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U.S. Department of Education
400 Maryland Ave. SW, 5th Floor
Washington, DC 20202

RE: Comments to the Department of Education on the Accreditation, Innovation, and Modernization; The Secretary's Recognition of Accrediting Agencies Notice of Proposed Rulemaking [Docket ID ED-2025-OPE-1042]

To Whom It May Concern:

Thank you for the opportunity to comment on the U.S. Department of Education's (the Department) Notice of Proposed Rulemaking (NPRM), "Accreditation, Innovation, and Modernization; The Secretary's Recognition of Accrediting Agencies," Docket ID ED-2025-OPE-1042.[1] New America's Higher Education Program is a team of researchers, writers, policy experts, and advocates dedicated to advancing policy solutions that center students and families while also protecting taxpayer resources. Given that accreditation plays an essential role in protecting students and taxpayers, we have focused on accreditor accountability and reform from our team's inception.

Accreditation is the gatekeeper in our federal student aid system, determining which institutions can access more than $100 billion in annual taxpayer-funded federal student aid awarded each year. Students are not the ones who choose their accrediting agency. They choose a college and trust that its accreditation provides an independent check on the quality of the education they are paying for with their time, money, and in many cases, federal student aid, such as grants and loans. When accreditation works, it helps ensure that federal student aid supports students' enrollment at institutions that provide a meaningful education and leave students better off than if they never attended. When it does not, students bear the consequences of wasted time and money, lost credits,

[1] U.S. Department of Education, "Accreditation, Innovation, and Modernization; The Secretary's Recognition of Accrediting Agencies; Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions," 91 Fed. Reg. 53940, August 20, 2026 (to be codified at 34 C.F.R. pts. 600, 602, 668), https://www.federalregister.gov/documents/2026/08/20/2026-17001/accreditation-innovation-and-modernization-the-secretarys-recognition-of-accrediting-agencies.

debt they may be unable to repay, using up time-limited Pell eligibility, and degrees or credentials that are not worth the paper they are printed on. Taxpayers also bear a significant burden for unpaid and defaulted student loan debt, and by spending taxpayer resources on worthless degrees.

New America has long supported reforming accreditation and its ability to protect students and ensure value. New America supports several of the goals these provisions reflect, understanding them as functions that accreditors carry out through the standards they set and requirements they impose on their institutions. We support meaningful emphasis on student achievement and on measures of performance that ensure students are not left worse off. We support greater transparency around transfer of credit while recognizing that not all credits are equivalent and that institutions must retain appropriate judgement about whether coursework is applicable to a student's program of study. And we support stronger protections for students when an institution closes or can no longer provide the education that students expected when they enrolled — including the proposed requirements concerning teach-outs and access to transcripts — which accreditors are positioned to require of institutions. These provisions can make accreditation more responsive to the needs of students and ensure that taxpayer investment is well spent.

However, other parts of the proposal would undermine that same student protection function. The proposed changes to accreditor switching and the recognition of new accrediting agencies risk weakening the quality assurance system on which students rely. Section 600.11 would make it easier for institutions, including those that have raised serious quality concerns and are facing sanctions from their accreditors, to change accreditors, and § 602.12 would eliminate the existing requirement that an accrediting agency has demonstrated legitimate experience before it can be recognized to serve as a federal gatekeeper.

The NPRM argues that these changes will promote competition and institutional choice, and it assumes greater choice will lead to improved quality. But accreditation does not work like a typical consumer market. Accreditors serve as quasi-regulators and gatekeepers, and only institutions—not students—choose among them. Institutions, in theory, choose their accreditors. Students do not choose; they rely on the fact that a college is accredited by a federally recognized accreditor. When institutions can escape a sanctioning accreditor's oversight by moving to another, and when a new agency can become a gatekeeper to federal aid without having demonstrated any accrediting experience, competition rewards the accreditor that asks the least rather than the institution that performs the best. Students and taxpayers bear risk, and the accreditor's seal of approval becomes less reliable as a signal of quality.

The proposal also raises a separate but related concern about the independence of quality assurance. New America supports strong accountability for both institutions and accreditors. But Congress did not make the federal government the arbiter of academic quality. The proposed unlawful changes concerning faculty, including issues of academic freedom, intellectual diversity, and research would give the federal government a substantially greater role in matters that have depended on independent academic expertise and judgement. Congress established a federal role in ensuring that recognized accreditors are reliable authorities on educational quality, while also placing limits on federal control over accrediting agencies, the standards they set, and what the federal government can and cannot weigh in on.[2] A system where accreditors are pressured to compete by lowering their standards, or where judgements are prescribed by political agendas, does not provide the independent quality assurance students expect and rely on.

These provisions also work together rather than in isolation. Easier entry for new accreditors, a longer runway to come back into compliance, continued eligibility during review, and an accelerated review track all take effect at once. Some might be defensible on their own, but in combination they open an exit from oversight at every stage and the Department has not analyzed their combined effect.

Congress established accreditation to protect students and ensure the quality of institutions receiving taxpayer-funded federal student aid. In doing so, it deliberately balanced two commitments: meaningful oversight for institutions, and independent academic and peer review judgement about educational quality, protected by limits on the federal government's role. The Department needs to strengthen both—better oversight *and* durable independence.

For these reasons, New America urges the Department to revise the proposed rule to strengthen accreditation's role as an independent system of quality assurance. The Department should maintain meaningful safeguards against institutions changing accreditors to evade oversight, ensure that new accrediting agencies demonstrate the experience necessary to serve as reliable authorities on educational quality, and reject unlawful provisions that would allow the federal government to direct the substance of or necessity for accreditation standards. At the same time, the Department should preserve its focus on student achievement, within the bounds of applicable law, transparency, meaningful transfer of credit changes, and protection for students when institutions fail. Accrediting agencies should be more accountable and focus on student outcomes and being good stewards of taxpayer dollars, while remaining sufficiently independent to make credible judgements about educational quality.

Sincerely,

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[2] Section 496 limits the Secretary three separate ways. Section 496(g) provides that nothing in the chapter "shall be construed to permit the Secretary to establish criteria for accrediting agencies or associations that are not required by this section," and that nothing shall be construed "to prohibit or limit any accrediting agency or association from adopting additional standards not provided for in this section." Section 496(n)(3) provides that the Secretary "shall not, under any circumstances, base decisions on the recognition or denial of recognition of accreditation agencies or associations on criteria other than those contained in this section." Section 496(o) provides that "[n]otwithstanding any other provision of law, the Secretary shall not promulgate any regulation with respect to the standards of an accreditation agency or association described in subsection (a)(5)." 20 U.S.C. § 1099b(g), (n)(3), (o), https://www.law.cornell.edu/uscode/text/20/1099b.

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I. Accreditation should protect students through strong, independent quality assurance

Congress did not create accreditation, it used the existing peer-review system and gave it a federal job: helping decide which institutions may get access to federal student aid. Accreditation is one leg of the program integrity triad, alongside state authorization and the Department's own certification, and it is the leg Congress assigned to be the judge of educational quality. That is why the statute conditions Title IV participation on an institution being "currently accredited by any agency or association recognized by the Secretary," and why it conditions recognition on the agency being "a reliable authority as to the quality of education or training offered."[3]

A strong accreditation system matters because the cost of a weak one falls on students and taxpayers alike, and the cost is significant. The Accrediting Council for Independent Colleges and Schools accredited Corinthian Colleges, for which the Department has discharged $5.8 billion in loans held by 560,000 borrowers, and ITT Technical Institute, for which it has discharged $3.9 billion held by 208,000 borrowers.[4] That is $9.7 billion in taxpayer dollars from only two chains mostly overseen by the same agency, which accredited many other problematic institutions. The loan discharges may have provided some after-the-fact relief for students, but they did not recover the years they spent in programs that were shuttered or worthless, time those students could have been pursuing credentials that were actually valuable, and they came at a cost to taxpayers that will never be recovered.

The dollar figures are the result of the agency failing to do its job. When Department staff reviewed ACICS in 2021, they found it could not show it had the administrative capacity to carry out the accrediting it was recognized for, and that across three open inquiries the agency "either was unaware of compliance issues and took no action, or took action after another approval entity or accrediting agency took action, or took an action that did not appear consistent with its policies and procedures."[5] One institution the Department examined had been accredited while not operating at all, with no students, no faculty, and no physical presence; ACICS had accepted faculty counts that differed across three of the school's own documents, and Department analysts could not find evidence that the listed faculty had ever worked there.[6] The Department terminated the agency's recognition in August 2022, finding a "continued long-standing inability to come into compliance with the minimum standards expected of accreditation agencies."[7]

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[3] 20 U.S.C. § 1099b(a), (j)(1), https://www.law.cornell.edu/uscode/text/20/1099b.

