those data, provide additional training to the employee, or remove the employee.

ACICS has responded aggressively to the data errors identified – or in some cases allegedly identified – in reported job placement rates, while at the same time following the agency’s policies and procedures to engage its member institutions and the Council in developing new policies and programs with appropriate community feedback. The PVP system has been fully implemented since the 2017 CAR reporting period and more than satisfies the Department’s requirements for data integrity. This demonstrates that ACICS could have come into compliance within 12 months of the earlier 2016 decision to terminate recognition had the agency been given the opportunity to do so.

2. At Risk Working Group

The At Risk Working Group (ARIG) is one of the most notable improvements made by ACICS. The implementation of the PVP combined with the institutional review through the ARIG, gives ACICS a comprehensive assessment of institutional health and program quality. According to ACICS:

The expressed purpose of ARIG is to review the interim information/actions received concerning member institutions and determine an investigatory action that will take place. The goal is to provide the Council with the necessary information by which to make an informed decision about a campus or institution.

Exhibit B-O-73 (Policies and Procedures) at 37.

The ARIG strengthens ACICS’s oversight and investigatory abilities by allowing the agency to detect and address issues in between onsite visits. As ACICS explains, “[t]he ARIG has

SDO Response to ACICS

become a valuable means for ACICS to receive and act on relevant information in a timely manner to avoid delay between regular visits. ARIG also reviews information at regular intervals between Council meetings and, where applicable, initiates a deeper investigation through an unannounced/limited announced visit or prepares a report for consideration and review by the Council's Executive Committee (EC).” Exhibit B-O (ACICS May 2018 Supplement) at 43; see Exhibit B-O-146 (ARIG Meeting Minutes).

To ensure matters are handled effectively, the ARIG is comprised of the President of ACICS and other senior staff. The ARIG notifies the Council of risk factors associated with each campus, thus enabling ACICS to identify programs with institutional compliance early, rather than only at the point of renewal of accreditation. See Exhibit B-O-161 (ARIG Review, December 2017-April 2018); Exhibit B-O (ACICS May 2018 Supplement) at 60.

The ARIG reviews a comprehensive list of risk factors to monitor institutions health and quality. The ARIG reviews an institution’s:

- 1) Financial Stability;
- 2) Student Achievement Performance;
- 3) Adverse Information;
- 4) Complaints;
- 5) Enrollment Growth Monitoring;
- 6) Excessive Substantive Changes Monitoring;
- 7) Information derived from Title IV compliance audits, inquiries and information exchanges; and
- 8) Findings derived from the most recent comprehensive site visit or quality assurance monitoring visit.

See Exhibit B-O-73 (Policies and Procedures)(Chapter 13, ARIG Procedures); see also Final Staff Report (acknowledging these eight factors).

With regard to complaints, ACICS has produced evidence of a comprehensive process to handle them in an effective manner. The complaints reviewed by the ARIG go beyond student complaints, and include complaints and external negative information about an institution from any reliable sources such as federal or state agencies, other accrediting entities, the news media, faculty or other third parties. “The ARIG, as part of its evaluation, reviews complaints and negative information and prepares a report that is considered by the Council.” Exhibit B-O (ACICS May 2018 Supplement) at 43; see Exhibit B-O-145 (ARIG Report to BPC). ACICS’s procedures and policies on responding to complaints is discussed further in Section IV. 11. (§ 602.16(a)(1)(x)).

The ARIG reviews information and complaints to discern patterns for high risks. When appropriate, the ARIG has the ability to initiate an investigative review based on the complaints through an announced or unannounced visit, and report its findings to the Council's Executive Committee. See Exhibit B-O-73 (Policies and Procedures)(Chapter 13, ARIG Procedures) at 3. The ARIG is also tasked with ongoing monitoring. See Exhibit B-O-161 (ARIG Review, December 2017-April 2018).

SDO Response to ACICS

Similar to complaints, the ARIG is a tool to improve ACICS's ability to oversee and assess Title IV compliance, and financial stability. If ACICS receives negative information regarding Title IV compliance from any credible source including the Department, state agencies, consumers or media, the ARIG will investigate. ACICS has produced evidence that the investigation may include a request for an Institutional Teach-Out Plan. See Exhibit B-O-129 (Request for Teach-Out Plans); see also Exhibit B-O (ACICS May 2018 Supplement) at 45.

As discussed below, the ARIG works in conjunction with the Onsite Review team. "ACICS submits evidence of active review of Title IV program requirements through recent site visit reports and findings." Exhibit B-O (ACICS May 2018 Supplement); Exhibit B-O-139 (ARIG-Directed Visits). Similarly, other types of complaints are shared with the onsite review team in advance. See generally Section IV. 11. (§ 602.16(a)(1)(x)).

ACICS has demonstrated that the ARIG has been implemented and is effective in practice. ACICS has conducted 54 visits based on ARIG reviews since the committee was first established. See Exhibit B-O-138 (Summary of ARIG Investigations); see also Exhibit B-O-146 (ARIG Meeting Minutes).

One example of an investigation that resulted from an ARIG review was MedTech College. In the summer of 2016, the ARIG took investigate actions of MedTech College because of Data Integrity issues. See. Exhibit 3 (MedTech College & Radians College - Summary of Investigation). After an analysis and examination of MedTech's placement and student achievement data, the ARIG determined that three unannounced visits were necessary. Id.; see also Exhibit B-O (ACICS May 2018 Supplement) at 50.

ACICS has also produced evidence of an active review of Title IV program requirements through recent site visit reports and findings. See Exhibit B-O-139 (ARIG-Directed Visits). ACICS has also gone beyond traditional oversight method. The ARIG has used secret shopper as a tool to investigate aggressive recruiting tactics. See Exhibit B-O-140 (SIBA Secret Shopper Review).

Overall, ACICS has produced evidence showing how the ARIG has strengthened its oversight ability. In conjunction with the PVP, DIR, and CEP, ACICS has demonstrated it have a rigorous oversight and monitoring policies procedures.

3. Onsite Data Integrity Reviewer

To improve data integrity, ACICS has the dedicated Data Integrity Reviewer ("DIR" and also identified as a "data evaluator") in place on every site visit. The function of the reviewer is "to focus primarily on the reliability of the placement information reported by institutions on the Campus Accountability Report." Exhibit A-O (ACICS Part II Submission Explanation (May 2018)) at 15. ACICS notes that this individual is "responsible for attempting to contact, via telephone, up to 100% of all graduates reported as placed." Id. This individual is supported by subject matter experts who "provide[] practical input on the appropriateness of the placement as disclosed by the campus and confirmed by the graduate or employer." Id. While the Final Staff Report hinted that ACICS had not demonstrated the implementation of this feature of its

SDO Response to ACICS

placement verification procedures, evidence provided by ACICS does demonstrate that this expanded review process has been in place. ACICS included training presentations, call scripts, and other instructional material to demonstrate the procedures the DIR must follow to ensure data integrity. Exhibit 203 (Communication to Data Integrity Reviewers & Training).

ACICS provides an explanation in its Placement Verification Report document about the initial effectiveness of the DIR and later in its May 2018 Supplement how that function is currently being carried out. Exhibit A-O-2 (ACICS Placement Verification Report) at 5.

The May 2018 Supplement also provides multiple exhibits demonstrating the rigor of the onsite data review. See e.g. Exhibit B-O-158 (Data Integrity Review Template); Exhibit B-O-154 (DIR Team Reports); and Exhibit B-O-73 (Policies and Procedures Manual). Finally, and perhaps most importantly, ACICS has provided evidence of the enforcement of its verification standards through this onsite review process in show cause directives. See Exhibit B-O-119 (Living Arts College Show-Cause Directive); and Exhibit B-O-120 (CSI Adverse Review).

While the DIR is complimentary and perhaps secondary to ACICS's PVP program, it is nonetheless relevant and noteworthy evidence that responds to staff's requests that ACICS prove it has resolved issues of widespread job placement rate falsification and points towards the rigor and seriousness in which ACICS vets placement data and, ultimately, its compliance with the criteria.

As ACICS explains, "[t]he Data Integrity Review role is now served by the ACICS staff representative who works intimately with the in-house PVP analyst, and who better understands the nuances of the CAR and disclosure requirements. The team's report and, ultimately, Council decisions relative to institution and program effectiveness are informed by this verified data." Exhibit B-O (ACICS May 2018 Supplement) at 49.

No method can ensure that an inaccurate placement will never in the future be reported, or that such inaccurate reports will always be discovered, but the processes put in place with the DIR, PVP, and ARIG more than fulfill ACICS's requirements to ensure that its member institutions are reporting accurate data.

4. Campus Effectiveness Plans

Campus Effectiveness Plans are another tool that ACICS uses to improve their placement verification and data integrity procedures. The Campus Effectiveness Plan is explained in ACICS's Accreditation Criteria as:

[a]n important indication of the overall effectiveness of an ACICS-accredited institution is the degree to which it meets the mission, objectives, and educational goals it has identified. Each ACICS-accredited main and branch campus shall develop and implement a Campus Effectiveness Plan (CEP) that is consistent with its mission and objectives. The CEP shall identify how a campus plans to assess and continuously improve its overall educational operations and how it plans to meet the educational and occupational objectives of its programs, taking into

SDO Response to ACICS

consideration its review of all critical organizational functions such as admissions, recruitment, financial aid, and student services.

A-O-3 (ACICS Accreditation Criteria) (Section 3-1-110; and Appendix K).

The Campus Effectiveness Plan requires, at a minimum, seven elements: (1) retention rates; (2) placement rates; (3) graduation rates; (4) the level of student satisfaction; (5) the level of graduate satisfaction; (6) the level of employer satisfaction; and (7) student learning outcomes. Id.

ACICS has provided evidence of examples of Campus Effectiveness Plans (CEP). The plans demonstrate the comprehensive data review conducted, and the evaluation and analysis. See Exhibit B-O-156 (CEP Examples; see also Exhibit B-O-153 (Forrest College CEP Review). ACICS has also produced evidence of the onsite visit teams reviewing graduation rates in the CEP as part of its institutional evaluations.

In conjunction with ACICS other improvements, the CEP is another tool that the agency has provided as evidence of its improved oversight and its clear requirements of institutions to monitor and improve student outcomes.

IV. Review and Recommendations for Individual Recognition Criteria

1. Section 602.13 – Acceptance of the Agency by Others

34 CFR § 602.13 requires that an agency “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.”

The Final Staff Report concluded ACICS had not addressed “how well graduates of its institutions succeed on . . . licensing exams that are required for employment, especially by using data specific to each licensing exam.” 2016 Final Staff Report at 6. Additionally, ACICS needed “to provide documentation of continued positive relationships with state licensing-related entities and nurse accrediting agencies, especially by providing current documents.” Id. The Final Staff Report also cited to the job placement rate misrepresentations issue as evidence ACICS’s student achievement data could not be relied upon as another reason impacting its acceptance by third-parties. Id. Neither the SDO Decision nor the Secretary’s Decision provide any additional rationale for why ACICS was noncompliant with this criterion.

The Part II submission provides ample evidence that ACICS meets the standard for being an agency widely accepted by others as a reliable source for quality assurance. ACICS clearly acknowledges in its Part II response that it has, indeed, been the subject of tremendous scrutiny as a result of investigations into the operations of several large institutions formerly accredited by ACICS. Exhibit A-O (ACICS Part II Submission Explanation (May 2018)) at 2. This scrutiny led to heightened oversight of the agency and a significant increase in interactions with federal and state officials. Id. ACICS contends that notwithstanding this scrutiny it continued to meet the

SDO Response to ACICS

regulatory standard for acceptance of the agency by others. *Id.* As evidence, ACICS cites to numerous exhibits provided during its recognition review which it said demonstrated continued acceptance. ACICS states this added scrutiny has also resulted in the agency taking aggressive actions to develop and implement, for example, new methods for verifying and validating job placement rates to prevent its institutions from reporting these sorts of errors or misrepresentations in the future. And despite all of the well-publicized concerns about job placement misrepresentations, a number of state licensing boards, educators, administrators and other accreditors did and still do recognize ACICS accreditation as legitimate and acceptable.

The Department's Accreditation Guidelines²⁰ explain that "wide acceptance does not necessarily mean unanimous acceptance by all of the agency's constituents/communities of interest." Department's Accreditation Guidelines at 13. Nor would it mean acceptance by entities not enumerated in the regulation. There is no doubt that ACICS has numerous critics who do not accept its accreditation decisions, but it does not appear that those critics are actually members of licensing boards, state higher education agencies, or educators who are knowledgeable of ACICS's standards or who have participated in the ACICS review process.²¹ ACICS's largest critics are associated with groups that are not engaged in the conduct of education, the delivery of educational services, the evaluation of institutional quality or employers in the relevant fields and, while their observations and concerns are an important part of the agency's review, they do not automatically negate acceptance of the agency as a reliable source of quality assurance by those that license and hire graduates of ACICS-accredited institutions.

Specifically, as it relates to compliance with the criterion, the Final Staff Report first concluded ACICS was noncompliant because it had not provided information on "how well graduates of its institutions succeed on . . . licensing exams that are required for employment, especially by using data specific to each licensing exam." 2016 Final Staff Report at 6. While this information could presumably be somewhat relevant to ACICS's acceptance by licensing bodies and employers, the review of licensure pass rates is more relevant to student achievements standards discussed below in Section IV. 6. (§ 602.16(a)(1)(i)) and is thus addressed there. ACICS should not be found noncompliant with 34 CFR § 602.13 based on its consideration of licensure pass rates. Nonetheless, ACICS has provided to the Department a history of its standards and a discussion of its current policy regarding review of licensure pass rates in Exhibit A-O-1 (ACICS Licensure Pass Rate Report (2018)). Additional information regarding its consideration of licensure pass rates as part of its Student Achievement Standards is discussed below in Section V. 7. (§ 602.16(a)(1)(i)). One point also worth noting is that only 5% of ACICS-accredited programs "require licensure for employment in the occupation for which the program prepares a graduate" and so the emphasis on this issue in the Final Staff Report is somewhat perplexing. Exhibit A-O-1 (ACICS Part II Submission Explanation (May 2018)) at 2.

²⁰ *Guidelines for Preparing/Reviewing Petitions and Compliance Reports*, U.S. Department of Education, Office of Postsecondary Education (January 2012) (herein, the "Department's Accreditation Guidelines").

²¹ Nonetheless, the SDO respects and has considered any third-party comments submitted by groups in the 2016 recognition process and has considered those comments as part of the record per the requirements of 34 CFR §§ 602.36(a)(1) and 602.34(c)(4).

SDO Response to ACICS

Second, the Final Staff Report stated ACICS needed “to provide documentation of continued positive relationships with state licensing-related entities and nurse accrediting agencies, especially by providing current documents.” 2016 Final Staff Report at 1. With regard to wide acceptance by licensing bodies, the Department’s Accreditation Guidelines look for evidence including:

- Graduation from an institution and/or program accredited by the agency as a requirement to sit for an exam and/or to obtain a license or certification, employment, etc.
- Accreditation as acceptance by state approval authorities for institutional/program licensure to operate, reciprocity, etc.
- Support from state approval, licensure, and/or certification offices.

Department’s Accreditation Guidelines at 14-15.

In Table B of its Part II submission, ACICS provided an inventory of agencies and organizations “that were engaged in performing accountability reviews of the agency from 2007 to 2016.” Exhibit A-O (ACICS Part II Submission Explanation (May 2018)) at 3. That inventory included, among other items, approval from the Texas Higher Education Coordinating Board for institutions accredited by ACICS to offer educational programs in Texas, as well as approval from the American Registry of Radiologic Technologists (ARRT) in 2015 that institutions accredited by ACICS qualify for certification and licensure by that agency.

ACICS also provided documentation from the National League for Nursing Accrediting Commission (NLNAC) from 2008 illustrating that graduates of ACICS-accredited institutions could sit for licensing exams and qualify for licensure by that organization. Department staff found this report to be problematic because it was issued before the commission transitioned into the Accreditation Commission for Education in Nursing (ACEN). However, there is no evidence that graduates of ACICS-accredited institutions were barred from nursing licensure exams or consideration.

In general, the concern of Department staff appeared to be that not all of the documentation provided by ACICS was recent. However, the Department’s standards do not require agencies to receive new letters of support from other agencies contemporaneous with its renewal of recognition review. Nonetheless, the Part II submission included numerous pieces of evidence that the agency had met this criterion with regard to wide acceptance by licensing bodies.

ACICS addressed the concern about the 2008 letter from NLNAC by providing updated information from ACEN (in 2013 NLNAC separated from the National League of Nursing and took on the new identity of the Accrediting Commission for Education in Nursing). This recent letter of support from ACEN affirms that it accepts ACICS as an institutional accreditor. Exhibit B-O-44 (ACEN Letter of Support). ACEN accreditation is required in at least 18 states in order for graduates of nursing programs to be eligible to be licensed and work in the field. ACEN does not accredit nursing programs unless they are offered by an accredited institution. ACICS accreditation, including by virtue of its recognition by CHEA, is accepted by ACEN as a credible form of institutional accreditation, therefore demonstrating that ACICS accreditation does

SDO Response to ACICS

provide a gateway to individuals who seek employment in fields that are restricted to graduates of accredited institutions and programs. The uncertainty surrounding ACICS's status with ACEN seems to have been the particular reason why staff requested documentation of continued positive relationships with nurse accrediting agencies and the ACEN letter is exactly that. The supplemental materials also provide similar evidence as to the role that ACICS accreditation plays as a gateway for individuals seeking to work in the field of occupational therapy. See Exhibit B-O-41 (ACOTE Letter of Support).

The 2018 Supplement helps to clear up any uncertainties regarding compliance, including updates on specific evidence provided by ACICS in 2016, that the Final Staff Report determined needed updating. In its Summary of Findings, staff relied in part on ACICS's pending continuing recognition decision by the Council for Higher Education Accreditation (CHEA) as evidence of non-compliance with this standard. However, the 2018 Supplement includes a list of "National Career-Related Accrediting Organizations" recognized by CHEA which shows that it continues to recognize ACICS and has done so for over two years since staff noted that CHEA had deferred decision on its continued recognition. Exhibit B-O-18 (2017-2018 CHEA Directory of Recognized Organizations) at 7. CHEA's recognition of the agency was originally granted through 2016.²²

CHEA is seen by those knowledgeable about higher education and higher education accreditation as an organization whose accreditation procedures are at least as rigorous as the Department's, with the exception of requirements that are specifically related to participation in Title IV programs since these are not relevant to CHEA as it does not have a Title IV gatekeeping responsibility as a requirement for its recognition. CHEA recognition is considered by organizations in the United States and abroad as equivalent to the Department's recognition as a sign of quality assurance and is widely acceptance by the higher educational community. That CHEA continues to recognize ACICS pending review and has not taken negative action against ACICS despite ACICS's previous loss of recognition by the Department and accompanying highly public controversies surrounding ACICS's future, is notable and an important indicator that ACICS continues to be widely accepted as an accreditor. There is also no indication that CHEA will cease recognition of ACICS in the near future.

The 2018 Supplement also helps clarify uncertainties with its status with state licensing-related agencies, including the California Bureau of Private Postsecondary Education (Exhibit B-O-30 (BPPE Actions)), the Connecticut Office of Higher Education (Exhibit B-O-31 (CT Communication)), the Florida Department of Education Commission of Independent Education (Exhibit B-O-32 (FL Letter)), the Virginia Board of Nursing (Exhibit B-O-33 (VA BON Letter)), and the Washington State Department of Health, Nursing Care Quality Assurance Commission (Exhibit B-O-34 (WA BON Letter)). To underscore the importance of CHEA recognition, the letter from Washington State specifically affirms that even if ACICS were not accredited by the

²² ACICS is currently under review by CHEA's Committee on Recognition, which recommended to the CHEA Board of Directors that ACICS be granted recognition for up to three years. Although that recommendation will not be considered by the CHEA Board until January 2019, ACICS has submitted the required progress report due on March 1, 2018 and has participated in an in-person review by the committee at its June 2018 meeting.

SDO Response to ACICS

Department, it would be accepted as an authority on accreditation as a result of its recognition by CHEA. Id. at 1.

ACICS has also submitted letters from other state-affiliated organizations, such as the Court Reporters Board of California and the California Court Reporters Association, who wrote in support of ACICS recognition and of the need for ACICS-accredited institutions to continue operating their programs to meet shortages of court reporting experts that are essential to the function of the criminal justice system. Exhibit B-O-36 (CA Court Reporting Board); Exhibit B-O-51 (Trade Association Letters). These letters point to the excessive costs imposed on institutions by the actions taken against ACICS.

