

January 26, 2026

SUBMITTED VIA FEDERAL eRULEMAKING PORTAL

Honorable David Barker
Assistant Secretary, Office of Postsecondary Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Re: Comment on the Request for Information; Updates to the Accreditation Handbook
Agency/Docket Number: ED-2025-OPE-1009

Dear Assistant Secretary Barker:

As President and Co-Founder of the Defense of Freedom Institute for Policy Studies (“DFI”), I am delighted to provide DFI’s public comment to the U.S. Department of Education’s (the “Department”) Request for Information (“RFI”) on updates to the agency’s Accreditation Handbook (the “Handbook”) (Docket ID: ED-2025-OPE-1009). We are pleased that Secretary Linda McMahon and Under Secretary Nicholas Kent are focused on the challenges of the current accreditation system and are committed to much-needed reform.¹ DFI echoes Under Secretary Kent’s

¹ See, e.g., Executive Order 14279, “Reforming Accreditation to Strengthen Higher Education,” April 23, 2025, <https://www.whitehouse.gov/presidential-actions/2025/04/reforming-accreditation-to-strengthen-higher-education/>; and Josh Moody, “McMahon Sharpens Tone on Accreditation,” *Inside Higher Ed*, May 16, 2025, <https://www.insidehighered.com/news/governance/accreditation/2025/05/16/mcmahon-sharpens-tone-accreditation>.



call for major changes in accreditation,² and we look forward to working with the Department to create a regulatory framework during the upcoming rulemaking effort that brings accreditors back to their core mission of academic quality assurance and serving the needs of America’s postsecondary students.³

DFI is a national nonprofit organization focused on providing thoughtful, conservative solutions to the challenges presented by education, workforce, labor, and employment issues. DFI is led by former senior leaders at the Department, and we bring a unique blend of policy and legal expertise to these issues. DFI regularly contributes its expertise to policy and legal debates concerning education law and policy, particularly the Department’s regulations issued under the Higher Education Act of 1965, as amended (“HEA”).⁴ On accreditation matters, DFI has been a leading voice for reform, including major reports on the failures of the current accreditation system and how to reform it.⁵

On December 11, 2025, the Department published a RFI in the Federal Register asking for specific updates to the Handbook.⁶ The purpose of the RFI is to “improve this important handbook to communicate clear and concise information to users so that the process for the Department’s recognition of an accrediting agency is

² See, “Remarks of the Undersecretary of Education, Nicholas Kent, at the meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI),” December 16, 2025.

³ See, U.S. Department of Education, “Intent to Establish Negotiated Rulemaking Committee,” Docket ID: ED-2025-OPE-1042; RIN: 1840-AD82, January 27, 2026.

⁴ 20 U.S.C. § 1001 et seq.

⁵ See, e.g., Andrew Gillen, “Should College Accreditation Be Replaced or Reformed?” February 25, 2025, <https://dfipolicy.org/press-release-defense-of-freedom-institute-calls-for-bold-reforms-to-college-accreditation-system/> and Michael Brickman, “The State of Federal Accreditation Regulations and Guidance: Recent Reforms and New Opportunities,” March 7, 2023, <https://dfipolicy.org/dfi-releases-new-report-calling-the-higher-education-accreditation-process-broken-proposes-changes-to-better-protect-students-taxpayers/>.

⁶ 90 Fed. Reg. 57454.



transparent, efficient, and not unduly burdensome.”⁷ Further, the Department stated that the RFI may also inform the Department’s potential reforms to the accreditation regulations.⁸

DFI submits this public comment to express support for the Department’s focus on accreditation reform and to propose changes to the current Handbook. Our comment also includes policy proposals that will help the Department achieve its goal of major reform in higher education accreditation to better serve students, institutions, and taxpayers.

This comment is organized as follows. First, it provides a brief background on the accreditation system and identifies several challenges faced by accreditation agencies and accredited institutions. Second, DFI proposes “top-level” changes to the Handbook. Finally, as requested in the RFI, DFI offers policy proposals (grounded in statutory authority) for the Department’s consideration in the upcoming rulemaking.

I. Brief Background on Accreditation and Challenges to the Current System

With the expansion of federal financial aid, accreditors have evolved into formal gatekeepers for taxpayer-funded student aid. Unfortunately, too many accreditation agencies have strayed from their core mission of academic quality assurance and engaged in practices that have reduced the quality of American higher education. Understanding how that transformation occurred is essential to evaluating the system’s current performance.

Starting in the late 19th century, voluntary associations of postsecondary institutions formed to define the differences between high school and college education, as well as to develop guidelines and procedures for peer review as a

⁷ *Id.*

⁸ 90 Fed. Reg. 57456.



condition for membership.⁹ In 1965, Congress augmented the role of accrediting agencies with the enactment of the HEA, which created new federal student aid programs for postsecondary students.¹⁰ The HEA required that only institutions accredited by agencies recognized by the (then) Office of the U.S. Commissioner of Education were eligible to receive those federal funds. As a result, accreditation agencies evolved into a crucial leg of the higher education regulatory triad, together with state authorization agencies and the Department, as gatekeepers of federal dollars.¹¹

In 1992, Congress addressed the Department's criteria for recognition by the Secretary. HEA § 1099b was added to require accrediting agencies to exercise genuine oversight of their member institutions and set forth the standards and criteria recognition by the Department.¹² The new section also described the types of organizations eligible for recognition and detailed the types of institutional assessment standards that agencies were to apply consistently to all schools, such as: recruitment and admissions practices; program length; and "success with respect to student achievement in relation to [the school's] mission," which could include consideration of course completion, state licensing examinations, and job placement rates.¹³ The 1998 HEA reauthorization saw changes in the scope of the

⁹ Alexandra Hegji (2024, April 12). *An Overview of Accreditation of Higher Education in the United States* (CRS Report No. R43826). https://www.congress.gov/crs-product/R43826#_Toc164092350.