[4] U.S. Department of Education, "Education Department Approves $5.8 Billion Group Discharge to Cancel all Remaining Loans for 560,000 Borrowers who Attended Corinthian," June 1, 2022; U.S. Department of Education, "Education Department Approves $3.9 Billion Group Discharge for 208,000 Borrowers Who Attended ITT Technical Institute," August 16, 2022.

[5] U.S. Department of Education, Accreditation Group, "Final Analysis and Recommendation for the Accrediting Council for Independent Colleges and Schools," February 2021.

[6] U.S. Department of Education, Accreditation Group, "Final Staff Analysis: Reagan National University," documenting an inquiry opened February 24, 2020 into an ACICS-accredited institution that "was not in operation, and did not have students, faculty, or a physical presence."

[7] Decision of the Deputy Secretary, In the Matter of the Accrediting Council for Independent Colleges and Schools, August 19, 2022.

ACICS is the clearest case, but the weakness it exposed was not unique to one agency. Accreditors rarely use their strongest tools at all: GAO found that over a four-and-a-half-year period accreditors sanctioned about 8 percent of the institutions they oversee and only terminated the accreditation of about 1 percent.[8] Accreditors already did not have a good record of sanctioning and terminating poor-quality and fraudulent institutions, and these regulations would lower the bar further.

Congress wanted strong quality assurance and it wanted independent quality assurance. It gave the Secretary authority over *who* may serve as a gatekeeper, and it withheld authority over *what* the gatekeepers must require. Section 496(a)(5) lists the topics an agency's standards must address — among them student achievement, curricula, faculty, fiscal and administrative capacity, recruiting and admissions practices, program length, the record of student complaints, and the record of Title IV compliance. Congress told accreditors what subjects to have standards about and declined to tell them what those standards should say. Three separate prohibitions in § 496 enforce that line, and two further statutes bar the Department from exercising direction, supervision, or control over curriculum, program of instruction, personnel, or over any accrediting agency.[9]

Those limits are specific, and they reach well beyond curriculum. Section 496(g) bars the Secretary from establishing criteria for accrediting agencies that are not required by section 496, and separately provides that nothing in the chapter may be construed to prohibit or limit an agency from adopting additional standards of its own. Section 496(n)(3) bars the Secretary, under any circumstances, from basing a recognition decision on criteria other than those contained in section 496. Section 496(o) bars the Secretary from promulgating any regulation with respect to the standards of an accrediting agency described in section 496(a)(5). And section 103(b) of the Department of Education Organization Act and section 438 of the General Education Provisions Act each bar any officer or employee of the Department from exercising direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of an institution, or over any accrediting agency. Read together, they leave the Department free to decide who may be recognized and not free to decide what a recognized agency's standards must say.

That limit is intentional Congress legislated against the backdrop of a long-standing understanding that the federal government does not decide what colleges teach or whom they hire, and it wrote that understanding into the statute creating the Department itself, which forbids any officer of the Department from exercising "direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution." The independence that limit protects is a large part of why American higher education is widely regarded as the strongest

[8] U.S. Government Accountability Office, "Higher Education: Education Should Strengthen Oversight of Schools and Accreditors," GAO-15-59, December 2014, covering October 2009 through March 2014. Over that period accreditors issued at least 984 sanctions to 621 schools and terminated 66.

[9] See note 2 above for the § 496 prohibitions. Section 103(b) of the Department of Education Organization Act provides that no provision of a program administered by the Secretary "shall be construed to authorize the Secretary or any such officer to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, over any accrediting agency or association, or over the selection or content of library resources, textbooks, or other instructional materials … except to the extent authorized by law." 20 U.S.C. § 3403(b), https://www.law.cornell.edu/uscode/text/20/3403. Section 438 of the General Education Provisions Act uses the same language and binds "any department, agency, officer, or employee of the United States" with respect to "any applicable program," which includes the Title IV programs. 20 U.S.C. § 1232a, https://www.law.cornell.edu/uscode/text/20/1232a.

in the world: its universities consistently lead the global rankings. That preeminence is the product of a decentralized system in which institutions retain autonomy over what they teach and whom they hire, and in which quality is assured through the triad, with judgments about academic quality left to independent peer review rather than to government officials. An accreditor that has to consider what the current administration thinks of a college's faculty, research, admissions, and related policies is not making an academic judgment, nor is it centering quality assurance.

That risk is not hypothetical. A new accrediting body organized by state systems has been publicly promoted as an alternative to incumbent accreditors its backers call ideologically captured, and several states now direct or encourage their public institutions to switch to new accreditors for political reasons.[10]

II. The Department should strengthen accreditation where it is intended to protect students

A. Student achievement standards (§ 602.17(a)(1))

New America has argued for years that accreditation should be more attentive to student outcomes, and we continue to support that goal.[11] The question is not whether student achievement should be measured, but how the Department can encourage strengthened standards within the limits Congress established. Section 496(g) provides that nothing in the section permits the Secretary "to establish any criteria that specifies, defines, or prescribes the standards that accrediting agencies or associations shall use to assess any institution's success with respect to student achievement." Requiring agencies to evaluate a specified list of measures could be understood as prescribing the standards they must use to assess student achievement.

Recommendation: As we urged during the last accreditation rulemaking, the Department can pursue this objective within those limits.[12] Section 496(a)(5)(A) already requires agencies to have student-achievement standards. The Department could require that an agency use reliable data, that agencies publish their student-achievement floors; that the floors be specific enough to be auditable; that agencies apply their standards consistently across institutions and disclose institutional performance against them; and that agencies demonstrate, through the recognition process, that they have acted on the results. That preserves meaningful outcome accountability

[10] Jeremy Bauer-Wolf, "A New State-Led Accreditor Risks Politicizing College Oversight," New America, February 12, 2026; Edward Conroy, "Not so fast! Department of Education Puts Colleges on Notice About Accreditor Shopping," New America, August 9, 2022 (on state laws directing public institutions to change accreditors).

[11] See Amy Laitinen and Clare McCann, "The Bermuda Triad: Where Accountability Goes to Die," New America, November 19, 2019 (urging that accreditors prioritize student outcomes in accreditation decisions); Edward Conroy and Rachel Fishman, Comments to the Department of Education regarding information collected for the Database of Accredited Postsecondary Institutions and Programs, New America, December 15, 2022; Edward Conroy, "If 'Outcomes Are Key' in Higher Education, Why Do Accreditors Oppose Minimum Standards for Colleges?," New America, March 5, 2024.

[12] New America supported the Department's 2024 proposal to require accreditors to set minimum thresholds on student-success measures; that proposal did not reach consensus. See Edward Conroy and Lydia Franz, "'We Just Disagree:' Department of Education Concludes Negotiated Rulemaking Without Consensus on Student Protections," New America, March 14, 2024.

while respecting the role Congress assigned to accrediting agencies. Where additional authority is needed to go further, the Department should work with Congress rather than assert it by regulation.

B. Teach-out plans and transcript access (§ 602.24(c)–(d))

These provisions are the strongest in the rule and should be finalized as proposed. Requiring a plan to maintain and provide access to transcripts upon closure; requiring a record-retention plan provided to enrolled students; clarifying the distinction between teach-out plans and teach-out agreements; and requiring agencies to publish information on obtaining transcripts, loan discharges, and reimbursement all address documented harms and rest solidly on § 1099b(c)(3) and (c)(6).[13]

Students rarely recover from a closure they did not see coming. Reenrollment after an orderly closure is 64 percent; after an abrupt closure it is 40 percent, and at four-year for-profit institutions the gap is wider, 70 percent against 42 percent.[14] Only 22 percent of closure-affected students ever completed a credential, and those who did averaged 6.5 academic years against national norms of 5.1 years for a bachelor's degree and 3.3 for an associate degree.[15] On transcripts, an estimated 6.6 million current and former students cannot obtain their records because they still owe a balance to a closed school they attended.[16] Those balances came to roughly $6.5 billion in fiscal year 2018, and are often only a few hundred dollars a student.

