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Aaron Washington
Office of Postsecondary Education
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Re: Comments on the Notice of Proposed Rulemaking, "Accreditation, Innovation, and Modernization: The Secretary's Recognition of Accrediting Agencies," 91 FR 53940 (August 20, 2026)

Veterans Education Success is pleased to submit comments on the Department's proposed revisions to 34 CFR Parts 600, 602, and 668.

Veterans Education Success is a nonprofit research, policy, and student-veteran advocacy organization. We work on a bipartisan basis to advance higher education success for veterans, service members, and military families, and to protect the integrity and promise of the GI Bill® and other federal postsecondary education programs.

Introduction

We wholeheartedly share the Department's stated premise that accreditation has too often failed to function as a reliable authority on educational quality, and that institutions with unacceptable completion rates, earnings outcomes, and loan performance have retained accreditation for years. We had high hopes that, in undertaking a significant overhaul of its regulations on Secretarial recognition of accrediting organizations, the Department would strengthen regulatory requirements that pertain to their substantive quality assurance functions, while eliminating the many ineffective or performative rituals that accreditors have substituted for meaningful gatekeeping and continuous oversight of institutions that they admit into eligibility for federal aid.

Regrettably, however, we are deeply disappointed with the framework the Department has adopted in these proposed regulations, as well as the numerous changes it intends to make to recognition standards. Put briefly, we believe the main thrust of the proposed regulations is to deregulate quality assurance in matters within the Department’s statutory authority while regulating ideology in matters well beyond its legal and constitutional reach. We believe that weakening quality assurance provisions will generate enormous future federal costs, while the new ideological mandates in the proposed draft will subject the rule to lengthy litigation because they exceed the Secretary’s statutory authority.

On quality assurance, the NPRM's central thesis — that lowering barriers to the recognition of new accreditors and to institutional switching among accreditors will improve quality through competition — is entirely unsupported by the rulemaking record, contradicted by the Department's own analysis and prior statements, and inconsistent with the well-documented behavior of fee-dependent gatekeepers whose "customers" are the entities they regulate. At the same time, on academic and intellectual freedom issues, the NPRM imposes on accreditors a set of content mandates concerning faculty viewpoint, institutional speech policy, and "intellectual diversity" that exceed the Secretary's authority under section 496 of the Higher Education Act and that collapse the program integrity triad's statutory separation of the States, the Department, and accrediting agencies. We urge the Department to withdraw or substantially revise the provisions identified below.

For context, we note that the Secretary of Education's recognition of accrediting agencies serves as the federal government's common gatekeeping standard, not merely a condition of Title IV eligibility. Other federal agencies typically do not conduct their own reviews of educational quality; rather, they defer to the Department's judgment by statute and regulation. The Department of Veterans Affairs relies on it under 38 U.S.C. Sec. 3675, which allows State Approving Agencies to approve courses for GI Bill benefits on the basis of accreditation by an agency recognized by the Secretary of Education. The Department of Defense conditions its Tuition Assistance program on the same recognition: under 10 U.S.C. Sec. 2006a(b), 32 CFR Part 68, and the DoD Voluntary Education Partnership Memorandum of Understanding, an institution must be accredited by an ED-recognized agency before it may receive a single dollar of TA for active-duty service members. The pattern repeats across government: the Department of Homeland Security's Student and Exchange Visitor Program, the Department of Health and Human Services' health-professions loan and scholarship programs, the Department of Labor's eligible training provider lists, and numerous grant programs all key eligibility to ED-recognized accreditation. The budgetary consequence is that a change in which agencies the Secretary recognizes, or in how easily an institution can obtain and keep recognized accreditation, propagates automatically into more than $10 billion in annual VA education benefits, roughly half a billion dollars in DoD Tuition Assistance, and the federal outlays and eligibility standards of every other agency that has adopted the Secretary's list as its own. A regulatory action the Department scores as budget-neutral for Title IV is therefore anything but neutral for the federal budget as a whole. And the population most exposed is military-connected students: veterans, service members, and their families are the beneficiaries of programs that treat ED recognition as dispositive, such that any weakening of the Secretary's recognition criteria is felt first, and most directly, in the programs Congress created specifically to honor their service and sacrifice.

A Race to the Bottom on Quality

The most central feature of the rulemaking process that generated the proposed regulations is that lowering barriers to recognition of new and untested accrediting bodies would improve the quality of education offered by eligible institutions. In fact, nothing could be farther from the truth, as both

regulatory theory and actual history indicate the exact opposite. Indeed, the regulatory record on accreditation contains no evidence that multiplying accreditors would improve quality, and the Department's own analysis points in the opposite direction. Oddly enough, even the Department concedes the absence of evidence. The NPRM states that "empirical evidence measuring the causal effect of institutions changing accreditors is limited," that "previous regulatory barriers have resulted in too few accreditor switches to permit rigorous statistical analysis," and — in the Regulatory Impact Analysis — that "there is limited data available to estimate the proposed regulation's potential impact" and that the Department "invites public feedback" on "research findings on the way that accreditation reform is associated with accreditor innovation, competition, and quality." An agency that asks commenters to supply the evidence for its central premise has acknowledged that the premise is not in the record. Under the Administrative Procedure Act, a rule must be the product of reasoned decision-making supported by the record; an untested economic analogy does not substitute for evidence when the Department itself identifies the gap. As such, the Department's proposed regulation must be returned for re-drafting.

