Defense of Freedom Institute
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September 21, 2026

SUBMITTED VIA FEDERAL eRULEMAKING PORTAL

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

Re: Comment on the Notice of Proposed Rulemaking
Accreditation, Innovation, and Modernization: The Secretary's Recognition of Accrediting Agencies: Institutional Eligibility Under the Higher Education Act of 1965, as Amended, Student Assistance General Provisions; 91 Fed. Reg. 53940
Agency/Docket Number: ED-2025-OPE-1042
RIN 1840-AD82
Document Number: 2026-17001

Dear Mr. Washington:

On behalf of the Defense of Freedom Institute for Policy Studies ("DFI"), we are delighted to provide DFI's public comment regarding the U.S. Department of Education's ("Department") Notice of Proposed Rulemaking, 91 Fed. Reg. 53940 (Docket ID: ED-2025-OPE-1042), entitled "Accreditation, Innovation, and Modernization: The Secretary's Recognition of Accrediting Agencies: Institutional Eligibility Under the Higher Education Act of 1965, as Amended, Student Assistance General Provisions" ("NPRM" or "AIM NPRM"). DFI strongly supports the Department's commitment in the NPRM to reimagine the role of accreditors and modernize the accreditation process in higher education. We also note a few concerns and provide suggestions to resolve those concerns.

(202) 627-6735
info@dfipolicy.com
dfipolicy.org
1455 Pennsylvania Avenue, NW
Suite 400
Washington, DC 20004

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 who bring a unique blend of policy and legal expertise to these issues. We regularly contribute this expertise to debates concerning education law and policy, particularly the Department's regulations issued under the Higher Education Act of 1965, as amended ("HEA").[1] On student loan and accreditation matters, DFI has been and is a leading voice for reform, publishing policy reports and legal analyses and playing a central role in organizing the legal effort to block the prior administration's illegal program pursuing the mass cancellation of student loan debt.[2]

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[1] 20 U.S.C. § 1001 *et seq.*

[2] *See* PAUL ZIMMERMAN, MOVING THE FEDERAL STUDENT LOAN PROGRAM TO THE SMALL BUSINESS ADMINISTRATION: AN ANALYSIS OF EXISTING STATUTORY AUTHORITIES (2025), *available at* https://dfipolicy.org/wp-content/uploads/2025/07/Moving-the-Federal-Student-Loan-Program-to-the-Small-Business-Administration-July2025.pdf; Brief for the New Civil Liberties Alliance et al. as Amici Curiae Supporting Applicants' Request for Vacatur of Stay, *Alaska v. Dep't of Educ.*, 145 S. Ct. 109 (2024) (No. 24A11); JASON DELISLE, DEFYING INTENT: BIDEN'S SAVE PLAN AND THE ORIGINAL GOAL OF INCOME-CONTINGENT REPAYMENT FOR STUDENT LOANS (2024), *available at* https://dfipolicy.org/wp-content/uploads/2024/06/Defying_Intent_Jason_Delisle.pdf; Michael Brickman & Robert Eitel, *Save America from SAVE Loan Forgiveness*, REAL CLEAR POL'Y (Feb. 5, 2024), https://www.realclearpolicy.com/articles/2024/02/05/save_america_from_save_loan_forgiveness_1009670.html; Robert S. Eitel & Paul Zimmerman, *Biden's Zombie Student-Loan Bailout Continues to Stalk Taxpayers*, NAT'L REV. (Oct. 9, 2023), https://www.nationalreview.com/2023/10/bidens-zombie-student-loan-bailout-continues-to-stalk-taxpayers/; Angela Morabito, *Biden Just Invented a New Way to Rob Taxpayers for Student Debt Heist*, FOX NEWS (Sep. 22, 2023), https://www.foxnews.com/opinion/biden-invented-new-way-rob-taxpayers-student-debt-heist; Letter from Robert S. Eitel, Def. of Freedom Inst. for Pol'y Studs., et al. to Nasser Paydar, Assistant Sec'y for Postsecondary Educ., U.S. Dep't