Three additions would strengthen these provisions. Require teach-out plans proactively on the statutory triggers, not only agreements reactively. Adopt a "reasonably similar program" standard, because a teach-out into a materially different program does not deliver the enrolled student's objective. And bar a same-institution branch campus from serving as the sole teach-out partner. The researchers who assembled the closure data found that students who reenrolled at another branch campus sometimes lived through a second closure, and concluded that "allowing branch campuses of the same institution to serve as the teach-out partner is inadequate."[17]

Records-retention and teach-out policies are the interventions that have a measured effect on post-closure reenrollment. Students who experienced a closure in a state with a student-records policy, a teach-out policy, or both were 54 percent and 95 percent more likely to be enrolled again

[13] The most comprehensive evidence is the series by the State Higher Education Executive Officers Association and the National Student Clearinghouse Research Center: Rachel Burns et al., "A Dream Derailed? Investigating the Impacts of College Closures on Student Outcomes," November 2022; and Rachel Burns et al., "A Dream Derailed? Investigating the Causal Effects of Student Protection Authorization Policies on Student Outcomes after College Closure," August 2023. The second report finds that student-records and teach-out policies are the state protections that measurably improve post-closure reenrollment.

[14] Rachel Burns, Lynneah Brown, Kelsey Heckert, Dustin Weeden, Hee Sun Kim, Beatrix Randolph, Aaron Pevitz, Sarah Karamarkovich, and Jennifer Causey, "A Dream Derailed? Investigating the Impacts of College Closures on Student Outcomes," State Higher Education Executive Officers Association and National Student Clearinghouse Research Center, November 2022.

[15] Rachel Burns, Lynneah Brown, Kelsey Heckert, Dustin Weeden, Hee Sun Kim, Beatrix Randolph, Aaron Pevitz, Sarah Karamarkovich, and Jennifer Causey, "A Dream Derailed? Investigating the Impacts of College Closures on Student Outcomes," State Higher Education Executive Officers Association and National Student Clearinghouse Research Center, November 2022.

[16] Julia Karon, James Dean Ward, Catharine Bond Hill, and Martin Kurzweil, "Solving Stranded Credits," Ithaka S+R, October 5, 2020, https://sr.ithaka.org/publications/solving-stranded-credits/.

[17] Burns et al., November 2022, at 9. The same report finds that 99 percent of students who experienced more than one closure had their first closure at a private for-profit institution.

within four months than students in states with neither, and the two policies together did more than either alone.[18] In this NPRM, the Department does not quantify the benefits of its best provision. We urge the Department to refer to the estimate from its 2019 accreditation rule, where it approximated closed-school effects.

Recommendation: Finalize these provisions, and require a teach-out plan at each of the points the statute already identifies — when the Department notifies the agency of an action against the institution under § 1094(f), when the agency itself acts to withdraw, terminate, or suspend accreditation, and when the institution notifies the agency that it intends to cease operations — rather than only once a closure is underway. We suggest adding the following to § 602.24(c): "A teach-out plan must identify a teach-out opportunity in a program reasonably similar in content, structure, and scheduling to the program in which the student is enrolled, and may not rely solely on an additional location or branch campus of the closing institution."

C. Transfer of credit (§ 602.24(e) and § 668.43)

Credit loss is a real barrier to student success. Students who transfer between institutions frequently lose credits, which delays completion and increases costs. Institutions and students deserve better.

Congress addressed this problem by requiring transparency around transfer of credit, rather than mandating acceptance of credit. Section 1092(h) requires institutions to publicly disclose their transfer-of-credit policies before students enroll, giving students the information they need to make informed decisions. Congress did not require institutions to accept all credits, but it did require that students know which credits will transfer before they commit.

The Department can make changes within Congress's framework to make it easier for students to transfer credit. Require institutions to disclose, before students enroll or incur financial obligations, which credits will and will not transfer, and the criteria for denial. Require a published institutional grievance procedure for disputed transfers. This gives students real information at the moment they need it—to decide whether to transfer—while preserving institutional judgment about academic quality.

D. Transparency and institutional reporting (§§ 602.2, 602.27)

Requiring the Department's website to display the current accreditation status of every institution and program, kept current, is a genuine consumer protection and one of the provisions here that most directly helps students. Three additions would make it materially more useful. Include the history of accreditation actions rather than only current status: if institutions can move between accreditors more freely under § 600.11, a display showing only the present agency hides exactly what a prospective student needs to know, so prior agencies, prior accreditation actions, and the date and stated reason for any change should be retained and shown. Publish the data in

[18] Rachel Burns, Dustin Weeden, Ellen Bryer, Kelsey Heckert, and Lynneah Brown, "A Dream Derailed? Investigating the Causal Effects of Student Protection Authorization Policies on Student Outcomes after College Closure," State Higher Education Executive Officers Association, August 2023. The same study finds no positive association between tuition recovery funds or surety bonds and post-closure reenrollment.

machine-readable form with a public interface, so that states, researchers, and journalists can examine accreditor behavior at scale. And flag any institution operating under a continuation of eligibility granted under § 602.26, so a student can see that a college is drawing federal aid despite an adverse accreditation action.

Recommendation: Finalize the transparency requirements with those three additions.

E. Conflicts of interest and the separate-and-independent requirement (§ 602.14)

Strengthening the separate-and-independent requirement is consistent with § 496(a)(3) of the HEA and is a real safeguard.[19] Independence from the institutions an agency reviews is what makes a peer judgment worth relying on, and the Department is on solid statutory ground here.

Two changes would make the provision work better. On public members, the Department should adopt a defined cooling-off period — a set number of years between service at an affiliated association or an accredited institution — rather than a categorical bar. GAO's expert respondents identified faculty and administrators as the source of the expertise that makes review meaningful, and a definition broad enough to exclude anyone who has ever worked in the field risks excluding valuable expertise. A cooling off period would help limit concerns about influence.[20] And the Department should close the conflict it left open: an express bar on owners and shareholders of accredited institutions voting on accreditation decisions. The Department declined on the ground that any such owner would already be affiliated and therefore already covered.[21] If that is right, writing the bar down costs nothing. If it is wrong, the gap sits in the highest-risk category of institution.

Recommendation: Adopt a defined cooling-off period for public members, and bar owners and shareholders of accredited institutions from voting on accreditation decisions in regulatory text.

F. Credential standards (§ 602.15(e)(7))

We share the concern that students should not be required to earn a longer credential than a field actually demands. But the mechanism the Department chose points the wrong way, and it conflicts with the statute. Proposed § 602.15(e)(7) would condition an accreditor's ability to raise a credential standard on a showing of "clear and convincing evidence" to the Secretary. Section 496(g) of the HEA provides that nothing in the chapter shall be construed "to prohibit or limit any accrediting agency or association from adopting additional standards not provided for in this section."[22] Requiring federal permission before an accreditor may adopt a higher standard is the thing that sentence forbids, and it would make the Department the arbiter of how much education a credential should represent. The practical problems compound the legal one. The Department has not said what "clear and convincing evidence" would consist of, how long it would take to decide, or

[19] 20 U.S.C. § 1099b(a)(3), which requires that a recognized agency be "separate and independent, both administratively and financially, of any related, associated, or affiliated trade association or membership organization."
[20] U.S. Government Accountability Office, "Higher Education: Expert Views of U.S. Accreditation," GAO-18-5, December 2017, https://www.gao.gov/products/gao-18-5.
[21] U.S. Department of Education, "Accreditation, Innovation, and Modernization; The Secretary's Recognition of Accrediting Agencies," 91 Fed. Reg. 53940 (August 20, 2026) (preamble discussion of § 602.14).
[22] 20 U.S.C. § 1099b(g), https://www.law.cornell.edu/uscode/text/20/1099b.

whether an agency could seek review of a refusal. An accreditor that concludes a field has changed — that a program now needs additional clinical hours, or a sequence aligned to a new licensure requirement — would have to persuade the Department before it could act, and would bear the risk of guessing wrong about a standard the Department has not defined. Nothing comparable applies to an agency that lowers a credential requirement, which faces no showing at all. This, like many other provisions in this proposed rule, makes weakening accreditation easier and clearer.