Returning to the Department's Accreditation Guidelines, which again state that wide acceptance does not require unanimous acceptance, with regard to educators and educational institutions, the accreditor must demonstrate:

- Participation by educators on the agency's site visit teams, commissions and other committees.
- Participation by educators in the agency's review and revision of standards and/or agency policies and procedures.
- Representation in agency activities by educators in fields or activities that align with the agency's current and/or requested scope.
- Geographic and institutional diversity of the educators involved with the accrediting agency (geographic location, member and/or non-member educators).

Department's Accreditation Guidelines at 14.

ACICS has provided evidence in its Part II submission that it continues to be recognized by CHEA, that 115 educators participated in the agency's initial accreditation workshop in 2015, that it continued to have institutional representatives from geographically diverse regions who participated in the agency's site visit teams and on its commission and decision-making bodies, and that it had engaged a number of educators and institutional staff in the development of the Placement Verification Program (PVP) to improve the accuracy and reliability of job placements reported by institutions. This evidence, alone, is sufficient to meet the Department's standard for educators and educational institutions in 34 CFR § 602.13(a).

Moreover, in its May 30, 2018 submission, ACICS provided considerable additional evidence that it has the support of educators and institutions in its accreditation activities and that ACICS remains widely accepted by educators as a reliable authority on quality assurance. Although the Department was critical that many of the educators who had provided earlier support for ACICS were affiliated with ACICS member institutions, as ACICS points out, there is nothing in the Department's regulations or guidelines that limit this support to educators not affiliated with the agency under recognition review. Exhibit B-O (ACICS May 2018 Supplement) at 3. To the contrary, the Department's Accreditation Guidelines specifically reference "[s]ample letters of support to the agency from educators in the agency's accredited programs or institutions" as evidence demonstrating compliance. Department's Accreditation Guidelines at 14. These educators, who have intimate knowledge of ACICS's policies and

SDO Response to ACICS

procedures through direct engagement with the agency, and as participants of site visit teams, would know best if ACICS has appropriate standards, policies and procedures in place to support its wide acceptance as an authority on institutional quality.

ACICS's support is not just from its own accredited institutions. In its 2018 Supplement, ACICS provides additional letters of support from educators who are familiar with the standards and criteria of other accrediting bodies as well as those of ACICS to reinforce that ACICS's standards, policies and procedures are in line with those of other recognized accreditors. Some of these letters were written by former ACICS member institutions that were forced to seek new accreditation (a costly proposition) from a new accreditor as a result of the Department's decision derecognizing ACICS, which would normally make an institution even more critical of its former accreditor. Yet, these individuals continue to support ACICS. These institutions represent a wide geographic diversity, thereby meeting the Department's standards for educator and institution support. In fact, this evidence far exceeds the Department's requirements for providing evidence of wide acceptance among educators and institutions in 34 CFR § 602.13(a).

In its supplemental materials, ACICS also provides letters of support from nine other accrediting agencies, including ACCET, DEAC, SACS, WASC, ACSC, NCASC, ABHES, MSCHE, and ACCJC. Exhibit B-O-11 (Excel chart matching letters of support with accrediting agencies). Each of these is a widely accepted accreditor in its own right, and its support of ACICS as a peer in this highly scrutinized area serves as important evidence of ACICS's wide acceptance.

In assessing whether the agency demonstrates wide acceptance by practitioners, the Department's review elements include:

- Participation of practitioners on agency visit teams, commissions and other committees.
- Participation of practitioners in the agency's review and revision of standards and/or agency policies and procedures.
- Representation in agency activities by practitioners in fields or activities that align with the agency's current and/or requested scope.
- Geographic breadth of the practitioners involved with the accrediting agency.
- Acceptance of the agency's policies, procedures, accreditation standards and decisions by practitioner-based professional association(s).

Department's Accreditation Guidelines at 15.

ACICS was not asked to respond to a question about wide acceptance by practitioners in its Part II submission. However, in its May 30, 2018 submission, ACICS provides a number of materials that serve as more than ample evidence that ACICS is widely accepted by practitioners in fields taught by ACICS-accredited institutions. These materials include a chart of ACICS Practitioner Volunteers who participate on ACICS site visit teams and committees, as well as site visit reports that list the names and qualifications of individuals who participate on those teams. Exhibit B-O-46 (Sample List of ACICS Active Practitioners). These reports provide clear evidence that practitioners in relevant fields are included in ACICS site visit teams. These

SDO Response to ACICS

practitioners have a wide range of experience in their field, and hold impressive credentials that were awarded by many different institutions, including institutions that are accredited by accreditors other than ACICS.

These individuals would be fully aware of differences in program quality between the program they completed and the programs they evaluated as part of ACICS site visit teams, so if ACICS's standards were lacking or its accredited institutions were falling short of meeting quality standards, these practitioners would fully recognize these deficiencies. Instead, these individuals continue to serve on ACICS site visit teams, apparently recognizing the importance of this work to their professions. The May 30, 2018 submission also includes letters of support for ACICS from practitioners who have graduated from ACICS-accredited institutions and who have had successful careers as a result of their credential from ACICS-accredited institutions. See Exhibit 151 (Letters of Support, ITT Employers). Therefore, ACICS has provided more than sufficient evidence of the agency's wide acceptance by practitioners in relevant fields.

It does not appear that the Final Staff Report found that ACICS had not demonstrated compliance with acceptance by employers. However, to the extent staff's concerns on related issues such as licensing apply here, ACICS provided ample evidence in its application for recognition that it meets this criterion. This is because of the number of different employers who hire graduates of ACICS programs, as evidenced by job placement records which ACICS site visit teams review and verify during site visits. While ACICS acknowledges that the job placement rate errors committed by several of its member institutions call into question the integrity of those institutions and the sufficiency of ACICS's review processes, the agency has put appropriate corrective actions in place and one wonders for how many years the agency will continue to be punished for the alleged acts of institutions that no longer exist. To deny that any job placement information provided by ACICS is irrelevant because some institutions may have, years ago, reported incorrect data is absurd and points to efforts to seal the predetermined fate of this organization.

In Exhibit B-O-56, ACICS provides numerous letters of support for ACICS schools or their graduates, demonstrating additional evidence of ACICS accreditation as ensuring quality of the education and training offered by ACICS-accredited institutions. It also validates, that despite anecdotal reports to the contrary, a number of ACICS-accredited institutions are providing high quality education to prepare students for employment in their field, to the satisfaction of the many employers who hire these graduates.

SDO Recommendation: I recommend that you accept the materials provided by ACICS in the Part II submission and the 2018 Supplement as more than sufficient evidence that ACICS accreditation, though not unanimously so, is widely accepted by those who are familiar by experience with the standards, policies and practices of ACICS or by experience through hiring graduates of ACICS-accredited programs, as a reliable source of quality assurance. This is in addition to materials provided during the 2016 recognition process which evidenced wide acceptance. ACICS has provided more than enough evidence than is required by the Department's regulations or guidelines to prove compliance with 34 CFR § 602.13.

SDO Response to ACICS

2. Section 602.15(a)(1) – Administrative and Financial Resources

34 CFR § 602.15 enumerates the requirements for an agency’s administrative and fiscal responsibilities and specifically requires that “[t]he agency must have the administrative and fiscal capability to carry out its accreditation activities in light of its requested scope of recognition.” The regulation proceeds to outline the specific factor for how an agency demonstrates it has those capabilities. The 2016 Final Staff Report stated that ACICS had not demonstrated that it met the requirements for demonstrating administrative and fiscal responsibilities for subsections (a)(1), (2), (3), (5), and (6).

The requirements outlined in 34 CFR § 602.15(a)(1),(2),(3), and (5) are somewhat interrelated and thus the analysis for compliance as well as various materials submitted by ACICS will likewise be applicable to multiple subsections.

Beginning with 34 CFR § 602.15(a)(1), the 2016 Final Staff Report concluded that ACICS was noncompliant with the requirement the agency has “[a]dequate administrative staff and financial resources to carry out its accrediting responsibilities.” Neither the SDO Decision nor the 2016 Decision by the Secretary address this finding.

The Department’s guidelines for demonstrating compliance with this criterion look to the following:

- The sufficiency of agency staff with appropriate credentials and qualifications to administer the agency’s accreditation activities and finances in an effective manner within its scope of recognition. (For example, completion of all required accreditation activities in accordance with the agency’s accreditation schedule may be considered as evidence of effectiveness as would having no record of complaints, regarding the agency’s administrative capacity.)
- The organization of the agency such that its processes, e.g. recordkeeping and communications, are performed in a timely and competent manner, and records are up-to-date.
- How the numerical size of the agency’s staff is appropriate to the extent of the agency’s accreditation activities, and to the number of its institutions or programs.
- The sufficiency of agency financial resources to accomplish its accrediting functions and responsibilities; and that its funding sources place no constraints on its financial independence.

Department’s Accreditation Guidelines at 22-23.

Administrative Capabilities:

As it relates to “administrative” capabilities, the Final Staff Report concluded that ACICS was not administratively capable despite the fact the Department had received “no complaints” that would indicate staffing problems or shortages and that the staff site visit to ACICS’s offices indicated that the administrative processes were “functioning efficiently.” 2016 Final Staff Report at 6.

SDO Response to ACICS

The Final Staff Report pointed to the “recent” departure of ACICS’s executive director and the lack of a “permanent replacement” as evidence that ACICS had inadequate administrative capabilities. Id. While the departure of the executive director was noteworthy and potentially of concern to the Department, in other parts of the record, the staff and NACIQI point to the replacement of senior leadership as a positive step toward taking corrective action. ACICS named an experienced leader in the field of accreditation to serve as an interim president and CEO after the departure of the prior president, and since then it has hired an experienced leader to fill that role permanently. The now permanent President and CEO of ACICS has direct experience in higher education delivery, has served as an ACICS Commissioner and Board member, and has participated in over 50 site-visits. She is well qualified to lead the organization.

It is also not uncommon for organizations (including even the Department) to have interim leaders in place during periods of transition to enable the organization to carefully choose permanent successors, a process that undoubtedly takes time when done properly. Therefore, the recent departure of a leader is not necessarily evidence of noncompliance with this criterion particularly when, as discussed above, the previous executive director’s departure was only “recent” and the interim leader was qualified and capable. 2016 Final Staff Report at 6. On the contrary, such a Department policy could incentivize accreditors to retain ineffective but permanent leaders or act hastily when choosing new ones out of fear their agency may be sanctioned or singled out as unstable if they have gaps in permanent leadership that are filled by interim personnel.

In addition, the Final Staff Report’s finding that ACICS’s alleged “lack of effective monitoring approaches for its institutions” provides evidence of the agency’s inadequate administrative resources is conclusory and applies circular logic. Id. The Final Staff Report did not point to any evidence or provide any analysis linking problems with staffing quality or quantity to potential shortcomings in ACICS’s monitoring. Rather it points to the 2016 finding on a separate criterion (34 CFR § 602.19) and insinuates that noncompliance there must mean the agency did not have adequate staffing and thus ACICS was also noncompliant with this criterion. The Final Staff Report should have identified how specific deficiencies with monitoring revealed staff inadequacies to make that connection. While ACICS’s procedures revealed insufficiencies, they were not dissimilar from the policies and procedures of other agencies or the Department with regard to self-reported data, and they certainly do not provide evidence of staffing insufficiencies. In fact, the development and implementation of the PVP demonstrates that ACICS has ample staff resources since the PVP process is demanding and time-consuming.

Finally, it is worth returning to the Final Staff Report’s own conclusions, which noted that staff interviews and the site visit revealed that ACICS’s “administrative processes were observed to be functioning efficiently” and that there were “no complaints.” 2016 Final Staff Report at 6. According to the Department’s guidelines, “having no record of complaints” and “processes . . . performed in a timely and competent manner” are considered evidence of compliance with the criterion. Department’s Accreditation Guidelines at 22. It is surprising that after such positive findings, the conclusion could be anything other than that the agency was compliant with the administrative requirement. The staff conclusions here are contradicted by the findings.

SDO Response to ACICS

The Part II submission included a number of materials that, together with the materials reviewed by staff in 2016, meet the Department's requirements for demonstrating administrative responsibility. For example, Table D in the Part II submission displays information showing the sufficiency of its staff to manage the cycle of required agency site visits which is exactly the type of evidence Department guidelines look for to demonstrate compliance. In Table F, ACICS also provided a breakdown of the number and timing of staff training activities which, again, is the type of information listed in the Department's Accreditation Guidelines to demonstrate compliance with this standard. This evidence further corroborates the Final Staff Report's conclusion that staffing appeared sufficient.

ACICS reported that, at the time of its submission, staff consisted of 39 individuals. Approximately 50 percent of the staff at that time were dedicated to the recurring review of institutions through site visits and document reviews. Accreditation coordinators, then and now, are required to have at least a bachelor's degree. At that time, 68 percent of the accreditation coordinators held graduate degrees, including doctoral degrees. All staff are vetted and trained, then as now, so that they are able to understand and interpret Council standards, to effectively coordinate onsite evaluation teams, and to communicate effectively in writing and verbally.

The 2018 Supplement also include exhibits that serve as evidence of the qualifications of ACICS staff for the roles they are playing and the Accreditation Criteria clearly outline the qualifications and training requirements for all staff. Exhibit A-O-3 (ACICS Accreditation Criteria) and Exhibit B-O-63 (Position Descriptions and Staff Resumes). Exhibit B-O-64 (Evidence of State Training) also includes copies of materials used to train ACICS staff and sign-in sheets that document staff participation in those training programs.

While the number of staff employed by ACICS has been reduced, its reduction in staff was concomitant with a significant reduction in member institutions. The Department does not provide hard and fast rules regarding how many staff an agency must employ per each member institution, and there is no evidence of any sort that current staffing levels are inadequate. That said, if ACICS starts to grow its membership more rapidly, additional staff resources could be necessary. I would recommend that ACICS be required to submit an annual staffing report to show how staffing levels change if membership levels change, and to include in that report a staff organizational chart to demonstrate that all necessary positions are filled.

Financial Resources:

The Department's Accreditation Guidelines look for evidence of "[t]he sufficiency of agency financial resources to accomplish its accrediting functions and responsibilities" to demonstrate compliance with the financial resources component of the criterion. Department's Accreditation Guidelines at 22. As evidence of noncompliance, the Final Staff Report noted budgetary pressures on ACICS due to reduced revenue from the contraction of private career colleges, a trend that was expected to continue.

Curiously, the Final Staff Report pointed to ACICS's "optimistic" statement in October, 2015 that it would remain recognized by the Department indefinitely as evidence of

SDO Response to ACICS

noncompliance with this criterion. The implication appears to be that ACICS should have adjusted its revenue forecasts to reflect that the Department would not be granting it continued recognition. That type of statement from staff makes it appear as if ACICS's fate was foreordained. Perhaps it is not unreasonable for the agency, having made significant progress in implementing corrective action, to assume that it would receive continuing recognition. It would be odd to include a more pessimistic statement in the agency's materials.

While these factors (some realized and some speculative) did not impact ACICS's ability to handle short-term revenue fluctuations, staff still found ACICS deficient in evidence that it had sufficient cash reserves to weather long-term decreases in budgeted revenue. As a result, staff required the agency to submit audited financial reports for FY 2015-2016 and FY 2016-2017 – which the agency did. However, those materials were not available at the time of the completion of the Final Staff Report.

It was not unreasonable to request ACICS to provide audited financials to the Department, particularly considering the considerable changes in its membership base. ACICS went through a rapid contraction and could go through a rapid expansion or second contraction depending on whether its recognition continues. It will be important for the Department to monitor ACICS's fiscal capability. However, it is unreasonable to find the agency out of compliance because there was concern that in the future the agency might not have sufficient financial resources, especially since this agency has robust cash reserves.

I also would like to address the Final Staff Report's problematic characterization of ACICS's statement anticipating continued recognition as "optimistic." The criterion contemplates that the agency has "financial resources to carry out its accrediting responsibilities." 34 CFR § 602.15(a)(1). As it relates to future financial resources, particularly for an agency already recognized as ACICS was when its application for continued recognition was considered, the regulation presupposes the agency will remain recognized. The decrease in revenue and corresponding risk of long-term financial responsibility was contingent on the Department derecognizing ACICS because only then would it suffer a flood of departures from programs and institutions reliant on ACICS for licensure and/or to maintain title IV eligibility.

Nonetheless, the fact ACICS has continued to function since it lost recognition is evidence that staff's conclusion (that loss of recognition would render it unable to carry out its responsibilities) was inaccurate.

As for financial resources and the Part II submission, those materials include an explanation that ACICS had, at the time of the submission, an operating budget of more than \$11 million, with a reserve fund of over \$13 million. Exhibit A-O (ACICS Part II Submission Explanation May 2018)) at 7. While staff's concerns about ACICS long-term financial health were reasonable, it appears the agency had adequate financial resources to meet the requirements of serving as an accreditor and providing timely and expert support of its member institutions, particularly when considering it had fewer institutions to oversee and so consequently needed less money to finance its reduced activities.

SDO Response to ACICS

The Part II submission included materials that described a spending contingency plan in the event of revenue shortfalls (see Table D), and ACICS's Petition for Re-Recognition included a report on the agency's recent investment of \$2 million to update its IT infrastructure to streamline its operations and support the PVP process. Such an investment is not evidence of an organization that plans to cease functioning as an accreditor, despite the decision rendered by the Department.

To the extent compliance with the criterion was uncertain, the 2018 Supplement demonstrates that ACICS has sufficient financial resources to accomplish its accrediting functions, particularly considering the reduced number of institutions and programs it currently accredits due to its loss of recognition. First, ACICS currently still "accredits 138 main and 169 branch institutions" which ensures that at least some revenue continues to flow to the agency. Exhibit B-O (ACICS May 2018 Supplement) at 16. Second, returning to the financial materials requested by staff, the FY16 and FY17 audited financial statements provided in the supplement clearly show that ACICS has the financial resources necessary to carry out its functions. Exhibit B-O-68 (FY 16 Audit); Exhibit B-O-69 (FY2016 and FY2017 Audits²³). While ACICS's revenue and support unsurprisingly dropped between 2016 and 2017, it still had over \$8.7 million in total support and revenue and over \$14.5 million in net assets for the year ending June 30, 2017. Exhibit B-O-69 at 7.

ACICS provided additional materials with analysis which further support its compliance with the financial capability requirement including revenue projections from investments which evidences a substantial investment portfolio. Exhibit B-O-70 (Nov 17 and Mar 18 Invest Reports). It is also clear in the materials provided that its Board is involved in monitoring its budgets and overall financial condition. See Exhibit B-O-60 (April 2018 ACICS Board Minutes). Finally, ACICS has provided adequate evidence of how it effectively manages financial risks such as through purchasing liability insurance and other litigation risk mitigation strategies. Exhibit B-O (ACICS May 2018 Supplement) at 18.

SDO Recommendation: As discussed above, there were significant weaknesses in the reasoning in the 2016 Final Staff Report in regards to ACICS's administrative and financial capabilities. While ACICS was an agency in rapid transition and its financial and administrative resources were somewhat diminished, there is no real evidence it was ever noncompliant. Additional materials provided by ACICS in its Part II submission and the 2018 Supplement further evidence ACICS's compliance with 34 CFR § 602.15(a)(1). However, concerns regarding ACICS's staffing and financial resources are reasonable. Accordingly, I would recommend that you direct ACICS to provide to staff its audited financials for the next three years to ensure ACICS continues to remain in compliance with the criterion. I would also recommend that you request ACICS provide to staff information regarding the size of ACICS's staffing relative to the agency's membership while also taking into account the volume of schools and programs in which it is reviewing for accreditation.

²³ Exhibit B-O-68 appears to be an audit for the fiscal year ending June 30, 2017.

SDO Response to ACICS

3. Section 602.15(a)(2) – Competency of Representatives

One of the ways an agency meets the criteria’s administrative and fiscal responsibility requirements is by demonstrating it has:

Competent and knowledgeable individuals, qualified by education and experience in their own right and trained by the agency on their responsibilities, as appropriate for their roles, regarding the agency's standards, policies, and procedures, to conduct its on-site evaluations, apply or establish its policies, and make its accrediting and preaccrediting decisions, including, if applicable to the agency's scope, their responsibilities regarding distance education and correspondence education[.]