On accreditation matters, DFI has published extensively on the need to address serious deficiencies in the marketplace and has made significant recommendations for reform. For example, in February 2025, DFI published a report by Andrew Gillen, entitled *Should College Accreditation Be Replaced or Reformed?*,[3] which concluded that, despite their immense power over institutions of higher education, accreditation agencies fail to ensure academic quality, operate like a monopoly, lack transparency, and stifle new and innovative educational models. As the report noted, "The problems with accreditation are too numerous and severe to ignore, and although none of the replacements for accreditation is desirable, many reforms hold promise."[4]

DFI also filed an amicus brief in the U.S. Court of Appeals for the Eleventh Circuit case *Florida v. U.S. Secretary of Education* arguing in favor of the Plaintiff's position that the Department's then-guidance regarding accreditation requirements was a violation of the Administrative Procedure Act.[5] DFI has also submitted supportive public comments to the Department's Proposed Regulatory Agenda, which

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of Educ. (Apr. 25, 2023), *available at* https://dfipolicy.org/wp-content/uploads/2023/04/IDR-NPRM-Cost-Estimate-04.25.2023.pdf; Letter from Robert S. Eitel & Paul F. Zimmerman, Def. of Freedom Inst. for Pol'y Studs., to Miguel Cardona, U.S. Sec'y of Educ. (Feb. 10, 2023), *available at* https://dfipolicy.org/wp-content/uploads/2023/02/DFI-Comment-IDR-NPRM-02.10.2023.pdf; Brief for Elisabeth DeVos et al. as Amici Curiae Supporting Respondents, *Biden v. Nebraska*, 600 U.S. 477 (2023) (No. 22-506).

[3] Andrew Gillen, Should College Accreditation be Replaced or Reformed? (2025), *available at* https://dfipolicy.org/wp-content/uploads/2025/02/Should_College_Accreditation_Be_Replaced_or_Reformed_Gillen_Andrew_2_25_2025.pdf.

[4] *Id.* at 28.

[5] Brief for The Defense of Freedom Institute as Amicus Curiae Supporting Plaintiff-Appellant, *Florida v. U.S. Sec'y of Educ.*, 180 F.4th 1340 (11th Cir. 2026) (No. 24-13814), *available at* https://dfipolicy.org/resources/amicus-brief-state-of-florida-v-u-s-secretary-of-education-11th-circuit-court-of-appeals/.

included accreditation as a topic of regulatory changes,[6] and the updates to the Accreditation Handbook.[7] Indeed, most recently, members and friends of DFI have participated in webinars for The Federalist Society[8] and the National Association of Scholars[9] on the topic of accreditation and this NPRM. As a result of this work and more,[10] DFI is very well-placed to comment on the NPRM.

Expressions of Support for the NPRM

DFI fully supports the Department's effort to rethink and reform accreditation and refocus the federal recognition process on the purposes outlined by Congress in the HEA.

- **The Department is right to be concerned about the impact of accreditation on the cost of higher education.**

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[6] Comment by The Defense of Freedom Institute on the Department's Announcement of Its Intent to Receive Public Feedback for the Development of Proposed Regulations and Establish a Negotiated Rulemaking Committee, Comment ID ED-2025-OPE-0016-0528, May 5, 2025, *available at* https://dfipolicy.org/resources/public-comment-u-s-department-of-educations-intent-to-receive-public-feedback-for-the-development-of-propsed-regulations-and-establish-a-negotiated-rulemaking-committee/.

[7] Comment by The Defense of Freedom Institute on the Request for Information; Updates to the Accreditation Handbook, Comment ID ED-2025-OPE-1009-0058, Jan. 26, 2026, https://dfipolicy.org/resources/public-comment-updates-to-the-accreditation-handbook/.

[8] The Federalist Society, "Accreditation of Higher Education: A Primer," July 13, 2026, https://dfipolicy.org/resources/webinar-federalist-society-accreditation-of-higher-education-a-primer/.

[9] National Association of Scholars, "VIDEO: Reforming Accreditation Policy," Sep. 8, 2026, https://dfipolicy.org/resources/webinar-national-association-of-scholars-reforming-accreditation-policy/.

[10] The Co-Founder and President of DFI is a currently serving member of the National Advisory Committee on Institutional Quality and Integrity ("NACIQI").