¹⁰ P.L. 89-329.

¹¹ Office of Postsecondary Education, U.S. Department of Education, "History and Context of Accreditation in the United States," May 9, 2025, https://www2.ed.gov/admins/finaid/accred/accreditation_pg2.html.

¹² Hegji, (2024), <https://www.congress.gov/crs-product/R43826#fn29>.

¹³ *Id.*



criteria for the recognition of accrediting agencies, especially regarding education delivery methods and distance education programs.¹⁴

Today, unfortunately, accreditors suffer from both foundational and self-imposed problems. Agencies too often fail in their basic quality improvement and assurance roles, leading to students burdened with unmanageable debt and ill-prepared for citizenship and the workforce.¹⁵ Further, when an accreditor does act against a failing institution, it is rarely for low quality. A recent analysis found that, between 2012 and 2021, the seven (7) largest accreditors issued just 107 disciplinary actions that touched on academic quality.¹⁶ During that same time period, accreditation agencies issued 11,000 disciplinary actions for concerns related to governance, finances, and compliance.¹⁷ In short, less than 1% of disciplinary actions were based upon the core, foundational role that the HEA created for accreditors.

When they do act, accreditors too often impose on institutions criteria unrelated to their responsibilities under the HEA and contrary to federal law. Recent analyses have uncovered dozens of examples of “political abuses of accreditation standards and processes,” finding that “accreditors have used their standards to promote or require diversity, equity, and inclusion (DEI) policies, to interfere with legitimate governance of public colleges in conservative states, and to demand racial

¹⁴ Pub. L. 105-244.

¹⁵ Gillen, <https://dfipolicy.org/press-release-defense-of-freedom-institute-calls-for-bold-reforms-to-college-accreditation-system/>.

¹⁶ U.S. Government Accountability Office. (2014; Reissued 2015). *Education Should Strengthen Oversight of Schools and Accreditors* (GAO Report No. 15-59) <https://www.gao.gov/assets/d1559.pdf>.

¹⁷ Stig Leschly and Yazmin Guzman, *Oversight of Academic Quality and Student Outcomes by Accreditors of US Higher Education Evidence from the Database of Accredited Postsecondary Institutions and Programs*, Harvard Business School Postsecondary Commission, Spring 2022, <https://postsecondarycommission.org/wp-content/uploads/2024/01/Accreditor-College-Quality-Report-FINAL-PSC-Updated-010624.pdf>.



preferences in admissions.”¹⁸ Not only do such actions conflict with federal law (discussed more fully below), they creep into areas that have little to do with ensuring the quality of academic programs.

The current system also makes it exceedingly difficult for new agencies to operate. Remarkably, the dominant accreditors in 1952 are still so today.¹⁹ As an expert points out, one could count all the new institutional accreditors on your fingers and toes, with a toe to spare.²⁰ New agencies face restrictions on the types of colleges that they can accredit and vexatious, unnecessary obstacles to entry to the accreditation agency marketplace.

In sum, accreditation has devolved from a voluntary system of peer review into a central gatekeeping function for access to federal student aid, reinforced over time by successive HEA amendments that expanded federal recognition criteria and the scope of accreditor oversight. Yet, despite its critical role in safeguarding academic quality and student outcomes, the current system too often fails to address low-quality programs, prioritizing governance, financial, and political concerns over educational value and return-on-investment. More notoriously, accreditors have increasingly leveraged their Title IV gatekeeping authority to advance radical agendas that conflict with federal civil rights law, while existing authorities and market dynamics entrench dominant agencies and impede meaningful competition and innovation. Collectively, these structural and self-imposed

¹⁸ Adam Kissel and Timothy J. Rosenberger, Jr., *The Politicization of Higher Education Accreditation*, Texas Public Policy Foundation, August 2023, <https://www.texaspolicy.com/wp-content/uploads/2023/08/2023-08-NGT-PoliticizationofHigherEducationAccreditation-KisselRosenberger.pdf>.

¹⁹ Gillen, <https://dfipolicy.org/press-release-defense-of-freedom-institute-calls-for-bold-reforms-to-college-accreditation-system/>.

²⁰ *Id.*



failures have undermined public confidence in accreditation and warrant serious, immediate reform.

II. Proposals to Revise the Accreditation Handbook

DFI elucidates below several proposals that will provide clarity and direction to institutions and accreditors without creating additional, sub-regulatory requirements, demands, or obligations. In this vein, it is critical that the administration not mimic the prior administration’s practice of using subregulatory guidance to extract compliance from regulated entities without engaging in notice-and-comment rulemaking. Indeed, we discourage the Department from implementing major reforms to the accreditation system through revisions to the Handbook, which is subregulatory guidance that lacks the force and effect of law.²¹ DFI urges the agency to use the planned negotiated rulemaking process to make changes that materially alter the recognition criteria, the obligations of agencies, or institutional eligibility for federal student aid.