34 CFR § 602.15(a)(2).

In order to demonstrate compliance with this criterion, the Final Staff Report stated ACICS needed to “document how its revised training programs for all volunteers provide more focus on consistently recognizing programs and questionable practices at institutions, particularly concerning student achievement.” 2016 Final Staff Report at 1. Additionally, ACICS needed to “document that each volunteer has undergone the improved training process before being permitted to fulfill the tasks assigned to them,” including for onsite evaluators. Id. ACICS also needed “to document the membership and activities of its new Ethics Review Board” (ERB). Id. ACICS also needed “to document the integrity and sufficiency of its data verification regime, both in design and implementation.” Id.

Staff’s findings appear to acknowledge that ACICS was working to come into compliance with this criterion, for example, by instituting new training requirements, establishing the ERB, and adding a data integrity reviewer for site visits. Id. at 8-9. However, it was generally too early to evaluate the effectiveness of these measures and whether they would be implemented in a way that demonstrated application of the criterion.

The Secretary’s Decision and SDO Decision did not provide any analysis or assessment of ACICS’s compliance with this criterion.

Training Issues:

As it relates to the training issues, the Part II submission contains multiple relevant exhibits that summarized requirements for evaluator training, performance protocols, and qualifications. As far as ensuring evaluators were qualified and capable, ACICS submitted evidence of its evaluator performance review criteria (Table G) and the ability of ACICS to match evaluator expertise with programs offered by ACICS members (Table E). The Part II submission also provided information on ACICS’s efforts to remove evaluators who were deemed to be incompetent or whose behavior was inappropriate, as well as on its efforts to recruit additional volunteers in areas of need. See Tables E-G. While these efforts were ongoing at the time of staff’s review, they were in addition to the fact ACICS had “a pool of more than 1,900 trained,

SDO Response to ACICS

qualified on-site volunteer evaluators” at the time of the 2016 recognition evaluation speaks to its compliance with this criterion. Exhibit A-O (ACICS Part II Submission Explanation) at 7.

ACICS’s 2018 Supplement provides additional materials related to training of site evaluators and volunteers generally.²⁴ As it relates to evaluators, ACICS has stated in its 2018 Supplement and provided documentation that all evaluators are required to complete training on applicable issues. Exhibit B-O (ACICS May 2018 Supplement) at 21; Exhibit B-O-81 (Evaluator Training Binder). As evidenced in Exhibit B-O-81, ACICS’s training materials are thorough and certainly appear adequate to meet the criterion. ACICS has also prepared refresher and specialized training materials to ensure evaluators’ continuing competency. Exhibit B-O-82 (Evaluator Refresher Training); Exhibit B-83 (Evaluator Training – Ed. Activities). Multiple other exhibits demonstrate ACICS’s emphasis on training evaluators both initially and on an ongoing basis to ensure their effectiveness. See generally Exhibits B-O-84 – B-O-90.

As it relates specifically to student achievement, those issues are generally addressed elsewhere. ACICS has integrated its data-collection and verification enhancements into its site visits and the system is designed for evaluators to play an important role. Evaluation and review of the school’s CEP and CAR and student achievement issues are also covered in ACICS’s aforementioned training materials and a review of them makes clear that data quality and verifying student achievement metrics are a key part of the work of evaluators, including ACICS’s Data Integrity Reviewer. For information on ACICS’s efforts in these areas generally please see Section III. (Major Improvements Made by AICS) and Section IV. 7. (§ 602.16(a)(1)(i)).

In sum, while ACICS’s training materials may have been in “flux” at the time of the 2016 review, its current offerings are thorough and professional. 2016 Final Staff Report at 8.

ACICS has clearly made strides in its training efforts; however, it is unclear whether its existing evaluators have undergone the training and ACICS’s narrative indicates they have not. The Final Staff Report specifically requested this be done in order to prove application of the criterion: “[T]he agency needs to document that each volunteer has undergone the improved training process before being permitted to fulfill the tasks assigned to them.” 2016 Final Staff Report at 9. At a minimum, it would seem like ACICS should require its existing evaluators to undertake supplemental or refresher training that reflects its improvements in this area rather than to assume, just because they are qualified on paper, they are also properly trained. Accordingly, I would recommend that you find ACICS out of compliance with this criterion for not having demonstrated its evaluators have undergone the improved training.

Data Verification Regime:

The Final Staff Report found that ACICS’s “documentation does not describe the data integrity reviewer’s qualifications, nor the process ACICS used or resources it called upon in

²⁴ The 2016 Final Staff Report’s focus was on the training of on-site evaluators and likewise I have focused on compliance of that criterion from that perspective. However, the materials provided by ACICS, otherwise demonstrate compliance with the training requirements generally.

SDO Response to ACICS

coming up with its verification scheme.” 2016 Final Staff Report at 8. More specifically, the 2016 Final Staff Report stated ACICS needed “to document the integrity and sufficiency of its data verification regime, both in design and implementation.” *Id.* at 1. The request related to qualifications of the Data Integrity Reviewer is reasonable. However, the remainder of the request falls significantly outside of the scope of relevant factors demonstrating compliance with this criterion. The data verification regimen is specifically addressed above in Section III. (Major Improvements Made by ACICS); and below in Sections IV. 7. (§ 602.16(a)(1)(i)) and 15. (§ 602.19(b)).

The Final Staff Report employs a double-jeopardy standard that makes failure in one area disqualify the agency from demonstrating compliance with another, and which essentially makes it impossible for an agency to find its way back towards compliance. Not only is an agency being docked points against compliance in multiple criteria for the same specific issue, some of the findings here truly are inapplicable to 34 CFR § 602.15(a)(2). ACICS is being called to task for its data verification “design and implementation” as part of assessment of its compliance with a criterion which looks to whether an agency has competent individuals for various responsibilities. However, the qualification of the Data Integrity Reviewer does fall under the criterion’s purview and ACICS failed to provide any specific information regarding the individuals’ qualifications that perform this function, although it did provide information on the reviewers’ training in its 2016 petition. Exhibit 203 (Communication to Data Integrity Reviewers & Training).

Ethics Review Board:

ACICS pledged to set up an Ethics Review Board (ERB) in response to criticisms of conflicts of interest and other ethical issues encountered by ACICS over the years. The 2016 Final Staff Report found that ACICS needed “to document the membership and activities of its new Ethics Review Board.” ACICS has stated that “[d]ue to strong conflict of interest clearance processes, the Ethics Review Board “has not needed to be convened.” ACICS May 2018 Supplement at 22. However, ACICS did submit a copy of the Board’s training manual which evidences that the ERB members have been chosen and have undergone training. See Exhibit B-O-96 (Board of Ethics Training Manual).²⁵

As evidenced in the Part II submission and 2018 Supplement, ACICS has clearly made strides in its conflicts of interests policies, among other things, this was demonstrated by a Board member’s resignation when the accreditation status of the schools that person represented was challenged. Exhibit B-O (ACICS May 2018 Supplement) at 14. However, I am concerned that ACICS has not formally convened the ERB, a key piece of its efforts to ensure competency of its representatives. ACICS states that “due to strong conflict of interest clearance processes, the Ethics Review Board has not needed to be convened.” *Id.* at 22. However, this applies somewhat circular logic. Part of the reason why the ERB was needed was because ACICS’s conflicts of interest efforts were lacking, but now ACICS states it is not needed because it has strong conflicts of interest policies in place. I would recommend that you find ACICS out of

²⁵ The Part II submission questions and requests from the Under Secretary were not directly requesting documents related to the ERB and it does not appear any Part II materials are relevant to it.

SDO Response to ACICS

compliance with this criterion based on a lack of implementation of the ERB. The ERB should not be a body that meets solely on an ad hoc basis, but should be an active participant in ACICS's ongoing efforts to ensure competency of its representatives and to protect against conflicts of interest.

Additional Evidence Demonstrating Compliance Generally:

In order to provide a complete response, ACICS provided in its 2018 Supplement additional information about the composition and roles of ACICS's decision making bodies, including the Council, the Executive Committee and the Review Board. The supplemental materials also included links to the website where information about the members is posted. A review of those lists indicates that those bodies consist of individuals qualified for the role they play and that the composition of those bodies meets the requirements of ACICS's bylaws. ACICS has also provided evidence of the training that its Commissioners and Directors receive (Exhibit B-O-79 (Commissioner and Board Training Manual)), as well as an agenda from a recent Commissioner Refresher Orientation and a sign-in sheet that demonstrates participation in that training. Exhibit B-O-80 (Council Training). ACICS also included its Visit Evaluation Procedures and Guidelines manual as well as slides from an ACICS evaluator training webinar and an Evaluator Refresher Training Webinar and training used for individuals assigned to serve in specific functions on site visits, such as those focused on evaluating educational activities. ACICS also included in its exhibits the Pre-Visit Meeting Orientation Guide, ACICS Team Chair Training, and sample checklists used by site visit teams to evaluate the institution's Campus Effectiveness Plan (including student learning outcomes, the evaluation of distance education, and examples of materials that are provided to the site visit team, the institution and the agency prior to, during and after a site visit takes place).

SDO Recommendation: It is clear ACICS has made significant strides in demonstrating compliance with and applying this criterion. I strongly disagree with some of the analysis in the 2016 Final Staff Report, particularly as it relates to findings of noncompliance for issues that are really not within the purview of this criterion. ACICS's Part II submission and 2018 Supplement do help demonstrate compliance, particularly on training shortcomings, and problems with evaluator qualifications staff previously identified.

However, based on my review I recommend that ACICS submit a compliance report within 12 months and to provide additional evidence responding to whether existing evaluators have received the improved training and to answer questions regarding qualifications of the Data Integrity Reviewer. In addition, this compliance report should also explain how ACICS has made progress to ensure its Ethics Review Board, seemingly a central piece of ACICS's efforts to ensure competency of representatives and prevent conflicts of interest, has met and to explain how it will be an integrated part of ACICS's efforts to remain compliant with this criterion.

4. Section 602.15(a)(3) – Academic/Administrator Representatives

The Final Staff Report was somewhat vague about why ACICS was noncompliant with this criterion which requires “[a]cademic and administrative personnel on its evaluation, policy, and decision-making bodies.” 34 CFR § 602.15(a)(3). “The draft staff analysis found that the agency

SDO Response to ACICS

needed to provide evidence that it has maintained adequate representation of both academic personnel, and administrative personnel, on its site teams and decision-making bodies.” 2016 Final Staff Report at 9. ACICS also needed “to document how it has verified that those selected for evaluation and/or decision-making positions actually possessed the necessary qualifications to fulfill those roles effectively.” Id. In the final analysis it appears that ACICS had satisfied this requirement for evaluators since staff noted that, while ACICS’s interpretation of the regulation for requiring one academic and one administrative evaluator on the team was “minimalist, it nonetheless meets the requirement” and that “[i]n actual practice, the documentation shows that the agency typically has sufficient inclusion of the required designations represented of the required persons.” Id. And staff had found previously that ACICS’s “policy and decision-making body includes adequate representation of the required persons.” Id. Thus it appears that ACICS was in compliance with the criterion.

Also, curiously, while staff found ACICS’s “review and purging” of its evaluator pool “laudable,” it also “raise[d] questions about the qualifications of those who served as evaluators up to that point.”²⁶ Id. Staff concluded that “[t]he inconsistent and unreliable process that resulted from the unknown percentage of unqualified or poorly vetted evaluators obviously cannot be repeated.” Id. To the extent there was any specific existing issues, the Final Staff Report did point to ACICS’s practice of permitting representatives to sign “attestations of qualifications” as opposed to reviewing “documented experience.” Id.

If there was any real existing noncompliance at the time of the review, materials in the Part II submission and the 2018 Supplement further demonstrate ACICS’s compliance, including with the specific issue of reviewing documentation. In its May 2018 Supplement, ACICS states that it “utilizes the Attestation Forms discussed in 602.15(a)(5) and 602.15(a)(6) as a tool to appropriately classify individuals as public, academic or administrative, *but reviews such classifications against resumes and other information provided to confirm proper classification and qualifications for same.*” Exhibit B-O (ACICS May 2018 Supplement) at 24 (emphasis added). ACICS’s statements in this regard clarify that it does not rely solely on the attestation forms but does further due diligence to verify qualifications. Additional procedures specific to ACICS’s verification of qualifications for participation in the ACICS body (evaluation team, Council, etc.) are outlined in detail in ACICS’s May 2018 Supplement. See e.g. Exhibits B-O-97 (Council Attestation Forms); B-O-74 (Evaluator Training – Web); B-O-75 (Visit Evaluation Procedures/Guidelines); and B-O-179 (Sample Evaluator Database and Team Composition). Additionally, some of the Part II submission materials already referenced demonstrate this, particularly Tables E, F, and G which address new evaluator recruitment and performance protocol. Given, the Department’s standards do not require agencies to provide written summaries of such reviews. This evidence is more than sufficient to demonstrate compliance with the criterion.

SDO Recommendation: I recommend you find ACICS in compliance with this criterion. The Final Staff Report did little to explain why ACICS was noncompliant with this criterion and to the extent concerns with documenting the actual experience of site evaluators as opposed to

²⁶ The issues related to compliance with the criterion related to site evaluators is generally addressed in the section above discussing compliance with § 602.15(a)(2).

SDO Response to ACICS

allowing attestations to suffice was the problem, ACICS has provided evidence demonstrating it verifies the actual qualifications.

5. Section 602.15(a)(5) – Public Representatives

Staff found that ACICS was noncompliant with this criterion because the “specialized attestation form” “used to verify the status of appeal board members appear[ed] to be inconsistently interpreted by those required to sign them, thereby raising questions regarding their effectiveness.” 2016 Final Staff Report at 10. Specifically, the issue was whether members would be serving as a public member or would be designated as an academic or an administrator because they could not be both simultaneously. However, there did not appear to be any real doubts in the Final Staff Report that ACICS was including the participation of public representatives on the Review Board: “The agency provided materials showing that it uses cross-referenced materials to verify that persons currently classified as public members on the full commission meet the Secretary’s definition of a public member.” 2016 Final Staff Report at 10. The Secretary’s Decision and the SDO Decision do not discuss this criterion.

To the extent there was noncompliance, ACICS has addressed this finding by revising its attestations which now require the members of the Review Board to “clearly delineate their public and academic roles pursuant to 34 C.F.R. § 602.15(a)(5).” ACICS May 2018 Supplement at 28. ACICS notes it had made these changes in the summer of 2016 and even had demonstrated application. *Id.* ACICS’s updated Review Board Members Classification and Attestation Forms evidence compliance on paper.²⁷ The documents regarding West Virginia Business College evidence the application of the improvements made regarding the form to ensure each member’s role is clear. Exhibit B-O-98 (Institutional File –WVBC) at 522-529.

SDO Recommendation: The evidence is clear that ACICS has demonstrated compliance with and application of this criterion. I recommend you find the agency in compliance.

6. Section 602.15(a)(6) – Conflict of Interest

As part of the Secretary’s recognition criteria for demonstrating administrative and fiscal capability, 34 CFR § 602.15(a)(6) requires an agency to demonstrate that it has “[c]lear and effective controls against conflicts of interest, or the appearance of conflicts of interest . . .” The Final Staff Report concluded the agency needed to “provide clear documentation of its consistent past practices to ensure that members of the Intermediate Review Committee (IRC) were free from conflicts of interest.” 2016 Final Staff Report at 2. Staff seemed to demand that ACICS provide signed attestation forms related to conflicts of interest for all members involved in a prior meeting of the IRC, and yet ACICS only provided forms for IRC members that would be participating in a future meeting. *Id.* at 11. The Secretary’s Decision and SDO Decision do not provide any additional analysis for why ACICS was noncompliant.

²⁷ This document is referenced in ACICS’s May 2018 Supplement and can be found on pages 443-444 of the Administrative Record of the *ACICS v. DeVos* litigation.

SDO Response to ACICS

It was reasonable for staff to conclude that ACICS had not demonstrated application of this criterion given that the agency was unable or unwilling to provide examples of signed forms from previous meetings. However, it was unreasonable not to assess whether ACICS could have demonstrated compliance with the criterion within 12 months, particularly when the agency had provided ample evidence it had been in compliance with this criterion for other individuals covered by the regulation, just not for the IRC, and that it had made adjustments to meet Department demands for better documenting its controls in the form of affidavits.²⁸

ACICS has provided some evidence in its 2018 Supplement that it is mindful of potential conflicts of interest with its IRC but it did not provide any examples of signed forms that would indicate its IRC members sign the same ethics forms as other members which would indicate it is aware of and will adhere to the agency's conflicts of interest requirements. Therefore, I would encourage you to request that ACICS provide a compliance report within 12 months that demonstrates its adherence to its current conflict of interest policies.

SDO Recommendation: My review of these materials leads me to the conclusion that ACICS has largely proven that it meets the standards for compliance with this criterion. However, it has not addressed an issue specifically pointed out by staff during the 2016 recognition process which is significant enough for me to recommend that you find them out of compliance. Specifically, I would recommend that ACICS be required to submit a compliance report within 12 months evidencing it requires its IRC members to sign conflicts of interest attestations.

7. Section 602.16(a)(1)(i) – Accreditation and Pre-Accreditation Standards – Student Achievement

34 CFR § 602.16(a)(1)(i) requires the agency's accreditation standards to effectively address the quality of the institution or program” in the area of “[s]uccess 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 State licensing examinations, course completion, and job placement rates.”

The Final Staff Report found that ACICS had not demonstrated compliance because it had not “effectively demonstrate[d] that it ha[d] resolved issues of widespread placement rate falsification” nor had it “explain[ed] its delay in implementing verification it promised to begin performing in 2011.” 2016 Final Staff Report at 2. The Final Staff Report also stated that ACICS had to “specifically explain what actions it took with respect to each pending or settled State or federal lawsuit initiated for the benefit of students against ACICS-accredited institutions in the last 5 years to demonstrate that its actions were appropriate and effective.” *Id.* ACICS also had to “demonstrate that it took follow up action on evidence it had that placement rate data submitted by institutions was unreliable.” *Id.* ACICS was also supposed to “provide current documentation

²⁸ ACICS makes the argument that its IRC members are not covered by the conflicts of interest provisions of 34 CFR § 602.15(a)(6). However, the regulation covers “[o]ther agency representatives” and so it is a reasonable interpretation of the statute to conclude these individuals would be covered.

SDO Response to ACICS

policies/practices to address the non-compliant issues.” Id. Staff was not satisfied with ACICS’s explanation of its reason for removing graduation rates from its student achievement benchmarks and considered it “a significant retreat in terms of accountability of the agency’s institutions . . .” Id. at 12.

While, as the court noted, the Secretary’s Decision failed to consider relevant information, it did at least specifically reference student achievement standards and essentially adopted the staff finding and arguments in the SDO’s appellate filing in stating that ACICS’s “progress in developing and effectively implementing student achievement standards was entirely lacking or incoherent.” Secretary’s Decision at 6. The Secretary also stated that ACICS’s “standards and processes in this area were unclear” and that it “had ‘failed to document multiple reviews of different institutions demonstrating implementation’” of the standards. Id. (quoting Final Staff Report at 12-13). The Secretary, again adopting the SDO reasoning, concluded that ACICS “ha[d] not put forward a plan to effectively develop and apply standards for evaluating student achievement” and that its standards “appeared to change at each stage of the proceeding,” specifically citing to graduation rates. Id. ACICS also failed to provide evidence of a standard for licensure. Id. at 7.

Prohibition on Bright Line Standards:

From the outset, it is noteworthy that, despite a very clearly written prohibition on the Secretary establishing bright-line standards for student achievement or requiring an accreditor to do so, this is precisely what the Department was requiring ACICS to do in order to comply with this criterion.²⁹ Congress was wise to include such a prohibition in the 2008 Higher Education and Opportunity Act because there is no empirical evidence upon which a single relevant and appropriate standard could ever be developed that would make sense for all students or all programs at all times. The Great Recession proved just how inappropriate bright-line standards can be, since that was a time of record underemployment among recent college graduates – not just the graduates of ACICS accredited institutions. The HEA and this specific recognition criterion also explicitly state that accreditors need not hold all institutions to the same standards (“may include different standards for different institutions or programs”), and yet the Department required ACICS to do just that. 20 U.S.C. § 1099b(a)(5)(A); 34 CFR § 602.16(a)(1)(i). The HEA expressly states that an accreditor may assess student achievement standards for different programs or institutions differently. The Department cannot create a requirement that flouts this HEA directive.

