CAP

Center for American Progress
1333 H Street NW, Suite 100E
Washington, DC 20005
202.682.1611
americanprogress.org

September 21, 2026

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

Docket ID ED-2025-OPE-1042
Submitted electronically via regulations.gov

Thank you for the opportunity to comment on the proposed regulations relating to the Secretary's recognition of accrediting agencies, institutional eligibility under the Higher Education Act of 1965, as amended, and student assistance general provisions. Accreditation is a central component of the higher education program integrity triad and must remain a credible assurance of educational quality, student success, and responsible stewardship of federal student aid funds. The NPRM includes several potentially constructive provisions, particularly greater transparency regarding transfer credit, public disclosure of accrediting actions, attention to program-level student outcomes and new conflict-of-interest requirements. However, its broader approach risks dramatically weakening quality assurance by opening pathways to federal recognition for new, untested accreditors and making it easier for institutions to change accreditors without adequate accountability protections.

Innovation in accreditation should not create new avenues for institutions to evade oversight. More accreditors and greater institutional mobility will not necessarily produce higher-quality education or stronger consumer protection. Instead, meaningful standards, transparent outcomes, public participation, and enforceable oversight ensure that accreditation serves students and the public interest.

When accreditation fails, the consequences fall first on students. Students may lose time, credits, money, eligibility for aid, and viable pathways to completion. Taxpayers may also finance programs that do not provide meaningful educational or labor-market value. A credible education system must therefore protect students and the public by identifying institutions and programs that are capable of delivering a quality education and supporting student success.

The Department of Education should not sacrifice the safeguards that make accreditation meaningful and should instead preserve rigorous standards for accreditor recognition and entry, prevent accreditation shopping, and avoid using accreditation to impose contested academic-policy mandates that exceed the Department's statutory role.

I. Weaponizing accreditation to advance partisan ideology

The proposed regulations would give the federal government new tools to exert pressure on institutions to advance partisan goals, often through misleading or inaccurate representations of current law. In combination with a pressure campaign that has included selective cancellation of research grants and contracts, coercive agreements, and the weaponization of civil rights enforcement, these proposed regulations could make accreditors an additional point of leverage for the administration. As gatekeepers to Title IV funds, accreditors help determine which institutions have access to federal funding. These decisions should be based on standards related to academic and institutional quality—not alignment with one party's ideological goals. The proposed regulations may make accreditors tools to enforce Trump administration goals by making student financial assistance contingent on alignment with this administration's flawed interpretations of civil rights law.

The proposed regulations do so by creating requirements that accreditors evaluate institutional policies related to the First Amendment, civil rights, and the use of race in campus policies. These changes could pressure institutions to, for example, further curtail lawful student support services, change their policies related to transgender students, or create new limitations on campus protests. § 602.17(g) would prohibit accreditors from "encourag[ing], direct[ing], or otherwise requir[ing] institutions or programs to violate Federal or State law, including by having policies that provide any preferences on the basis of race." While this section suggestions that "policies that provide any preferences on the basis of race" would "violate Federal or State law," there are in fact uses of race that remain lawful, and some cases in which they are in fact legally required. Such misleading text may encourage institutions to pre-emptively eliminate lawful campus services and activities that help students from all backgrounds succeed, such as mentorship programs, affinity groups, counseling centers, and disability support services.

These regulations also require accreditors to "promptly review" the accreditation or pre-accreditation of an institution after a State or the federal government takes action against it. Given the current administration's aggressive weaponization of the civil rights enforcement process to enforce its interpretation of racial and gender discrimination, this could create additional pressure on institutions to amend their policies and compromise their rights to due process. While institutions of higher education should abide by all existing laws, these regulations use student financial aid to pressure institutions to adopt the administration's legal argument that diversity, equity, and inclusion programs violate civil rights law which, particularly in the higher education context, has failed repeatedly in court. Because this administration cannot rely on the merits of its legal arguments to be upheld under scrutiny, it relies on bully tactics to pressure organizations to comply. These proposed regulations threaten to politicize the accreditation system and ultimately harm students by denying them access to the institutions, programs, and services that would help them earn a quality education and succeed in the workforce.