Recommendation: Strike the requirement of a showing to the Secretary. If the Department wants accreditors to justify credential requirements, it should require them to publish and periodically review the basis for their program-length standards, which is transparency rather than federal approval.

III. Accreditation should not be a race to the bottom

The proposed rule would make it easier for institutions to switch accreditors and easier for new, unvetted accreditors to enter the federal system. History and economic evidence show this is a formula for regulatory collapse.

The rules governing accreditor changes have been tightened once and loosened twice in seven years, and the Department has examined none of the impacts. Congress made an institution ineligible for Title IV for 24 months after its accreditation has been withdrawn, revoked, or terminated for cause. In 2019, after negotiated rulemaking and full notice and comment, the Department went further: it provided that an institution cannot establish reasonable cause to change accreditors if it has been under a withdrawal, a probation or equivalent, a show-cause order, or a suspension order in the preceding 24 months, while allowing the Secretary to find cause anyway where the agency denied the institution due process or applied its standards inconsistently.[23] In 2025, Dear Colleague Letter GEN-25-03 dismantled the review process built around that rule. This proposal would now remove the disqualifiers themselves. The 2019 guardrails exist because the moment an institution most wants a new accreditor is the moment its current one has concluded the institution no longer meets standards, and because a new agency inherits none of the record — no site-visit reports, no financial analysis, no open inquiry — and restarts the clock on a self-report.

When an accreditor with weaker standards is available, institutions under pressure find it. In its 2013 annual report, the owner of the Kaplan colleges disclosed that two other national accreditors, the Accrediting Commission of Career Schools and Colleges and the Council on Occupational Education, had placed Kaplan campuses on negative sanctions for failing to meet student achievement standards. In the same filing it disclosed that it had moved all of its nationally

[23] The 24-month ineligibility bar is statutory. 20 U.S.C. § 1099b(j)(2)–(3); 34 C.F.R. § 600.11(c). The disqualifiers on changing accreditors, and the accompanying waiver, were added by the Department in its 2019 accreditation rulemaking and appear at 34 C.F.R. § 600.11(a)(1)(ii) and (a)(2). See U.S. Department of Education, "Student Assistance General Provisions; The Secretary's Recognition of Accrediting Agencies; The Secretary's Recognition Procedures for State Agencies," 84 Fed. Reg. 58834 (November 1, 2019). The preamble to that rule described the disqualifiers as "guardrails to ensure that struggling institutions cannot avoid the consequences" of failing to meet standards "by attaining accreditation from another agency."

accredited Kaplan campuses to ACICS.[24] The Department's own review of ACICS found an agency that repeatedly acted only after some other regulator had acted first.[25] The pattern is not that institutions shop for a better reviewer; it is that institutions under pressure shop for a less demanding one, and a permissive agency grows by taking them. That conduct is what the 2019 disqualifiers were written to stop, and it is what this proposal would allow.

The pressure now also runs through state law. As mentioned above, several states have directed or encouraged their public institutions to change accreditors, and a new agency founded by state systems is positioning itself to receive them.[26] Whatever one thinks of those laws, they mean that accreditor changes will increasingly be driven by something other than a judgment about educational quality. A federal rule that presumes reasonable cause, and that the Department has told institutions will not be reviewed onerously, leaves nothing to catch the cases that matter.

A. Accreditor shopping (§ 600.11)

Congress codified the cooling-off principle in 20 U.S. Code § 1099b(j), and in § 496(h) of the Higher Education Act by requiring that an institution changing agencies "submit to the Secretary all materials relating to the prior accreditation, including materials demonstrating reasonable cause for changing the accrediting agency or association." The statute's starting point is refusal: the Secretary will not recognize the switch unless the institution's materials demonstrate reasonable cause for it. The 2019 rule built on that starting point by identifying the circumstances in which reasonable cause cannot be established: a withdrawal, a probation or equivalent, a show-cause order, or a suspension order in the preceding 24 months. Those are the provisions this proposal would strike.

The proposed rule inverts that structure by establishing four independent prongs. It creates a presumption that cause is reasonable unless the Secretary affirmatively finds that the institution seeks the change in order to (1) evade or circumvent federal law, (2) avoid or delay accreditor enforcement or oversight, (3) obtain Title IV eligibility through misrepresentation, or (4) otherwise undermine Title IV integrity. It also removes the requirement that institutions get approval. The Department acknowledged the design on the record: its own negotiator described it as "turning the expectation or the assumption in the regulation from … you have to prove why you're going to

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24 Ben Miller, "ACICS Must Go," Center for American Progress, June 2016, at 13–15, https://www.americanprogress.org/wp-content/uploads/sites/2/2016/06/ACICS-report.pdf. The report concludes that "it appears that, in some cases, actions by other accreditors may have encouraged colleges to move to ACICS." Negative sanctions of the kind described there are precisely the status that the 2019 disqualifiers at 34 C.F.R. § 600.11(a)(1)(ii)(B) now reach, and that this proposal would remove.

25 U.S. Department of Education, Accreditation Group, "Final Analysis and Recommendation for the Accrediting Council for Independent Colleges and Schools," February 2021.

26 Jeremy Bauer-Wolf, "A New State-Led Accreditor Risks Politicizing College Oversight," New America, February 12, 2026; Edward Conroy, "Not so fast! Department of Education Puts Colleges on Notice About Accreditor Shopping," New America, August 9, 2022.

make the change to basically assuming that the change is okay."[27] Congress placed the burden on the regulated party, and the Department cannot legally relocate it by regulation.[28]

The proposal is not only unlawful, but also unworkable on its own terms. Every one of the four prongs turns on institutional intent, which an institution is unlikely to volunteer. The Department has not specified what evidence would demonstrate intent under any prong. The rule does not require the institution to state its reasons in its own words — it requires only "materials demonstrating reasonable cause," a document transmittal. And under Dear Colleague Letter GEN-25-03, the institution's entire submission is a self-certification form, reviewed under a 30-day deemed-approval clock that this NPRM neither codifies nor mentions.[29] An undefined, intent-based standard applied to self-certified documents on a 30-day clock is structurally unenforceable. The student negotiator put this to the Department directly during negotiated rulemaking: "How is the Department going to determine whether an institution isn't trying to switch for one of the reasons that you've outlined?" The Deputy Assistant Secretary for Postsecondary Education answered: "Well, again, the default now is that you have to ask permission to leave. So I guess my question back to you is, why should we allow that to continue? And why isn't this a better approach?"[30] That is the whole of the Department's answer. It has never identified a mechanism, an indicator, or an evidentiary showing by which evasive switching would be detected.

The Department also demands more of an institution seeking a second accreditor than of one leaving its first altogether. An institution seeking multiple accreditation must provide "a written explanation showing reasonable cause"; an institution changing accreditors altogether need

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[27] U.S. Department of Education, "Transcript of the Accreditation, Innovation, and Modernization Negotiated Rulemaking Committee, Session 1, Day 1 (Afternoon Session)," April 13, 2026, https://www.ed.gov/media/document/2026-negotiated-rulemaking-aim-transcripts-day-1-pm-113990.pdf. Department counsel confirmed in the same session that the provision "becomes essentially a rebuttable presumption that essentially an institution has allowed the change unless the Secretary determines that it's being done for one of these reasons set forth herein."

[28] 20 U.S.C. § 1099b(h), https://www.law.cornell.edu/uscode/text/20/1099b. The statute is framed as a prohibition subject to an exception: the Secretary "shall not recognize the accreditation of any otherwise eligible institution … unless" the institution submits materials demonstrating reasonable cause. The institution's submission is the condition that lifts the default, and the Department may not relocate by regulation a showing the statute places on the regulated party. The proposed removal of the 24-month ineligibility provisions also conflicts with 20 U.S.C. § 1099b(j)(2) and (3); Congress wrote exactly one exception to § 1099b(j), at § 1099b(k), for withdrawals related to religious mission.