To ensure that the Department’s reforms remain, stakeholders must have a meaningful opportunity to provide input – beyond a simple RFI – and the Department must observe requirements and processes consistent with 20 U.S.C. § 1098a. Rulemaking is the most effective, durable vehicle for fundamental revisions to the accreditation system because it promotes transparency, consistency, and procedural fairness, whilst ensuring that any new requirements are legally grounded, publicly vetted, and applied in a predictable manner across institutions and accrediting agencies. Otherwise, the simple stroke of another Secretary of Education’s pen could swipe the Department’s reforms from the books. In short, reforms of the scope necessary to enact meaningful change belong in binding regulations, not in guidance documents (such as the Handbook) that can shift without accountability or adequate process.

²¹ *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 97, 135 S. Ct. 1199, 1204 (2015) (“[I]nterpretive rules do not have the force and effect of law.”).



With that caution in mind, DFI suggests several changes to the Handbook.

Handbook Proposal #1: Regulations First, Handbook Second

DFI encourages the Department to hold off on revisions to the Handbook until after the upcoming negotiated rulemaking process on accreditation regulations. To avoid a “cart before the horse” scenario, the Department should conduct negotiated rulemaking first and *then* revise the Handbook to conform with those regulations.

Doing the opposite will require the Department to revise the Handbook twice and may tempt the agency to leverage revisions to the Handbook to achieve long desired, but legally indefensible, subregulatory changes to the accreditor recognition requirements. DFI urges the agency to direct its precious resources and time to rulemaking before revising the Handbook, which would then reflect the Department’s major regulatory changes.

Handbook Proposal #2: Trim the Handbook to the Bare Essentials

Should the Department choose to revise the Handbook prior to rulemaking, the agency should begin its review in a similar manner to how the first Trump Administration conducted the “Rescission of and Replacement for the 2016 Handbook for Campus Safety and Security Reporting (Updated Jan. 19, 2021).”²²

There, the Department rescinded the 265-page “Handbook for Campus Safety and Security Reporting, 2016 Edition”(the “Clery Handbook”)²³ and replaced it with the

²² See, U.S. Department of Education, *Rescission of and Replacement for the 2016 Handbook for Campus Safety and Security Reporting (Updated Jan. 19, 2021)*, Electronic Announcement, October 9, 2020, <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2020-10-09/rescission-and-replacement-2016-handbook-campus-safety-and-security-reporting-updated-jan-19-2021>.

²³ See, U.S. Department of Education, *The Handbook for Campus Safety and Security Reporting (Maintained for Historical Purposes Only) (July 2016)*, <https://www.ed.gov/sites/ed/files/admins/lead/safety/cleryappendixfinal.pdf>.



13-page “Clery Act Appendix for FSA Handbook”(the “Clery Appendix”).²⁴ As a result of this action, the Department cut sub-regulatory guidance on the Clery Act to the bare minimum required under the statute and removed significant portions of the document that, despite the best intentions of the drafters, failed to provide clarity, confused readers, and muddled requirements for institutions. Similarly, the Department may wish to *remove* Handbook requirements that conflict with statutory authority²⁵ and implementing regulations.²⁶

For example, extrapolating from 34 C.F.R. § 602.12, the Handbook requires that, for agencies seeking initial recognition, the Department’s “File Review” will include “records of correspondence between the agency and the institution or program regarding the accreditation or preaccreditation process or the institution’s or program’s accreditation or preaccreditation status.”²⁷ Neither § 602.12 nor the HEA requires accreditors to submit *all* correspondence with institutions or programs. Although just a short phrase in the Handbook, this requirement results in reams of documents that, according to the Handbook, could result in an agency being denied recognition. If the Department wishes to review all of this correspondence and sees value in these documents, such a requirement should be promulgated in regulation, not the Handbook.

Building off of § 602.21, the Handbook also demands “redline versions of standards or other documents that identify the standards that have been updated since the last recognition review” and “minutes of meetings in which new standards were developed, reviewed, and approved by the decision-making body, board, or other

²⁴ See, U.S. Department of Education, *Clery Act Appendix for FSA Handbook*, Appendix: <https://fsapartners.ed.gov/sites/default/files/attachments/2020-10/CleryAppendixFinal.pdf>

²⁵ 20 U.S.C. § 1099b.

²⁶ See, *generally*, 34 C.F.R. Part 602, Subpart B.

²⁷ Accreditation Handbook, pg. 6-7.



related body under the agency’s comprehensive standard review process.”²⁸ No such requirement exists in the regulations or statute. Although these documents *may* assist the Department’s review, demanding these documents as a prerequisite for recognition has not been subject to negotiations or notice-and-comment rulemaking. The result is a manual of mandatory agency preferences without any legal basis.

Handbook Proposal #3: Choose Discretion Wisely

DFI recognizes both the importance of, and the need for, agency discretion when interpreting and implementing its own regulations. At the same time, we caution against extending that discretion in ways that effectively impose new obligations on accreditors and institutions through subregulatory guidance. When discretion functions as an informal mechanism to expand requirements beyond the text of the statute and regulations, it risks undermining regulatory clarity and creating stacking requirements that, over time, makes sustained compliance substantially and increasingly more difficult and expensive.

The Department’s prior treatment of “Clery Geography” in the Clery Handbook provides a useful example. Although the regulatory definition is relatively straightforward, the Clery Handbook included twenty-seven (27) pages of interpretive guidance on this single topic, creating a complex and burdensome compliance framework that proved a compliance minefield for institutions.²⁹ The first Trump administration streamlined and reduced the guidance to fewer than three pages in the Clery Appendix, illustrating how an agency can recalibrate subregulatory guidance to promote clarity, rather than confusion.