For example, the Department seems to indicate that ACICS must specify or prescribe certain student achievement standards particularly when it comes to graduation rates. See Final Staff Report at 12 (Removing graduation rates “appears to be a significant retreat in terms of accountability of the agency’s institutions. . .”). Graduation rates are an important indicator of

²⁹ 20 U.S.C. § 1099b(g) states that The Secretary shall not “establish any criteria that specifies, defines, or prescribes the standards that accrediting agencies . . . shall use to assess any institution’s success with respect to student achievement.” The statute also states the “Secretary shall not promulgate any regulation with respect to the standards of an accreditation agency or association described in subsection (a)(5).” Id. at (o). (Subsection (a)(5) is the statutory counterpart to this particular regulatory criterion.)

SDO Response to ACICS

program stability, and certainly significant changes in graduation rates from one year to the next signal that a review of the program or institution is warranted. However, graduation rates vary considerably by field, and in some instances, will appear to be low simply because students are being hired into the job for which they are preparing before they complete the program (which is actually a sign of program strength, not weakness). This is especially problematic in areas such as Information Technology and welding where worker shortages are significant, but it happens in other fields as well if there are not licensure requirements that are tied to program completion. For a student whose end goal is employment, it is hard to argue that being hired into a job prior to completing the program is a sign of program failure or low quality. Quite the opposite, it is a sign that the program is so well designed that students are prepared for the workforce before completing it. Similarly, for licensure, the Secretary's Decision stated that "ACICS also appears to lack a standard for licensure . . ." Secretary's Decision at 7.

ACICS has provided in its 2018 Supplement a report on its decisions regarding the inclusion of licensure pass rates in its student achievement standards. In response to pressure applied by the Department and NACIQI for ACICS to adopt a bright-line standard for licensure pass rates, ACICS provides a thoughtful and well-reasoned justification for its decision to remove licensure pass rates from its student achievement measures. In many instances, licensing boards will not provide results to accreditors out of respect for the privacy of individuals who took the exam. In other instances, the timing of licensure exam testing opportunities makes it impossible to have those results in time to include them in the annual CAR. Students are not obligated to provide the institution with information about their licensure exam results, so it can be very difficult for institutions to collect this information, and it is impossible for the institution to verify the accuracy of this self-reported data. It is impossible to establish an empirically-based bright line standard for licensure pass rates given vast differences in rigor and level of difficulty between such exams. ACICS is permitted to include the review of licensure pass rates in its review of student achievement, but it is not required to do so, and if it includes the review of licensure pass rates, it does not need to establish a single bright line standard to which it holds every institution and program accountable.

Job Placement Rates Issues:

The Final Staff Report stated that ACICS needed to demonstrate it had resolved issues of widespread job placement rate falsification and to explain the delay in implementing the verification system it had promised to begin in 2011. Further, ACICS had to explain what actions it took in relation to various state or federal lawsuits related to ACICS-accredited institutions and what follow-up action it took in instances it had received unreliable job placement rate data. Finally, the agency was asked to provide current documentation policies/practices to address the non-compliant issues.

As it relates to resolving issues of widespread rate falsification, as discussed in Section III 1. (PVP), ACICS now has a reliable system in place to collect and assess job placement verification. ACICS's PVP system is as rigorous as any accreditor's (and is likely the most rigorous of any accreditor) when it comes to detecting errors or falsifications in job placement rate reporting.

SDO Response to ACICS

Implementing such a system is not an easy proposition, especially given the many challenges identified by the TRP as contributors to the complexity of such determinations. ACICS took the time to engage its members as well as outside evaluating and auditing specialists in the design of its system, and in its 2018 Supplement, it provides a time line showing each step of the development, alpha and beta testing, and full-implementation of the PVP system. Not only is there not a reliable source of data to verify job placements, we live at a time when many people do not answer their phone or return a call if they do not recognize the number that shows up on the caller ID. In addition, in order to accurately evaluate the alignment between a given job placement and the curriculum the student completed, ACICS had to identify subject matter experts who could participate in this review – which is an element largely missing from other placement verification regimes that rely on outside third-party verifiers. ACICS also had to develop a technology-based solution to auto-generate emails to students when it realized that many people simply do not answer their phone or listen to their messages if they do not recognize the name or number of the caller.

Although it did take several years for ACICS to implement its full PVP program, in the meantime, it required individual institutions to provide third party verification of most or all of the job placements reported by those institutions when concerns about misrepresentation arose. ACICS also took interim steps by revising its definition of an in-field job placement, revising its list of students who could be excluded from the calculation and adding a data integrity evaluator to its site visit teams. Even after losing recognition, ACICS continued to implement its PVP, further demonstrating its commitment to improved data integrity.

The evolution of and issue of “delays” in implementing the PVP are also covered in Section III. 1. (PVP) and elsewhere. While any delays could be relevant to demonstrating past compliance with and application of the criterion, they are not grounds to find it noncompliant now because the materials in the Part II submission and the 2018 Supplement make it abundantly clear ACICS is in compliance with 34 CFR § 602.16(a)(1)(i). Likewise, the analysis above in Section III. (Major Improvements Made by ACICS) and elsewhere largely address the more pointed Department questions regarding actions ACICS took in response to lawsuits against ACICS-accredited institutions. ACICS acknowledges its mistakes and has largely answered the Department’s calls to focus on the job placement rate issue. At this time ACICS is fully compliant with this criterion.

Second, as referenced above in Section III. 3. (Onsite Data Integrity Reviewer) and Section IV. 2. (§ 602.15(a)(1)), ACICS has the dedicated Data Integrity Reviewer in place on every site visit. The function of the reviewer is “to focus primarily on the reliability of the placement information reported by institutions on the Campus Accountability Report.” Exhibit A-O (ACICS Part II Submission Explanation (May 2018)) at 15. ACICS notes that this individual is “responsible for attempting to contact, via telephone, up to 100% of all graduates reported as placed.” *Id.* This individual is supported by subject matter experts who “provide[] practical input on the appropriateness of the placement as disclosed by the campus and confirmed by the graduate or employer.” *Id.*

While the Final Staff Report hinted that ACICS had not demonstrated the implementation of this feature of its placement verification procedures, evidence provided by ACICS does

SDO Response to ACICS

demonstrate that it has been in place and ACICS provides an explanation in its Placement Verification Report about the initial effectiveness of this new role and, later in its May 2018 Supplement, it provided an update on how that function is currently being carried out. Exhibit A-O-2 (ACICS Placement Verification Report) at 5. The May 2018 Supplement also provides multiple exhibits demonstrating the rigor of the onsite data review. See e.g. Exhibit B-O-158 (Data Integrity Review Template); and Exhibit B-O-73 (Policies and Procedures Manual). Finally, and perhaps most importantly, ACICS has provided evidence of the enforcement of its verification standards through the results of its onsite review process and, in cases of unacceptable data errors, has issued show cause directives. See Exhibit B-O-119 (Living Arts College Show-Cause Directive); and Exhibit B-O-120 (CSI Adverse Review).

Licensure and Graduation Rates and Other Evidence Demonstrating Compliance:

In addition to concerns about job placement rates, the 2016 Final Staff Report analysis focused on ACICS's lack of specific student achievement standards, such as licensure pass rates of graduation rates. This is an inappropriate finding since the Department is prohibited from requiring any accreditor to adopt particular student achievement standards.

Nonetheless, ACICS's Part II Submission and 2018 Supplement evidence that ACICS has met the bar for compliance with the criterion. First, ACICS has, in its Accreditation Criteria, articulated clear student achievement standards, including benchmarks. Exhibit A-O-3 (ACICS Accreditation Criteria) at 129-134. ACICS has established standards for retention rates and placement rates at the campus-level and, adds to those, licensure examination pass rates at the program-level. Id. at 129. ACICS has clear policies in place for when programs and campuses fail to meet those benchmarks, including developing improvements plans, compliance warnings, show-cause, and adverse action. See e.g. Id. at 131-134 ("Student Achievement Review and Council Actions").

ACICS has made progress in reintroducing graduation rates at the program and campus level. This is evidenced in a February 5, 2018 Memorandum to the Field where ACICS notes its Council had "drafted guidelines on graduation rates for the membership's information and advisement." Exhibit B-O-115 (February 2018 Memorandum to Field) at 1. Those materials evidence that ACICS was working towards introducing minimum graduation rates as a factor it will consider when making accreditation decisions. Id. at 5. It is important to note that this information is already being reported by schools and evaluated by ACICS as part of its Campus Effectiveness Plan (CEP) and on its CAR. Exhibit A-O-3 (ACICS Accreditation Criteria) at 44-45, and 127. The Council reviewed graduation rate data included in the 2017 CAR, but determined that it needed to review additional data in order to be able to empirically determine a graduation rate standard. ACICS's caution in developing a bright line standard is commendable given the pressure put on the agency by the Department to adopt an arbitrary standard. I hope ACICS will develop a methodology that accommodates differences in institutional selectivity, macroeconomic conditions, and other factors to ensure a level playing field.

ACICS's supplemental materials include specifics on licensure that the Department had previously found missing or inadequate. In addition to the detailed information for licensure found in the Accreditation Criteria document, ACICS also included a detailed document on its

SDO Response to ACICS

licensure pass rates. Exhibit A-O-1 (ACICS Licensure Pass Rate Report 2018). ACICS explains in its supplemental materials; however, that in some instances, licensing boards do not and will not provide data directly to the institution or ACICS, or will not disaggregate data in a way that enables determination or verification of licensure pass rates. Id. at 7. Therefore, in some instances, licensure pass rates cannot be included in the CAR or ACICS evaluation of an institution's or program's performance. Id. In other instances, the timing of licensure exams does not coincide with the CAR reporting period, meaning that results of licensing exams for a given graduating cohort are not available in time to report on the CAR. Id. As a result, ACICS has amended its policies and provided an opportunity for institutions to make a one-time adjustment of licensure pass rates within 6 months of submitting the CAR in instances where graduates cannot take the licensing exam or have their scores returned to them in time for the regular CAR reporting period. Id.

In the Licensure Pass Rate Report, ACICS points out that only 5% of the programs it accredits lead to licensure, but among programs that do lead to licensure, ACICS has established a standard of 60% and a benchmark of 70% to evaluate program performance. Id.; Exhibit A-O-3 (ACICS Accreditation Criteria) at 129. Programs that fall below benchmark must develop and submit an improvement plan, and programs below the standard receive a written show cause or compliance warning and additional action if the deficiency is not resolved. Exhibit A-O-3 (ACICS Accreditation Criteria) at 2.

The Licensure Pass Rate Report provides additional evidence that the Department was essentially forcing ACICS to adopt a bright-line standard for licensure pass rates, even though the Department's standards do not require that accreditors review licensure pass rates or establish bright-line standards. The coercive nature of staff reports and NACIQI reviews make it clear to accreditors that they must do what they are told, even if those instructions are not codified in the Department's regulations or are prohibited expressly by the HEA.

This is highly problematic and serves as additional evidence that part of ACICS's challenges over the last decade have been that the Department and the NACIQI that have made demands outside of their authority and essentially moved the goalposts on the agency. Although ACICS had established benchmark and compliance standards for licensure pass rates in 2011, in 2012 the Department "strongly" advised that ACICS revise and increase its minimum standards, which ACICS did. Exhibit A-O-1 (ACICS Licensure Pass Rate Report 2018) at 5. The Licensure Pass Rate Report provides a timeline of the actions ACICS has taken with regard to establishing licensure pass rates, and the lessons that have been learned from this exercise and the careful review of data submitted on the CAR, including the 2016 CAR which led to actions including reporting, compliance warning and show-cause for a number of programs. Id. at 5-6.

As a result of these actions, ACICS learned that, in practical terms, there are many challenges associated with collecting pass rate data, including inability to access institution-level data or to understand the formula used by various agencies to make its aggregate calculations, and of the inconsistencies in the receipt of those data from various licensing bodies. ACICS also determined that in many instances, licensing bodies made errors and later published corrected data, but ACICS did not have a way to identify those corrections and adjust CAR data accordingly. After careful consideration and much discussion in 2017, the Council approved a

SDO Response to ACICS

policy change that requires licensure pass rates to be included in the CAR only if those rates are required and published. ACICS states that it will continue to review this issue, but that challenges with collecting data and inconsistencies in its format and accuracy (on the part of issuing agencies) subject institutions and ACICS to unacceptable risk regarding data integrity. ACICS has clearly considered this issue carefully, attempted to implement a licensure pass rate standard, and learned through the process that this is not a reliable test of program quality. I commend them from making a well-reasoned decision rather than implementing a faulty standard just to yield to the pressure exerted by the Department or NACIQI.

Finally, in its revised Accreditation Criteria, ACICS now requires (section 3-1-704) all institutions to make institutional and program level student achievement data, as reported on the CAR, available to the public. Exhibit A-O-3 (ACICS Accreditation Criteria). Additional requirements regarding data integrity have also been added to the Accreditation Criteria.

SDO Recommendation: I recommend that you find the agency to be fully compliant with the student achievement and data integrity requirements of recognized agencies. However, in light of the fact that the PVP system is still relatively new, if ACICS continues to require job placement rate reporting, I recommend that ACICS be required to submit an annual PVP report for the next three 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, that 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. This report should also 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.

However, I believe the Department should consider alternative outcome measures other than job placement rates until the Department can identify a reliable data source that can be used to report and verify those rates, or until such time as the Department publishes program-level earnings data which can be utilized in lieu of more traditional job placement rate determinations to provide the public with outcomes data.

I would also encourage ACICS to review its benchmarks and standards regarding student achievement requirements to be sure that they have built in flexibility to accommodate changes in the local or national economy that influence job placement rates and to recognize that job placement rates may vary from one profession to the other, or one geographic region to another, and account for those variances mathematically or statistically. It is clear that ACICS has been required to adopt bright-line standards, and to elevate those standards over time, which is in direct opposition to Congress's explicit prohibition. ACICS is encouraged to review its standards and, if these standards need to be revised or replaced by a different type of standard or calculation, ACICS should undertake those changes following the policies and procedures in place for developing and approving such changes.

SDO Response to ACICS

8. Section 602.16(a)(1)(v) – Accreditation and Pre-Accreditation Standards: Fiscal/Administrative Capacity

34 CFR § 602.16(a)(1)(v) requires “[t]he agency’s accreditation standards effectively address the quality of the institution or program” in the area of “[f]iscal and administrative capacity as appropriate to the specified scale of operations.”

In the 2016 Final Staff Report, Department staff commended ACICS for the actions it had taken to improve compliance with this criterion. Further, the staff commended ACICS for establishing new policies and procedures that have resulted in the agency more consistently and effectively identifying and reviewing at-risk institutions, including through the establishment of an At Risk Institutional Group. 2016 Final Staff Report at 14.

Nevertheless, the Final Staff Report concluded that “[a]lthough most of the agency’s plans are commendable and should improve the agency’s ability to uncover difficulties more expeditiously,” it was simply too late for ACICS because “at this time the plans have not been fully implemented or produced significant and tangible results.” Id. The staff also specifically criticized ACICS for not discussing any plans to enhance the focus of its site visitors during the team’s evaluation. Id.

Since 2016, ACICS has fully implemented the plan that was deemed “to be too little too late,” proving that, indeed, it was not too late for ACICS. This demonstrates that even if the Department was correct about ACICS not being in compliance with this criterion, it was unjustified for the Department not to consider whether the agency could come into compliance within 12 months. ACICS has demonstrated through evidence provided in 2016, the Part II submission, and the 2018 Supplement, that they are in compliance with 34 CFR § 602.16(a)(1)(v).

Regarding ACICS’s Accreditation Standards, they require institutions to demonstrate financial stability and adequate administrative capability to operate effectively. See e.g. Exhibit A-O-3, (Accreditation Criteria) (Sections 3-1-200, 3-1-202, 3-1-204, and 3-1-300). “The integrity and capability of an institution is manifested by the professional competence, experience, personal responsibility, and ethical practices demonstrated by all individuals comprising the ownership, control, or management.” Exhibit A-O-3 (ACICS Accreditation Criteria)(Section 3-1-202) at 46.

One of the biggest improvements ACICS has implemented is the At Risk Institution Working Group (ARIG). See generally Section III (Major Improvement Made by ACICS). The 2016 Final Staff Report commended ACICS for the creation of its At Risk Institution Group. 2016 Final Staff Report at 14. The ARIG conducts a multifaceted review of an institution that examines: 1) financial stability; 2) student achievement performance; 3) adverse information; 4) complaints; 5) enrollment growth; 6) excessive substantive changes; 7) information derived from Title IV compliance audits, inquiries and information exchanges; and 8) findings derived from the most recent comprehensive site visit or quality assurance monitoring visit. Id.

SDO Response to ACICS

In addition to the ARIG, ACICS has developed and implemented strengthened procedures for visiting teams to more consistently uncover institutional fiscal and administrative problems while onsite. See Exhibit B-O-75 (Visit Evaluation Procedures and Guidelines); Exhibit B-O-158 (Data Integrity Review Template); Exhibit B-O-82 (Evaluator Refresher Training); Exhibit B-83 (Evaluator Training – Ed. Activities; and Exhibit B-O-84 (Sample Pre-Visit Meeting Outlines).

ACICS has produced evidence demonstrating that when there are serious concerns with these components of administrative oversight, appropriate action is taken by the council. See Exhibit B-O-122 (Institutional File-DuBois), at 300, 351-352, 354; Exhibit B-O-77 (Institutional File-ACCT) at 224, 283.

ACICS is using Annual Financial Reports (AFRs) as an oversight tool. ACICS provided evidence demonstrating the use of these AFRs as part of its review of the financial stability and administrative capacity of institutions. Exhibit B-O-124 (Sample AFRs). ACICS uses these AFRs as part of its accuracy verification process. “Staff/FRC verifies the accuracy of the report by comparing it to the audited financial statements and applies a scoring rubric for assessing financial stability; reviews the notes to the audited financial statements related to any legal issues or contingencies, failure to meet lender requirements, compliance with the Department's financial responsibility standards; and reports to the Council on these matters.” Exhibit B-O at 37; see also Exhibit B-O-73 (Policies and Procedures Manual) (Chapter 25); and Exhibit B-O-128 (FRC Meeting Minutes).

ACICS has provided evidence that it has taken action after review of institutions’ AFRs. See Exhibit B-O-125 (Sample Financial Show-Cause Actions); Exhibit B-O-126 (Broadview Special Visit - AFR Review). ACICS also demonstrates that, when appropriate, it has required institutions to provide Quarterly Financial Reports, a financial improvement plan, or both. See Exhibit B-O-132 (Sample Council Actions for QFR & FIP). ACICS will then continue to require the institution to submit reports and, if the institution is unable to demonstrate compliance within the time frame, they are subject to withdrawal of accreditation. Exhibit B-O (ACICS May 2018 Supplement); See Exhibit B-O-125 (Financial Show Cause Actions); Exhibit B-O-133 (Institutional File - Herguan).

Likewise, ACICS requires financially weak institutions to submit an institutional teach-out plan to ensure that, in the event of closure, the institution can carry out an orderly teach-out for its current enrollees. Exhibit A-O-3, Section 3-1-202. See Section V. 21 (§ 602.24(c)(1))

ACICS also includes in its review the results of Title IV compliance audits, information received from the Department about Heightened Cash Monitoring (HCM) status, failing cohort default rates, or failing 90/10 results. Exhibit B-O-131 (Request for information 90/10 Review-College of Business and Technology). ACICS provided evidence of follow up actions the agency has taken when these risks are identified. The evidence includes a request for a teach-out plan, an unannounced visit and a request for additional information to show that ACICS has taken action consistent with its policies. Exhibit B-O-129 (Request for Teach-Out Plans); Exhibit B-O-130 (AMEDCO Unannounced Visit); Exhibit B-O-131 (Request for information 90/10 Review-College of Business and Technology); Exhibit B-O-128 (FRC Meeting Minutes).

SDO Response to ACICS

In the event that an institution closes without providing for students in an appropriate manner, members of the executive team and governance body are subject to debarment. See Exhibit B-O-123 (Sample Debarment Action Letters). Since 2016, ACICS has debarred 14 administrators and/or owners for failing to fulfill their teach-out obligations to students and the public. Sample debarment action letters were provided in the 2018 Supplement and a URL was provided to the ACICS website where all debarment actions are listed.³⁰ Routine monitoring of student achievement rates, along with any financial concerns stemming from financial aid audits are now required to be submitted with the institution's Annual Financial Report and are considered to be signs that an institution may be at risk and requires follow up or Council action through the ARIG process.