[29] U.S. Department of Education, "Changes to the Approval Process for Changing Accrediting Agencies," Dear Colleague Letter GEN-25-03, April 30, 2025, https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2025-04-30/changes-approval-process-changing-accrediting-agencies. GEN-25-03 superseded GEN-22-10 and GEN-22-11, dismantled the pre-clearance process those letters established, stated that "[t]he law and regulation do not dictate a robust or onerous process for receiving the Department's approval," and provided that an application is deemed approved if the Department does not respond within 30 days. The NPRM neither codifies nor mentions the deemed-approval clock or the self-certification form, and the Department should state plainly whether either survives this rulemaking. An agency "must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made," and acts arbitrarily when it "entirely fail[s] to consider an important aspect of the problem." Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29, 43 (1983), https://supreme.justia.com/cases/federal/us/463/29/. An agency also may not adopt an outcome-determinative standard while declining to give it definitional content: "[t]o refuse to define the criteria it is applying is equivalent to simply saying no without explanation." Pearson v. Shalala, 164 F.3d 650, 660–61 (D.C. Cir. 1999), https://law.justia.com/cases/federal/appellate-courts/F3/164/650/488876/.

[30] Exchange between Magnus Noble, primary negotiator for students, and Jeff Andrade, Deputy Assistant Secretary for Postsecondary Education, in U.S. Department of Education, "Transcript of the Accreditation, Innovation, and Modernization Negotiated Rulemaking Committee, Session 1, Day 1 (Afternoon Session)," April 13, 2026.

provide only "materials." Yet a second accreditation is additive — the institution remains subject to the original agency's standards and enforcement — while a change is subtractive, severing the relationship with the agency that knows the institution's history and substituting one starting from zero. And the safe harbor at proposed § 600.11(b)(2), providing that the Secretary will not find cause unreasonable "due to a withdrawal, revocation, other termination of accreditation, probation or equivalent, show cause order, or suspension order," cannot be reconciled with the Department's own assurance that "an institution subject to an adverse action cannot switch its recognition to simply avoid consequences." The safe harbor and that assurance cannot both be true, and the Department should say which one it means.

Those statuses are not interchangeable. Each one signals serious institutional risk, which is exactly why the bar exists. Accreditors do not reach for them lightly. As previously mentioned, over the four and a half years GAO examined, accreditors sanctioned about 8 percent of the institutions they oversee and terminated the accreditation of about 1 percent. The more telling number may be the actions that did not happen: the Department found that ACICS repeatedly either missed compliance problems entirely or moved only after another regulator had already acted.[31] Each status arises at the moment when an institution's incentive to leave is highest and the public's interest in keeping it under supervision is greatest. The consequences also reach beyond the accreditation relationship: adverse action is itself a trigger for teach-out planning under 20 U.S. Code § 1099b(c)(3), so an institution that escapes a sanction by changing agencies also escapes the student protections that the sanction would have triggered.

Finally, the Department has never examined what the last round of loosening actually did to create the evidentiary base for this change. The Regulatory Impact Analysis concedes that "in retrospect, we know the number of institutions that changed accreditors was fairly low and it is difficult to attribute particular changes in volume to accreditation reforms," and then asks commenters to supply the data. After seven years under the 2019 rule and sixteen months under GEN-25-03, the Department should not issue an unvetted policy a third time unless it has the evidence to do so.

The Department should leave § 600.11 as it stands and enforce it. The recommendations below apply only if the Department proceeds over the objections above; none of them should be read as agreement that the proposed structure is lawful or that it can be made to work.

Recommendations:

- Require the institution to submit a written statement identifying its reasons for the change, the current and proposed agencies, and how the new agency will maintain or strengthen quality and protect consumers.
- Require supporting materials: the most recent accreditation determination letter; visiting-team reports and other agency feedback from the prior three years; information on pending consumer complaints and investigations by state and local licensing and

[31] U.S. Government Accountability Office, "Higher Education: Education Should Strengthen Oversight of Schools and Accreditors," GAO-15-59, December 2014. Over the period examined, accreditors issued at least 984 sanctions to 621 schools and terminated accreditation for about 1 percent of accredited schools.

law-enforcement agencies; and a current-status confirmation from the institution's present accreditor stating whether it has opened inquiries, engaged in substantive dialogue about compliance, or taken any action. That last item matters most, because it is the only one that does not depend on the candor of the institution whose intent is at issue. This would not increase burden because every item already exists; none must be created for the Department.

- State expressly that the burden rests on the institution, and specify what materials would demonstrate evasive switching under each of the four prongs.
- Retain the statutory disqualification for institutions under adverse action, show-cause, or probation in the preceding 24 months, or provide that such status is presumptive evidence of evasive intent under § 600.11(a)(1)(ii)(B). Strike the safe harbor at § 600.11(b)(2), and apply the same demonstration requirement to multiple accreditation that applies to switching.
- State plainly in regulatory text that a change of accrediting agency does not take effect for Title IV purposes until the Secretary approves it, that the Secretary may extend the review period, and what the institution should expect by way of acknowledgment, decision deadline, and statement of reasons. Negotiators asked for all of this and the published rule supplies none of it.
- Report, in the final rule, how many institutions have changed accreditors since the 2019 rule took effect, how many were under sanction at the time, and what has happened to those institutions since — including their students' outcomes, whether any are under Department investigation, and whether any have been placed on heightened cash monitoring or subjected to other Department sanctions.

B. Accrediting experience (§ 602.12)

Section 1099b(a)(1) of 20 U.S. Code requires that an agency "demonstrate the ability **and the experience** to operate as an accrediting agency or association." [Emphasis added.] Congress specified *both*, separately. The ability to accredit an institution is not sufficient to prove experience.

The Department's proposed language only tests ability: an agency must be legally established, have adopted standards, have adopted operating procedures, and have received at least one application for accreditation. None of these requires any actual accrediting experience. Zero completed accreditation cycles cannot reasonably satisfy a statutory experience requirement.

The Department justifies this change on the ground that the two-year requirement "is not statutory and represents undue and unnecessary burden." But nearly every recognition criterion the Department has ever adopted goes beyond the statute's exact language; non-statutory origin describes how agencies implement statutes, and is not a reason for repeal. The Department's job is to implement the requirement of "experience," not to eliminate it because the statute does not specify a precise measure. The Department also retained an accrediting-experience requirement in 2019 after full notice and comment, and has not explained what changed in the factual record since.[32] Institutions selected accreditors and states built authorization schemes on the assumption that recognized agencies had been vetted for demonstrated competence, because states lack the capacity and expertise to oversee higher education quality themselves — which is why Congress built the triad the way it did.[33] Those are reliance interests the Department must consider, and eliminating the requirement puts federal funds behind institutions reviewed by an agency that has never completed a review.

Entry standards matter so much because removing a recognized agency takes years. ACICS was terminated in 2016, reinstated in 2018, terminated again in 2021, and the matter was finally resolved in August 2022 — six years, during which it continued to accredit institutions, and at the end of which the Department found a "continued long-standing inability to come into compliance with the minimum standards expected of accreditation agencies." If it takes six years to remove a recognized agency that cannot meet minimum standards, it is completely irresponsible of the Department to reduce the standards for admitting one. The $9.7 billion in student loan discharges traceable to two chains accredited by that one agency is what a single recognition error can cost.

Here, too, the Department should retain the existing requirement rather than replace it. What follows applies only if it declines to do so.

Recommendations:

- Retain a demonstrated-experience requirement before an agency submits a petition, and require that experience be demonstrated through completed accreditation reviews rather than the processes in place to complete an eventual review. An agency should have conducted and completed a full review cycle, including a site visit and a decision, for at least one institution or program within the scope sought.
- Require that an agency's accrediting experience cover the range of degrees, certificates, institutions, and programs for which it seeks recognition. An agency that has reviewed a single certificate program should not be recognized to accredit doctoral institutions.
- Adopt a three-year initial recognition period with a required monitoring report, rather than five years, and confirm that first-time applicants receive the most rigorous review track rather than the lightest.
- Establish explicit risk-based triggers for enhanced monitoring of newly recognized agencies, including rapid growth in portfolio size, an elevated rate of adverse actions or closures among accredited institutions, and accreditation of institutions that recently changed agencies.

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[32] When an agency reverses a position it must acknowledge the change and provide reasons, and where the new policy rests on factual findings that contradict those underlying the prior policy, or where the prior policy engendered serious reliance interests, it must supply "a more detailed justification." FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515–16 (2009), https://supreme.justia.com/cases/federal/us/556/502/; Encino Motorcars, LLC v. Navarro, 579 U.S. 211, 221–22 (2016), https://supreme.justia.com/cases/federal/us/579/15-415/; Department of Homeland Security v. Regents of the University of California, 591 U.S. 1, 30 (2020), https://supreme.justia.com/cases/federal/us/591/18-587/.

