

U.S. Department of Education

**Staff Report
to the
Senior Department Official
on
Recognition Compliance Issues**

RECOMMENDATION PAGE

1. **Agency:** National League For Nursing Accrediting Commission (1952/2007)

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

2. **Action Item:** Petition for Continued Recognition

3. **Current Scope of Recognition:** Accreditation of nursing education programs and schools, both postsecondary and higher degree, which offer a certificate, diploma, or a recognized professional degree including clinical doctorate, masters, baccalaureate, associate, diploma, and practical nursing programs in the United States and its territories, including those offered via distance education.

4. **Requested Scope of Recognition:** Accreditation of nursing education programs and schools, both postsecondary and higher degree, which offer either a certificate, diploma, or a recognized professional degree including clinical doctorate, master's, baccalaureate, associate, diploma, and practical nursing programs in the United States and its territories, including those offered via distance education.

5. **Date of Advisory Committee Meeting:** June, 2012

6. **Staff Recommendation:** Continue the agency's recognition and require the agency to come into compliance within 12 months, and to submit a compliance report that demonstrates the agency's compliance with the issues identified below.

Grant the agency's request to expand its scope to include the accreditation of clinical doctorate educational programs.

7. **Issues or Problems:**

- The agency must demonstrate that it satisfies the "separate and independent requirements" (see 602.14(b)). [602.14(a)]

- The agency must revise its by-laws to be compliant with the Secretary's "separate and independent" definition. [602.14(b)]

- The agency must provide further information and documentation regarding training it provides for public representatives serving on its appeals panel on the agency's standards, policies and procedures. [602.15(a)(2)]

- The agency must amend its definition of distance education to include that technology is used to support regular and substantive interaction between the instructor and the students. [602.16(b)(c)]

- The agency must clearly define in its substantive change policy under what conditions/situations it would require a program to undergo a new comprehensive evaluation and provide documentation of its application of its policy. [602.22(a)(3)]

- The agency must amend its policy to include that, in the absence of official comments from the program; the agency will provide evidence that the affect program was offered the opportunity to provide official comment. The agency must also provide documentation of its timely provision of the brief statement and program's comments to the Secretary, the appropriate state licensing agency and the public. [602.26(d)]

EXECUTIVE SUMMARY

PART I: GENERAL INFORMATION ABOUT THE AGENCY

The National League for Nursing Accrediting Commission (NLNAC) is a national programmatic accrediting agency for postsecondary and higher degree nursing education programs. Its current scope of recognition is for the accreditation in the United States of programs in practical nursing, and diploma, associate, baccalaureate and higher degree nurse education programs, including those offered via distance education.

The agency's accreditation is a required element enabling some of its practical nursing and all of its hospital diploma programs to establish eligibility to participate in the Title IV, HEA programs. Consequently, the agency must meet the requirements under the separate/independent provisions of the regulations, or must seek and receive a waiver of those requirements.

Recognition History

The National League for Nursing, precursor to the NLNAC, was first recognized as a national accrediting agency in 1952 for the accreditation of associate, baccalaureate, and higher degree nurse education programs. Its scope was later expanded to include diploma and practical nursing programs. Prior to the 1997 meeting, the accrediting functions of the National League for Nursing were formally transferred to the NLNAC.

The agency was last reviewed by the National Advisory Committee on Institutional Quality and Integrity (NACIQI) at its December 2006 meeting. The agency initially requested an expansion of scope for distance education, but withdrew the request in October 2006. At the December meeting, the NACIQI determined that the agency was in full compliance with the Secretary's criteria. The Secretary agreed with the NACIQI recommendation, and the agency was granted a five-year period of recognition. In June of 2008 the agency again appeared before the NACIQI for an expansion of scope to include distance education and was granted the request.

In conjunction with the current review of the agency for continued recognition, Department staff observed the agency's Spring 2012 decision meeting in Atlanta Georgia and preformed an office and file review.

PART II: SUMMARY OF FINDINGS

§602.14 Purpose and organization

(a) The Secretary recognizes only the following four categories of agencies:

The Secretary recognizes...