Overall, the 2018 Supplement includes exhibits that serve as evidence of the rigor of the agency's site visit review process, including evidence demonstrating that when concerns have arisen about critical components of an institution's administrative oversight capability. See generally Exhibit B-O-122 (Institutional File-DuBois) at 300, 351,352,354; Exhibit B-O-77 (Institutional File-ACCT), at 224, 283; Exhibit B-O-123 (Sample Debarment Action Letters); Exhibit B-O-125 (Sample Financial Show-Cause Actions); Exhibit B-O-126 (Broadview Special Visit - AFR Review); Exhibit B-O-129 (Request for Teach-Out Plans); Exhibit B-O-130 (AMEDCO Unannounced Visit); Exhibit B-O-131 (Request for information 90/10 Review- College of Business and Technology); and Exhibit B-O-128 (FRC Meeting Minutes).

ACICS has demonstrated in its 2018 Supplement that it has implemented the plan described during its 2016 review—the plan that staff described as being commendable. ACICS has also demonstrated that it has taken action required by that plan based on the new policies and procedures.

SDO recommendation: I recommend that you find ACICS in compliance with this criterion, having demonstrated implementation of the comprehensive plan described in its 2016 submission – a plan that is one of the most aggressive of any accreditor recognized by the Department.

9. Section 602.16(a)(1)(vii) – Recruiting and admissions practices, academic calendars, catalogs, publications, grading and advertising

34 CFR § 602.16(a)(1)(vii) requires “the agency's accreditation standards to effectively address the quality of the institution or program” in the area of “[r]ecruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising.”

The 2016 Final Staff Report confirms that ACICS has the necessary policies and practices in place regarding an institution's publications, recruitment practices, grading system, catalog and student records. 2016 Final Staff Report at 14-15. Staff also confirmed that the agency's visiting team evaluates the self-study and reviews evidence including the transfer of credit policy, recruitment materials and advertisements, copies of catalogs and handbooks, the academic

³⁰ <http://www.acics.org/commission%20actions/content.aspx?id=6967>

SDO Response to ACICS

calendar and class schedules, and student records including grades. Id. Staff acknowledged that ACICS has applied a substantial number of sanctions to large multi-campus systems as a result of deficiencies in this category. Id.

The Final Staff Report concluded “[t]he agency needs to fully implement its new and strengthened initiatives regarding misrepresentations to prospective students and abusive recruiting. In addition, the agency needs to regularly verify that each institution’s recruitment process is complying with the new ACICS requirements.” Id. at 2.

It is widely understood that an accreditor cannot control every advertisement or claim made by an institution, and there is nothing in the Department’s standards that requires institutions to have all advertisements and other materials preapproved by the agency. Additionally, consumer protection is largely a responsibility for the states. However, it is essential that accreditors have the necessary policies and practices in place to ensure the quality of member institutions recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising.

Too many institutions have engaged in advertising and recruiting practices that are inappropriate and misleading, the most recent example being Temple University and its recruitment strategy for online MBA students which misrepresented the entrance standards, and therefore the quality and selectivity of its program.³¹ This demonstrates that misrepresentation is not limited to proprietary or vocational institutions, and yet the Department has not taken action against any other accreditors that accredit institutions that committed these acts of misrepresentation.

The Final Staff Report points to settlement agreements that institutions have reached with state attorneys general as evidence that the agency’s processes are insufficient. As explained in previous sections, this evidence is not as persuasive or relevant as the Staff purports it to be.

The Final Staff Report concludes that the agency is not in compliance with this criterion since its standards are not effective in ensuring academic quality. 2016 Final Staff Report at 16. However, this standard is not one that is associated with academic quality, so it is hard to understand the relevance of or justification for such a finding. The Final Staff Report acknowledged that the agency had implemented more rigorous policies, including greater oversight of at-risk institutions, increased calls for comments, and investigating all complaints, including those submitted anonymously (which most accreditors do not do). 2016 Final Staff Report at 14-15. Staff also recommended that ACICS implement a secret shopper program. Id. at 15. While this may be a good suggestion, it is not a requirement of the Department’s regulatory criteria, and the agency cannot be found to be out of compliance because it did not implement a program that is not required by law. Nonetheless, the 2018 Supplement provides evidence that ACICS has implemented such a program. Exhibit B-O-149 (CDR Monitoring Excel chart) (provides details on secret shopper procedures).

³¹ <https://www.temple.edu/about/data-integrity/rankings-data-overview-and-updates>

SDO Response to ACICS

As discussed above, at the center of accusations of false advertising are assertions of widespread job placement rate misrepresentations. Had the Department reviewed the Part II submission, it would have found evidence that through the PVP system and the ARIG, the agency had significantly improved its assessment of institutional practices. See generally Section III. (Major Improvements Made by ACICS). It appears that for almost every criterion reviewed, the Department stubbornly refused to consider ample evidence that the agency had responded aggressively and thoroughly to prevent future problems and instead looked back and declared that ACICS was noncompliant because of activities that occurred – or were alleged to have occurred - prior to the implementation of the new standards or processes. ACICS has made no effort to deny that job placement rate errors point to weaknesses in its prior processes, and it has taken aggressive action to solve these problems. One wonders for how long an agency should be found out of compliance for actions that took place under a different and less rigorous set of standards, especially when those practices had received Department and NACIQI approval during prior reviews.

In the Part II submission, ACICS provided responses to the concerns raised by the Department with respect to six institutions or institutional groups. Those responses described ACICS's in-depth analysis of deficiencies regarding recruitment, admissions, advertising, and marketing derived from team reports, complaints, and other sources. The Part II submission also explained ACICS's more prescriptive standard for recruitment and admissions, effective July 1, 2016, and provided an explanation of additional items that had been added to the site visit template to test for compliance with this requirement. The Part II submission also included the use of the template to review Everest College, which resulted in a probation order for student achievement. See Exhibit 148 (Updated Visit Template). The Part II submission also provided ample evidence that the agency had taken aggressive and comprehensive action to address concerns about student achievement reporting, which was not considered when rendering the final recognition decision. See Exhibits 165 – 177 (Correspondence demonstrating monitoring and enforcement of standards); see also Exhibit 147 (MJI Correspondence); Exhibit 148 (Probation Notices). Had the Department reviewed the Part II submission and taken the time to understand the complexity and thoroughness of the new PVP system, it is likely it would have concluded that ACICS was taking sufficient action to resolve earlier deficiencies and was in or well on its way towards compliance.

The 2018 Supplement provides additional evidence that ACICS has fully implemented the PVP as well as other monitoring and review activities targeted toward at-risk institutions, and further demonstrates ACICS's compliance with this criterion. In addition, the 2018 Supplement summarizes information provided to the Department, including sample site visit reports that show:

- How criteria on admissions and recruitment are enforced through re-accreditation and special site visits. Exhibit B-O-134 (2017 and 2018 Sample Site Team Visit Reports).
- That ACICS has strengthened its standards for recruiting practices by requiring each institution to maintain documentation that it systematically monitors its recruitment activities and tests compliance with these expectations during onsite reviews, and that the agency reviews compliance with this standard during site visits. Id. That ACICS has established a Call for Comment process prior to visits to solicit information about school

SDO Response to ACICS

practices, in addition to posting on the ACICS website a publicly posted call for public comments regarding institutions undergoing review for initial accreditation See Exhibit B-O-135 (Sample Visit Memos with Call for Comment Request).

- That the ARIG, a more robust tracking of complaints and responses, enhanced reporting to the Department regarding Title IV related compliance issues, and a more robust and systematic review of student comments on key issues. That recruiting must be ethical and compatible with the educational objectives of the institution, disclosures to students regarding program details including cost must be accurate and not exaggerated or misleading, and that the institution systematically monitors the recruitment activities standards. See Exhibit B-O-136 (Institutional File-NWSC); Exhibit B-O-114 (Systematic Review of Criteria) at 90; see also Exhibit B-O-134 (2017 and 2018 Sample Site Team Visit Reports); ACICS Appeal to the Secretary (October 21, 2016).
- That institutions abide by truth in advertising requirements, which include publishing CAR data for public inspection and Catalog requirements for certification, licensure or registration in the professional field. Exhibit A-O-3 (ACICS Accreditation Criteria)(Section 3-1-700; Appendix H)(requiring posting of accurate information on website).
- That catalogs include accurate information about transparency in the admissions process, including transfer of credit, cost, scholarships and other information and that the institution publishes a clear and well-explained grading system. Id. at Section 3-1-303(e), Appendix C; Exhibit B-O-137 (Team Report Template) (Section 6).
- That for programs where state certification, licensing or registration is mandatory, the curriculum must include the necessary course work to afford students the opportunity to obtain the minimum skills and competencies necessary to become licensed. Exhibit A-O-3 (Accreditation Criteria) (Section 3-1-502).
- That onsite teams are trained to monitor admissions personnel and activities including listening in on recorded or live calls, reviewing text/instant messages, training manuals, and scripts; in addition, the ARIG conducts mid-cycle reviews through unannounced visits, limited-announced visits, or heightened monitoring when ACICS receives any information that an institution may be violating this requirement. Exhibit B-O-75 (Visit Evaluation Procedures and Guidelines) at 23.
- That “secret shopper” services are utilized by ACICS to investigate aggressive recruiting tactics. Exhibit B-O-149 (CDR Monitoring Excel chart) (provides details on secret shopper procedures).

SDO Recommendation: Based on the evidence ACICS provided in the Part II submission and the 2018 Supplement, I recommend that you find the agency in compliance with 34 CFR § 602.16(a)(1)(vii). ACICS has implemented new policies and practices that increase the rigor of its standards, it has added training of onsite visitors to identify inappropriate or misleading practices, and it has expanded its site visitor worksheet to ensure a more thorough review of institutional compliance with these standards. ACICS will need to continue maintaining the high standards it has adopted regarding recruitment, admissions, advertising and marketing and take quick action against institutions that violate those standards.

Given the importance of the ARIG in monitoring institutions, identifying inappropriate practices or at-risk institutions, and providing information to the Council to inform decisions

SDO Response to ACICS

regarding sanctions or actions against an institution, I recommend that ACICS submit an annual report to the Department that includes a table outlining problems or concerns identified by the ARIG, actions taken to address those concerns, and any Council decisions regarding the institutions identified by the ARIG 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.

10. Section 602.16(a)(1)(ix) – Record of student complaints received by, or available to, the agency

34 CFR § 602.16(a)(1)(ix) requires the agency's accreditation standards to effectively address the quality of the institution or program” in the area of “[r]ecord of student complaints received by, or available to, the agency.”

It is unreasonable that the Final Staff Report concluded that ACICS was not in compliance with this criterion. This conclusion ignores the evidence presented (and acknowledged by the staff), and the Final Staff Report’s findings that ACICS’s efforts go above and beyond the requirements by investigating anonymous complaints.

Neither the Secretary’s Decision nor SDO Decision specifically addressed why ACICS was noncompliant with this criterion. Therefore, is not clear why in the September 2016 decision, the SDO Decision included 34 CFR § 602.16(a)(1)(ix) in the list of criteria in which ACICS was noncompliant given that the Final Staff Report found that the agency uses an online complaint system to solicit, receive, and review complaints; examines complaints to identify patterns and trends in order to identify systemic problems that require further investigation; and provided evidence that it had utilized this system to identify problems that were then the subject of two recent school visits. 2016 Final Staff Report at 15-16. When such problems are identified, schools are being given the opportunity to respond to the findings of the onsite evaluators, and are subsequently brought before the commission for a decision. Id.

The Final Staff Report acknowledged that ACICS had developed a comprehensive plan designed for rapid response for the resolution of issues and enforcement, and “the agency uses the pattern of complaints prior to regular site visits so that the evaluators can make focused inquiries in a timely manner. As noted previously, the agency also processes anonymous complaints, a practice that is not common among accrediting bodies.” Final Staff Report at 16. The staff then concluded that “the agency provided substantial documentation to show that it is implementing its stronger focus on student complaints.” Id. The Final Staff Analysis then arbitrarily pivots to state “[i]t is too early for the evidence of the process’ effectiveness to be compiled.” Id.

Although the Final Staff Report stated that ACICS had sufficient – and actually more rigorous processes in place than other accreditors – for some reason the summarized findings state that “[t]he agency needs to continue implementing its strengthened process for obtaining and evaluating the record of student complaints for each institution” and that “the agency needs

SDO Response to ACICS

to compile evidence that its strengthened process is effective in practice.” 2016 Final Staff Report at 2.

It is surprising that after such positive findings, the conclusion could be anything other than that the agency was compliant with the administrative requirement. Moreover, a conclusion of noncompliance seems unsupported by the evidence. Not only does the agency have new policies in place, it was able to provide evidence that it had implemented these policies and the policies have been effective. This should not have been a criterion for which ACICS was found to be out of compliance.

As evidenced by the materials provided in its 2016 petition for recognition, the Part II submission, and the May 2018 Supplement, ACICS has continued the strengthened procedures acknowledged by in the 2016 Final Staff Report, and has produced evidence of the effectiveness of these procedures in practice. See Exhibit B-O-138 (Summary of ARIG Investigations).

According to the Department’s Accreditation Guidelines, in assessing this criterion, “Department staff looks to see if the agency discussed and demonstrated” “[w]hether the agency has standards, processes, and/or procedures to assess if a pattern of student complaints exists that would bring into question the institution’s/program’s fulfillment of one or more of the agency’s expectations.” Department’s Accreditation Guidelines at 38. ACICS has provided significant evidence that the agency has standards, processes, and/or procedures to assess if a pattern of student complaints exists that would bring into question the institution’s/program’s fulfillment of one or more of the agency’s expectations. See www.acics.org (About Us/Complaint Procedures); 2016 Re-recognition Petition (January 8, 2016); Exhibit B-O-141 (About Us, Mission Statement).

Further, the Department Accreditation Guidelines also list factors regarding the agency standards for the Department to assess. These factors are whether the: (1) “institution/program and/or the agency is primarily responsible for maintaining the record of student complaints”; (2) “the record of student complaints covers at least the most recent accreditation period, and includes information about how the complaints were resolved”; and (3) record of student complaints, wherever it is maintained, is made available to on-site evaluators for review.” Department’s Accreditation Guidelines at 38. In addressing these factors, ACICS has submitted its Accreditation Criteria as evidence of compliance. ACICS’s standards dictate that accredited institutions are responsible for maintaining records of student complaints received and for maintaining grievance procedures for such complaints. See Exhibit A-O-3 (Accreditation Criteria), 3-1-202(d). Likewise, ACICS maintains records of complaints received directly to ACICS. Id. at 2-3-700.

ACICS has also produced evidence of a standing committee that is responsible for the review of student complaints it receives from external sources and other adverse information. See Exhibit A-O-3 (Accreditation Criteria)(Appendix A, Article V, Section I(b)). After reviewing and considering complaints, the committee may recommend to the full committee to order an onsite review. See June 2016 Petition Submission, Excerpt of BPC Report, MJI, December 2012; MJI Renewal Grant Evaluation and Special Visit Letter; see also Exhibit A-O-3 (Accreditation Criteria)(Appendix J).

SDO Response to ACICS

The complaint information is provided to the onsite evaluators for review in advance. To supplement this information ACICS conducts a Pre-visit Call for Comment period and conducts an onsite student survey. When appropriate, this information is used to shape the focus of evaluations. See 2016 Re-recognition Petition (January 8, 2016): Exhibit B-O-164 (Bristol University v. ACICS); Exhibit B-O-132 (Financial Council Action Letters). This information is compiled in the teams report. ACICS has produced evidence of the process working and resulting in findings. See Exhibit B-O-98 (Institutional File-WVBC) at 211-216, 217-359, 425-426; Exhibit B-O-122 (Institutional File-Dubois) at 280-289, 416.

The creation and activities of the ARIG are also relevant to this criterion. As ACICS explains in its May 2018 Supplement, the committees, who meet monthly as well as on an ad hoc basis, use the online complaints process to enhance monitoring: “ARIG also reviews this information at regular intervals between Council meetings and, where applicable, initiates a deeper investigation through an unannounced/limited announced visit or prepares a report for consideration and review by the Council's Executive Committee (EC).” Exhibit B-O (ACICS May 2018 Supplement) at 43; See Exhibit B-O-146 (ARIG Meeting Minutes). Since the creation of the ARIG, ACICS has conducted 54 visits based on the ARIG’s reviews. See Exhibit B-O-138 (Summary of ARIG Investigations).

In sum, ACICS has provided sufficient evidence it is in compliance with this criterion. Further, it is unreasonable that the Department would find that the agency had rigorous policies in place, acknowledged it provided evidence showing the policies had been implemented, and then conclude the agency was not in compliance based on concerns about whether ACICS would continue to implement the policies in the future. The proper recommendation would have been to provide the agency 12 months in order to oversee the continued progress.

SDO Recommendation: Evidence ACICS provided at the time of the 2016 recognition review demonstrated the agency was in compliance with 34 CFR § 602.16(a)(1)(ix). Much of the analysis in the 2016 Final Staff Report seems to confirm that ACICS had in place a rigorous and thorough policy. While the record from the 2016 review alone was sufficient to demonstrate compliance, after considering evidence submitted by ACICS in its Part II submission and the May 2018 Supplement, it is even more than apparent that ACICS has demonstrated compliance with this criterion.

11. Section 602.16(a)(1)(x) – Records of compliance regarding cohort default rates, financial audits, program reviews and other information provided by the Department

34 CFR § 602.16(a)(1)(x) requires the agency's accreditation standards to effectively address the quality of the institution or program” in the area of its “[r]ecord 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.”

SDO Response to ACICS

The Final Staff Report concluded that ACICS “could [not] apply these revisions in such a way as to document effectiveness in monitoring in the time it would be given to respond in a compliance report, particularly in view of its weak record in monitoring and failure to document enforcement, and prior lack of cooperation with the Department.” 2016 Final Staff Report at 2.

This conclusion seems inconsistent with the evidence provided, and the Final Staff Report’s own analysis.

The Final Staff Report acknowledged that ACICS provided evidence demonstrating that its new policies and procedures had been shown effective in four different cases:

ACICS'[s] new policy of notifying the Department of any institution is found non-compliant with an ACICS standard related to Title IV, including credit hours calculations, Satisfactory Academic Progress, refunds return of Title IV resources, tuition and fees, scholarships, cohort default rates or financial stability is demonstrated in the agency's Exhibit 249: EDMC, Zenith Education Group, ITT, Delta Career Education Show Cause letters 2016. However, the criteria required the agency to have been doing this all along.

2016 Final Staff Report at 17.

It seems inconsistent that the Final Staff Report acknowledged that the agency had produced evidence of four occasions where the new strengthened practices had been effective, but then goes on to conclude that the “Department cannot see how the agency could apply these revisions in such a way as to document effectiveness in monitoring in the time it would be given to respond in a compliance report.” 2016 Final Staff Report at 2.

In 2016, ACICS has provided four pieces of evidence to demonstrate its new policies and procedures had been implemented, and yet were still found to be out of compliance. See Exhibit 249 (2016 Show cause letters to EDMC, Zenith Education Group, ITT, Delta Career Education). It was unreasonable that the Staff found the agency out of compliance with this standard; moreover, our regulations do not require more than four pieces of evidence to prove that an agency is compliant with a criterion. See 34 CFR § 602.16(a)(1)(x); see also Department’s Accreditation Guidelines at 38-39.

The 2016 Final Staff Report’s findings with regard to this criterion serve as further evidence that even when ACICS identified a gap in their standards or oversight practices, implemented new policies to close those gaps and provided evidence that they have begun implementing the new policy effectively, staff still found the agency to be out of compliance because the agency could not provide evidence of future actions that had not yet occurred. No agency can predict or prove actions that will take place in the future, so while it may be appropriate to require that the agency provide an interim report to prove that it is, indeed, following its new policies and procedures, it is not appropriate to find the agency out of compliance because it can’t prove what it will or will not do at some unspecified future date.

SDO Response to ACICS

One of the biggest problem with the 2016 review of ACICS is that Final Staff Report continued to evaluate the agency based on actions that took place in the past, prior to the implementation of new and more rigorous policies. As stated above, some of the institutions where significant job placement misrepresentations were referenced by the Department were not even accredited by ACICS. See Section II. (Overarching Issues).