The Office of the Chief Economist's April 13, 2026, presentation to the AIM committee inadvertently documented three basic facts: that the former regional accreditors hold dominant market share in their former regions; that voluntary switching has been rare (fewer than 200 voluntary switches since 1965 among institutions still operating, concentrated among for-profit and graduate-only institutions); and that student outcomes vary widely *within* each accreditor's membership. None of these findings is evidence that competition improves quality. On the contrary, the third finding that "very-high and very-low performing colleges are often accredited by the same accrediting agency" is evidence that accreditors do not enforce outcome floors, which necessitates stronger recognition criteria rather than more accreditors. Most tellingly, the presentation's own statement, "The Importance of Competition," predicts that while some accreditors may adopt "very high standards," "other accreditors may offer less onerous standards that still ensure sufficient quality and appeal to institutions more focused on a cost-effective education." That is a description of a market segmented by poor oversight and regulatory leniency. The presentation sidesteps the obvious race-to-the-bottom dynamic that its lower recognition standards set for accreditors, let alone explain what would prevent the "less onerous" segment from becoming the destination for institutions with poor outcomes: the very institutions the Department's own data show accreditors already fail to sanction.

Further undercutting its own contentions, the Department's 2019 analysis, reproduced in this NPRM, explicitly predicts accreditor shopping by low-performing institutions. The NPRM's Cost and Benefits section states that in 2019 the Department "did not estimate a significant change in repayment performance as institutions with less favorable program outcomes could find more lenient accrediting agencies." The Department thus expects that institutions with worse outcomes will migrate to more lenient accreditors, and treats the migration as fiscally neutral because Title IV volume is unchanged. That is precisely the harm we identify: the aid continues to flow, but the gatekeeping function has been defeated. A budget-neutral outcome for the Treasury is not a neutral outcome for the students who

enroll at, and borrow to attend, institutions that a rigorous accreditor would have sanctioned. This is especially relevant for veterans, since it is highly likely that a significant number of unaccredited programs would be able to gain eligibility for VA funds under 38 U.S.C. Sec. 3675 by obtaining the seal of approval from one of the many newly recognized accreditors with “less onerous” standards.

The economic literature the Department cites concerns a different market. The NPRM relies on Lizzeri (1999) on certification intermediaries and Jin and Leslie (2003) on restaurant hygiene grade cards. Lizzeri's model concerns certifiers that sell information to buyers who can choose whether to purchase certified goods. Its finding that competition among certifiers increases disclosure assumes that the certified party's customers reward disclosure. In Title IV accreditation, the "buyer" of the certification implied by being accredited is the institution being certified; the certification is mandatory for access to federal funds, and, as the Department's Sec. 602.11 preamble insists, no recognized accreditor should be regarded as "better" than any other. There is, in other words, no brand differentiation among recognized accreditors, all of which provide an identical “service” to the institutions they accredit: i.e., access to federal funds. Therefore, Lizzeri's finding that competition improves disclosure has no application here: when the entity being certified is also the paying customer, and every certification confers the identical federal benefit, certifiers compete for institutions' business by demanding less, not by revealing more.

In the other paper cited by the Department, Jin and Leslie studied the effect of *mandatory, government-administered* hygiene grades posted for consumers. Far from making the Department’s case, the study provides evidence for bright-line, publicly disclosed outcome standards administered by the regulator, which is the reform we recommend below, not for competition among private certifiers. Neither paper addresses the situation in which the regulated entity selects and pays its regulator.

The relevant analytical lens for studying accrediting bodies is previous fee-dependent regulatory competition, and the documented lesson is a race to the bottom: regulators compete not by adopting high standards, but by positioning themselves as the least demanding option. As we document in "Title IV Accreditation: Regulatory Capture and Competition" (April 7, 2026), regulatory capture permeates the current accreditation model, resulting in a system that fails to meet its basic requirements. Our paper explains that the structural features of institutional accreditation include mandatory participation, accreditors being funded by dues from the institutions they evaluate, lack of reputational differentiation among recognized agencies, and a "product" (Title IV eligibility) that is identical regardless of which agency confers it. This means that competition among accreditors cannot take the form of competition to be more rigorous because an institution gains nothing by selecting an accreditor that imposes greater demands, but it gains cost savings and deference by selecting one that imposes fewer. The analogy we draw to pre-2011 federal banking regulation is precise: banks could choose among fee-funded federal regulators that competed for assessment revenue, and the predictable result (exemplified by Countrywide's 2007 charter switch to the Office of Thrift Supervision, the most lenient available regulator, and the subsequent failures of OTS-supervised institutions including Washington Mutual and IndyMac) was that regulators competed by relaxing oversight. Congress abolished the OTS in the

Dodd-Frank Act because a regulator financially dependent on the entities it oversees cannot be trusted to serve the public. The NPRM recreates that structure in higher education and adds features the banking system never had: a regulatory prohibition on the Department discouraging a switch (Sec. 602.11(b)(2)), an accelerated on-ramp at the receiving regulator (Sec. 602.23(k)), and continued federal funding after the original regulator has acted (Sec. 602.26(h)).