The Department correctly examines the extent to which current accreditation requirements and practices contribute to the cost of higher education. Accreditation must provide meaningful quality assurance without imposing unnecessary administrative burdens, stifling innovation, or requiring institutions to devote resources to matters that are not materially related to educational quality or the accreditor's legitimate oversight responsibilities.

- **The Department should pursue a much-needed "revolution" in accreditation.**

DFI supports the Department's call for fundamental reform, a *genuine* revolution in accreditation.[11] The existing system should not be preserved merely because particular or historical practices or approaches have been customary. Rather, the Department should encourage approaches to accreditation that emphasize academic quality, student outcomes, institutional accountability, innovation, efficiency, respect for institutional mission and autonomy, and, where appropriate, intellectual diversity and academic freedom.

- **Additional competition in accreditation will serve students, institutions, and taxpayers.**

Greater competition among recognized and new accreditation agencies can benefit students, institutions, and taxpayers. Institutions should have meaningful choices among rigorous accreditors with different approaches to quality assurance, rather than being effectively confined to a limited number of incumbent organizations. New entrants can promote innovation, reduce unnecessary burdens, improve responsiveness, and encourage all accreditors to demonstrate the value they provide to institutions and the public.

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[11] Jessica Blake, *Experts: New Accreditation Rules Threaten Academic Freedom*, INSIDE HIGHER ED, Apr. 13, 2026, https://www.insidehighered.com/news/governance/accreditation/2026/04/13/experts-new-accreditation-rules-threaten-academic-freedom.

- **The Department should exercise its statutory authority to ensure that accreditors serve their lawful purpose as proper gatekeepers of federal funds.**

The Department should use all the authority Congress provided to it under the HEA to ensure that recognized accrediting agencies effectively perform their role as gatekeepers of federal student-aid funds. Federal recognition should focus on whether an accreditor reliably evaluates educational quality and institutional compliance with applicable standards, not on preserving legacy practices or permitting accreditation to become a vehicle for imposing requirements unrelated to the federal purposes that accreditation is intended to serve.

Expressions of Concern for the NPRM

Although DFI supports the Department's broader reform effort, certain provisions of the proposed rule appear to work against the Department's stated objectives of reducing unnecessary regulatory burdens and ensuring that accreditation serves its appropriate quality-assurance and gatekeeping functions.

Indeed, DFI encourages the Department to reconsider all provisions through the same lens that appropriately informs the administration's broader accreditation reforms: whether a federal requirement is necessary to protect students and taxpayers, its benefits justify the burdens it imposes, and the same objective can be achieved through a less costly and less prescriptive approach. At a minimum, accreditation reform should make the system more accountable and effective without making it more procedurally cumbersome or expensive.

- **Regarding arbitration, the NPRM undermines the purpose of arbitration efforts between institutions and accreditors.**

DFI is concerned that the NPRM, as proposed, would undermine efforts to resolve disputes between institutions and accrediting agencies through arbitration. Such mechanisms and procedures can provide institutions and accreditors with a more efficient and less costly means of resolving disputes while preserving appropriate legal and procedural protections. Federal regulations should not inadvertently undermine those mechanisms in favor of protracted administrative proceedings or litigation. To the extent institutions and accreditors have established lawful processes for resolving disputes efficiently and fairly, the Department should preserve, even encourage, the use of those processes to reach a binding outcome.

- **Regarding due process, the proposed changes contradict the administration's pursuit of reducing burden and expense for institutions.**

DFI is also concerned that the proposed changes to due process requirements would impose additional procedural obligations that may increase the cost, complexity, and duration of accreditation disputes. That result is difficult to reconcile with the administration's broader and appropriate objectives of reducing unnecessary regulatory burden and expense for institutions. Due process is *essential* when an accrediting action can have significant consequences for an institution and its students; however, due process requirements must be carefully tailored, not simply a bundle of additional onerous, bureaucratic entanglements. The appropriate objective should be procedures that are fair, timely, predictable, and proportionate to the interests at stake, not the accumulation of procedural requirements that replicate litigation and increase costs without corresponding benefits to educational quality or students.