The Final Staff Report had valid concerns about ACICS's oversight of MJI. ACICS was clearly not compliant with this standard when it provided its 2014 response to the Department about its earlier findings and actions. However, the Final Staff Report states that the agency must explain what changes it has made and will make to ensure it is consistently effective in the future with respect to Title IV compliance. In its response to the Department, the agency provided evidence that it had substantially revised its policies and processes to improve its effectiveness with respect to Title IV compliance, and staff found the new multi-faceted approach to meet the requirements of this standard. The agency also provided evidence that despite its earlier action, which deprived the Department of necessary information regarding MJI, the new policies and procedures had been effective in identifying more recent examples of non-compliance with Title IV, which resulted in show cause letters to four institution groups that operated large numbers of campuses.

Further, in the Part II submission, and May 2018 supplement, ACICS has provided ample evidence that the agency has made sufficient improvements to its policies and procedures, and these improvements are effective in practice.

According to the Department's Accreditation Guidelines, in assessing this criterion, "Department staff looks to see if the agency discussed and demonstrated, as appropriate, aspects such as: (1) Mechanisms that are in place to incorporate information regarding an institution's deficiencies in its Title IV compliance (from compliance audits, program reviews, loan default rates, or other information the Secretary may have provided) in the evaluation process; and (2) Whether an institution's failure to resolve the identified deficiencies in a timely manner calls into question the institution's ability to meet the agency's relevant standards." Department's Accreditation Guidelines at 38-39.

As for mechanisms in place to satisfy this criteria, ACICS has provided evidence relating to its program reviews; financial aid audits; financials review process; the At-Risk institution's Group processes; and the Cohort Default Rate (CDR) monitoring. Likewise, the agency has shown the ability to resolve the identified deficiencies in a timely manner. Exhibit B-O-125 (Sample Financial Show Cause Actions). Specifically, the ARIG has shown to be effective to satisfy this criterion. See Section III. (Major Improvements Made by ACICS).

In its Part II submission, ACICS provided additional evidence that it was in compliance with this criterion by describing its revised onsite evaluation procedure, which now includes a review of the last audit by the Program Participation Team. It also provided evidence that the standard team report template had at least 84 questions that were directly or indirectly related to Title IV compliance. See Exhibits 147 – 159. Further, ACICS explained the role of its specialized evaluators (program specialists, distance education specialists, educational activities specialist) in conducting onsite reviews of Title IV compliance, that it evaluates the qualifications of

SDO Response to ACICS

financial aid professionals, and that the institution is meeting the Department's requirements for evaluating satisfactory academic progress, conversion of contact to credit hours (and vice versa), substantiating externship hours, etc. It also interviews students during onsite reviews to further evaluate the institution's compliance with these policies.

In its 2018 Supplement, ACICS further explains the role of the ARIG in monitoring institutional compliance with Title IV requirements. See Section III. (Major Improvements Made by ACICS); Exhibit A-O-3 (Accreditation Criteria)(3-1-434; 2-3-700; 2-1-800; Appendix G; Appendix D); and Exhibit B-O-139 (ARIG-Directed Visits).

It also explained that prior to conducting an onsite review, ACICS now contacts the Department to learn of any concerns or findings that the Department may have that are of importance to the onsite review or accreditation decision, and includes a review of the most recent FSA compliance audit as well as financial audits in the evaluation of the institution. See Exhibit B-O-114 (Systematic Review of Criteria) at 280; Exhibit A-O-3 (Accreditation Criteria)(Section 2-1-803); and Exhibit B-O-14 7 (Team Report Template)(Section 4).

ACICS also provided evidence of the annual financial review process. See Exhibit B-O-132 (Council Action letters AFR and FIP); Exhibit B-O-125 (Sample Financial Show Cause Actions). As an example, at an April 2017 meeting, the Financial Review Committee considered Title IV compliance areas. See Exhibit B-O-128 (FRC Meeting Minutes) at 5, 8-12; 17-21. See Section V. 8. (§ 602.16(a)(v)) (more detail on ACICS standards and implementation regarding fiscal capacity of institutions).

The ARIG was established by ACICS to provide a mechanism for rapid response to financial audits, FSA compliance audits or other concerns identified through ACICS's CAR review, student complaint portal, or other mechanisms, without waiting until the next regularly scheduled review of that institution. See Section III. 2. (At Risk Working Group) above; see also Exhibit B-O-129 (Request for Teach-Out Plans).

ACICS has also established a policy which now requires institutions that are placed on heightened cash monitoring or that are required to post a letter of credit to also submit financial improvement plans to the Council for review and approval. See Exhibit B-O-149 (CDR Monitoring Excel chart). Institutions placed on HCM2 are required to submit teach-out plans to ACICS to provide for the orderly cessation of operations in the event of closure. See Exhibit A-O-3 (ACICS Accreditation Criteria).

Finally, ACICS has implemented a new policy of establishing a "tip hotline" that is made available to faculty, students and staff prior to an onsite review so that any concerns about potential acts of fraud or abuse can be reported and reviewed during the site visit. See ACICS Appeal to the Secretary.

SDO recommendation: I recommend that you find the agency to be in compliance with this criterion.

SDO Response to ACICS

12. Section 602.17(a) – Application of standards in reaching an accrediting decision

34 CFR § 602.17 requires an agency to “have effective mechanisms for evaluating an institution's or program's compliance with the agency's standards before reaching a decision to accredit or reaccredit the institution or program.” Part of how an agency meets this requirement is by demonstrating that it “evaluates whether an institution or program - (1) Maintains clearly specified educational objectives that are consistent with its mission and appropriate in light of the degrees or certificates awarded; (2) Is successful in achieving its stated objectives; and (3) Maintains degree and certificate requirements that at least conform to commonly accepted standards.” *Id.* at (a)(1)-(3).

The 2016 Final Staff Report finds that ACICS has standards in place that comply with the Department’s requirements that an institution’s objectives be devoted substantially to career-related education, that there are reasonable programs of instruction with a mode of delivery that helps students develop the necessary skills and competencies, and that the agency sends a visiting team to review the data collected by an institution to demonstrate that it is achieving its stated objectives. However, like for many of the criterion, the Staff Report points to lapses in data integrity on the part of four institution groups as evidence that the agency is out of compliance with this standard. As discussed in previous sections, there are many flaws in the 2016 Decision’s analysis regarding job placement misrepresentations. More importantly, there is a different criterion that focuses on data integrity. As discussed earlier, it is inappropriate to use a failure to meet the requirements of one criterion as the determinant of failure of several others.

Staff acknowledged that the agency had added new data integrity standards, had added a dedicated data integrity reviewer to each of its site visit teams, had implemented a new Placement Verification Program to substantiate CAR data with respect to job placement rates, and had provided evidence that training of reviewers on these new policies and procedures has taken place. However, because there was not a site visit report included in the petition, staff found that the agency had failed to provide evidence that it had implemented the necessary policies and procedures to comply with this standard.

The Final Staff Report concluded “[t]he agency does not meet the requirements of this section. The agency must clarify its policies and procedures relative to its new data integrity standards and new team reviewer. The agency must also demonstrate that it has applied these standards. (For example, in a site visit report).” Final Staff Report at 2.

Had the Department considered the Part II submission in its review, it would have found more than sufficient evidence that the agency had implemented new policies and procedures that likely set among the highest standard for data integrity, including the Placement Verification Program. While the Part II submission accurately described the PVP program as one that was in its beta testing phase, the agency did provide evidence that the program had been developed, implemented and tested according to strict standards and in adherence to the agency’s policies and procedures. The agency was making substantial progress in fully implementing the PVP program.

SDO Response to ACICS

In its May 2018 submission, ACICS points to evidence provided in its October 2016 request to the SDO for reconsideration that demonstrate effective implementation of its policies regarding the agency's application of its standards.

Examples of such enforcement actions include adverse action against DuBois Business College (denial of renewal of accreditation), ITT Technical Institute (these actions preceded the Department's action against ITT Tech), MedTech College, and Globe University (show-cause action and required teach-out plan), Stevens – The Institute of Business and Arts in Saint Louis (secret shopper investigation). See Exhibit B-O-122 (Institutional File-DuBois); Exhibit 2 (ITT Technical Institute - Summary of investigation); Exhibit 3 (MedTech College & Radians College - Summary of Investigation); Exhibit 4 (Globe University/Minnesota School of Business Adverse Information) at 3; and Exhibit 5 (September 28, 2016 Letter to Stevens - The Institute of Business and Arts).

ACICS also provided the Department with examples of a recent Campus Effectiveness Plan completed by Mountain State and McCann School of Business and Technology. These plans illustrate the comprehensive data review conducted for all programs and the corresponding evaluation and analysis to ensure that the institution and programs conform to commonly accepted standards. Exhibit B-O-156 (CEP Examples). The agency also provided the Department with its new team report template, highlighting the questions that related to this criterion, and with evidence of council action to ensure compliance with these standards. Exhibit B-O-137 (Team Report Template); Exhibit B-O-157 (Institutional Reviews-Conformity).

The Agency also provided a full report of the new PVP system and examples of correspondence with institutions to resolve invalid job placements that were identified through the PVP system. See Section III. (Major Improvements Made by ACICS). This evidence proves that the PVP system is effective in detecting potentially erroneous job placements, and requiring institutions to resolve those errors prior to reporting those placements in the CAR or to the public.

SDO Recommendation: I recommend that you find the agency compliant with this criterion. I also recommend that over the next 12 months, staff observe a meeting of the ACICS decision-making body to ensure that accreditation decisions are made based on the standards, policies and procedures currently in place.

13. Section 602.17(c) – Onsite Reviews

One of the ways an agency is required to demonstrate it has “effective mechanisms for evaluating an institution's or program's compliance with the agency's standards before reaching a decision to accredit or preaccredit the institution or program” as required by 34 CFR § 602.17 is by demonstrating it that it “[c]onducts at least one on-site review of the institution or program during which it obtains sufficient information to determine if the institution or program complies with the agency's standards.” 34 CFR § 602.17(c).

SDO Response to ACICS

The 2016 Final Staff Report states that the agency has policies and processes in place to conduct onsite reviews, that a checklist is utilized to ensure the completeness and consistency of the onsite review process, that subject matter specialists are included in onsite review teams to review each program's area of study, and that the agency has sufficient requirements in place to provide documents to onsite reviewers for review prior to commencing the onsite review. 2016 Final Staff Report at 18-19. However, once again, the Final Staff Report points to concerns about placement rate misrepresentations as evidence that the agency is not compliant with this standard. *Id.*

In the wake of allegations of job placement misrepresentations, ACICS took immediate action, including requiring the use of a third-party reviewer to validate each job placement included in the CAR, requiring the institutions to pay fines for each CAR that required updating, and it also put some of these institutions on show cause until they could demonstrate that the institution had put new processes in place to prevent any such errors in the future. See Section II. (Overarching Issues); and Section III. (Major Improvements Made by ACICS).

The narrative that ACICS took no action against institutions is simply untrue. There may have been temporal distance between the last onsite review when an institution's data were confirmed by reviewers, and instances in which an institution found errors in its own data or was found to have errors in its data. This may suggest that data checks as part of the periodic onsite review process are insufficient to ensure data accuracy during the intervening years, but this does not provide evidence that the onsite review process failed to comply with the Department's standards. ACICS has described in detail the new processes it has put in place to ensure data accuracy outside of the onsite review process.

The Final Staff Report acknowledges that, in response to the draft staff analysis, ACICS provided additional information about the many actions it has taken to improve the onsite review process, including gathering information from a variety of external sources in a call for comment and in a pre-visit tip line, in the use of the ARIG to identify institutions that should receive heightened monitoring or investigation both during and outside of the onsite review process, and in conducting an agency review of pre-visit materials that are then distributed to the site-visit team. Final Staff Report 18-19. The staff analyst points to the inclusion of a data integrity reviewer to the site visit team as the strongest improvement that the agency has made. The analyst also concedes that the new template used by onsite teams is more useful to the institution and the agency's decision-making bodies. *Id.*

However, the staff analyst still concludes that evidence of implementation of these new policies is insufficient until the agency can provide a site visit report that demonstrates the successful application of these new policies and procedures. Finally concluding that, "[a]lthough the agency is making strides at improving its overall processes, there was insufficient evidence that its regular onsite visit process currently and consistently meets the requirements of this section." Final Staff Report at 19.

According to the Accreditation Guidelines, in assessing this criterion:

SDO Response to ACICS

Department staff looks to see if the agency discussed and demonstrated, as appropriate, aspects such as: (1) “The size, composition, purpose, responsibilities, and training of the site team and the duration of the site visit, to conduct a thorough review prior to the accreditation decision.”; and (2) “The written protocol for conducting site team reviews to verify information in the self-study.” As to “[t]he size, composition, purpose, responsibilities, and training of the site team and the duration of the site visit, to conduct a thorough review prior to the accreditation decision.

Department’s Accreditation Guidelines at 41.

In its Part II submission, ACICS provides additional details about its new, more rigorous onsite review processes, describes new processes for conducting onsite visits in between regular review periods, and explains that these interim onsite evaluations were also being included as part of the Council’s quality assurance monitoring process. See generally Exhibit A-O. The Part II submission further explains that ACICS has added to its onsite review process the review of the institution’s most recent Program Participation Team audit, and it highlighted the 84 questions on the onsite review template that relate to Title IV compliance. ACICS explained the role of the student relations evaluator and the data integrity evaluator and it listed all of the documents that are now provided to site visitors at least two weeks prior to the site visit. The Part II submission also provided a status report on the implementation of the new PVP system. *Id.*; see also Section III. (Major Improvement Made by ACICS).

In Exhibit B-O, ACICS explains that “[s]ite visits are conducted with applications for accreditation, re-accreditation, and certain substantive change reviews, as well as periodic quality monitoring visits as directed by the Council or through the At-Risk Institutions Group (ARIG).” Exhibit B-O; See Exhibit A-O-3 (Accreditation Criteria), Section 2-1-205; 2-1-400; 2-2-201. ACICS Accreditation Criteria also require an onsite team to visit every campus at least once during an accreditation cycle with an average accreditation grant length of 3-4 years, with the maximum being six years. *Id.* at Section 2-1-701. ACICS also conducts regular quality assurance monitoring visits based on substantive changes or if “it has received adverse information or when general operations of the institution may be called into question.” *Id.* at Appendix B.

Likewise, in the 2018 Supplement, ACICS provided evidence of its stronger standards, including its Evaluator Training Binder, its checklist of materials that must be assembled prior to the visit. See Exhibit B-O-81 (Evaluator Training Binder); Exhibit B-O-122 (Institutional File-Dubois) at 266-267; and Exhibit B-O-77 (Institutional File-ACCT) at 208-209. ACICS has also provided evidence of its procedures that subject matter specialists use to evaluate programs of student and interview staff, faculty and students Exhibit B-O-75 (Visit Evaluation Procedures and Guidelines) at 25-30. The agency also explained its new process for performing a site visit in response to a complaint or other concern, and provided a summary of ARIG investigations that had been conducted as part of this new policy. Exhibit B-O-138 (Summary of ARJG Investigations). This Exhibit provides evidenced that the agency has conducted more than 50 visits where concerns presented during monitoring were investigated through the ARIG procedure.

SDO Response to ACICS

In its 2018 Supplement, ACICS provides evidence that it has policies in place that determine the size, composition and responsibilities of all onsite review teams, and that teams are composed of educators, executives and practitioners. See Exhibit A-O-3 (ACICS Accreditation Criteria) (Sections 2-1-400; and 2-1-401). It also confirms that the site visit team members are selected based on the type and size of the institution, programs offered, and mode of educational delivery, among other things. It reaffirms in several places in the 2018 Supplement that when institutions offer distance learning, the site visit team consists of experts in distance learning and all members of the team have been trained in evaluating distance education programs. A review of resumes provided demonstrates that ACICS is meeting the requirements regarding the composition of site-visit teams. As to ACICS's "written protocol for conducting site team reviews to verify information in the self-study," ACICS presents as evidence of compliance its 2018 Accreditation Criteria and its Policy and Procedure guide. Exhibit B-O-75 (Visit Evaluation Procedures and Guidelines), ACICS's accreditation criterion dictates the size, composition, and responsibilities of the onsite review team. See Exhibit A-O-3 (ACICS Accreditation Criteria)(Sections 2-1-400; and2-1-401).

Further, as explained in the Part II submission, prior to review, ACICS requires from an institution the following evidence: an application for renewal of accreditation or substantive change; Institutional self-study; School catalog; Copy of the Campus Effectiveness Plan; State authorization; Academic credit analysis; Syllabi for new programs; Campus Accountability Report; and Annual Financial Reports.

The review also includes of the self-study. Two weeks before the onsite evaluation visit, the team also has access to: An update on self-study; Faculty and staff rosters, including qualifications; List of approved programs; Syllabi (onsite and electronic access in some cases); Access to distance education courses (where applicable); and Academic Credit Analysis. Exhibit B-O-7 5 (Visit Evaluation Procedures and Guidelines). ACICS has also presented its Visit Evaluation Procedures and Guidelines. Exhibit A-O (ACICS Part II Submission Explanation (May 2018)).

SDO Recommendation: I recommend that you find the agency in compliance with this criterion. The agency has implemented a number of new policies and procedures to improve the efficacy of the site visit teams and ensure that those teams consist of appropriate experts and specialists, including a data integrity evaluator. ACICS has also provided evidence that its new ARIG provides additional monitoring to identify at-risk institutions and conduct site-visits to investigate concerns that evolve from the agency's various monitoring efforts and its enhanced communication with the Department. It provided evidence of 50 ARIG reviews to demonstrate that it has effectively implemented this policy. It also provided training materials as evidence that these new policies and procedures are included in the preparation of onsite evaluators. It also provided evidence that it informs its reviews by requesting information from the Department; comments from students, faculty and staff; requesting a number of written documents in advance of the onsite review so that evaluators can prepare in advance for the visit; and reviewing records and documents as well as interviewing faculty, students and staff. I recommend that a staff analyst observe a scheduled onsite review in the next 18 months to confirm that these new processes are in place and working well.

SDO Response to ACICS

14. Section 602.18(d) – Reasonable Assurance of Accurate Information

34 CFR § 602.18 states the “[t]he agency must consistently apply and enforce standards that respect the stated mission of the institution, including religious mission, and that ensure that the education or training offered by an institution or program, including any offered through distance education or correspondence education, is of sufficient quality to achieve its stated objective for the duration of any accreditation or preaccreditation period granted by the agency.” One of the ways the agency meets this requirement is if it “[h]as a reasonable basis for determining that the information the agency relies on for making accrediting decisions is accurate[.]” *Id.* at (d).

The Final Staff Report concluded ACICS had not provided enough evidence to prove that the agency was in compliance. The staff acknowledged the improvements ACICS had made, but then stated that there was not enough evidence to show the improvements were effective. 2016 Final Staff Report at 18-19.

Further, the 2016 Final Staff Report conceded that “up until recently, ACICS relied on traditional methods to obtain reasonably accurate information,” which included training site visitors, having site visitors follow that training and following a written process to verify the accuracy of information reported by the institution, including through cross-checking records and interviewing numerous parties in different situations. 2016 Final Staff Report at 18-19. In other words, the agency had a policy in place that was deemed by the Department through many rounds of renewal of recognition to be as adequate and sufficient. In fact, the methods ACICS had in place to evaluate the accuracy of data far exceeded those used by some other accreditors or the Department to verify self-reported data. Therefore, ACICS had met or exceeded the Department’s own standards during prior renewal of recognition reviews. It is not the fault of the accreditor that an institution acts irresponsibly, but it is the duty of the accreditor to put new safeguards in place to prevent a repeat of those acts in the future – which ACICS has done.

Accreditation relies on periodic reviews and sampling techniques to ensure that, based on the evidence reviewed, an agency and the institutions it accredits are adhering to the requisite standards and requirements. Such techniques may not catch every incidence of error; but, that is not the point of accreditation review. Accreditation review is primarily designed to evaluate the sum total of an institution’s programs and services, and ensure that on the whole, it meets student needs and provide what the institution advertised it would provide. In the case of ACICS, however, the agency recognized the need to integrate heightened data integrity reviews during the period of time between renewal of accreditation reviews and implemented the PVP program to do so.

ACICS has invested considerable resources in developing new policies and procedures to improve the rigor and accuracy of its reviews, and to ensure that its standards and criteria serve the interests of students. These actions have focused primarily on improving recruiting and admissions practices, and improving data quality.