Furthermore, the Secretary lacks the authority to implement the regulations as proposed, as the Higher Education Act of 1965 explicitly prohibits the Secretary from "establish[ing] criteria for accrediting agencies or associations that are not required by this section" and (§ 496(g)) or "promulgat[ing] any regulation with respect to the standards of an accreditation agency or association described in subsection" (§ 496(o)). These two clauses limit the authority of the Secretary to create additional standards for accreditors beyond those specifically enumerated by Congress. It is clear that Congress foresaw the potential for accreditation to become a political weapon to impose partisan ideology on universities, and sought to create safeguards against such abuses of power.

II. Academic freedom, "intellectual diversity," and viewpoint neutrality requirements

The current recognition criteria (§§602.15, 602.17, 602.18, and HEA section 496(a)(5)) appropriately focus on whether an accrediting agency has the capacity and processes necessary to serve as a reliable authority on educational quality. However, the proposed regulations would require agencies to evaluate institutions' policies on academic freedom, "intellectual diversity," viewpoint neutrality, or First Amendment compliance.

The language in the NPRM would significantly expand the role of accreditors by requiring them to evaluate institutional academic freedom protections, public institutions' First Amendment policies, faculty viewpoint and ideology protections, freedom of inquiry and policies promoting "intellectual diversity." Although the NPRM does not codify a definition of academic freedom, its preamble provides a nonbinding formulation and describes how the Department expects accreditors to apply these provisions. These requirements raise serious statutory and implementation concerns.

A. Accreditors are not equipped to adjudicate contested legal and academic policy questions

Accreditors generally lack the legal expertise and institutional role necessary to adjudicate constitutional claims, faculty speech disputes, or whether an institution has achieved sufficient "intellectual diversity." Concepts such as "viewpoint neutrality" and "intellectual diversity" could be applied inconsistently, creating new avenues for politicized complaints and diverse accreditors from core quality-assurance responsibilities. While these agencies Accreditors have important expertise in educational quality assurance, institutional capacity, and compliance with their own standards. They are not generally equipped to resolve constitutional disputes, assess the legal sufficiency of institutional speech policies, determine whether a faculty member's speech was protected, or decide whether an institution has adequately represented a range of viewpoints.

The NPRM recognizes that First Amendment obligations differ between public and private institutions, but it still asks accreditors to assess whether public institutions "consistently" protect First Amendment rights, an inquiry that may exceed their expertise. It also risks imposing uniform federal requirements on the context-specific concept of academic freedom. Because "intellectual diversity" and "viewpoint neutrality" are undefined, the provisions could invite politically charged disputes over curriculum, faculty hiring, research, and campus speech, while creating a new complaint channel unrelated to educational quality and diverting accreditors from their core responsibilities.

The NPRM's own preamble acknowledges that accreditors are not intended to adjudicate legal disputes or act as civil-rights enforcement agencies, but the regulatory text does not adequately cabin the proposed requirements to avoid precisely that results.

B. Proposed requirements exceed the appropriate scope of recognition criteria

Section 496(a) of the Higher Education Act (HEA) authorizes the Secretary to establish criteria for determining whether an accrediting agency is a reliable authority on the quality of education or training offered by the institutions and programs it accredits. The statute identifies specific areas that accreditor standards must address, like student achievement, admissions and recruiting, complaints and Title IV compliance. It also requires agencies to apply and enforce standards consistently while respecting institutional mission.

At the same time, in section 496(o) of the HEA, the Secretary may establish procedures governing recognition and appeals, but it prohibits the Secretary from promulgating regulations with respect to the accrediting agency standards described in section 496(a)(5). The Department itself recognizes this statutory limit in the NPRM, stating that the Secretary may establish recognition criteria concerning whether an agency functions as a reliable authority, while accreditors retain responsibility for developing and applying their own substantive standards; the Department further states that, except where expressly required by statute, the proposed regulations do not prescribe the substantive content of institutional accreditation standards.

The proposed academic-freedom, "intellectual diversity," viewpoint neutrality, and First Amendment provisions are difficult to reconcile with that interpretation. They do not merely require an agency to maintain their procedures, apply its own standards consistently, or respect institutional mission. Instead, they direct agencies to evaluate specific substantive institutional policies and practices. Those requirements risk transforming Federal recognition criteria into a mechanism for prescribing and enforcing institutional academic-policy standards.