In another example of the questionable reasoning behind the proposed recognition changes, the NPRM's theory is internally inconsistent. The Department predicts that competition will lead accreditors to "distinguish themselves by offering scaled ratings for institutional quality" and that institutions "will signal their quality level through accreditation." But proposed Sec. 602.11(b)(2) forbids the Secretary from "otherwise favor[ing] one recognized accrediting agency over another," and the preamble's stated aim is to "eliminate any preconceived notion that one accrediting agency or association may be fundamentally 'better' than another." If no accreditor may be regarded as better, accreditation cannot function as the differentiated quality signal on which the competition theory depends. What remains is competition on price and burden alone. As drafted, the proposed regulations would light a fuse that will inevitably lead to an explosion of waste, fraud, and abuse in federal education programs in just a few years.

In offering this critique, we would like to emphasize that we do not oppose the recognition of new agencies as such. We could envision an accreditation ecosystem that includes a larger number of recognized accreditors if all accreditors were held to more rigorous standards. Simply stated, recognition criteria matter more than accreditor numbers. New accreditors with rigorous upfront standards, bright-line outcome-based metrics, governance insulated from institutional and political controls, and a demonstrated willingness to deny and withdraw accreditation from failing institutions could improve the system. The problem is that the NPRM lowers the recognition bar while multiplying the incentives for institutions to shop for their regulators. We offer the following section-by-section commentary to assist the Department in meeting the APA requirement to set forth a reasoned basis for regulations and to prevent the worsening of an already dysfunctional system.

Section-by-Section Comments

Sec. 600.11 — Change of accreditors; multiple accreditation. We oppose the removal of the 24-month look-back provision in Sec. 600.11(a) and the provision in Sec. 600.11(b)(2) that adverse action may not render multiple accreditation unreasonable. Section 496(h) of the Higher Education Act places the burden on the institution to demonstrate reasonable cause, but the NPRM reverses the explicit statutory construct. The preamble's assurance that institutions "subject to an adverse action cannot switch" is not reflected in the regulatory text itself, which requires a Secretarial finding of evasive intent. We recommend restoring the current 24-month look-back, and providing that an institution under probation, show cause, suspension, or adverse action may not designate a new Title IV link until the

action is resolved or the receiving agency has independently reviewed and adopted findings on each deficiency identified by the prior agency.

Sec. 602.3 — Definition of "accrediting agency." We oppose making peer review optional. Historically, and in terms of its fundamental function, accreditation is synonymous with peer review. The entire rationale for reliance on accreditation has been that it encapsulates the expertise of disciplinary experts, primarily the faculty. We recognize, as we suspect the Department does as well, that over recent decades, “peer review” has sometimes devolved into something akin to self-dealing by institutional insiders, such as owners, executives, and administrators, whose priorities extend beyond quality assessment. This calls for a more precise definition of peer review, not for rendering this essential attribute of accreditation optional. We strongly recommend retaining the peer-review requirement while clarifying, if the Department wishes, that evaluation teams may include non-academic subject-matter experts in addition to faculty. Equally as important, we would recommend explicit language prohibiting owners, executives, or fiduciaries of institutions participating in Title IV from serving in decision-making roles by accreditors.

Sec. 602.10 — Federal link. We oppose permitting an agency to satisfy the federal-link requirement on the basis of institutions that have designated another agency. The provision exists to enable stand-by accreditation. We recommend that the federal link be satisfied only by institutions that designate the agency.

Sec. 602.11(b)(2)–(3) — Prohibition on the Secretary discouraging switching. We oppose the prohibition on the Department "directly or indirectly discourag[ing]" a switch "through . . . communications" and the prohibition on treating a switch as a basis for any Title IV consequence. First, it is not clear why Secretarial non-interference is formulated only as a prohibition that applies to discouraging, but not to encouraging, accreditor switching. Second, the Department should retain the ability to treat a change of accreditor, particularly following adverse action, as a risk factor warranting heightened cash monitoring or provisional certification under existing Sec. 668.13 and Sec. 668.162 authority. A regulation that forbids the Department from communicating risk information to institutions is inconsistent with the Secretary's oversight responsibilities under Sec. 487 of the Higher Education Act.

Sec. 602.12 — Accrediting experience. We oppose eliminating the two-year rule and reducing the pre-recognition track record to a single grant of accreditation. Section 496(a)(1) of the Higher Education Act requires "experience." An agency that has approved one applicant and denied none has not demonstrated that it can function as a reliable authority. If the Department is concerned about the length of the NACIQI cycle, the remedy is to expedite review, not to eliminate the evidence reviewed. At minimum, the Department should require that an agency seeking initial recognition demonstrate that it has applied its standards to multiple applicants, including at least one instance in which it declined to grant accreditation or imposed conditions, and that its decisions cover the range of the scope it seeks.