In short, the Department’s exercise of discretion should enhance predictability and administrability, not create additional requirements or increase complexity, such

²⁸ Accreditation Handbook, pg. 23.

²⁹ *See*, Clery Handbook, Ch. 2.



that compliance becomes a technical exercise unmoored from statutory authorization, regulatory requirements, or simple common sense.

Handbook Proposal #4: Remove “In Petition” and “File Review” Columns and Replace with Narrative Explanations

The Department should also consider the removal of the Handbook’s “In Petition” and “File Review” columns, as well as the verbatim recitation of regulatory text. As referenced above, these columns create sub-regulatory compliance obligations that can exceed statutory authority and regulatory requirements.

Similarly, reproducing regulatory language word-for-word provides limited practical value to accreditors or institutions, particularly where the same text is readily available through official sources. Instead, the next iteration of the Handbook should prioritize clear narrative explanations, like the Clery Appendix, that translate the governing requirements into a more usable, implementation-focused format.

III. DFI’s Accreditation Policy Proposals

Since the passage of the HEA in 1965, too many of America’s colleges and universities, particularly so-called “elite” schools, have become monolithically illiberal, intolerant, and obsessed with identity while loading many students with unmanageable debt and discouraging young Americans, particularly men, from attending four-year institutions. Although the administration has taken important steps to reform higher education and to provide alternative pathways to four-year degree granting institutions, much work remains to ensure long-lasting, durable reform. To that end, the Department’s accreditation agency recognition power provides a critical tool not only for reform of accreditation agencies – arguably, the center of gravity for needed changes in higher education – but also postsecondary institutions. Accordingly, consistent with the Department’s request in the RFI, DFI provides the following policy proposals for anticipated negotiated rulemaking sessions concerning the Department’s accreditation regulations.



Policy Proposal #1: Require accreditation agencies to ensure that their policies, standards, and criteria do not compel or encourage their member institutions to violate federal civil rights laws, such as Title IX.

Accreditors are charged with evaluating academic quality, institutional integrity, and compliance with applicable legal requirements, *not* to serve as vehicles for a preferred ideological imposition or intellectual conformity. If the accreditation system is to retain public confidence and remain a credible component of the federal oversight framework, accrediting agencies must confine their standards to statute-driven, mission-relevant criteria that directly relate to educational quality, student outcomes, and operational capacity—not “woke” political agendas.³⁰

Accordingly, within statutory constraints, “woke” criteria must be excised from all accreditor policies, standards, and criteria.³¹ Whatever label is used, accreditation agencies should not impose political litmus tests, viewpoint-based requirements, illegal yardsticks, or compelled ideological commitments as conditions of institutional eligibility for Title IV funds. Accreditors should focus on measurable indicators of quality and effectiveness – curriculum coherence, learning outcomes, faculty qualifications, governance, fiscal controls, and student recruitment, admissions, campus life, career services, and support – rather than standards that

³⁰ If the current system cannot be reformed, there are several pathways to replace it, including replacing accreditors with the federal government or moving to a market-based system; however, both pathways suffer serious drawbacks. Because of these drawbacks and as Congress must authorize these changes, DFI does not argue here for removing accreditation agencies from the regulatory triad—underscoring the importance of the reforms that the Department is undertaking. *See* Gillen, <https://dfipolicy.org/press-release-defense-of-freedom-institute-calls-for-bold-reforms-to-college-accreditation-system/>.

³¹ For more information on how DFI defines “woke” ideology, *see* Angela Morabito and Paul Zimmerman, “The Fall of Woke? The Teacher Unions Create a Safe Space for a Beleaguered Ideology,” DFI, November 2025, https://dfipolicy.org/wp-content/uploads/2025/11/The_Fall_of_Woke__Morabito_Zimmerman_November2025.pdf.



function as proxies for political or social enforcement unrelated to academic performance.

Accordingly, Department regulations should plainly state that accreditors with “woke” criteria that require schools to violate, or encourage them to violate, federal civil rights law face withdrawal or suspension of recognition by the Department and possible referral to the Department’s Office for Civil Rights or the U.S. Department of Justice (“DOJ”) for investigation. The Department’s recognition authority is meaningful *only* if it is used to prevent accreditors from exceeding their proper scope and imposing unlawful conditions. Clear policy direction through rulemaking would also provide notice to accreditors and institutions and reduce the risk of inconsistent or ad hoc enforcement or judicial abrogation.

While some accreditors have already taken action to remove or replace their “diversity, equity, and inclusion” (“DEI”) standards,³² others have simply “suspended” their DEI standards or otherwise been slow to act. Some accreditors continue to include DEI policies within their criteria and standards.³³ Indeed, several accreditors and organizations that represent either accreditors or

³² See, Susan H. Greenberg, “Western Accreditor Officially Drops DEI Standards,” *Inside Higher Ed*, October 8, 2025, <https://www.insidehighered.com/news/quick-takes/2025/10/08/western-accreditor-officially-drops-dei-standards>; see also, Josh Moody, “STEM Accreditor Drops DEIA from Its Standards,” *Inside Higher Ed*, February 21, 2025, <https://www.insidehighered.com/news/quick-takes/2025/02/21/stem-accreditor-drops-deia-its-standards>.