[33] The division of labor among the federal government, the states, and accreditors is set out in 20 U.S.C. § 1099b and § 1099c. On state capacity, see U.S. Government Accountability Office, "Higher Education: Expert Views of U.S. Accreditation," GAO-18-5, December 2017, reporting that experts identify accreditors rather than states as the source of substantive academic quality review.

IV. Accreditation must remain independent of political and federal control

Congress gave accreditation a federal role and then drew a line around it. The Secretary decides who may serve as a recognized gatekeeper; accreditors and institutions decide what quality means in an academic field. Section 496 of the Higher Education Act enforces that line three separate times, and two further statutes bar the Department from exercising direction, supervision, or control over curriculum, program of instruction, personnel, or over any accrediting agency.[34] The Department's entire authority statement for this rulemaking is a single paragraph, and it cites none of these provisions.

The provisions at § 602.17(a)(2) and § 602.18 cross that statutory line. They intrude upon matters of institutional autonomy and academic freedom. They are tied together by a common subject — faculty, what they may teach, what they may say, and how viewpoints must be balanced among them — and they exceed the Department's authority for the same reasons. Some of them impose requirements that appear nowhere in the § 496(a)(5) of the Higher Education Act's list of areas an accreditor's standards must address, which § 496(g) of the HEA forbids.[35] Others regulate "faculty," which is a listed area, but this is also not allowable because listing a topic authorizes an accreditor only to maintain standards, it does not authorize the Department to dictate what those standards must contain. In fact, § 496(o) of the HEA bars this explicitly. Additionally, every one of these provisions reaches into the institution's personnel and curriculum—the faculty it hires and what it teaches—which the Department of Education Organization Act and General Education Provisions Act independently prohibits. Framing the requirements as directives to accreditors rather than institutions does not suddenly wash the intent: when the Department orders an accreditor to require an institution to do something, it is intruding in ways that Congress purposefully did not allow.

The Department should keep a federal definition of academic freedom out of the final rule entirely, and it should say plainly that the definition carried in the preamble has no regulatory effect. The preamble asserts that the definition is consistent with Executive Order 14279. An agency or institution reading that, and knowing the Department controls recognition, will reasonably treat the definition as the standard it is expected to meet, whether or not it ever appears in regulatory text. Preamble language that functions as a

[34] See notes 2 and 5 above.

[35] The statutory problems stack. Academic freedom, intellectual diversity, viewpoint neutrality, and research integrity appear nowhere in § 496(a)(5)'s list of standards areas, so § 496(g) bars them as criteria "not required by this section," and § 496(n)(3) bars their use as recognition criteria "under any circumstances." "Faculty" is a § 496(a)(5)(C) area, so § 496(o) bars regulation with respect to it. And 20 U.S.C. §§ 3403(b) and 1232a forbid the Department to exercise direction, supervision, or control over institutional personnel, curriculum, or program of instruction, or over any accrediting agency. The Department cites none of these provisions. On research integrity specifically, a binding government-wide framework has existed since 2000: the Office of Science and Technology Policy's Federal Policy on Research Misconduct, 65 Fed. Reg. 76260 (December 6, 2000), https://www.federalregister.gov/documents/2000/12/06/00-30852/executive-office-of-the-president-federal-policy-on-research-misconduct-preamble-for-research, implemented by the Public Health Service at 42 C.F.R. part 93 and by a parallel National Science Foundation regime. The Department should identify the gap accreditor review would fill; absent one, the provision duplicates an existing framework administered by the agencies that fund the research, at the cost of inconsistent definitions of misconduct across accreditors and conflicting findings on the same allegation.

standard while escaping notice and comment is the worst of both worlds, and its presence there suggests the Department may intend to add it to the final rule or to issue it as guidance later.

A federal definition of academic freedom, enforced through Title IV eligibility, is the very intrusion the concept exists to prevent, and the Supreme Court has said so directly. In *Sweezy v. New Hampshire*, the Court identified the "four essential freedoms" of a university: to decide for itself, on academic grounds, who may teach, what may be taught, how it shall be taught, and who may be admitted to study.[36] This proposed rule takes the first two for those decisions—who teaches and what they teach—away from the university and gives them to the federal government. And in *Keyishian v. Board of Regents,* the Court held that academic freedom is "a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."[37] A rule that conditions federal funding on adherence to a government definition of academic freedom, and on a government-set balance of viewpoints among an institution's faculty, is *exactly* that pall.

There are drafting defects as well: the negotiated text carries near-duplicate academic-freedom language in both § 602.17(a)(2)(iii) and § 602.17(a)(2)(vii)(A), with materially different phrasing, so a regulated institution cannot tell which formulation governs—a fair-notice problem apart from the merits. And to the extent the proposal requires *private* institutions to guarantee "the same or similar" First Amendment protections, it extends a constitutional constraint to entities the Constitution does not reach.

Accreditors are also not constitutional adjudicators. Proposed § 602.17(a)(2)(v) and (vii) would have agencies evaluate whether an institution consistently applies policies that protect the First Amendment. Constitutional compliance is adjudicated by courts. Accreditors have no subpoena power, no compulsory process, no adjudicative record, and no expertise in constitutional law, and peer teams are not equipped to determine whether a given application of a speech policy was lawful. Nor is the Department, which would be reviewing those determinations through the recognition process without any of the procedural apparatus a court brings to the same question.

Accreditors should not be transformed into civil rights enforcement agencies. Proposed § 602.17(g) would, according to the preamble, require accrediting agencies to ensure that their standards do not result in "unlawful discrimination" and should "evaluate glaring violations" of Federal or State law. The Department states that this provision is not intended to make accreditors arbiters of violations of Federal law but it does not explain how accreditors are expected to identify or evaluate glaring violations without interpreting and applying complex legal requirements. Proposed § 602.23(h) raises a similar concern by requiring accrediting agencies to ensure that their policies do not require institutions to violate Federal or State law, including Title VI and Title IX. Accreditors have an important role in evaluating whether institutions meet standards for educational quality but they do not have the capacity to assess compliance with Federal or state

[36] Essential freedoms of a university include determining "who may teach" and "what may be taught," Sweezy v. New Hampshire, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring in the result), https://supreme.justia.com/cases/federal/us/354/234/; see also Regents of the University of Michigan v. Ewing, 474 U.S. 214, 226 & n.12 (1985), https://supreme.justia.com/cases/federal/us/474/214/.

[37] Academic freedom is "a special concern of the First Amendment," Keyishian v. Board of Regents, 385 U.S. 589, 603 (1967), https://supreme.justia.com/cases/federal/us/385/589/.

laws. The proposed regulations do not explain what legal standard should be applied, what procedures they should use, and at what point a “glaring violation” is considered to have occurred. Any such violations are best enforced through existing legal and administrative processes. The Department is responsible for enforcing Federal civil rights laws and should not place this expectation on accrediting agencies who should be focused on issues of educational quality and holding institutions accountable.

Recommendation: The Department should withdraw § 602.17(g) and § 602.23(h).

The intellectual-diversity mandate at § 602.17(a)(2)(viii) should be withdrawn in its entirety. It would require agencies to evaluate whether an institution maintains a policy designed to “support, promote, and appropriately prioritize intellectual diversity and the free exchange of ideas amongst faculty” and that “measures student and faculty perceptions on the range of viewpoints and perspectives offered.” Its only identifiable source is Executive Order 14279’s instruction that the Secretary mandate that accrediting agencies require member institutions to act, and an executive order cannot supply authority Congress withheld.[38]

The provision has problems beyond the Department’s authority to issue it. A federal requirement that an institution “prioritize” a particular distribution of viewpoints among its faculty, enforced through federal funding eligibility, is a government-prescribed orthodoxy about the composition of academic discourse.[39] The measurement requirement compels the collection of data about the political and ideological beliefs of faculty and students as a condition of federal funding, and the Department identifies no instrument, no sampling frame, no response-rate floor, and no privacy protection. There is no methodological validation literature for “viewpoint diversity” campus-climate instruments — no published test-retest reliability, construct validity, or nonresponse-bias analysis — yet accreditors would make recognition-relevant judgments on the results. The Department also does not cost the requirement at all, for roughly 6,000 institutions.