Sec. 602.13 and Sec. 602.23(i) — Antitrust. We do not object to a statement that recognition confers no antitrust immunity. We object to the preamble's characterization and the Sec. 602.23(i) requirement to the extent they would treat inter-agency agreement on common floor standards, or on declining to accept institutions that lost accreditation elsewhere within a defined period, as suspect "collective action." The Department should clarify that coordination to maintain or raise quality standards, as distinct from coordination to restrict entry into occupations or to allocate institutions among agencies, is not discouraged.

Sec. 602.15(a) — Composition of decision-making bodies. While we support strengthening conflict-of-interest controls, we believe the proposed rule unreasonably extends its definition to exclude legitimate, and indeed, central, stakeholders in quality assurance. Specifically, we oppose the proposed deletion of current regulations' paragraphs (a)(3) and (a)(4). Accreditation decisions about educational quality should be made by bodies that include qualified educators. If the Department wishes to broaden the categories of qualified members, it should do so by adding additional qualified categories. Equally as important, as noted above, we would urge the Department to explicitly exclude individuals with fundamental conflicts of interest, such as owners, executives, and fiduciaries of organizations affected by the accreditation decision, from decision-making bodies.

Sec. 602.15(c) and (a)(3) — Burden minimization and training on low-cost models. We recommend that these provisions be revised to make clear that minimizing burden does not authorize an agency to forgo documentation or verification necessary to meaningfully evaluate and ensure educational quality and assess compliance with its standards, and that training on delivery models must include training on the documented quality risks of those models, including the completion and earnings outcomes of fully online programs.

Sec. 602.15(e)(7) — Restriction on raising standards. We oppose this provision. It subjects any accreditor decision to increase credentialing or educational requirements to a clear-and-convincing-evidence justification filed with the Secretary, while imposing no corresponding burden on decisions to lower them. Nothing in Sec. 496 of the Higher Education Act authorizes the Secretary to condition recognition on an agency's forbearance from raising standards. If the Department's concern is collusion between programmatic accreditors and trade associations to restrict labor supply, the separate-and-independent requirements of Sec. 602.14 address it directly. Sec. 602.15(e)(7) should be struck not only because it lacks statutory authority, but also because it is counterproductive policy.

Sec. 602.16(a)(1)(i) — Institution-set achievement standards. We oppose the language permitting "different standards for different institutions or programs, as established by the institution." Section 496(a)(5)(A) of the statute requires agency standards to assess student achievement "in relation to the institution's mission"; it does not permit the institution to set the standard against which it is assessed. The language exceeds the Department's statutory authority and must be redrafted to comply with the

statute. We recommend that the Department require agencies to establish minimum expectations for completion, licensure, and earnings outcomes below which accreditation may not be granted or renewed absent documented, time-limited improvement.

Sec. 602.17(a)(4) and (d) — Program length and "barriers." We oppose the prohibition on "unreasonably restrict[ing]" short and compressed programs and the instruction that agencies "seek to reduce unnecessary barriers." Rapid-completion credentials of dubious value are the signature product of low-quality institutions that fail to deliver on their promises to students, and many of these have duplicitously and deceptively targeted GI Bill beneficiaries. Accreditors must retain the discretion to require that compressed programs demonstrate – not merely claim or predict – comparable outcomes before they are approved. We recommend that any compressed or short-term program be treated as a substantive change under Sec. 602.22 requiring prior approval and a post-approval outcomes review.

Sec. 602.17(b)(1) — Self-study. We recommend restoring and indeed strengthening the self-study requirement. The self-study, if properly conducted by campus experts, is not a paperwork ritual; it is the mechanism by which an institution assesses its performance against the agency's standards, documents deficiencies, and identifies remedies before the site visit. And it is often the only comprehensive record of institutional self-assessment that peer reviewers and the agency's decision-making body have to test against independent evidence. Eliminating it does not reduce burden so much as it reduces the accreditor's visibility into the institution. If, like us, the Department's concern is that self-studies have become performative or formulaic, the remedy is to articulate their function more specifically and focus them on outcomes, rather than to strike the requirement altogether.

Sec. 602.17(g) and (h); Sec. 602.23(h) — Incorporation of State law. We oppose these provisions as drafted. Section 496 of the statute does not authorize the Secretary to make conformity with the law of every State a condition of a national accreditor's recognition, and Sec. 602.17(h) of the regulation would allow any State to exempt its institutions from any federal recognition criterion by legislating a conflict. The triad assigns enforcement of state law to the States and enforcement of federal law to the Department. The Department must withdraw this provision as not only unauthorized by the statute, but as potentially contrary to the federal statute it purports to regulate. If the Department retains a provision addressing legal compliance, it should be limited to a requirement that agencies not have standards that *require* institutions to violate *Federal* law as authoritatively construed by a court of competent jurisdiction.

Sec. 602.23(j) — Governance of public institutions. We oppose this provision. The independence of governing boards from undue political influence is a core accreditation standard and the mechanism by which accreditors have protected public institutions' academic integrity from political intervention. Withdrawing it from review while simultaneously mandating review of speech and viewpoint policies at the same institutions is not neutrality. The architecture of the triad already gives states significant

influence over all institutions within their jurisdiction through the state authorization provision. We recommend striking Sec. 602.23(j).