³³ See, e.g., Council on Social Work Education, “Education Policy 2.0: Anti-Racism, Diversity, Equity, and Inclusion (ADEI),” <https://www.cswe.org/getmedia/bb5d8afe-7680-42dc-a332-a6e6103f4998/2022-EPAS.pdf>; see also, Defending Education, *AccreditED: Social Work Programs Steeped in Anti-Racism, DEI, Critical Race Theory, Privilege and Anti-Oppressive Practices*, December 8, 2025, <https://defendinged.org/investigations/accredited-social-worker-programs-steeped-in-anti-racism-dei-critical-race-theory-privilege-and-anti-oppressive-practices/>.



institutions continue to express support for illegal “diversity, equity, and inclusion” standards.³⁴

In the past, agencies punished or treated unfairly those institutions that refused to comply with standards that conflict with federal civil rights laws. For example, in 2008, WASC complained about the “lack of progress on racial issues” at an institution and threatened the college’s accreditation over its “increasing and sustained lack of civility.”³⁵ In 2020, the Liaison Committee on Medical Education deemed a medical school lacking sufficient faculty (racial) diversity and required the delivery of a “Diversity, Equity, Inclusion, and Anti-Racism Strategic Action Plan.”³⁶ But Title VI prohibits recipients of federal financial assistance from using race as a condition of their education programs and activities—faculty hiring, retention, and employment conditions and student recruiting, admissions, housing, campus life, and academics.³⁷ The Department must not allow accreditors to use their Title IV gatekeeping (or occupational licensure authority) to compel,

³⁴ See, Cynthia Jackson Hammon, Ed.D., “Higher Education and the Importance of Diversity, Equity, and Inclusion,” Council for Higher Education Accreditation, February 25, 2025, <https://www.chea.org/higher-education-and-importance-diversity-equity-and-inclusion>; and American Council on Education, “ACE, Higher Education Groups Urge Department to Rescind DEI “Dear Colleague” Letter,” March 3, 2025, <https://www.acenet.edu/News-Room/Pages/Higher-Ed-Groups-Urge-ED-to-Rescind-DCL.aspx>.

³⁵ Kissel and Rosenberger, pg. 6.

³⁶ John Sailer, “When Discipline-Specific Accreditors Go Woke,” *The James G. Martin Center for Academic Renewal*, January 27, 2023, <https://jamesgmartin.center/2023/01/when-discipline-specific-accreditors-go-woke/>.

³⁷ 42 U.S.C. § 200d et seq. See also, U.S. Dep’t of Justice, “Memorandum for All Federal Agencies; Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination,” July 29, 2025, https://links-1.govdelivery.com/CL0/https:%2F%2Fwww.justice.gov%2Fag%2Fmedia%2F1409486%2Fd1%3Finline=%26utm_medium=email%26utm_source=govdelivery/1/010001985c36b911-61c8d569-6d56-46d7-a035-616d9d8fe7e9-000000/TsIBQqBaWzEOyES8UUgQDNShsWJG3q3R3Tew_gKTTok=416.



encourage, or cajole institutions to circumvent Title VI and other federal civil rights laws.

Statutory support exists for the Department to address the issue of accreditor criteria that steer institutions into violations of civil rights statutes. For example, the HEA requires that accreditors have standards that assess an institution's faculty³⁸ and student recruiting and admissions practices.³⁹ As the guardians of federal funds, accreditors thus have an obligation to ensure that their policies, criteria, and standards concerning faculty, recruiting, and admissions do not compel member institutions to violate civil rights laws or ignore those laws.

Arguments to the contrary simply do not hold water. Congress did not carve out an exemption from civil rights laws such as Title VI so that institutions can comply with an accreditor's illegal criteria; there is no "accreditation exception" to Title VI or other federal civil rights laws. It simply begs credulity to argue that accreditation agencies have the freedom under the HEA to enforce policies that require or even imply that member institutions have license to ignore federal civil rights requirements simply to accommodate an agency's criteria.

Additional statutory authority exists for such an express requirement.⁴⁰ The HEA also requires that accrediting agencies have standards that assess an institution's "fiscal and administrative capacity as appropriate to the specified scale of operations."⁴¹ Accrediting agencies must thus enforce criteria relating to the "administrative capacity" of their members and core institutional functions--recruiting, admissions, faculty hiring and employment, compliance, and related

³⁸ 20 U.S.C. § 1099b(a)(5)(C).

³⁹ 20 U.S.C. § 1099b(a)(5)(G).

⁴⁰ *For example*, 20 U.S.C. 1099c(d) provides the Secretary the authority to "establish...other reasonable procedures...to ensur[e] that the institution of higher education will comply with administrative capability required by [Title IV]."

⁴¹ 20 U.S.C. § 1099b(a)(5)(E).



educational practices.⁴² This administrative capability surely includes compliance with federal civil rights mandates. Accreditors should not accredit institutions whose recruiting, admissions, and employment practices violate federal civil rights laws, and the Department should not recognize agencies that compel or encourage their member institutions to operate in a manner that conflicts with these legal requirements.

Institutions cannot be “high quality” if they operate in a manner that is unlawful or discriminatory. To allow otherwise would tolerate discrimination in faculty recruitment, hiring, and employment conditions, as well as student recruitment, admissions, and participation in educational programs and activities, and completely gut the quality assurance function of accreditors. Such institutions would fail to demonstrate sufficient administrative capacity to comply with basic legal requirements such as Title VI—an issue well within the purview of accreditor oversight and the Department’s recognition authority.