The Department should not attempt to circumvent the statutory limit on regulating accreditor standards by requiring accreditors to adopt and apply prescribed substantive standards under the label of recognition criteria. The Department's stated distinction between process-based recognition and substantive institutional standards becomes untenable where the regulation directs agencies to assess whether particular institutional academic-freedom and "intellectual diversity" policies exist, what they must cover, and how they must operate.

C. Recommendations

The Department should revise the rule by withdrawing proposed §602.15(f) and deleting proposed §§602.17(a)(2)(iii), (v), (vii)(A)–(C), and (viii), as well as §602.18(b)(4), because these provisions would improperly direct accreditors to evaluate constitutional, academic freedom, viewpoint, and "intellectual diversity" policies beyond their expertise and existing recognition responsibilities. Existing legal, judicial, state oversight, and institutional governance mechanisms are better positioned to address those matters, while the remaining requirements in §602.18(b) already provide an appropriate framework. The Department should also delete proposed §602.17(a)(2)(iii), (v), (vii)(A)–(C), and (viii), which would require accreditors to evaluate detailed institutional policies concerning academic freedom, First Amendment protections, faculty viewpoint and ideology, freedom of inquiry and "intellectual diversity."

Existing §602.18(b)(1)–(3) and (5)–(7) already require agencies to maintain written standards, prevent inconsistent application of those standards, and base decisions on published requirements. Together, these provisions provide an appropriate framework for accreditor decision-making without imposing an undefined Federal viewpoint-neutrality requirement.

Finally, the Department should remove the preamble's illustrative definition of academic freedom or expressly disclaim its regulatory effect. If the illustrative definition is retained, ED should state that the definition does not create an accreditation requirement, safe harbor, presumption or basis for enforcement and does not limit institutional authority over curriculum, pedagogy, faculty employment, research standards or professional conduct.

III. Preserving meaningful safeguards for initial recognition

Current §602.12 requires an agency seeking initial recognition to have granted accreditation or preaccreditation before applying to the Department and to have conducted accrediting activities for at least two years, unless it is affiliated with or a division of an already recognized agency. The regulation also requires an agency seeking an expansion of scope to demonstrate that it has policies satisfying the recognition criteria and permits the Department to limit the number of institutions or programs an agency may accredit when the agency lacks experience under the expanded scope.

The proposed §602.12 would replace these requirements with a lower threshold for submitting an initial recognition application. An agency would need to be legally established, adopt standards consistent with §602.16, adopt operating procedures consistent with §602.23, and establish a process for accepting applications, with at least one institution or program having submitted an application. The proposal would also require the agency to undergo the recognition process and to have granted accreditation to at least one institution or program before recognition could be awarded. However, the Department would remove the current two-year experience requirement and the requirement that an agency demonstrate experience across the range and geographic area of its requested scope.

The NPRM also removes initial-recognition-specific materials that appeared in the consensus language under the restructured recognition procedures. Those materials included letters of support from accredited institutions or programs, educators, and where appropriate, employers or practitioners, as well as a letter from an institution or program that would rely on the agency as its Federal link. Proposed §602.31 instead establishes a risk-based framework for determining whether an agency must submit a comprehensive application, but does not require every new agency to provide comparable evidence of stakeholder demand, operational readiness, or prospective Federal-program relevance at the initial stage.

The Department should retain a tailored initial-recognition showing that tests whether an agency is prepared to serve as a reliable quality-assurance authority. Specifically, ED should revise proposed §602.12(a) to require an agency to demonstrate that it has the governance, administrative and financial capacity, and properly trained evaluators; meaningful institutional or programmatic demands within its proposed scope; the ability to collect and assess student-achievement and other relevant outcomes; reliable procedures for applying standards, taking adverse action, and protecting students through teach-out planning; and, when applicable, an actual reasonably imminent Federal link consistent with §602.10.

Further, ED should also revise §602.31(a) to require every agency seeking initial recognition to submit this initial readiness documentation as part of its application, regardless of whether the Department later selects the agency for a comprehensive or more limited review. ED should further revise §602.31(a) to require a comprehensive review of every initial recognition application before recognition is granted.