Sec. 602.15(f); Sec. 602.17(a)(2)(iii), (v), (vii), (viii); Sec. 602.18(b)(4) — Speech, viewpoint, and intellectual diversity mandates. We oppose these provisions on three grounds. First, they exceed the Secretary's authority. Section 496(a)(5) of the Higher Education Act enumerates the subjects an accreditor's standards must address; Sec. 496(o) of that Act provides that the Secretary "shall not promulgate regulations with respect to the standards of an accrediting agency"; and 20 U.S.C. Sec. 1232a prohibits federal "direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution." The Department's draft blatantly violates this statutory restriction. The Department's effort to regulate speech, viewpoint, and intellectual diversity is unlawful because it falls squarely within the federal law's prohibition on controlling institutional prerogatives on curriculum, administration, and personnel. The NPRM invokes Sec. 496(o) of the Act to remove quality requirements it says lack sufficient statutory basis, then imposes viewpoint requirements that lack any statutory basis. Second, the Department's draft conscripts accreditors into constitutional adjudication for which they have neither competence nor authority. Whether a public university's speech policy satisfies the First Amendment is a question for courts, not for universities nor for the Department. An agency whose recognition depends on getting that question right will predictably err on the side of the Department's preferred answer. Third, Sec. 602.17(a)(2)(viii)'s requirement that institutions "prioritize intellectual diversity . . . amongst faculty" and survey "student and faculty perceptions on the range of viewpoints" is a mandate to collect and act on data about the faculty's intellectual perspectives, except for religious institutions. A regulatory regime in which faculty members' viewpoints are surveyed, aggregated, and reported to an accreditor as a recognition requirement creates a perverse incentive for institutions to consider viewpoint in hiring, promotion, and retention. This would create the very ideological litmus test the Department elsewhere professes to condemn

The Department appears to contemplate viewpoint diversity in terms of binary political ideologies, but there are often multiple disciplinary perspectives and schools of thought within various academic fields, with prestigious institutions associated with particular academic theories, e.g., the "Chicago school" of economics associated with Milton Friedman. A mandate on viewpoint would therefore go well beyond matters of political ideology and intrude on the intellectual framework adopted by various institutions.

We strongly recommend striking these provisions because they lack statutory authority.

Sec. 602.18(c)–(d) and Sec. 602.20(i) — Alternative standards and noncompliance windows. We oppose the Department's proposal to broaden Sec. 602.18(c) beyond "special circumstances" and "undue hardship on students," and we oppose the three-year renewable noncompliance window, particularly the inclusion of "the normal application of the agency's standards creates an undue hardship on students" as a circumstance beyond the institution's control. Taken together, these provisions convert

what is supposed to be a narrow safety valve into a general license for indefinite noncompliance. An institution that cannot meet its accreditor's standards could first obtain "alternative standards" tailored to its deficiencies, and, failing even those, remain accredited through a three-year noncompliance window that is renewable without apparent limit. Worse yet, the trigger regarding "undue hardship on students" inverts the purpose of accreditation: the hardship that matters is the one suffered by students who enroll and borrow at an institution that cannot meet minimum standards, not the hardship an institution experiences when it is held to them. Because the normal application of standards to a failing institution will always disadvantage that institution's students in the short run, the exception would nullify the rule in every case where enforcement matters most.

We recommend restoring current Sec. 602.18(c) and limiting any noncompliance period to the timeframe in Sec. 602.20(a)(2) without a separate extension mechanism.

Sec. 602.20(h) — Retroactive restoration. We recommend that any restoration of accreditation following arbitration or litigation be prospective, and that the agency's record of the adverse action and its resolution remain publicly available under Sec. 602.26(f). Retroactive restoration rewrites history: it treats the period during which an institution operated under a final adverse action as though the action never occurred, erasing information that students who enrolled during that period relied on in making enrollment and borrowing decisions. It also weakens the deterrent value of adverse action itself, since an institution that expects any sanction to be retroactively expunged through arbitration has less reason to remediate promptly and more reason to litigate. Prospective restoration fully protects an institution that prevails on the merits going forward, while preserving an accurate public record of what the accreditor found, when, and how the dispute was resolved.

Sec. 602.22 — Substantive change. We oppose reclassifying changes in method of delivery, 25-percent content changes, and "customized pathways or abbreviated or modified courses or programs" recognizing prior "employment or military service" as after-the-fact notice items for institutions in good standing. These are the changes most associated with quality deterioration and with programs marketed to veterans on promises of rapid completion. We recommend retaining prior approval for all three categories regardless of the institution's standing.

Sec. 602.23(k) — Accelerated process for switching institutions. We recommend that any accelerated process be conditioned on the receiving agency's obtaining and reviewing the complete accreditation file from the prior agency, including any pending or resolved adverse findings, and issuing written findings on each.