(1) An accrediting agency

- (i) Has a voluntary membership of institutions of higher education;**
- (ii) Has as a principal purpose the accrediting of institutions of higher education and that accreditation is a required element in enabling those institutions to participate in HEA programs; and**
- (iii) Satisfies the "separate and independent" requirements in paragraph (b) of this section.**

(2) An accrediting agency

- (i) Has a voluntary membership; and**
- (ii) Has as its principal purpose the accrediting of higher education programs, or higher education programs and institutions of higher education, and that accreditation is a required element in enabling those entities to participate in non-HEA Federal programs.**

(3) An accrediting agency for purposes of determining eligibility for Title IV, HEA programs--

- (i) Either has a voluntary membership of individuals participating in a profession or has as its principal purpose the accrediting of programs within institutions that are accredited by a nationally recognized accrediting agency; and**
- (ii) Either satisfies the "separate and independent" requirements in paragraph (b) of this section or obtains a waiver of those requirements under paragraphs (d) and (e) of this section.**

(4) A State agency

- (i) Has as a principal purpose the accrediting of institutions of higher education, higher education programs, or both; and**
- (ii) The Secretary listed as a nationally recognized accrediting agency on or before October 1, 1991 and has recognized continuously since that date.**

The agency seeks recognition under category 602.14(a)(3). The agency's by-laws, certificate of incorporation and policies support the agency's structure and its purpose to accredit programs of higher education that voluntarily seek accreditation for the purpose of participating in Title IV student financial assistance programs. NLNAC has demonstrated that it meets the structural, organizational and functional requirements of this section. The agency must satisfy the Secretary's "separate and independent" requirements. However, as discussed in 602.14(b), the agency does not satisfy these requirements.

Staff Determination: The agency does not meet the requirement of this section. The agency must demonstrate that it satisfies the "separate and independent requirements" (see 602.14(b)).

Analyst Remarks to Response:

In response to the staff's draft analysis the agency provided clarification on its efforts to revise its by-laws to meet the Secretary's requirements, and a copy of the Dissolution request from NLN. While NLNAC has demonstrated that it has the requisite purpose required by 602.14(a)(3)(i) the Department has serious concerns that if NLNAC is, as described in its response, subject to intrusive interference in its operations by NLN or any other organization or individual other than its own Board of Commissioners, it would severely affect the agency's compliance with the Department's conflict of interest and separate and independent requirements.

The Department has grave concerns about the provision in the NLNAC's by-laws that requires the written consent of the NLN in order for the Board of Commissioners to amend the agency's by-laws. Staff believe that this provision provides NLN with more authority over NLNAC than NLN would otherwise have by operation of law, and that in the context of NLN's reported ongoing interference in NLNAC's operation of the agency's accreditation business, to the point that legal action is continuing between NLN and NLNAC, the presence of this by-law supports staff's conclusion that the agency cannot operate in the separate and independent manner required by the Title IV statute and regulations.

Staff Determination: The agency does not meet the requirement of this section. The agency must demonstrate that it satisfies the "separate and independent requirements" (see 602.14(b)).
atisfies the "separate and independent requirements" (see 602.14(b)).

(b) For purposes of this section, the term separate and independent means that--

(1) The members of the agency's decision-making body--who decide the accreditation or preaccreditation status of institutions or programs, establish the agency's accreditation policies, or both--are not elected or selected by the board or chief executive officer of any

- related, associated, or affiliated trade association or membership organization;**
- (2) At least one member of the agency's decision-making body is a representative of the public, and at least one-seventh of that body consists of representatives of the public;**
- (3) The agency has established and implemented guidelines for each member of the decision-making body to avoid conflicts of interest in making decisions;**
- (4) The agency's dues are paid separately from any dues paid to any related, associated, or affiliated trade association or membership organization; and**
- (5) The agency develops and determines its own budget, with no review by or consultation with any other entity or organization.**
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The NLNAC provided its by-laws and supporting documentation in response to the requirements of this section. Department staff's review of NLNAC by-laws raises concerns about the continued compliance of the NLNAC with the Secretary's "separate and independent" requirements contained in this section.