Finally, the Department should add a provisional recognition framework to §602.12 and §602.36 for new agencies that satisfy the initial eligibility requirements but have limited experience applying their standards. Provisional recognition should be limited to the agency's demonstrated scope and should not permit the agency to expand its scope or serve as the Federal link for additional institutions without Department approval. The regulation should require enhanced monitoring under §602.33, annual reporting on accreditation decisions and student outcomes, and a shorter recognition period, such as two years, before the agency may receive full recognition. This approach would help to facilitate legitimate new entrants while preventing recognition from becoming a low-threshold pathway for entities with untested standards, limited operational capacity, or insufficient public accountability.

IV. The Department should seek to prevent accreditor shopping and establish safeguards against a race to the bottom

The language in the NPRM would make it easier for institutions to change accreditors, obtain accreditation from multiple agencies, and seek accreditation without traditional geographic limitations. The Department's assumption that increased competition will necessarily improve quality is not self-executing. Accreditation is not an ordinary consumer market. Institutions, rather than students or taxpayers, generally select and pay accreditors. This structure can create incentives for agencies to compete by offering lower costs, faster reviews, reduced scrutiny or greater tolerance for weak outcomes. The risk is particularly serious where an institution seeks to change accreditors after an adverse action, unresolved compliance finding, financial warning, serious complaint, provisional Title IV certification, heightened cash monitoring, or a pattern of poor student outcomes. Without enforceable quality floors and a complete review of an institution's history, expanded mobility would likely weaken an accreditor's willingness to enforce its standards and allow an institution to seek a less demanding agency rather than improve, close or teach out deficient programs.

The Department should therefore revise §600.11 to require a documented transition review before the Secretary recognizes a Title IV-participating institution's change or addition of an institutional accreditor. The institution should be required to submit its complete accreditation and compliance record, including all adverse and interim actions, unresolved findings, complaints, financial risk indicators, program review materials, teach-out obligations, corrective action plans and relevant State or Federal actions. The receiving agency should be required to review that record and provide the Secretary with a written certification that it has considered the institution's prior history and determined that the change is not intended to evade oversight or obtain a less rigorous review. ED should also require institutions to publicly disclose its reason for changing accreditors and any pending or recent adverse actions. To address the absence of a clear transition timeline in the NPRM, ED should specify in §600.11 that the Secretary will issue an initial determination within 60 days of receiving a materially complete submission and issue a final determination within 120 days.

Further, the Department should add further corresponding safeguards to §602.23(k) and §602.12. Any expedited process for an institution changing accreditors should be undeniable to an institution that is subject to probation, show-cause, suspension, or another adverse action. The receiving agency should be required to conduct a full-scope review of the institution's accreditation history before granting accreditation through an expedited process, and the agency should be required to submit a report to ED identifying the records reviewed and any unresolved risks. A receiving agency should not be permitted to use an expedited process to narrow the review or disregard prior findings.

Finally, the Department should establish a common set of minimum safeguards that every recognized institutional accreditor must apply when reviewing an institution that changes or adds accreditors. The Department could add a new paragraph to §602.23(k) requiring the receiving agency to apply, at a minimum, the agency's standards and procedures concerning student achievement, financial responsibility, consumer protection, complaints, institutional stability, teach-out planning, and compliance with Federal and State law. ED should also add a new monitoring requirement to §602.23(k) or § 602.33 requiring heightened monitoring for at least two years after the change. This requirement would not prohibit legitimate institutional mobility or require the Department to assign an institution to a particular accreditor. Rather, they would ensure that mobility occurs transparently and does not become a mechanism for avoiding accountability or creating a race to the bottom.

Conclusion

The Department should ensure that efforts to promote innovation and institutional choice do not weaken accreditation's essential role as a safeguard for students and taxpayers. In particular, the Department should maintain a rigorous threshold for initial recognition that requires evidence of operational capacity, stakeholder demand, quality-assurance readiness, and demonstrated application of standards. It should also guard against accreditor shopping by requiring stronger disclosure, transition review, and enhanced monitoring when institutions seek to change accrediting agencies, especially where an institution has recent adverse findings, financial risk indicators, or persistently weak student outcomes.

If you have any additional questions or comments, please feel free to contact Madison Weiss, Senior Policy Analyst, Higher Education at mweiss@americanprogress.org.