Sec. 602.26(h) — Continued Title IV access after final adverse action. We oppose this provision and recommend that it be struck. It authorizes the Department to keep federal aid flowing to an institution after its accreditor has made a final determination of noncompliance, for the duration of arbitration and judicial review, on a showing of "irreparable harm to the institution," a standard that every loss of accreditation will meet. The provision considers harm to the institution and none to the students who

will enroll and borrow during the pendency of the dispute. It also makes the Department, rather than the accreditor, the effective arbiter of whether an adverse action has consequences, which is inconsistent with the statutory assignment of the quality-assurance function to accreditors. Sec. 496 of the Higher Education Act specifies that accreditors, not the Department, will determine quality assurance. The Department's proposed regulation would undermine the triad's explicit legislative design by empowering the Secretary to override an accreditor's final determination of noncompliance and continue funding the college in violation of the explicit statutory requirement limiting Title IV eligibility to accredited institutions.

Sec. 602.28(c) — Accrediting notwithstanding another body's adverse action. We recommend that the 30-day after-the-fact explanation be replaced with a requirement of prior notice to the Department and the prior agency, and a reasoned written determination addressing each finding of the prior agency, before accreditation is granted.

Sec. 602.31–602.32 — Tiered review. We oppose exempting agencies that do not hold a "substantial portion" of Title IV volume from comprehensive review at renewal. New entrants and small agencies are precisely the agencies for which comprehensive review is most necessary. We recommend that every agency undergo comprehensive review at its first renewal following initial recognition or any expansion of scope, and that agencies that have accepted institutions previously subject to adverse action by another agency be reviewed comprehensively regardless of volume. This is necessary to ensure that new entrants and institutions that have been subject to adverse action are carefully reviewed.

Sec. 602.24(e) and Sec. 668.43 — Transfer of credit. We support the requirement of a written basis for denial and the pre-enrollment disclosure requirements to prevent unnecessary costs and inappropriate duplication of effort for transfer students. But, in view of existing quality disparities among various accreditors — disparities that would be exacerbated given the loosening of recognition criteria contemplated in the proposed regulations — we believe the mandate that institutions not deny transfer credit solely on the basis of the sending institution's accreditor be restricted to credits from institutions accredited by the same agency, since the quality standards to which those institutions are held are the same. We further recommend that the Department clarify that nothing in these provisions requires acceptance of credit from an institution that has been the subject of adverse action or that fails Title IV outcome metrics, and that institutions retain authority to evaluate comparability of content and learning outcomes. This is important to ensure proper placement of students in courses for which the transferred coursework serves as prerequisites.

Comments on Regulatory Impact Analysis and Budgetary Consequences

The Department's Regulatory Impact Analysis rests on a claim of budget neutrality that it cannot support and that every available piece of independent evidence contradicts. The Department's Regulatory Impact Analysis asserts that the proposed rule will have no "significant net budget impact on the title (*sic*) IV, HEA federal student aid programs." It reaches that conclusion by reusing the method of its 2019

accreditation rule, in which the Department stated it "did not estimate a significant change in repayment performance as institutions with less favorable program outcomes could find more lenient accrediting agencies." The migration of poorly performing institutions to lenient accreditors is thus treated as a reshuffling of existing aid volume rather than as new federal spending. The Department then concedes that "there is limited data available to estimate the proposed regulation's potential impact" and asks commenters to supply research on how accreditation reform "is associated with accreditor innovation, competition, and quality." The Department is thus requesting evidence for its central budgetary premise, and is, in effect, acknowledging that it cannot support its assertion of budget neutrality with facts.

The RIA considers whether aid volume will shift among institutions or be newly generated. The drastic regulatory reduction of quality-assurance demands on recognized accreditors will inevitably allow them to attract not only providers that are currently unable to meet existing standards, but also retain institutions that, under current rules, would lose Title IV eligibility. The NPRM creates at least five paths to that latter outcome: an institution may switch away from a sanctioning accreditor because the 24-month look-back in Sec. 600.11(a) is eliminated and cause is presumed reasonable; it may hold a second accreditation notwithstanding adverse action because Sec. 600.11(b)(2) says such action "will not" render multiple accreditation unreasonable; it may keep drawing funds through arbitration and judicial review after a *final* withdrawal under Sec. 602.26(h); it may enter a new accreditor through the accelerated process in Sec. 602.23(k); and it may find a newly recognized agency that has approved one institution and denied none under Sec. 602.12. Each path converts spending the baseline assumes will stop into spending that continues. In other words, the RIA's budget-neutrality conclusion depends on a baseline in which institutions that lose accreditation, or would have lost it under current rules, exit the Title IV program and their aid volume stops. But because the NPRM's provisions allow those same institutions to retain eligibility, the dollars the baseline scores as savings become continued outlays that the RIA fails to recognize.

The RIA's observation that "in retrospect, we know the number of institutions that changed accreditors was fairly low" after 2019 proves the opposite of what the Department intends. The 2019 rule retained the look-back, the two-year experience requirement for new agencies, and the Department's authority to scrutinize switches. Low switching under those constraints is evidence that they worked. The NPRM removes all three constraints and, in Sec. 602.11, adds a prohibition on the Department even "indirectly discourag[ing]" a switch. The Department is thus overlooking a basic fact: behavior under the old constraints cannot predict behavior once those constraints are gone.