I. HEA Statute and Department Rulemaking

The HEA, at 20 U.S.C. § 1099b, sets forth the standards by which the Department recognizes accrediting agencies as reliable authorities on educational quality. Specifically, § 1099b(o) directs the Department to establish, through regulation, procedures for governing the recognition of accrediting agencies and the appeal of recognition decisions.

On April 4, 2025, the Department published in the Federal Register a notice of an intent to hold public hearings and to establish negotiated rulemaking committees, including a committee focusing on streamlining current federal student financial assistance program regulations while maintaining and improving program integrity and institutional quality.[12]

On January 27, 2026, the Department published a notice in the Federal Register to set forth a schedule for committee meetings and requesting nominations for negotiators to serve on the Accreditation, Innovation, and Modernization Committee ("AIM Committee").[13]

The AIM Committee convened April 13–17, 2026, and May 18–21, 2026. After reviewing and discussing draft regulatory language, taking into account additional proposals, and debating revised regulatory language, on May 21, 2026, the AIM Committee reached consensus on proposed regulations. The NPRM followed in the *Federal Register* on August 20, 2026.

II. Expression of Support

This section of our submission identifies the many AIM NPRM provisions that DFI supports and applauds the Department and the negotiating committee for proposing.

> *DFI supports the Department's leveraging of the accreditation process for the protection of civil rights, free speech, academic freedom, and viewpoint diversity.*

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[12] 90 Fed. Reg. 14741.
[13] 91 Fed. Reg. 3403.

We strongly support the proposed framework's provisions, to be codified at 34 C.F.R. § 602.17, requiring accrediting agencies to evaluate whether institutions maintain and enforce policies that protect the civil and First Amendment rights of all students.

The consensus language specifically addresses academic freedom protections in a manner that requires the consistent application of lawful policies and procedures regardless of classification, race or other immutable characteristics, viewpoint, or ideology, while protecting institutions with a religious mission. The NPRM also successfully addresses the freedom of inquiry in teaching, scholarship, and research, as well as the ability to examine a range of academic perspectives without adverse action unrelated to professional or academic competence.

The Department does well to characterize these provisions as quality-assurance measures, rather than simply additions to the regulatory burden on institutions and accreditors. Further, the premise that academic freedom, intellectual inquiry, research integrity, and the free exchange of ideas bear directly on educational quality and student learning is a long-overdue emphasis point. The NPRM rightfully seeks to prevent recognized accreditors from imposing standards or policies that result in unlawful discrimination based upon political agendas or fashionable ideas.

DFI particularly supports the NPRM's efforts to establish these principles *without* transforming accreditors into general-purpose civil rights enforcement agencies. At their core, accrediting agencies are quality-assurance organizations, not substitutes for courts, the Department's Office for Civil Rights, or other government enforcement agencies; however, accreditors are the gatekeepers of federal funds whose functions include ensuring that institutions have the capacity to comply with federal law. Thus, the appropriate role for agencies is to ensure that institutional policies, procedures, and practices support (and certainly do not undercut) the conditions necessary for academic freedom, lawful nondiscrimination, research integrity, and intellectual inquiry. Properly implemented, the proposed provisions reinforce those principles while keeping accreditation focused on educational quality.

> *DFI fully supports the Department's efforts to ease the change of accreditors' process and procedure.*

DFI strongly supports the NPRM provisions, to be codified at 34 C.F.R. § 602.12, to ease the process for institutions to change recognized accrediting agencies. An institution should never become effectively captive to a particular accreditor merely because it obtained accreditation from that agency. Moving forward, the federal regulatory framework should facilitate an institution's ability to select the recognized accreditor that best fits its mission, programs, students, and approach to quality assurance.

Institutional mobility is essential to meaningful competition among accreditors. Competition cannot exist, in any practical sense, if institutions face significant regulatory barriers, delays, uncertainty, or potential Title IV consequences when attempting to move from one recognized accreditor to another. Accreditors should have incentives to demonstrate their value through effective quality assurance, reasonable processes, responsive service, appropriate standards, and efficient oversight. Making institutional movement realistic creates those incentives and reduces the risk that accreditation relationships become permanent regardless of an agency's performance.

Further, cost and time alone should not dictate whether an institution is able to change accreditors. Alignment on the key elements of an institution's mission should be the determining factor when selecting *and staying with* an accreditor.