Article III, Sec 2(b) requires the approval of NLN for adoption or determining the size of the NLNAC Board and the process of election of the Board. The by-laws further provide in Article IV, Sec 5 that the Board of NLNAC may be removed by the Board of NLN. Taken together, these provisions empower NLN's Board to impact significantly the composition of NLNAC's Board and its independence. The agency's by-laws are not in compliance with §602.14(b)(1).

The agency's documentation provided its definition for a public representative and demonstrates that as a fifteen-member Board with three public members, the NLNAC Board has one-fifth of its members as representatives of the public. Documentation also verifies that the agency's appeal panel has a sufficient number of Public members to meet the requirements of this section. The agency's public representatives participate fully in the decision-making processes. The agency is in compliance with §602.14(b)(2).

The agency's policies establish clear and effective controls against conflicts of interest, or the appearance of conflict of interest, by the agency's commissioners, evaluation team members, staff and appeals body. Policies and procedures identify specific conflicts of interest that apply to each group. All are required to sign and adhere to the agency's conflict of interest policy to help ensure that business is conducted in an unbiased manner. Commission members are required to recuse themselves from any accreditation or preaccreditation decision that would be considered a conflict of interest, or appearance thereof. The agency is in compliance with §602.14(b)(3).

The agency's documentation demonstrates that NLNAC's fees are paid separately from any dues paid to any related membership organization and that all fees collected relate directly to accreditation. NLNAC accredited programs

make payment to NLNAC, and funds are deposited in NLNAC accounts. The agency is in compliance with §602.14(b)(4)

Article III, Sec 2(c) of NLNAC's by-laws provide the NLN Board the authority to approve certain portions of the NLNAC budget, including overhead allocations and repayment of debt, which violates the requirements that there be no review of the agency's budget by any other entity or organization. Article IV, Sec 9(a) that the NLN Chief Executive Officer shares authority with the NLNAC Executive Committee regarding the performance evaluation and compensation of the NLNAC Executive Director. The agency should have complete control over its own spending, financial operations and personnel decisions. The agency's by-laws are not in compliance with §602.14(b)(5).

The following provisions raise concerns about the NLN's control of the operations of the NLNAC as to whether or not they would meet the Secretary's requirements:

* Article I provides that "except in matters related to the accreditation process, NLNAC shall act in accordance with the policies of NLN". This provision is too vague. The agency needs to list the NLN policies with which NLNAC would have to comply, to be sure they do not compromise compliance with 602.14

* The same is true with respect to Article III Sec I, which provides that "The Principal Member [NLN] shall have the sole right to vote or consent with respect to any action which members of a corporation are entitled to vote under the not-For-Profit Corporation Law". The agency needs to define what those "actions" would be.

* Article III, Sec 2(a) provides that the Principal member approve "restatements or amendments of the certificate of incorporation and by-laws". Under this provision, NLN could veto by-law changes NLNAC needs to make to achieve compliance with 602.14 and other changes NLNAC chooses to make in exercise of the independence of judgment that is necessary in a recognized accrediting agency.

* Article III, Sec 2(d) provides for NLN's consent before the "adoption or implementation of short or long-range plans that are outside the mission and purpose of NLNAC". This provision is too vague; it compromises NLNAC's independence.

* Article IV, Sec 2 provides that "the Board of Commissioners [NLNAC] shall have such other duties as may be prescribed by law or the Principal Member [NLN]". Reference to the Principal Member compromises NLNAC's independence.

* Article IV, Sec 10(b) provides that "the NLNAC Board of Commissioners shall be accountable to the Principal Member [NLN] for compliance with business practices, financial policies, and human resources and operating policies and procedures established by the Principal Member". Making the NLNAC Board accountable to the NLN is non-compliant with the Secretary's "separate and independent" requirements.

* Article V, Sec 1(a) provides that "the Executive Committee shall: conduct the evaluation of the Executive Director in collaboration with the Chief Executive Officer of the Principle Member (NLN) and report the outcome in writing to the

Board of Commissioners (NLNAC) and the Principal Member”. The NLN’s role in the evaluation of the executive director is non-compliant with the Secretary’s “separate and independent” requirements.