The RIA also ignores the interactive effect of its proposed accountability changes. Every independent analysis of accreditor competition (including CBO's, below) assumes that gainful-employment, financial-value-transparency, and the 2025 reconciliation act's accountability provisions will screen out newly accredited low performers, and that those rules are "more stringent than are accreditation requirements in general." Importantly, however, the Department is revising, or has revised, those very rules in prior or planned rulemakings, thereby nullifying reliance on the 2025 provisions. Treating each

deregulatory action as budget-neutral in isolation, while the backstop each analysis assumes is removed by other new regulations, fails the APA standard of reasoned analysis.

The Congressional Budget Office scored this policy eleven months ago. On October 24, 2025, the CBO estimated that H.R. 4054, the Accreditation Choice and Innovation Act, would increase direct spending by $437 million ($225 million in loans, $212 million in the mandatory Pell add-on) and discretionary Pell outlays by $1.13 billion over 2026-2035 with roughly 50,000 additional Pell recipients and $175 million in additional undergraduate loans annually by 2030. CBO's reasoning is the same as the NPRM's mechanism stated plainly: agencies "would have an incentive to reduce their requirements to avoid having a postsecondary institution select another agency that uses less stringent accreditation requirements; institutions could maintain their current accreditation while they change to a new accrediting agency." Reviewing the Department's own Database of Accredited Postsecondary Institutions and Programs data, CBO found that only about 15 percent of 2025 accreditor actions were adverse and that few institutions lose accreditation today, and concluded that, under the bill, "the percentage of institutions facing adverse action or loss of accreditation would decline."

The CBO figure is a floor for the NPRM, for several reasons. CBO assumed the accountability rules would remain in force and limit new accreditations; the Department is weakening them. This, therefore, inevitably raises the federal budgetary costs of the NPRM. Moreover, H.R. 4054 does not contain the NPRM's most aggressive provisions, such as the removal of look-back, Sec. 600.11(b)(2), Sec. 602.23(k), or Sec. 602.26(h). And CBO scored an HEA bill, so it counted only Title IV effects, while the NPRM goes further and has a larger budgetary impact. The RIA does not cite the CBO estimate. In May 2025, CBO likewise found, in scoring the reconciliation bill, that repealing the 90/10 and gainful-employment rules would produce growth in the for-profit sector absent risk-sharing, thus providing a second confirmation that removing gatekeeping constraints generates new aid volume. In short, the Department’s proposed changes would have a significant budgetary impact, particularly due to the removal of preexisting Title IV protections, and this impact is not adequately addressed. We urge the Department to produce an accurate estimate of enormous future federal costs triggered by its proposed rule.

The Department has a direct precedent in its own history. The 1992 HEA amendments, enacted after correspondence-school fraud drove the cohort default rate to 37 percent in 1990, barred Title IV eligibility for institutions offering more than half their courses by distance education; with the other 1992 reforms, the default rate fell to 12 percent by 1999. The Higher Education Reconciliation Act of 2005 repealed the rule effective July 1, 2006, on the theory that it stifled innovation and that market forces and existing oversight would police quality. The Senate HELP Committee's 2012 report records the result: for-profit enrollment rose 225 percent between 1998 and 2008 against 31 percent for higher education overall; aid to the sector reached $32 billion in 2009-10, a quarter of all Title IV disbursements, up roughly seven-fold in a decade; Pell to for-profits climbed from $1.1 billion to $7.5 billion; and nearly a quarter of the sector's students defaulted within three years. At its 2011 peak, the sector enrolled a tenth of undergraduates and received a quarter of the aid. When a structural constraint

on Title IV access is removed, volume does not merely shift; it flows to institutions and delivery models that the constraint excluded, with significant negative budgetary impacts.

The Accrediting Council for Independent Colleges and Schools (recognized by the Secretary until 2016, restored by court order, and derecognized again in 2022) accredited ITT Technical Institute, Westwood College, and many Corinthian campuses. The discharges that followed their collapse include $5.8 billion for 560,000 Corinthian borrowers, $3.9 billion for 208,000 ITT borrowers plus $1.25 billion in closed-school relief, and $1.5 billion for 79,000 Westwood borrowers; the Art Institutes added $6.1 billion. Borrower-defense approvals alone exceeded $14.5 billion by mid-2022 and have grown since. Taxpayers bear all of these costs because the institutions that generated these losses no longer exist. Even if the loans had not been discharged as they rightly were, they would have been uncollectible, since the vast majority of the victims would never have been able to repay loans they were fraudulently saddled with. Every one of the schools in question was accredited by a recognized agency when the discharged loans were originally made. The NPRM makes such agencies easier to recognize (Sect. 602.12), exempts small agencies from comprehensive renewal review (Sec. 602.32), and lets their member institutions keep drawing aid after a final adverse action (Sec. 602.26(h)). The RIA estimates none of the resulting discharge liability.