Accreditation reform must include a firm commitment to ensuring that accreditation agencies do not leverage their Title IV gatekeeping function to enforce criteria that require or encourage member schools to violate civil rights requirements regarding faculty, student recruiting and admissions, and related matters concerning university life. By grounding accreditor recognition (and thus institutional eligibility for Title IV) in objective standards, civil rights compliance, and the HEA, the Department will strengthen the integrity of accreditation while protecting students, institutions, and taxpayers.

Policy Proposal #2: Expand the Department’s scope of review responsibilities to provide a fuller, more meaningful picture of accreditor actions, including those that implicate academic freedom and freedom of speech on campus.

Accreditation is more than a procedural gateway to federal financial aid. It is a public trust that exists to ensure institutions meet expectations of academic

⁴² See, generally, 20 U.S.C. § 1099b(a)(5).



quality, integrity, and institutional governance. As the higher education environment grows more politically and culturally polarized, the credibility of the sector partly depends on whether accreditors are willing and able to uphold core academic principles consistently, even when doing so is unpopular or invites external pressure.⁴³

For most institutions of higher education, academic freedom, free inquiry, and free speech are the foundation of a thriving, academically sound learning environment.⁴⁴ These principles are not merely aspirational values; they are foundational conditions for legitimate teaching, scholarship, and student development. A campus cannot credibly claim academic excellence if it tolerates systematic suppression of viewpoint diversity, retaliation for protected expression, or institutional practices that chill inquiry and debate. As with civil rights compliance, statutory support exists for the Department to address these issues as part of its recognition criteria through the HEA’s “administrative capacity” requirements.

Accreditors do not always enforce these requirements, to the detriment of students. For example, on January 4, 2023, the Foundational for Individual Rights in Education (“FIRE”) filed a complaint with the Higher Learning Commission (“HLC”) after an art history instructor was non-renewed after a controversy surrounding an image shown during a class lecture, which is a clear violation of

⁴³ After a review of the HEA, DFI has concluded that this policy proposal is grounded in statute through the requirements of § 1099b(a)(5)

⁴⁴ See, e.g., The University of Chicago’s “Free Expression” webpage, <https://freeexpression.uchicago.edu/>. Exceptions exist, such as for faith-based institutions whose institutional missions require fealty to a certain belief or doctrine. In this vein, the Department’s implementing regulations mandate that accreditation agencies respect the institutional mission of a member college or university. See also: Liberty University, “What We Believe: Explaining our mission to *Train Champions for Christ*,” <https://www.liberty.edu/residential/what-we-believe/>.



academic freedom.⁴⁵ Despite this complaint, there is no record on HLC’s website of *any* action taken by the institution’s accreditor in response to FIRE’s complaint.⁴⁶

To ensure that member institutions observe these protections, DFI urges, as part of criteria that address issues of “administrative capacity,” that the Department *require* accreditation agencies to establish criteria addressing academic freedom, free inquiry, and free speech and that the agencies enforce these criteria.

With reference to state-supported institutions, these criteria must ensure that institutional policies align with the First Amendment, without regard to whether a controversy arises from a progressive cause, a conservative viewpoint, a religious expression, or a disfavored political position. For nonpublic institutions, the Department must ensure that accreditors maintain criteria that require member schools to clearly disclose policies regarding academic freedom and freedom of expression on campus. The Department must also mandate that agencies evenly and consistently apply these criteria across institutions (depending on whether the school is public or private). Moreover, in accordance with the Department’s authority to police “misrepresentations”⁴⁷ by institutions under Title IV, the

⁴⁵ See, “FIRE Accreditor Complaint to Higher Learning Commission re: Hamline University,” January 4, 2023, <https://www.thefire.org/research-learn/fire-accreditor-complaint-higher-learning-commission-re-hamline-university-january-4>.

⁴⁶ See, Higher Learning Commission, “Statement of Accreditation Status: Hamline University,” <https://www.hlcommission.org/institution/1390/>. Note: HLC’s Criteria for Accreditation 2.D, [Policy #: CRRT.B.10.010], “Academic Freedom and Freedom of Expression,” states: “The institution supports academic freedom and freedom of expression in the pursuit of knowledge as integral to high-quality teaching, learning and research.” See, <https://www.hlcommission.org/accreditation/policies/criteria/>; see also, Paul Zimmerman and Robert S. Eitel, “Stanford Law’s refusal to enforce its free speech policies calls into question its accreditation,” *Washington Examiner*, April 6, 2023, <https://www.washingtonexaminer.com/opinion/beltway-confidential/2787868/stanford-laws-refusal-to-enforce-its-free-speech-policies-calls-into-question-its-accreditation/>.

⁴⁷ 34 C.F.R. § 668.71.



Department should also direct accreditation agencies to report violations of these “academic freedom and free speech” criteria to the Department so that Federal Student Aid may investigate whether an institution has engaged in a misrepresentation or refer the matter to another agency, such as DOJ or the Federal Trade Commission.

The Department should act against accreditors who fail to enforce (or consistently enforce) these criteria. In practice, that means creating a regulatory framework that treats persistent accreditor inaction as a serious oversight deficiency, one that can warrant heightened scrutiny, corrective action, or loss of recognition where appropriate. Done correctly, this approach would reinforce that academic freedom, free speech, and free inquiry are not optional add-ons, but central components of educational quality that accreditation must protect to remain credible, legitimate, and worthy of public confidence.

Policy Proposal #3: Remove barriers to entry for new, alternative, and innovative accreditors without sacrificing quality and diligence and emphasize student success, workforce development, and program-to-placement pipeline.