That said, institutions should not be able to leverage the proposed rules to switch accreditors because they have violated or fallen short of accreditor standards. The

Department's proposal appropriately preserves safeguards against institutions using an accreditor change to escape accountability.

DFI supports a framework in which institutional choice is the norm and federal intervention is reserved for circumstances where there is a legitimate concern about regulatory evasion or student protection. Such an approach respects institutional autonomy while strengthening the accountability of accrediting agencies themselves.

DFI supports the revisions to peer review and self-study requirements.

The Department's proposed modernization of federal requirements governing peer review and institutional self-studies are well-conceived and well-proposed. Peer review and self-evaluation can be valuable components of accreditation, but their value derives from the quality of the evaluation produced, not from the volume of paperwork generated or the number of procedural steps completed. Too often, accreditation becomes a byzantine exercise that produces no real improvement to student learning. Simply stated, federal regulations should not encourage a performative compliance culture in which institutions and accreditors devote substantial resources to demonstrating adherence to prescribed processes that may have little relationship to actual educational quality.

The Department's proposed approach appropriately gives accrediting agencies greater flexibility to determine how best to evaluate institutions within their unique scope. It is axiomatic that institutions, programs, educational models, and accrediting agencies require different forms of review. A large research university, a small liberal arts college, an online institution, a rural community college, and an institution primarily providing workforce education should not necessarily be evaluated through identical processes simply because federal regulations have historically prescribed a particular accreditation methodology. Accreditors must be held accountable for reaching reliable, evidence-based judgments about quality, but they should also be granted flexibility in reaching those judgments.

DFI views these revisions as an important shift from process-based compliance toward substantive quality assurance. Self-studies and peer review should remain available and will undoubtedly remain important tools for many accrediting agencies. But the federal government should not dictate unnecessary details for those processes. Reducing federal micromanagement can allow accreditors to devote more attention to student achievement, institutional performance, educational quality, and meaningful improvement while simultaneously reducing unnecessary administrative costs for institutions.

> *DFI supports the revisions to requirements regarding links to federal programs.*

DFI applauds the NPRM's effort, to be codified at 34 C.F.R. § 602.10, to clarify and limit the extent to which federal recognition requirements dictate accrediting-agency standards that are linked to federal programs. Congress has assigned recognized accreditors an important responsibility to serve as reliable authorities regarding educational quality. That responsibility should remain at the center of the recognition framework. Where Congress has expressly required accreditors to perform federal functions, those requirements must be honored. But federal recognition should not unnecessarily expand the accreditor's role beyond those statutory responsibilities or encourage accreditors to regulate matters disconnected from educational quality.

DFI believes that clearer boundaries ultimately strengthen accreditation. When accreditors concentrate their resources and expertise on evaluating educational quality, student achievement, institutional capacity, and compliance with thoughtful accreditation standards, they can serve as better gatekeepers of federal student aid, as Congress intended when it established the regulatory triad in the HEA.

The Department's proposal on related affiliation rules, separate and independent requirements, and conflicts of interest is a welcomed continuation of the first Trump administration's work and will have a positive impact on students and federal student loan debt.

DFI strongly supports the Department's continued efforts, to be codified at 34 C.F.R. § 602.14, to ensure that recognized accrediting agencies operate independently of affiliated trade and professional organizations and are protected from actual or apparent conflicts of interest. Accreditation carries extraordinary consequences, and accrediting decisions can determine whether an institution or program remains viable, whether students have access to federal financial aid, and whether graduates can enter their chosen professions. Organizations exercising that authority should be structurally independent and should make decisions based on educational quality rather than the economic interests of related organizations or existing market participants.

These safeguards are particularly important where accreditation standards intersect with occupational entry requirements. As the Department's former Acting Under Secretary Diane Auer Jones recently wrote:

> It is now time for the secretary of education to take decisive action to end the manipulative practices of programmatic accrediting agencies and their parent trade associations that have resulted in unnecessary credential inflation.[14]

Accreditation requirements that unnecessarily increase program length, mandate credentials beyond those necessary to establish competency, or otherwise increase the expense involved in entering a profession result in higher costs that are

[14] Diane Auer Jones, *It's Time to Break Up the Programmatic Accrediting Agency Monopolies*, Inside Higher Ed, Nov. 19, 2025, https://www.insidehighered.com/opinion/views/2025/11/19/break-programmatic-accrediting-monopolies-opinion.

ultimately borne by students. They can mean additional semesters of tuition, additional borrowing, delayed entry into the workforce, and foregone earnings.