The GI Bill. Veterans Education Success documented in *Schools Receiving the Most Post-9/11 GI Bill Tuition and Fee Payments Since 2009* (March 2018) that from 2009 to 2017 eight of the ten largest GI Bill recipients captured $34.7 billion, a fifth of all payments, while spending less than a third of it on instruction; seven faced law-enforcement action and fewer than 28 percent of their students completed. Accreditation was the sole gateway to those VA outlays. The RIA counts only Title IV costs. But the Secretary's recognition list is the eligibility trigger for federal education spending across the government: more than $10 billion in annual VA education benefits under 38 U.S.C. Sec. 3675 ($9.1 billion of it Post-9/11 GI Bill, to 610,000 beneficiaries); roughly half a billion dollars in DoD Tuition Assistance under 32 CFR Part 68; and DHS student-visa, HHS health-professions, and DOL training-provider programs. An institution that could keep eligibility under the proposed relaxation of Sec. 600.11 or Sec. 602.26(h), or an accreditor recognized under the proposed relaxation of Sec. 602.12, would retain access to all of these federal agencies' programs outside the Department of Education. The RIA has not analyzed the largest downstream effect of its own rule. Therefore, the rule must be remanded for redrafting. The distributional consequence is equally unexamined: because VA and DoD treat ED recognition as dispositive, the population most exposed is military-connected students, the same population the 90/10 loophole exposed to institutional fraud and whose completion and earnings, the Census Bureau/VA/AIR studies show, are markedly worse at low-instructional-spending institutions.

Questionable Legal Authority

In addition to its significant policy and budgetary problems, multiple provisions of the proposed rule are on dubious legal grounds and are unlikely to survive judicial review.

As a central and foundational legal inconsistency, the Department cannot coherently maintain that Sec. 496(o) of the Higher Education Act forbids the Department from requiring peer review, a two-year track record, educators on accrediting commissions, or a self-study, while also arguing that the same statute permits the Department to require accreditors to evaluate institutions' policies on faculty viewpoint, intellectual diversity, First Amendment compliance, research misconduct, and instructional staffing flexibility. The subjects the Department removes are within Sec. 496(a)(5) of the Act's enumerated list or are procedural means of assessing them; the subjects it adds are outside the list entirely. The NPRM thus fails to adhere to the Statute's clear limitations on the Secretary's authority, interpreting that authority as narrowest where the statute is most explicit and broadest where the statute is silent. The Department's proposal misinterprets and exceeds the Statute's requirements and must be remanded for drastic redrafting to comply with the underlying legislation. As drafted, the proposal leaves the Department vulnerable to legal challenge.

Beyond this, 20 U.S.C. Sec. 1232a prohibits construing any Department program to authorize federal "direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution." A recognition criterion requiring accreditors to verify that institutions "prioritize intellectual diversity . . . amongst faculty" and measure faculty and student perceptions of viewpoint range (Sec. 602.17(a)(2)(viii)), or that treats tenure and program-discontinuance protections as impediments to "flexibility in instructional staffing" (Sec. 602.17(a)(2)(iv)), is federal supervision of institutional personnel policy through an intermediary. This plainly and directly violates Sec. 1232a of federal law. Routing the control through accreditors does not take it outside Sec. 1232a. Again, this leaves the Department vulnerable to significant (and likely successful) legal challenge.

In addition, nothing in Sec. 496 of the Act authorizes conditioning Secretarial recognition on an accreditor's conformity to the law of every State (Sec. 602.17(g) and Sec. 602.23(h)) or subordinating federal recognition criteria to conflicting state statutes (Sec. 602.17(h)). The HEA assigns state-law enforcement to the States through authorization (Sec. 101–102; 34 CFR 600.9) and federal-law enforcement to the Department (Sec. 487 of the Higher Education Act). Section 602.23(h) adds a gloss that Title VI and Title IX mean, "among other things," that agencies may not require "preferences" and incorporates a tendentious construction of those statutes into a recognition criterion without the notice-and-comment process a substantive Title VI or Title IX interpretation would itself require. Section 602.23(j), establishing a bar on reviewing state-established governance of public institutions, withdraws a core accreditation subject, i.e., independent governance, from the one leg of the triad Congress built to assess it.

Finally, the NPRM repeatedly cites Executive Order 14279 as the source of legal authority for particular provisions. An executive order can control and direct only the exercise of authority the Department already has; it cannot supply authority Congress withheld. Where no provision of Sec. 496 of the Act

authorizes a criterion, citing the Executive Order does nothing to legalize exceeding the Department's statutory authority.

Conclusion

For the reasons detailed above, we believe the proposed rule, in its current form, exceeds and, in some cases, violates the federal statute, opens the Department to years of likely successful legal challenges, and must be remanded for redrafting.

We share the Department's conviction that accreditation needs reform, but these regulations would weaken quality assurance where it most needs strengthening while extending the Department's reach into matters beyond its statutory authority. The stakes for students, for veterans and military families, and for the integrity of billions of dollars in annual federal education spending across the government are far too high for the Department to rush this rule to finalization on an incomplete record. We urge the Department to withdraw the proposed rule, take the time to gather the evidence that its own analysis concedes is missing, and work carefully with all stakeholders toward accreditation reform that raises standards rather than lowers them. We stand ready to assist in that effort.

Respectfully,

Barmak Nassirian

Vice President for Higher Education Policy