The accreditation system’s structure has remained largely unchanged even as the postsecondary landscape has evolved dramatically. If the system is to remain credible, effective, and responsive to modern realities and the demands of the current (and future) job market, it cannot rely solely on legacy institutions and entrenched processes. A serious effort to modernize accreditation requires not only clearer standards and stronger outcomes, but also a willingness to rethink who participates in the system and how quality is assessed in the first place.

A critical aspect of reforming accreditation is admitting new players into the arena, with new ideas, new processes and procedures, and innovative ways of judging academic quality and excellence. The current system has too often favored incumbency, familiarity, and established reputations over experimentation, evidence-based evaluation, and performance-driven approaches. New accreditors, if appropriately vetted and held to rigorous standards, can bring fresh perspectives and greater agility in evaluating institutions that operate outside traditional



academic models, including those focused on workforce-aligned education, emerging industries, new delivery systems, and non-traditional learners.

The current accreditation system creates barriers to entry for innovative start-ups while being a poor gauge of program quality and student outcomes. The Department has the opportunity to harness the potential of new learning modes by welcoming high-performing applicant organizations.

This innovative approach also entails resolving long-standing issues with the accreditation regulations that have, at times, become hurdles for many agencies, especially new players. For example, in 34 C.F.R. § 602.12(a)(2), an agency seeking initial recognition must demonstrate that it has: “[c]onducted accrediting activities . . . for at least two years prior to seeking recognition.” There are multiple issues with this clause. First, “accrediting activities” is not fully defined. Although the regulation does state that “accrediting activities” includes “deciding whether to grant or deny accreditation or preaccreditation,” it is unclear how an unrecognized accreditor *could* “grant or deny accreditation” as no institution would pursue such a credential from an accreditor lacking status. It is clear that the drafters of this regulation meant additional duties, which the Department should state explicitly. Second, the required two (2) year period should be leveraged to create an incubator of new ideas and practices, not solely be treated as a barrier. As such, an “experimental period,” with close Department oversight, would assist applicant agencies to “get a foot in the door” *actually* to begin “accrediting activities.”

Importantly, quality does not have to be a casualty in this process. Increased competition among accreditors can strengthen quality by raising expectations, expanding the availability of expertise, and enabling institutions to pursue accreditation pathways that best match their missions and academic structures, without sacrificing academic rigor. When new accreditors are appropriately and reasonably required to demonstrate consistent standards, transparent procedures, and credible outcomes, a broader accrediting marketplace can actually increase accountability rather than weaken it.



To accomplish this, the Department should create a rulemaking framework that, as one of its guiding principles, seeks to break the programmatic and institutional accreditation cartels and monopolies that result in keeping high quality and unique programs and institutions from attaining accreditation. As Diane Auer Jones, a former Acting Under Secretary of Education and former Assistant Secretary of Postsecondary Education, has written, programmatic accreditors have effectively become monopolies because they have outsized control over entire career pathways.⁴⁸ Such cartels must be confronted in order to successfully prepare students for the new workforce.

DFI thus urges the Department to examine whether it lacks the statutory authority to recognize an accrediting agency that serves as a mandatory occupational license gatekeeper, because membership in the organization is no longer voluntary once it takes on that additional role. The HEA is clear: an accreditor *must* have a voluntary membership.⁴⁹ If the Department seeks to inject choice into the accreditation system, the planned rulemaking must tackle this language in the statute and ensure that, moving forward, accreditors remain voluntary membership organizations.⁵⁰

⁴⁸ Diane Auer Jones, “It’s Time to Break Up the Programmatic Accrediting Agency Monopolies,” *Inside Higher Ed*, November 19, 2025, <https://www.insidehighered.com/opinion/views/2025/11/19/break-programmatic-accrediting-monopolies-opinion>. Others have written that the situation is the same for accreditors with a national scope, *see* Andrew Gillen, “The Accreditation Cartel Faces a New Competitor,” Cato Institute, July 8, 2025, <https://www.cato.org/commentary/accreditation-cartel-faces-new-competitor#>; *see also*, Roger E. Meiners and Andrew P. Morriss, “Accreditation as Cartelization: Applying Antitrust Principles to Higher Education,” February 1, 2025, <https://ssrn.com/abstract=5121681>.

⁴⁹ 20 U.S.C. § 1099b(a)(2)(A)(i).

⁵⁰ Although Jones focuses on allied health programs, similar points can be made about other accreditors. For example, the American Bar Association (“ABA”) holds a virtual monopoly on the accreditation of freestanding law schools (as institutional accreditor for Title IV purposes) and of



In many areas, the lack of meaningful accreditor choice for institutions and programs operates as a structural barrier to innovation and can allow small factions of gatekeepers to impose rigid norms that add to the expense of a program, do not reflect the diversity of high-performing academic models, or conflate accreditation with occupational licensing. A regulatory framework that encourages new entrants, reduces unnecessary structural barriers, and supports specialization, while maintaining clear thresholds for competence and integrity, would help ensure that accreditation is a tool for quality assurance rather than a mechanism for protecting market share.