* Article V, Sec 2 provides that “the [NLN Finance] Committee shall provide financial oversight for the NLNAC including assuring adequate financial resources, advice concerning short and long term investments consistent with the financial policies of the Principal Member [NLN], requirement to participate in audits conducted by the Audit Committee of the Principal Member, review of employment practices and internal and external auditing, and preparation of the financial component of the annual report to the Principal Member”. The requirement that the NLNAC act “consistent with the financial policies of NLN” is non-compliant with the Secretary’s “separate and independent” requirements.

* Article V, Sec 3 provides that the NLNAC Audit and Compliance Committee “provide oversight of corporation compliance with good business practices and consistent application of NLN policies”. The requirement for “consistent application of NLN policies” is non-compliant with the Secretary’s “separate and independent” requirements.

* Article X provides that “The Corporation (NLNAC) shall adopt, implement and administer conflict of interest procedures consistent with the policies with the Principal Member (NLN)”. NLNAC must be able to develop its own conflict of interest policies to be in compliance with 602.14(b)(3).

* Article XI provides that Roberts Rules of Order “shall govern the proceedings of the Corporation in all cases to which they are applicable and in which they are not inconsistent with these by-laws, the by-laws of the Principal Member [NLN] . . .”. Reference to the “by-laws of the NLN” is non-compliant with the Secretary’s “separate and independent” requirements.

* Article XII provides that the by-laws of NLNAC “may be altered, amended, replaced or restated by the Board of Commissioners only with the written consent of the Principal member [NLN]

Staff Determination: The agency does not meet the requirements. It must revise its by-laws to be compliant with the separate and independent definition.

Analyst Remarks to Response:

In response to the staff’s draft analysis the agency provided clarification on its efforts to amend its by-laws and maintain the appropriate governing structure required by this section. The NLNAC has also reported that “the Board of Commissioners and the Chief Executive Officer of the NLNAC are committed to meeting the separate and independent requirements of §602.14 to safeguard the accreditation of its accredited programs and institutions, and continue its efforts to control its own bylaws.”

The agency also reports that until a legal decision on this matter is resolved and the NLNAC is able to control all operations of the agency including those cited as non-compliant in the staff analysis, the NLNAC cannot completely satisfy the Secretary’s requirements.

In order to be compliant with this section of the criteria, the NLNAC must amend

its by-laws in response to the concerns addressed in the staff's draft analysis. The revisions must be developed and approved by the NLNAC Board of Commissioners absent the control of any other Board, organization or individual.

Staff Determination: The agency does not meet the requirements of this section. The agency must revise its by-laws to be compliant with the Secretary's "separate and independent" definition.

§602.15 Administrative and fiscal responsibilities

The agency must have the administrative and fiscal capability to carry out its accreditation activities in light of its requested scope of recognition.

The agency meets this requirement if the agency demonstrates that--

(a) The agency has--

(2) 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;

NLNAC provided documentation demonstrating that its staff, commissioners and its evaluation review panel and site review team members receive training in all agency standards and processes including the review of distance education programs and clinical doctorate educational programs. The current NLNAC Standards and Criteria for Accreditation include the Standards and Criteria for clinical doctorate education. Further, all evaluators receive training and additional guidance to provide clarification regarding the application of the agency standards when programs that include distance education are being reviewed. They are also instructed to use the agency's policy for distance education, which provides additional factors related to agency standards that must be considered in such programs.

The agency has comprehensive selection criteria for its program evaluators and Commissioners. Expectations for academic credentials, knowledge and expertise are outlined for program evaluators conducting reviews for all programs accredited by the agency.

The Program Evaluator Forum is the primary method of training of new site evaluators, and all site evaluators must attend one forum every four years. The forum encompasses NLNAC policies, procedures, standards, and on-site evaluation processes. The agency states that new board members received training on the required elements. The agency's response includes documentation of new Commissioner orientation. This documentation evidences

that its Commissioners are trained on NLNAC standards, policies, and procedures, and also receive training in establishing policies and making accreditation decisions.

In its narrative, the agency indicates that Appeals Panel members, with the exception of the public member, serve as site evaluators. It is not clear that the Appeals Panel members are trained specifically on their responsibilities to serve on that decision-making body.