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38 An executive order can direct an agency to use authority it already possesses; it cannot create authority Congress withheld or override an express statutory prohibition, and like all executive orders it is to be carried out consistent with applicable law. See Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 637–38 (1952) (Jackson, J., concurring), https://supreme.justia.com/cases/federal/us/343/579/; Chrysler Corp. v. Brown, 441 U.S. 281, 302–08 (1979), https://supreme.justia.com/cases/federal/us/441/281/. Negotiated rulemaking consensus is likewise not a source of substantive power: 20 U.S.C. § 1098a(b)(2) constrains the Department’s ability to depart from an agreement in a proposed rule; it does not relieve the Department of its obligation to respond to significant comments and reconsider provisions shown to exceed its authority.

39 “[N]o official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.” West Virginia State Board of Education v. Barnette, 319 U.S. 624, 642 (1943), https://supreme.justia.com/cases/federal/us/319/624/. The government may define the contours of a program it funds but may not “leverage funding to regulate speech outside the contours of the program itself.” Agency for International Development v. Alliance for Open Society International, Inc., 570 U.S. 205, 214–15 (2013), https://supreme.justia.com/cases/federal/us/570/205/; see also Legal Services Corp. v. Velazquez, 531 U.S. 533 (2001), https://supreme.justia.com/cases/federal/us/531/533/. Compelled collection of data on the political and ideological beliefs of faculty and students implicates associational privacy. Americans for Prosperity Foundation v. Bonta, 594 U.S. 595 (2021), https://supreme.justia.com/cases/federal/us/594/19-251/; NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958), https://supreme.justia.com/cases/federal/us/357/449/. Vagueness concerns are heightened where a regulation “abut[s] upon sensitive areas of basic First Amendment freedoms.” FCC v. Fox Television Stations, Inc., 567 U.S. 239, 253–54 (2012), https://supreme.justia.com/cases/federal/us/567/239/; see also Grayned v. City of Rockford, 408 U.S. 104, 108–09 (1972), https://supreme.justia.com/cases/federal/us/408/104/.

The terms — “intellectual diversity,” “the free exchange of ideas,” “appropriately prioritize,” “the range of viewpoints and perspectives” — are all undefined. Because the enforcement mechanism is a recognition process the Department controls, the same institutional conduct can be compliant or noncompliant depending on who holds the office. That is not a hypothetical concern in a domain where a new accrediting body has been publicly promoted as a means of displacing what its proponents (who are politicians, not academics) call “woke accreditation cartels.”[40] This is how quality assurance becomes a political instrument, which is the opposite of what students rely on accreditation to do. A nationally representative survey from New America in 2024 found that 73 percent of Americans oppose allowing the federal government to control what can and cannot be taught in the classroom.

The rule also contradicts itself in two key ways. First, on viewpoints: § 602.17 would require institutions to affirmatively prioritize a distribution of viewpoints, while § 602.18(b)(4) requires accrediting agencies to be “neutral with respect to viewpoint and ideology.” The Department asks the same system to be simultaneously affirmative and neutral about viewpoint and does not explain how both can be satisfied. Second, on mission: § 496(a)(4)(A) of the HEA requires agencies to respect “the stated mission of the institution of higher education, **including religious missions**,” making mission-respect the general rule and religious mission one example. The proposal makes viewpoint neutrality the general rule and carves out only religious mission. We object to the absence of any reasoned explanation for why a seminary’s mission is protected while the mission of a women’s college, a historically Black college or university, a tribal college, or a military academy is not. And we also object to a carve-out that runs to agencies in § 602.18 but to institutions in § 602.17, leaving unclear how a religiously affiliated institution accredited by a secular agency is protected at all.

Recommendations: For the reasons stated above, the Department should withdraw these provisions. They exceed the Department’s statutory authority, intrude on academic judgments the First Amendment places beyond federal control, and—in the case of the intellectual diversity mandate—rest on no lawful source at all. Specifically:

- The Department should withdraw § 602.17(a)(2)in its entirety.
- The Department must not include a definition of academic freedom in the final rule and clarify that the definition in the preamble of the NPRM carries no regulatory weight.
- The Department should withdraw § 602.17(g) and § 602.23(h).
- The Department should withdraw § 602.18(b)(4).

We do not concede that the Department has authority to adopt these provisions in any form, and nothing below should be read as agreement that it does. We offer the following only in the event the Department proceeds over these objections; each would reduce, but not cure, the defects we have identified.

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40 https://www.npr.org/2026/07/10/nx-s1-5869546/some-republican-states-push-for-new-college-accreditation-agency

- If the Department retains any reference to academic freedom, it should require only that an agency verify that an institution maintains, publishes, and consistently applies its own academic freedom policy. That formulation, which negotiators themselves proposed, is administrable, within an accreditor's competence, and consistent with the policies institutions have long maintained.
- If the Department retains § 602.18 (b)(4), it should extend the mission-respect principle to all stated institutional missions, consistent with § 496(a)(4)(A) of the HEA, and state expressly that an agency's application of published, consistently enforced academic quality standards is not evidence of viewpoint discrimination.
- The Department must also resolve the duplicate and conflicting academic freedom language as flagged above in § 602.17(a)(2)(iii) and § 602.17(a)(2)(vii)(A).

V. The Department has not demonstrated that these changes will improve quality

Executive Order 13563, which the Department quotes in its own Regulatory Impact Analysis, permits an agency to "propose or adopt regulations only on a reasoned determination that their benefits justify their costs." *The Department quantifies over $490 million in annual costs and quantifies no benefits at all.* Its entire benefit discussion is that students "may benefit from these provisions if the changes result in more affordable and flexible educational opportunities." Half a billion dollars against the word "may" is not a reasoned determination. On the Department's own arithmetic, this is a cost-increasing rule that removes the substantive protections which justified the existing burden, and the Department does not acknowledge that trade anywhere.

The Department modeled no behavioral change, which is their whole theory of this rule. The premise is that removing restrictions will improve outcomes through competition and innovation. Circular A-4 requires analysis of anticipated behavioral changes and of the regulatory action as a whole; the Department's own discussion of Executive Order 14192 quotes that language. It then analyzes provisions one at a time and nowhere models what happens when easier recognition of new agencies, unlimited geographic scope, easier institutional switching, permissive multiple accreditation, reduced substantive-change oversight, an accelerated accreditation process, a four-year compliance runway, and continued eligibility during review all operate simultaneously.

The economic literature also runs against the Department. When the regulated party picks and pays the entity that certifies it, adding competitors makes the certification worse rather than better. Credit ratings are the clearest example. As competition among rating agencies increased, ratings went up while their ability to predict default went down.[41] That is not competition on quality; it is competition on leniency. Issuers shopped for the most favorable rating and disclosed only that one, which biased the ratings that reached the market even though each agency believed its own estimate was sound, and the research finds that a competitive ratings market served investors

[41] Bo Becker and Todd Milbourn, "How Did Increased Competition Affect Credit Ratings?," Journal of Financial Economics 101, no. 3 (2011): 493–514. Using the growth of Fitch's market share as a natural experiment, the authors find that as competition among rating agencies increased, rating levels rose, the correlation between ratings and market-implied yields fell, and the ability of ratings to predict default deteriorated.

worse than a single rater would have. Accreditation functions similarly: the institution being regulated selects and pays the accreditor, and what is being certified is that institution's own eligibility to draw federal money. It also shares the condition that makes shopping pay, because educational quality is hard to measure and reasonable reviewers disagree about it, which is what GAO's experts said about accreditation.[42] The Department's implicit reassurance that new accreditors will act in good faith is not responsive to the problem, which is that this structure creates perverse incentives that will degrade quality.

A breakeven analysis shows what is missing. The Department separately estimates $417.9 million in annualized costs at 7 percent under Executive Order 14192, a third headline figure it never reconciles with the other two.[43] Using GAO's figures, it discharged approximately $1.1 billion across 682 closures, or roughly $1.61 million per closure. At that historical rate, it would take roughly 260 additional college closures per year to equal the annualized cost of this rule — about 2.6 times the historical base rate of approximately 100 closures per year, or roughly 30,400 additional borrowers receiving closed-school discharges annually. Those figures are conservative: the rule's cost is a cost, not a saving, so these closures would be added to it rather than offset against it, and discharges capture only part of the loss. Among borrowers at closed institutions, 52 percent defaulted and another 21 percent went past due. None of the associated default costs, forgone Pell Grant expenditure, credit loss, or lost student time appears anywhere in the Department's accounting. We would put the question directly: at what increase in the rate of institutional failure would the costs of this rule exceed its benefits? The Department cannot answer, because it quantified no benefits.