In the end, meaningful accreditation reform requires strong oversight, as well as a more open and competitive environment. Welcoming new players into the system, without lowering standards, offers a practical way to modernize accreditation while preserving its essential role in assuring academic quality. If the Department embraces competition, transparency, and mission-aligned evaluation as core

programs leading to a Juris Doctor (as a programmatic accreditor) that is only recently being challenged. *See*, Clarke T. Edwards and Daniel Guarnera’s Letter to the Supreme Court of Texas, “Proposed Amendment to Rule 1 of the Rules Governing Admission to the Bar of Texas,” December 1, 2025, https://www.ftc.gov/system/files/ftc_gov/pdf/ftc-staff-comment-tex-s-ct.pdf. (“The ABA should not serve as a gatekeeper to a critical aspect of admission to the legal profession. Such control by the ABA is inimical to the principles on which competition law rest. The ABA is dominated by practicing attorneys, who have strong interests in limiting competition for legal services. As such, the current rule raises serious competitive risks by so broadly delegating to the ABA the state’s authority to set eligibility requirements for admission to the Texas bar. It effectively gives the ABA, an organization that has previously flouted the rule of law it purports to promote, the ability to exclude market participants who would compete with its members.”); *see also*, Kathryn Palmer, “Texas Drops ABA Oversight of Lawyers Amid Anti-DEI Crusade,” *Inside Higher Ed*, January 12, 2026, <https://www.insidehighered.com/news/governance/accreditation/2026/01/12/texas-drops-aba-oversight-lawyers-amid-anti-dei-crusade>; *and* Executive Office of the Governor, “Governor Ron Desantis Announces First-of-Its-Kind Alternative University Accreditor,” June 26, 2025, <https://www.flgov.com/eog/news/press/2025/governor-ron-desantis-announces-first-its-kind-alternative-university-accreditor>.



principles of the upcoming rulemaking, it can foster an accreditation landscape that supports innovation, protects students, and works to strengthen confidence in higher education.

Policy Proposal #4: Ensure that the Department and accreditation agencies observe a consistent and fair approach to accreditation-related enforcement matters that does not consider tax status, political opinion, or religious affiliation.

Because of the enormous stakes involved, the integrity of the accreditation system depends not only on the substance of agency policies, criteria, and standards, but on the fairness and predictability with which agencies apply them. Any perception that accreditation decisions are inconsistent, selective, or influenced by external considerations undermines confidence and weakens the credibility of both accreditors and federal oversight.

For that reason, the HEA directs the Department to police whether accreditors enforce their policies and procedures consistently. Standards that fluctuate in application or that are applied aggressively in some cases and ignored in others, are illegal and create a compliance environment defined by uncertainty. When enforcement becomes discretionary in practice, institutions cannot reasonably plan for compliance, accreditors lose their legitimacy as neutral evaluators of quality, and the system begins to resemble ad hoc regulation rather than principled oversight.

Indeed, the Department must hold itself to the strictest standards when applying accreditation rules against agencies and must do so in a manner that is blind to the tax status, political favor, or religious affiliation of the accreditor's member institutions. The recognition process must be guided by objective criteria grounded in statutory authority, not by perceptions of institutional prestige, sector standing, or external political pressures. Oversight that is even-handed and criteria-driven is essential not only to fairness, but to ensure that recognition decisions are defensible, transparent, and durable across administrations.



Along these lines, the Department must ensure that accreditors consistently apply their policies, standards, and criteria, regardless of the identity of the institution or its perceived reputation or influence, political affiliations, or favored status. An accreditor cannot claim credibility if it tolerates noncompliance for well-connected institutions while scrutinizing others more aggressively or if it allows institutional prominence to substitute for demonstrable performance and accountability. Consistent application of accreditor standards ensures that institutions understand expectations, students receive reliable protection, and federal dollars flow only to institutions that meet clearly articulated thresholds of quality and integrity.

The Department's negotiated rulemaking should consider additional protections that ensure rigorous, impartial oversight in its recognition decisions and ensure that accreditors do the same in their evaluations of institutions. By insisting on neutral, predictable enforcement, free from favoritism, politics, or institutional influence, the Department can strengthen confidence in accreditation and reinforce its role as a credible, lawful, and effective component of higher education accountability.

IV. Conclusion

DFI appreciates the Department's leadership in initiating a reassessment of its oversight of the accreditation system and its accompanying subregulatory guidance. We support the administration's commitment to meaningful reform that restores accreditation to its core purpose of safeguarding academic quality and protecting students and taxpayers.

As outlined above, the Department should prioritize a regulations-first approach that respects negotiated rulemaking requirements and streamlines the Handbook to the essential statutory and regulatory requirements.

In connection with the anticipated rulemaking, the Department should consider regulatory clarifications that ensure that accreditors function as serious and neutral gatekeepers. Moreover, in accordance with 34 C.F.R. § 1099b(a)(5), particularly as a matter of "administrative capacity," we urge the Department to clarify that accreditor policies, standards, and criteria (i) cannot compel or



encourage members to violate federal nondiscrimination requirements and (ii) must ensure that public institutions comply with the First Amendment and that private institutions clearly state, and faithfully comply with (at the risk of violating the Department’s Title IV’s “misrepresentation” regulations), their institutional policies regarding academic freedom, free inquiry, and free speech. DFI also asks that the Department conduct a rulemaking that lowers barriers to entry for innovative accreditors without sacrificing rigor and ensures that agencies apply standards consistently and impartially across institutions.

Together, these reforms will strengthen the integrity of the regulatory triad, curb abusive and ideologically-driven accreditation practices, help reverse the illiberal takeover of higher education, and reestablish accreditation as a lawful, transparent, and credible accountability mechanism—one capable of supporting true reform in higher education.

Sincerely,

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