The Final Staff Report clearly explains that the agency was in the process of developing the third-party Placement Verification Program (PVP) that would include random calls to students

SDO Response to ACICS

and employers (by ACICS) to ensure the accuracy of reported information. It is true that the PVP system was not fully in place at the time of the 2016 review, but there was ample evidence that the program had been well thought-out, that the agency's members had been engaged in its development, and that the agency was moving forward in a way that carefully balanced the need for quick action with effective action. The Department's standards require that changes be implemented in a measured way, and that those changes involve significant community input. As described in the 2018 Supplement, ACICS implemented the PVP program in a measured and responsible way – which includes alpha and beta testing – to ensure that the new program would be effective in ensuring the accuracy of future reports. This is precisely what the Department's recognition criteria demand – that agencies take a measured approach to changing their policies and procedures, which provides sufficient time for the participation of its members and an appropriate decision-making and governance process. This is precisely what ACICS delivered.

There is no doubt that the placement rate errors and anomalies reported by some institutions and identified (actually or allegedly) at others are troubling. However, the fact that ACICS has policies and practices in place that clearly prevented these anomalies in the past, and that the agency took swift action to overhaul its entire job placement reporting and verification system when those systems proved to be inadequate, serves as evidence of just how seriously ACICS takes its responsibilities to ensure accurate reporting.

It should be noted, however, that the Department has not and does not hold all agencies to the same level of accountability with regard to job placement reporting, even though many institutions in all sectors of higher education report job outcomes to the public. See Section II. (Overarching Issues). If we are to require that ACICS implement a PVP-like system to engage in third party review of every reported job placement, then we must require similar action of all accreditors. Although there was an overt effort to identify erroneous job placement rates at the large institutions accredited by ACICS, there was no effort to conduct a similar analysis of job placement rates reported by non-profit colleges and universities, including through the gainful employment disclosures required of many non-profit institutions. Therefore, we do not know if other accreditors have effective practices in place, or if the lack of targeted investigations simply means that problems and errors have not yet been identified. Given the well documented cases of alleged and admitted misrepresentation that have taken place at even the most reputable colleges, universities, and law schools, I would suggest that the latter is the case.

During a 2018 meeting of the NACIQI, a regional accreditor and a specialized accreditor were asked to describe the systems they had put in place to verify job placement rates reported by their members. Both accreditors responded by saying that they had no such third-party verification process in place, yet in the case of the specialized accreditor (the American Bar Association), a number of its members had admitted to falsifying job placement data in the recent past. Neither the Department's staff nor NACIQI determined that this constitutes a lack of compliance on the part of that agency, which shows the lack of consistency in the way the Department evaluates different accreditors. This is unacceptable.

The 2016 Final Staff Report explains that in response to the draft staff analysis, the agency reported that it had taken a number of actions. 2016 Final Staff Report at 19-20. These actions include a new Call for Comment protocol prior to reviewing or visiting an agency, the use of “at-

SDO Response to ACICS

risk” category to identify institutions that need heightened oversight during and outside of the regular site visit or review period, the addition of a dedicated data integrity reviewer on each site visit team, and a significant increase in the number of data points subjected to third party review by the agency or the data integrity reviewer on a regular basis. The agency also explained that it has implemented the use of a more detailed site visit template that provided more robust definitions to ensure that reviews would be rigorous. Id.

The Part II submission included additional information about steps taken to assure data integrity, including the use of a new algorithm within the PVP system to scrutinize placement data submitted by institutions, the use of the dedicated data integrity reviewer during site visits and the expanded use of a data integrity test of each institution’s annual CAR. See generally Section III. (Major Improvements Made by ACICS). The Part II submission includes additional information about steps taken to verify data integrity, including the review of all graduates who were classified as not available for placement, making telephone contact with employers and graduates to verify employment, and the implementation of the rigorous PVP system, which was explained in great detail in the Part II submission Exhibit A-O-2.

However, after describing a number of significant actions that the agency had taken to ensure future data integrity – steps that go well beyond those put in place by most other accreditors or the Department in its own review of self-reported data – and not considering the contents of the Part II submission, the Department still found the agency out of compliance because of lawsuits claiming “widespread” data errors in the past and because there was insufficient evidence that these new processes were being implemented effectively to prevent further errors.

Specifically, the staff acknowledged that ACICS explained “that student achievement data are reviewed at three points in time-upon submission by algorithms, by the data integrity reviewer during site visits, and by monthly sampling. If any of these reviews reveal concerns, the data is subject to an independent audit.” 2016 Final Staff Report at 20.

After commending ACICS for the additional inclusion of a “data integrity reviewer” on each site visit and calling it “the strongest improvement that ACICS has made to the regular onsite process,” the staff went on to criticize ACICS because “while stated in the agency’s documents that the data integrity reviewers has been added to the site visit team in Spring 2016, Department staff has been unable to confirm the involvement of this individual on a site visit report. Exhibit 203 was included that demonstrates documentation of training for the data integrity reviewer.” 2016 Final Staff Report at 20. “Additionally with regards to the independent third-party verification of all placement data, (at the institution’s expense, when deemed necessary by the Council) the agency does not describe the qualifications of the 3rd parties, does not explain when the Council might deem this necessary, and provides no documentation it has occurred.” Id. There is no evidence, however, that staff requested such specific pieces of information and were denied them.

The Accreditation Guide explains when assessing this criteria “Department staff looks to see if the agency discussed and demonstrated, as appropriate, aspects such as...[t]he collection of information during its accrediting reviews that is sufficient information on which to make accrediting determinations [and] [h]ow the information relied upon by the agency is substantially

SDO Response to ACICS

verified for accuracy (e.g., by comparisons with documents submitted by institutions/programs with their self-studies, documents reviewed onsite, and interviews with staff/faculty/students during site visits).” Department Accreditation Guidelines at 47.

ACICS’s Accreditation Standards state that “the integrity of an institution is manifested by the professional competence, experience, personal responsibility and ethical practices demonstrated by all individuals comprising the ownership control or management. See Exhibit A-O-3 (ACICS Accreditation Criteria)(Section 3-1-202) at 46-47. Likewise, ACICS requires that “[a]ll data reported to ACICS for any purpose is expected to reflect an accurate and verifiable portrayal of institutional performance and is subject to review for integrity, accuracy and completeness.” Id. at Section 3-1-203.

The May 2018 Supplement provides evidence that ACICS has adhered to its plans to implement a more rigorous data integrity program, and it provided evidence of instances in which its new data integrity programs have identified potentially erroneous job placement rates, notified institutions accordingly, and worked to resolve those errors to be sure that data submitted in the CAR was accurate. See generally Section III. (Major Improvements Made by ACICS). It also included a full report on the development and implementation of the PVP system, and it provided examples of correspondence between the agency and institutions as evidence of the efficacy of the PVP system and the steps taken to identify potentially inaccurate data and require institutions to correct it. See Exhibit A-O-3 (ACICS Placement Verification Program Report (2018)); B-O-98 (Institutional File -WVBC) at 427; and Exhibit B-O-122 (Institutional File-DuBois) at 291.

To demonstrate improvements to the agency’s Site Visitors policies and procedures, ACICS provided as evidence its visit evaluation, procedures and guidelines. See Exhibit 203 (Communication to Data Integrity Reviewers & Training); Exhibit B-O-75 (Visit Evaluation Procedures and Guidelines) at 21-30; and Exhibit B-O-81 (Evaluator Training Binder) at 11-14. Also, the agency has provided evidence explaining the qualifications of the onsite inspection staff. See Exhibit 203 (Communication to Data Integrity Reviewers & Training); and Exhibit B-O-5 (Team Member Requirements) (highlighting samples of individuals with current professional expertise in their trade on ACICS site teams)

To demonstrate the effectiveness of its improved onsite review process, ACICS has provided evidence of enforcement of its verification standards through its onsite review process in show cause directives. See Exhibit B-O-119 (Living Arts College Show-Cause Directive); and Exhibit B-O-120 (CSI Adverse Review).

SDO Recommendation: The Part II submission and the ACICS May 2018 Supplement make it clear that ACICS has implemented their data integrity plan fully and with good results. Therefore, I recommend that you find ACICS to be in compliance with this standard.

15. Section 602.19(b) – Monitoring

34 CFR § 602.19(b) states that the agency “must demonstrate it has, and effectively applies, a set of monitoring and evaluation approaches that enables the agency to identify problems with an

SDO Response to ACICS

institution's or program's continued compliance with agency standards and that takes into account institutional or program strengths and stability." Further, the regulation requires that such 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, consistent with the provisions of § 602.16(f)." Id. Finally, 34 CFR § 602.19(b) concludes by explaining that "[t]his provision does not require institutions or programs to provide annual reports on each specific accreditation criterion."

The Final Staff Report acknowledges that ACICS has "multiple monitoring approaches that include the Annual Financial Report (AFR), Campus Accountability Report (CAR), substantive change requests, complaints and other external information, Cohort Default Rate (CDR) reviews, and special onsite evaluations to any institution deemed to need additional oversight." 2016 Final Staff Report at 20. After recounting that the staff draft analysis pointed out weaknesses in ACICS's evidence of how it implements such approaches, the Final Staff Report acknowledged that in response to the staff draft analysis, ACICS "via its narrative and supporting exhibits provided information and documentation to describe its process for reviewing data and information it has collected and the manner in which it has identified deficiencies with regards to fiscal information and measures of student achievement." Id. at 21.

The Final Staff Report criticizes ACICS for not "explain[ing] its failure to uncover or report Corinthian's widespread placement rate misrepresentations" and points to legal action taken by State attorneys general and settlements made by a number of institutions as evidence of a "widespread" problem of job placement misrepresentation. 2016 Final Staff Report at 21-22. The Final Staff Report takes issue with ACICS's implication that it only credited evidence of noncompliance or misconduct that appears in a final judgment in a court, and points out that misconduct by Corinthian was evidenced in a California state court judgment and by the Department's own investigations.

However, the Final Staff Report goes on to acknowledge that ACICS developed new Accreditation Criteria with a revised set of monitoring and evaluation approaches for identifying problems with an institution's or program's compliance, including specific documentation of its application (e.g. the referenced Everest QFR and FIP documents). Despite the acknowledgment of the significant documentation provided by the agency, the Final Staff Report concludes that ACICS was out of compliance because "those criteria have not yet been applied" and staff "cannot see how the agency could apply these revisions in such a way as to document effectiveness in monitoring in the time it would be given to respond in a compliance report[.]" Id. at 21-22.

The 2016 Decision of the Secretary recounted the Staff Report and NACIQI recommendations for the proposition that ACICS could not be in compliance because its monitoring did not "deter widespread misconduct regarding placement, recruitment and admissions." Secretary's Decision at 7. However, those failures to detect misconduct took place prior to the implementation of the revised and expanded procedures. The Secretary's Decision included no additional analysis contravening ACICS's evidence that it had put in place policies and practices designed to detect and deter misconduct, and that the agency had taken such action against such institutions. Id.

SDO Response to ACICS

Penalizing ACICS for its ostensibly weak practices with respect to verifying job placement, and then discounting the revised criteria adopted by ACICS to strengthen its approach simply because ACICS has not had ample time to show evidence of implementation of its new criteria, unfairly concludes that ACICS is out of compliance with respect to its monitoring and evaluation approaches.

Had the Department reviewed the Part II Submission provided by ACICS, it would have seen ample evidence of the intensified monitoring conducted by the agency with regard to a number of institutions that had either voluntarily self-reported having identified instances of job placement errors or had been accused by state attorneys general of actions of misrepresentation or fraud. The Part II submission included all of the email correspondence requested by the Department to demonstrate that institutions under legal action or allegations of misrepresentation were under heightened monitoring by ACICS, including correspondence with Corinthian Schools, ITT, and Michigan Jewish Institute, among several others. See Exhibit A-O (ACICS Part II Submission Explanation (May 2018)) at 19; see also Part II Submission (Exhibits 165 – 177). Furthermore, since 2016 ACICS has implemented more rigorous policies and practices in the wake of the job placement rate issues.

ACICS has provided evidence in its Part II submission and 2018 Supplement about various processes used (onsite evaluation teams, team reports, specialist evaluations, student interviews, etc.) and materials that ACICS requires from institutions for purposes of identifying problems with institutional compliance with agency standards, and showing that it engages in appropriate monitoring activities. Further, its evidence shows that it regularly reviews audited financial statements and annual reports of student achievement, that it has implemented the ARIG to initiate investigations or conduct site-visits outside of the regular review period (or in conjunction with the regular review), and that it has implemented an enhanced complaint monitoring system to provide more intensive monitoring to those institutions that warrant it. See generally Section III (Major Improvement Made by ACICS); see also Exhibit B-O-73 (Policies and Procedures Manual)(Chapter 25).

ACICS has also provided evidence of the activities of its ARIG group to demonstrate that this new oversight group is effective in identifying and monitoring at risk institutions. See Section III. (Major Improvements Made by ACICS); Exhibit B-O (ACICS May 2018 Supplement) at 59-61; Exhibit B-O-161(ARIG Review, December 2017-April 2018). Specifically to issues of financial stability oversight, ACICS has produced evidence of action taken. See Exhibit B-O-129 (Request for Teach-out Plans); Exhibit B-O-160 (Denial of Renewal Application- SOLEX); Exhibit B-O-133(Institutional File -Herguan); Exhibit B-O-126 (Broadview Special Visit - AFR Review); see also Exhibit B-O-73 (Policies and Procedures) at 37; Exhibit B-O-138 (Summary of ARIG Investigations); and Exhibit B-O-161 (ARIG Review, December 2017-April 2018).

As further evidence of its monitoring polices, the agency also describes the role of its financial review committee. Exhibit B-O (ACICS May 2018 Supplement) at 60. “The Financial Review Committee, which meets routinely at every Council meeting, maintains an agenda which

SDO Response to ACICS

includes consideration of all institutions under financial review scrutiny. Through this regular review, the FRC provides continue[d] and consistent oversight of ACICS institutions.” Id.

ACICS has made a number of changes to its policies, practices, and criteria in response to allegations made against it and its member institutions and those changes far exceed those put in place by most other accreditors, including those who also have member institutions that self-reported or have been found to have engaged in misrepresentations. However, given the importance of this issue, I would recommend that ACICS be required to submit an annual report summarizing the activities and findings of its ARIG group.

SDO recommendation: ACICS has provided sufficient evidence that it was conducting heightened monitoring of institutions that had either self-reported or had been accused of misrepresenting student achievement outcomes, that it has developed new policies to increase its ability to identify and conduct heightened oversight of at-risk institutions and that it has processes in place to hold institutions accountable. I would recommend that ACICS be required to submit to the Department an annual report of the actions and activities of its ARIG including any follow-up actions taken by the Council as a result of the ARIG’s work.

16. Section 602.20(a) – Enforcement Standards (Timeframes)

34 CFR § 602.20(a) states that if an 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” either “(1) Immediately initiate adverse action [or] (2) Require the institution or program to take appropriate action to bring itself into compliance with the agency’s standards within a time period” not to exceed twelve months, eighteen months or two years depending on the maximum length of the longest program offered by the institution.”

The draft staff analysis found that ACICS needed to revise its enforcement action policies to meet the timeline requirements of this section. The Final Staff Report noted that ACICS did in fact revise its pertinent criteria in an attempt to remedy staff concerns; nonetheless, the Final Staff Report concluded that ACICS policies left ambiguities and inconsistencies with respect to timeframes for student achievement standards, uncertainty regarding the significance of agency “admonitions” and “accreditation deferred” practices, that ACICS allowed exceptions to enforcement for “significant progress,” that ACICS had not provided adequate documentation in response to staff requests and that proposed policy changes had “not been finalized and implemented[.]” For those reasons staff determined that ACICS was out of compliance with this criterion. 2016 Final Staff Report at 23-24. Other than incorporating the conclusions of staff, the 2016 Decision of the Secretary included no additional analysis. Secretary’s Decision at 7.

In its Part II submission, ACICS provided information about its reviews of several institutions where issues or apparent non-compliance had been identified, including how its Council had strengthened its process for conducting interim onsite evaluation visits. The Part II submission also provided evidence that ACICS only allots an institution an amount of time to come into compliances that corresponds to the length of the longest program, as stipulated by

SDO Response to ACICS

602.20(a). Exhibit 124 (ACICS Responses to Part II Supplement Information Request) at 20-21; Exhibit A-O (ACICS Part II Submission Explanation) at 21-23.

ACICS described the portion of its Accreditation Criteria pertaining to timeframes for coming into compliance following a compliance problem, demonstrating that its policy mirrors the regulatory timeframes in the Department's regulations. ACICS May 2018 Supplement at 61-62; see also Exhibit B-O-114 (Systematic Review of Criteria). ACICS further presented evidence that it has been implementing its new policies, including through a Memorandum to the Field in January 2017 and taking action to withdraw accreditation of an institution that failed to come into compliance within the prescribed timeframe, in April 2017. ACICS May 2018 Supplement at 62; see Exhibit B-O-120 (CSI Adverse Review) at 2.

SDO Recommendation: The Part II submission, ACICS's Part II Submission Explanation, and the ACICS's May 2018 Supplement demonstrate that ACICS has resolved ambiguities and inconsistencies in its policies concerning timeframes for its institutions to come into compliance, that its policies comply with the regulatory requirements of § 602.20(a), and that ACICS has shown steps taken to implement its updated policies. Therefore, I recommend that you find ACICS to be in compliance with this criterion.

17. Section 602.20(b) – Enforcement of Standards (Adverse Action)

34 CFR § 602.20(b) provides: "If the institution or program does not bring itself into compliance within the specified period, the agency must take immediate adverse action unless the agency, for good cause, extends the period for achieving compliance."

To satisfy concerns expressed in the draft staff analysis, ACICS submitted evidence it adopted a revised policy in July 2016; however, the Final Staff Report found ACICS out of compliance with this criterion because ACICS's new policy did not state a maximum time period for a good cause extension and because ACICS failed to provide documentation that it had taken immediate adverse action upon an institution failing to bring itself into compliance within the applicable time period. 2016 Final Staff Report at 24. While the Secretary's Decision did address 34 CFR § 602.20, generally it is unclear if that analysis applied to subsection (b). To the extent it is relevant, the Secretary's Decision stated that with respect to multiple institutions, staff, and NACIQI had not found evidence that ACICS had taken action when faced with reliable evidence of violation of agency standards. Secretary's Decision at 7.

Staff's conclusions do not flow from the regulatory requirements and the evidence presented by ACICS. First, nothing in the Final Staff Report indicates that staff believed that the good cause policy itself was out of compliance with the regulation. After summarizing the new ACICS policy the only criticism was that the policy does not state a maximum time period. But staff's self-described "request" that ACICS's policy include a "maximum time period" for good cause extensions is not found in 34 CFR § 602.20(b) or elsewhere in the regulation. This is a requirement that may be a best practice, but it is not required by Department regulations and therefore cannot form the basis of a finding of noncompliance. Nonetheless, ACICS's Accreditation Criteria now specifically states that "[i]n no event will the good cause extension

SDO Response to ACICS

exceed one year,” so even if not required by the regulation, ACICS has adopted a maximum. I would encourage ACICS to abandon such a regulation since there may be extenuating circumstances that prevent an institution from fully solving a problem, especially if the problem is a result of external conditions outside of the control of the institution. Exhibit A-O-3 (Accreditation Criteria) at 38.

The Department’s demand for evidence that ACICS took immediate adverse action when required by 34 CFR § 602.20(b) ignores the question of whether or not ACICS had actually faced a situation which required such action. The mere absence of evidence that ACICS has taken such action, without showing that such action was required and ACICS refused to take it, cannot justify finding ACICS out of compliance. 2016 Final Staff Report at 24-25. The Department’s regulations speak only to providing available evidence in instances in which the agency has had the need to exercise a particular policy. Moreover, ACICS has noted that “recent history indicates that programs or campuses that struggle to meet standards have themselves voluntarily withdrawn the programs and/or closed the campus before exhausting the maximum timeframes for compliance.” Yet even so, ACICS subsequently submitted evidence that it has initiated adverse action, such as in the case of Bristol University. Exhibit B-O (ACICS May 2018 Supplement) at 65; Exhibit B-O-164 (Bristol v. ACICS); Exhibit A-O (ACICS Part II Submission Explanation) at 21-23.