Recommendation: Redo the Regulatory Impact Analysis. If the Department cannot demonstrate net benefit, the rule cannot stand as proposed.

VI. Additional provisions warranting revision

The comments below address provisions that do not fit the preceding sections but on which we have specific recommendations.

Change of ownership and change of control (§ 602.22). We support the shift from an economic-ownership test to a control-based test; control is the right trigger and captures transactions a percentage test misses. The Department should state expressly that the 20 U.S. Code § 1099b(c)(5) site-visit obligation attaches to any change of ownership, whether or not it results in a change of control as the regulation defines it, and should confirm that a buyer taking effective control cannot escape review through structure — a minority stake carrying board appointment or veto rights, a management services agreement, seller financing that leaves the seller as principal creditor, or a nonprofit acquisition in which the seller controls the acquiring entity. The evidence on what follows these transactions is consistent. Across 88 private equity deals involving 994 schools,

[42] U.S. Government Accountability Office, "Higher Education: Expert Views of U.S. Accreditation," GAO-18-5, December 2017, https://www.gao.gov/products/gao-18-5.

[43] The Department reports $490.3 million and $494.2 million in annualized costs at 3 percent and 7 percent discounting, and separately $417.9 million at 7 percent, "discounted relative to year 2024, over a perpetual time horizon." The three figures should be reconciled in the final rule.

researchers found that buyouts lead to higher tuition and per-student debt, better capture of government aid, and lower education inputs, graduation rates, loan repayment rates, and graduate earnings, with enrollment roughly 50 percent higher after the buyout.[44] GAO found that of 59 for-profit-to-nonprofit conversions between January 2011 and August 2020, about one-third involved former owners or officials in leadership roles at the tax-exempt purchaser, and that the Department "does not monitor newly converted colleges to assess ongoing risk of improper benefit."[45]

Recommendation: Require the accrediting agency, as part of its substantive-change review under § 602.22, to monitor an institution for a defined period following a change of control, tracking tuition, program mix, instructional expenditure, and student outcomes, and to report what it finds through the recognition process.

Additional locations (§ 602.22(c)). The condition set for the prior-approval shortcut is more careful than earlier drafts, but it is keyed entirely to *past* compliance and silent on *current* growth. Section 1099b(c)(2) requires agencies to monitor "the growth of programs at institutions that are experiencing significant enrollment growth." An institution that has been clean for three years and is now adding locations rapidly is precisely the case the statute targets and precisely the case the shortcut exempts — and rapid multi-site expansion is the documented precursor to the failures that generated the largest discharge liabilities in the history of the Title IV programs.

Recommendation: Add a growth-rate trigger, so the shortcut is unavailable to an institution whose headcount enrollment or number of locations has increased beyond a specified threshold over the preceding two years. Clarify that the shortcut removes prior *approval* only and does not displace site-visit or branch-campus obligations.

Student voice (§ 602.23(l)). We strongly support requiring a structured mechanism through which currently enrolled students, staff, and faculty may communicate concerns directly to an accrediting agency, but the drafting will defeat the purpose. Because the three options are offered in the disjunctive, an agency satisfies the requirement with the thinnest of them — a registration process "subject to reasonable limits on the number of participants." The Department has said it wants randomization and "average" students precisely so institutions cannot hand-pick who reviewers meet; as drafted, the rule does not deliver that.

Recommendation: Require randomized panels or independently administered surveys as a floor, with registration available as a supplement rather than a substitute. Delete or define "manageable in volume," state that participation limits may not operate to exclude students who have raised concerns, require the channel to operate year-round rather than only during a site visit, and require agencies to report the volume and disposition of concerns received. The Department should also

[44] Charlie Eaton, Sabrina T. Howell, and Constantine Yannelis, "When Investor Incentives and Consumer Interests Diverge: Private Equity in Higher Education," Review of Financial Studies 33, no. 9 (2020): 4024–4060, https://academic.oup.com/rfs/article-abstract/33/9/4024/5602331.

[45] U.S. Government Accountability Office, "Higher Education: IRS and Education Could Better Address Risks Associated with Some For-Profit College Conversions," GAO-21-89, December 2020, https://www.gao.gov/products/gao-21-89.

state plainly in the final rule that the student and veteran negotiators, who represent this provision's intended beneficiaries, abstained rather than affirmed the text.

Accelerated accreditation (§ 602.23(k)). This is the provision most likely to interact badly with §§ 600.11, 602.11, and 602.12. An institution that can change accreditors on a presumption of reasonable cause, to an agency recognized without completed accrediting experience, and then enter an accelerated review has a fast lane out of oversight at every step.

Recommendation: State eligibility exclusions in regulatory text. The accelerated process should be unavailable to any institution under monitoring, probation, show-cause, or a negative action; in or recently emerged from a substantive-change review; that has changed accrediting agencies within a defined lookback period; that is provisionally certified; or that is experiencing significant enrollment growth within the meaning of 20 U.S. Code § 1099b(c)(2). The Department should also state what specifically is compressed and confirm that no § 496(c) of the HEA requirement is waived.

In-period monitoring (§§ 602.32, 602.33). If the Department finalizes §§ 600.11, 602.11, and 602.12 as proposed, in-period monitoring becomes the principal remaining control, and it should be strengthened rather than streamlined.

Recommendation: Adopt explicit risk-based triggers for enhanced monitoring — recognition granted within the current cycle; rapid growth in the number of institutions or total headcount in an agency's portfolio; an elevated rate of adverse actions, closures, or withdrawals; accreditation of institutions that changed agencies within a defined lookback; and any institution operating under a § 602.26 continuation of eligibility. Define "significant enrollment growth" in regulatory text rather than guidance, make monitoring reports public, and make the cadence faster rather than slower, precisely because institutions can now move more quickly. Otherwise a troubled institution that switches agencies is invisible to the Department for a full recognition cycle.

Compliance timelines (§ 602.20). The proposal would let an accreditor give an institution up to the lesser of four years or 150 percent of program length to come back into compliance. Section 1099b(j)(1) conditions Title IV participation on an institution being currently accredited, and § 1099b(a) conditions recognition on the agency being a reliable authority as to educational quality. An agency that continues to certify quality while an institution spends four years out of compliance with that agency's own standards is not acting as a reliable authority, and students continue to enroll and borrow throughout.

Recommendation: Make the cap a ceiling rather than a default. Require that any timeline beyond one year be accompanied by a public statement of the agency's reasons, intermediate checkpoints with defined consequences for missing them, and notice to enrolled students that the institution is operating under a compliance plan.

VII. Conclusion

Accreditation is the mechanism by which the federal government decides which institutions may receive federal student aid, and every weakening of it is paid for later — by students who do not finish, by borrowers who default, and by taxpayers who absorb the discharges. Students do not select their accreditor and cannot evaluate one. They rely on the federal government to have done that work before the seal of approval is granted, and the $9.7 billion discharged for students of two chains accredited by a single agency is what that reliance costs when it is misplaced.

A few provisions in this package would help students, and the Department should finalize them: the teach-out and transcript protections at § 602.24, the transparency requirements at §§ 602.2 and 602.27, the conflict-of-interest strengthening at § 602.14, the student-voice mechanism at § 602.23(l), and the up-front transfer-credit disclosure at § 668.43. They are a small part of what the Department has proposed, and they do not offset the rest of it.

The rest of the package lowers the bar for entry into the gatekeeping role, eases the exit from oversight for institutions that are failing, and asserts federal authority over academic content and faculty composition that the Higher Education Act prohibits. Several of these changes are troubling on their own. Together they change what it is rational for a struggling institution to do, because the cheapest way to resolve a problem with an accreditor becomes finding a different accreditor. That is how a race to the bottom begins: institutions move toward the accreditors that ask least, and the accreditors that ask more come under pressure to ask less. The Department has not modeled any of it, and the students who enroll at those institutions in the meantime will carry the cost.

We urge the Department to withdraw the provisions that exceed its statutory authority, to restore a demonstrated-experience requirement at § 602.12 and a meaningful gatekeeping standard at § 600.11, and to add the growth and eligibility triggers described above. We appreciate the opportunity to comment and are available to discuss any of these issues in greater detail.