Staff Determination: The agency does not meet the requirement of this section. The agency must provide information and documentation about the training it provides its Appeals Panel members on their responsibilities.

Analyst Remarks to Response:

In response to the staff's draft analysis the agency provided documentation identifying its appeals panel members and agendas used in its appeal panel member orientation. The agency clarified that all of its appeal panel members participate in a mandatory training session presented by the NLNAC CEO, and orientation is currently conducted by conference call; however, the NLNAC has plans in the future to conduct the orientation in a web-enhanced conference format to allow additional interaction among the call participants and with the call facilitator. Since the appeal panel members are visiting site team evaluators (with the exception of the public members), the orientation focuses on the appeal process, the role and purpose of the Appeal Panel, and the decision options available to the appeal panel. As most of the members serve as site team evaluators, they are trained separately in the NLNAC standards, policies and procedures. However, it is not clear that and how the public representatives are trained on the agency's standards, policies and procedures.

Staff Determination: The agency does not meet the requirement of this section. The agency must provide further information and documentation regarding training it provides for public representatives serving on its appeals panel on the agency's standards, policies and procedures.

§602.16 Accreditation and preaccreditation standards

(a) The agency must demonstrate that it has standards for accreditation, and preaccreditation, if offered, that are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or programs it accredits. The agency meets this requirement if -

- **(1) The agency's accreditation standards effectively address the quality of the institution or program in the following areas:**

(b) If the agency only accredits programs and does not serve as an institutional accrediting agency for any of those programs, its accreditation standards must address the areas in paragraph (a)(1) of this section in terms of the type and level of the program rather than in terms of the institution.

(c) If the agency has or seeks to include within its scope of recognition the evaluation of the quality of institutions or programs offering distance education or correspondence education, the agency's standards must effectively address the quality of an institution's distance education or correspondence education in the areas identified in paragraph (a)(1) of this section. The agency is not required to have separate standards, procedures, or policies for the evaluation of distance education or correspondence education;

The agency failed to respond to this section.

Staff determination: The agency does not meet the requirements of this section. The agency needs to respond to the requirements of this criterion and provide the appropriate documentation of its effective review of distance education.

The agency must also indicate whether it wishes to include in its scope of recognition the evaluation of correspondence programs and, if so, address its review of this mode of delivery in its response.

Analyst Remarks to Response:

In response to the staff's draft analysis, the agency reports that it at this time, there are no nursing programs that NLNAC accredits that are taught by correspondence and incorrectly states that the Department's definition of distance education encompasses correspondence education. While that was true in the past, new definitions of the two delivery modes were incorporated into the regulations in 2010. The NLNAC's definition of distance education in its Policy #15 is not in accord with the new regulatory definition in that it does not include that distance education uses technology to support regular and substantive interaction between the instructor and students, which is the primary difference between distance education and correspondence education. Based on the agency's response, staff conclude that NLNAC does not wish to include in its scope of recognition the evaluation of correspondence programs.

The agency's policy on distance education and its standards clearly describe its expectations regarding quality provision of distance education. The agency provided detailed documentation of its training of evaluators (under this criterion), and of Commissioners (under 602.15(a)(2), site evaluation team reports, and a decision letters, demonstrating its effective application of its distance education standards in its review of programs offering distance education delivery. (Exhibit 12; Exhibit 065, Sec 602.12(b)) and (Exhibit 146, Sec 602.17(c)).

Staff Determination: The agency does not meet the requirement of this criterion. The agency must amend its definition of distance education to include that technology is used to support regular and substantive interaction between the instructor and the students.

§602.22 Substantive change.

(3) 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 agency's policies and procedures for reviewing substantive changes are comprehensive, and its policies allow the agency to determine that a new or additional comprehensive review may be required if, during a normal monitoring of the institution, there is an indication that the quality of education is not being met. The NLNAC Substantive Change Policy (Policy # 14) provides for the option to require a program to undergo a full site visit in an accreditation cycle earlier than originally planned based on the staff's evaluation of its monitoring mechanisms. A detailed table listing the type of substantive change and the corresponding approval process is incorporated into Policy # 14 Reporting Substantive Changes, which appears in the Accreditation Manual. The table informs nursing education programs of NLNAC's expectations for reporting substantive changes and the review process and procedures that will be implemented.