ACICS produced additional evidence demonstrating compliance. The agency submitted evidence documenting a situation where the Council granted a good cause extension, and an example of a situation where the Council denied a good cause extension. See Exhibit B-O-165 (SA Good Cause Extension Letters) (demonstrating that ACICS granted a good cause extension of a school that performed below standards, but were already in the process of teach-out); Exhibit B-O-120 (CSI Adverse Review) at 1-2 (demonstrating that when there was no good cause to grant extension, ACICS acted to withdraw the accreditation of the institution by suspension).

SDO Recommendation: The Secretary’s Decision (ostensibly also drawing on the Final Staff Report) which concluded noncompliance rested on a request that ACICS institute a time period for good cause extensions that is not required by 34 CFR § 602.20(b) and a demand for proof of taking adverse action without any evidence that ACICS has faced a situation calling for immediate adverse action. Nonetheless, ACICS has provided evidence it has initiated adverse actions. It has also demonstrated compliance by adding to its criteria a maximum period for good cause extensions. ACICS is clearly in compliance with this criterion.

18. Section 602.21(a)-(b) – Review of Standards

34 CFR § 602.21(a) requires an accreditor to “maintain a systematic program of review that demonstrates that its standards are adequate to evaluate the quality of the education or training provided by the institutions and programs it accredits and relevant to the educational or training needs of students.” Subsection (b) permits the agency to determine “the specific procedures it follows in evaluating its standards” but sets forth four requirements for any program of review: (1) it is comprehensive; (2) it occurs at regular intervals or on an on-going basis; (3) it examines

SDO Response to ACICS

each standard individually and the standards as a whole; and (4) it involves all the agency's relevant constituencies.

The Final Staff Report acknowledges that ACICS changed its practices to respond to draft staff analysis concerns that ACICS did not have a systematic process to review its standards outside of the scheduled review cycle to address issues at problematic institutions and make changes as appropriate.³² However, the Final Staff Report finds fault with the processes ACICS adopted to respond to this deficiency, stating vaguely that because "verification of the information reviewed by the onsite visit team" has been "problematic and unreliable" in the past, the agency's practice of tracking all accreditation findings in team reports and responding to the most frequently cited problems is insufficient to comply with this criterion. 2016 Final Staff Report at 25. The Final Staff Report similarly dismisses out of hand ACICS's reference to its Campus Effective Plan (CEP) because "the agency has not provided a completed CEP for review nor has it provided evidence of how this plan was helpful in determining whether a standards change is/was necessary." 2016 Final Staff Report at 25. Finally, the Staff Report recognizes that ACICS has "adopted tougher standards regarding the review of recruitment and admissions practices, because of fraud and misrepresentation by institutions" but the Staff Report dismisses these changes because they "appear to have been made long after indications of fraud and misrepresentation were publicly known at institutions[.]" 2016 Final Staff Report at 26. This returns us to the circular argument that even when a good faith effort is made to take corrective action, the agency can never be found to be compliant because of things that happened in the past. The Staff Report thus acknowledges evidence of ACICS's compliance yet doggedly concludes noncompliance with this criterion.

For instance, contrary to staff's conclusory claim there is no evidence that site visits have been unreliable. It appears that the weakness in ACICS's methodology is that it failed to monitor the accuracy of job placement rates reported via the CAR in the years between accreditation reviews. This general complaint, found throughout the Final Staff Report is assessed and dispensed of above in Section II. 1. (Job Placement Rate Misrepresentations), and in Section III. (Major Improvement Made by ACICS) which describe the major improvements ACICS has made for example in relation to its PVP and the At Risk Working Group. The ACICS site visit process, including prior to the implementation of new policies, has always included random calls to graduates and employers to verify job placement data, and has always required institutions to address inconsistencies that are identified through that process. ACICS procedures go beyond those employed by the Department to verify the accuracy of IPEDS data, for example, which the Department knows contains errors and yet still relies upon for making significant policy decisions. ACICS's procedures also go beyond those used by most regional accreditors to verify job placement rates.

Sufficient evidence exists to show that ACICS's current policies and practices meet the regulatory requirements and are effective in responding to a need for changes to standards. For instance, as soon as job placement rate errors were reported to ACICS, the agency took swift action to sanction those institutions, and began developing new policies and procedures that

³² The Secretary's Decision also referenced 34 CFR § 602.21 but did not provide any substantive analysis for why ACICS was noncompliant with the criterion and essentially adopted the Final Staff Report's findings.

SDO Response to ACICS

would prevent such errors from occurring again in the future. The PVP implemented by ACICS in the wake of the job placement scandal revolutionized and established new industry standards for job placement verification. Not only did ACICS make sweeping changes in developing such a system, it followed its procedures with fidelity in involving a number of constituencies in designing and testing the new PVP system before taking it to full scale. PVP has now been fully implemented. The length of time it took to fully implement the PVP system is further evidence that the agency follows its policies regarding the modification and adoption of new policies, procedures and standards, which requires considerable input from others. Exhibit 124 (ACICS Responses to Part II Supplement Information Request) at 22; Exhibit A-O (ACICS Part II Submission Explanation) at 23-25; Exhibit B-O (ACICS May 2018 Supplement) at 66-70.

While it is true that the PVP had not been fully implemented in 2016, this is because the Department's standards require the agency to involve multiple constituencies in the development of new standards. It would be unreasonable for the Department to now conclude that ACICS is out of compliance because it involved those constituencies, and therefore had not yet had time to implement the changes it adopted. The evidence now shows that ACICS has implemented policies and procedures such as the PVP.

ACICS has also provided ample evidence that it has implemented a number of other policies to prevent future errors and improve oversight, including through the addition of a Data Integrity Reviewer position for each site visit, the creation of the At Risk Institution Group to better identify and monitor at-risk institutions, and the implementation of other policies and procedures described earlier to improve its oversight function. ACICS's response to the job placement rate scandal was swift and significant. Exhibit A-O (ACICS Part II Submission Explanation) at 23-25; and ACICS May 2018 Supplement at 66-70.

SDO Recommendation: The Department's standards under 34 CFR § 602.21(a)-(b) focus on policies and procedures for routine and regular review of standards, for engaging relevant constituencies in that review, and that lead to the improvement of standards. ACICS has more than sufficiently demonstrated compliance with this standard, and has evidenced its ability to also evaluate standards off-cycle when information makes it clear such a review is warranted. I recommend that you find ACICS has demonstrated that it is in full compliance with this standard.

19. Section 602.22(a)(3) – When a new evaluation is required under the substantive change policy

34 CFR § 602.22(a)(3) states that the agency's substantive change policy "must define when the changes made or proposed by an institution are or would be sufficiently extensive to require the agency to conduct a new comprehensive evaluation of that institution."

The Final Staff Report concluded that it was "not clear based on the provided documentation whether on a consistent bases decision makers are given a clear list of previously-proposed or approved substantive changes that would trigger a new comprehensive evaluation" and "also unclear as to whether decision-makers are making consistent decisions regarding whether or not

SDO Response to ACICS

to require a new institutional evaluation.” 2016 Final Staff Report at 26. The Final Staff Report further found that ACICS “does not have a written policy that identified the specific reasons/types of substantive changes that would require a new comprehensive evaluation or a written process to determine whether a new comprehensive evaluation is required on a consistent basis.” Id. ACICS also did not provide the rationale or associated policy for the rubric and points system used by the Council to evaluate substantive changes requests. Id.

First, ACICS has a clearly defined policy for the effect of substantive changes. Section 2-2-102 of its Accreditation Criteria states:

The Council shall conduct a comprehensive on-site evaluation of the institution if substantive changes that have been made or are proposed are sufficiently extensive that the institution’s capacity to maintain compliance with accreditation standards requires an immediate assessment. Substantive changes are defined by Council as “extensive” when the types and/or number of changes are so substantial that the nature and scope of the accredited institution will no longer be the same since last evaluated and in its place a new institution has evolved.

Exhibit A-O-3 (ACICS Accreditation Criteria) at 23. Section 2-2-102 meets the baseline for compliance with demonstrating that it, at least on paper, ACICS has articulated a definition for when a comprehensive evaluation is required.

ACICS has also provided additional detailed information about its policy, rubric, and point system used to clearly determine when institutional changes trigger a new comprehensive evaluation. ACICS’s Policies and Procedures Manual outlines this system in detail in an entire chapter on Extensive Substantive Changes. Exhibit B-O-73 (ACICS Policies and Procedures Manual) at 68. Under ACICS policy, the Educational Enhancement and Evaluation Committee or the Executive Committee uses a rubric to determine when a comprehensive evaluation is needed based on the number of substantive changes made by an institution, as well as giving consideration to any risk factors. Exhibit B-O (ACICS May 2018 Supplement) at 71-72; Exhibit B-O-172 (Substantive Change Monitoring) (evidence of the application of the policies and practices). The agency further explains that each month, the Executive Committee of the Council reviews substantive change requests individually, as well as collectively with other substantive changes that have occurred since an institution’s last grant of accreditation. Exhibit B-O (ACICS May 2018 Supplement) at 72.

These materials certainly demonstrate that ACICS has written policies that meet the criteria and are sufficiently specific and objective to ensure consistent decision-making and the materials provided in Exhibit B-O-172 (Substantive Change Monitoring) (evidence of the application of the policies and practices are sufficient to demonstrate application of that criteria. While staff also requested a list of previously-proposed or approved substantive changes that would trigger a new comprehensive evaluation such a list is not required by the regulations.

SDO Recommendation: ACICS has demonstrated sufficient policies and practices addressing this criterion and I recommend that you find ACICS to be compliant with this criterion.

SDO Response to ACICS

20. Section 602.24(c)(1) – Teach-out Plan Triggers

34 CFR § 602.24(c)(1) provides that an accreditor must “require an institution it accredits or preaccredits to submit a teach-out plan to the agency for approval upon the occurrence” of any of four events: (i) when the Secretary notifies the agency of action against an institution and that a teach-out plan is required; (ii) the agency acts to terminate or suspend an institution’s accreditation; (iii) the institution notifies the agency that it intends to cease operations or close a location; (iv) a State licensing agency notifies the accreditor that an institution’s license to operate has been or will be revoked.

The Final Staff Report acknowledged that ACICS demonstrated that its Accreditation Criteria contain written policies documenting its teach-out plan requirements and that “the agency has, in practice required its teach out plans to include the requirements of this section” but found ACICS out of compliance because the policies “do not include the terminology in 602.24(c)(1).” Apparently the finding of non-compliance is related to ACICS’s use of language that does not verbatim repeat the regulatory language. See Teach-out plan triggers in section 2-2-303 of the Accreditation Criteria, Exhibit A-O-3 (ACICS Accreditation Criteria) at 28. However, the Department does not require agencies to include in their standards language that is verbatim restatement of the Department’s regulations and if it did require it, it would have specified the language had to be verbatim. ACICS uses slightly different language in its policies as compared to the Department’s regulations, but achieves the same meaning, and the Staff Report even concedes that in practice ACICS’s policy language leads to the same results.

ACICS has presented substantial evidence that its policies direct its institutions to submit a teach-out plan when any of the four regulatory circumstances exist and what action ACICS takes if the institution does not cooperate. Further, ACICS policies go beyond regulatory requirements by providing that the agency may require a teach-out plan “at the Council’s discretion, and more specifically when a show-cause directive has been ordered.” Exhibit B-O (ACICS May 2018 Supplement) at 72-73. Finally, ACICS has overseen large numbers of teach-outs that resulted in orderly closures, thereby demonstrating the rigor of its policies and its effectiveness in applying them. Id. at 73; Exhibits B-O-125 (Financial Show-Cause Actions); B-O-173 (Show-Cause Directives-External); B-O-129 (Request for Teach-Out Plans); B-O-174 (Sample Adverse Actions); and B-O-123 (Debarment Action Letters).

The Part II submission also contained evidence that ACICS applies its teach-out policy with rigor and had done so in a number of recent situations. For example, the Part II submission included a list (Table K) of all campuses that had closed or were in the process of a teach-out and it included documents pertaining to teach-out plans and approvals for selected institutions. The Part II submission also confirmed that it has applied its policy regarding debarment for administrators and decision-makers of institutions that close without putting an acceptable teach-out plan in place. Exhibit 124 (ACICS Responses to Part II Supplement Information Request) at 23.

ACICS has produced further evidence demonstrating the agency requests teach out plans in line with the requirements of this section. See Exhibit 123 (Title IV Participation Terminated, and adverse letters to ITT and MJI); Exhibit 260 (Denial or Withdrawal of Accreditation)

SDO Response to ACICS

(Bristol University - RA Denial Letter); and Exhibit 261 (Cessation of Operations) (Letter from ACICS to Corinthian).

SDO Recommendation: The evidence submitted by ACICS is more than sufficient to demonstrate that its policies and implementation comply with 34 CFR § 602.24(c)(1). I recommend that you find ACICS in compliance with this criterion.

21. Section 602.27(a)(6)-(7), (b) – Fraud and Abuse

Under the heading of “other information an agency must provide the Department,” 34 CFR § 602.27(a)(6)-(7) requires an agency to submit to the Department the name of any institution or program it accredits “that the agency has reason to believe is failing to meet its title IV, HEA program responsibilities or is engaged in fraud or abuse,” including information the Secretary may request “that may bear upon an . . . institution’s compliance with its title IV, HEA program responsibilities, including the eligibility of the institution or program to participate in title IV, HEA programs.” Section 602.27(b) then imposes some obligations on agencies to keep information surrounding the contact with the Department confidential from the institution, specifically upon request by the Department.

The Final Staff Report found ACICS out of compliance with this criterion on the grounds that ACICS’s Accreditation Criteria references selected Title IV requirements, but that its commitment to disclosure to the Department is “significantly weaker than that required by 602.27(a)(6), and which ignores the requirements of 602.27(a)(7) and (b) entirely.” 2016 Final Staff Report at 28. Further, the Final Staff Report finds fault with ACICS because its accreditation criteria became effective in July 2016 so “there could not be documentation of implementation even if they were compliant,” and because the agency has not explained why it did not share with the Department “the information it had about the abuse practiced by, for example, Michigan Jewish Institute and CSI” and the “documented abuse regarding placement rates” discussed in the Staff Report under Section 602.16(a)(1)(i). The Final Staff Report also found that there was no basis to conclude ACICS would comply with this criterion in the future. 2016 Final Staff Report at 2.

ACICS points to its Accreditation Criteria, Appendix G (“Guidelines on Disclosure and Notification”) as evidence that the language in its policy meets the requirements of Section 602.27(a)(7) and (b). Exhibit B-O (ACICS May 2018 Supplement) at 75-76; Exhibit A-O-3 (ACICS Accreditation Criteria) at 116-117. The Accreditation Criteria state:

Through written, established protocols, the Council will directly, and in a timely manner, inform the U.S. Department of Education of any institution which the Council has reason to believe is failing to meet its Title IV program responsibilities or is engaged in fraud and abuse, along with the Council’s reasons for concern about the institution.

Further, the Council will make such notification if it believes the institution demonstrates systemic noncompliance with respect to use of the Department’s

SDO Response to ACICS

definition of credit hour or significant noncompliance regarding conformity with commonly accepted practice in the assignment of credit hours to one or more programs at the institution. The institution will then be given an opportunity to provide evidence demonstrating it is in compliance with Title IV requirements regarding credit hour assignments.

Exhibit A-O-3 (ACICS Accreditation Criteria) at 116-117.

Additionally, in the introduction to its Appendix G guidelines ACICS states: “The Council will provide information requested by the U.S. Department of Education that may bear on an institution’s compliance with federal student financial aid requirements, including the eligibility of the institution to participate in Title IV programs.” Id. at 116. Together these statements evidence ACICS compliance with 34 CFR 602.27(a)(6) and (7).

ACICS has also demonstrated application of the criterion as it relates to notifying the Department. For example, the materials related to Penn Commercial Business/Technical School evidence application of the criterion. There, ACICS notified Federal Student Aid about evidence ACICS had that led it to believe the institution was not complying with its Title IV responsibilities as it related to instituting a substantive change without approval. Exhibit B-O-175 (Institutional File - Penn Commercial) at 18-22. ACICS provided additional examples which also evidence that in practice the agency complies with the notification requirements. See Exhibit B-O-176 (Communication to ED –NWSC)(Notification to Department about a variety of serious allegations, including possible Title IV fraud.); Exhibit B-O-177 (Communication to ED – Trumbull)(Notification to Department about school’s failure to follow requirements for closure, including teach-out obligations).

In regards to the requirements of 34 CFR § 602.27(b), ACICS has included in its Policies and Procedures Manual a blanket policy of keeping the information confidential: “ACICS will not inform the institution about the contact in order to preserve the ability of the Department to investigate and resolve the alleged Title IV violation, or upon a specific request from the Department to keep information about the contact confidential.” Exhibit B-O-73 (ACICS Policies and Procedures Manual) at 158. See also Exhibit B-O (ACICS May 2018 Supplement) at 75. (“[W]hen the Council contacts the Department regarding concerns that arise with compliance with Title IV regulations or when fraud and abuse is suspected, the Council does not notify the institution of this contact with the Department. The Council's position supports the ability of the Department to investigate and resolve alleged Title IV violations independent of the institution's knowledge.”). There is also no indication that in practice, ACICS has violated the confidentiality provisions of 34 CFR § 602.27(b), but demonstrating application of its nondisclosure policy would in some ways be asking ACICS to prove a negative. Nonetheless, ACICS has also produced evidence of application of the confidentiality requirements of subsection (b). ACICS states there was a specific request by the Department that ACICS keep confidential for Delta Ed. See Exhibit B-O-178 (Request for Information Program Review, Delta Ed). While the exhibit does not explicitly mention the confidentiality issue, asking ACICS to produce evidence of some communication where it formally acknowledges to the Department it has kept the information confidential seems excessive.

SDO Response to ACICS

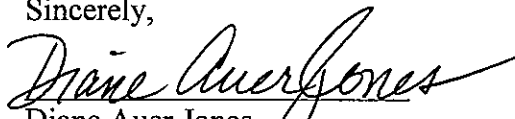
Finally, discussion of the circumstances concerning MJI, CSI, and job placement rates has been thoroughly addressed elsewhere in this memorandum. See Section III. (Major Improvements Made by ACICS). In short, as discussed in Section 11. (§ 602.16(a)(1)(x)), ACICS's failure to report information to the Department was troubling. While it is still not entirely clear what ACICS knew and when and what exactly it failed to report to the Department, it fell short in this regard. However, as demonstrated throughout this document, ACICS has made significant strides in upgrading and enhancing its detection and monitoring efforts, and in contacting the Department when it encounters information that would trigger the notification provisions. See Section III. (Major Improvements Made by ACICS) (discussing the implementation of the PVP, ARIG, DIR, and CEP); see also Exhibit B-O-138 (Summary of ARIG Investigations); and Exhibit B-O-139 (ARIG-Directed Visits). ACICS's failures were largely in those realms and their corresponding recognition criteria, not necessarily in withholding information from the Department when it had reason to believe there was potential title IV violations taking place as is relevant to this criteria.

Ignoring the evidence provided by ACICS that it is applying the notification requirements of this criterion and instead continuing to point to past failures (many of which are not entirely relevant to this criterion) would essentially be telling the agency that, no matter what it does to improve, its past problems disqualify it from being recognized as an accreditor by the Department again.

SDO Recommendation: ACICS has clearly evidenced it has the policies in place which comply with this criterion. It has also demonstrated sufficient application of the criterion. I recommend that you find ACICS in compliance with this criterion.

In summary, I recommend that ACICS be granted continued recognition with the condition that it submits a compliance report within 12 months demonstrating full compliance with 34 CFR §§ 602.15(a)(2) and (a)(6). Thank you for the opportunity to conduct this review and to provide you with these recommendations.

Sincerely,



Diane Auer Jones
Principal Deputy Under Secretary
Delegated to Perform the Duties of Under Secretary
U.S. Department of Education

SDO Response to ACICS

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of September 2018, a copy of the foregoing
Response to ACICS was served via e-mail on:

Katherine D. Brodie
Special Counsel
Duane Morris LLP
505 9th Street, N.W., Suite 1000
Washington, DC 20004 2166

Michelle Edwards
Accrediting Council for Independent Colleges and Universities
750 First Street, N.E.
Suite 980
Washington, D.C. 20002-4223

Allyson B. Baker, Esq.
Venable LLP
575 7th Street, N.W.
Washington, DC 20004-1601

Kenneth J. Ingram, Esq.
Whiteford Taylor Preston LLP
1800 M Street, N.W., Suite 450N
Washington, DC 20036



J. Justin Riemer
Counsel for Senior Department Official