However, it is not clear that the agency has defined the conditions/situations that can be applied consistently where a new comprehensive evaluation of the program is required.

Staff determination: The agency does not meet the requirements of this section. It must clearly define in its substantive change policy under what conditions/situations it would require a program to undergo a new comprehensive evaluation and provide documentation of its application of its policy.

Analyst Remarks to Response:

In response to the staff's draft analysis the NLNAC provided a clarification of its best practices in identifying those conditions/situations under which it would require a program to undergo a new evaluation. The agency provided some examples of substantive changes or situations when it would determine that changes made or proposed by a program are or would be sufficiently extensive to require the agency to conduct a comprehensive total reevaluation of that program. However, the agency needs to codify these best practices. Compliance with this section requires the agency to define with a level of specificity sufficient

to make clear when changes made or proposed are sufficiently extensive to require a program to undergo a new comprehensive evaluation. An agency might do so by including in its policy an illustrative list of the changes/situations that would trigger a review. The agency must provide documentation of its effective application of its policy.

Staff determination: The agency does not meet the requirements of this section. The agency must clearly define in its substantive change policy under what conditions/situations it would require a program to undergo a new comprehensive evaluation and provide documentation of its application of its policy.

§602.26 Notification of accrediting decisions

The agency must demonstrate that it has established and follows written procedures requiring it to provide written notice of its accrediting decisions to the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and the public. The agency meets this requirement if the agency, following its written procedures--

((d) For any decision listed in paragraph (b)(2) of this section, makes available to the Secretary, the appropriate State licensing or authorizing agency, and the public, no later than 60 days after the decision, a brief statement summarizing the reasons for the agency's decision and the official comments that the affected institution or program may wish to make with regard to that decision, or evidence that the affected institution has been offered the opportunity to provide official comment; and

NLNAC policies require it to provide the Secretary, within 60 days, a brief statement summarizing its rationale for denial of accreditation. Policies state that the appropriate State licensing body will also receive this information, Policies include that the public may receive this information upon request. However, this criterion requires that this information be made available to the public absent a specific request.

The agency provided as documentation a letter denying accreditation. The letter includes language that informs the program that it may make written comment about the decision, and that the comment will then be included with the brief statement submitted to required entities. However, the agency did not provide documentation of its timely provision of the brief statement and agency comments to the Secretary, the appropriate state licensing agency and the public.

Staff Determination: The agency does not meet the requirement of this section. The agency must provide documentation of its timely provision of the brief statement and program's comments to the Secretary, the appropriate state licensing agency and the public. It must also revise its policy to include the

public in the the list of entities that will be provided the required information.

Analyst Remarks to Response:

In response to the staff's draft analysis, the NLNAC provided its revised policy on Notification of Commission Decisions that includes that it will make available to all the listed entities, within 60 days of a negative accreditation decision, a brief summary statement of the reasons for its decision and the official comments made by the program. However, the revised policy does not include that, in the absence of official comments from the program, the agency will provide evidence that the affected program was offered the opportunity to provide official comment.

The agency provided copies of letters sent to a state Board of Nursing, the Secretary of Education, and a regional accrediting agency; however, these refer generally to accreditation decisions and do not include the required summary and official comments from the program. Staff checked the agency's website and found only lists of Commission decisions from the March 2012 and June 2011 meeting, which likewise did not include any summary statement and comments.

The agency also reports that the revisions to Policy #5 have been approved by the NLNAC Board of Commissioners, and the revised policy has been posted for a 30-day public comment period on the NLNAC website (www.nlnac.org) [EXHIBITS 47, 48].

Staff Determination: The agency does not meet the requirement of this section. The agency must amend its policy to include that, in the absence of official comments from the program, the agency will provide evidence that the affected program was offered the opportunity to provide official comment. The agency must also provide documentation of its timely provision of the brief statement and program's comments to the Secretary, the appropriate state licensing agency and the public.

PART III: THIRD PARTY COMMENTS

The Department did not receive any written third-party comments regarding this agency.