Therefore, DFI views the NPRM's proposed independence and conflict provisions as student-protection measures as much as governance reforms. Accreditation standards should be based on what is reasonably necessary to demonstrate educational quality and professional competency, not on enhancing the economic interests of organizations or their members by maintaining barriers to entry. Stronger organizational independence helps ensure that accreditation serves students, institutions, taxpayers, and the public rather than the private interests of trade organizations and their membership.

> *DFI supports the Department's efforts to incorporate antitrust provisions to ensure a fair and competitive accreditation marketplace.*

DFI supports the Department's effort, to be codified at 34 C.F.R. § 602.13, to create a fair and competitive accreditation marketplace. Federal recognition gives accrediting agencies massive authority within higher education, but that authority should not be used to insulate private organizations from generally applicable laws governing competition.

Competition is especially important because accreditation operates as a gateway to federal financial aid *and* functions as the pathway to professional practice. When institutions have few realistic alternatives, the normal mechanisms that encourage organizations to innovate, control costs, improve service, and respond to the entities they oversee are suppressed. Conversely, when recognized agencies must compete on the strength of their standards, effectiveness, efficiency, and value, both institutions and students can benefit.

Therefore, and thinking about the changes as a connected whole, DFI supports making it easier for institutions (not subject to adverse actions) to change accreditors, reducing unnecessary barriers to recognition of new agencies, strengthening independence from affiliated organizations, and confirming the continued applicability of antitrust law. Each proposed reform addresses a different potential impediment to competition; together, they will create a more dynamic accreditation environment while preserving the Department's responsibility to recognize only the agencies that satisfy the statutory standards for reliable quality assurance.

> *DFI believes the provisions and procedures for new accreditors will have a lasting impact on higher education and will help prepare students for the new workforce.*

Subject to the recommended changes in the next section, DFI strongly supports the Department's efforts, consistent with Executive Order 14279[15] and throughout the NPRM, to remove unnecessary barriers facing new, emerging, and nascent accrediting agencies. A quality-assurance system that effectively prevents new organizations from entering the market risks preserving existing approaches regardless of whether those approaches are best for students, institutions, and taxpayers. Longevity can provide valuable experience, but it is not in itself evidence that a particular accreditation methodology is optimal.

New accreditors must have a meaningful opportunity to demonstrate that they can satisfy the HEA's recognition requirements and serve as reliable authorities regarding educational quality.

The NPRM's proposed elimination of the two-year requirement is particularly significant. Contrary to the claims of some critics, removing that barrier does not require the Secretary of Education ("Secretary") to recognize an unqualified accreditor or constitute a "race to the bottom." New agencies must still demonstrate compliance with applicable recognition criteria. The change instead focuses on the question that matters: whether the applicant can demonstrate that it is capable of

[15] Exec. Order No. 14279, 90 Fed. Reg. 17529 (Apr. 28, 2025).

functioning as a reliable accrediting agency, rather than whether it has existed for an arbitrarily prescribed period.

Opening the system to qualified new accreditors will permit accreditation to evolve alongside higher education and the American workforce. New educational delivery models, rapidly changing technologies, artificial intelligence, shorter-term credentials, competency-based education, and changing employer needs present challenges that the accreditation system must be capable of addressing. Emerging accreditors may develop different methods of evaluating outcomes, using data and technology, measuring competencies, and assessing whether programs are preparing students for employment and further education. Competition does not guarantee innovation, but eliminating unnecessary barriers gives innovation an opportunity to occur.

> *The Department's focus on transfer of credit issues will have a profound impact on students who increasingly attend more than one institution of higher education.*

The data could not be clearer: more American students than ever are transferring from one institution to another. During the fall 2024 semester, nearly 1.2 million students transferred to a new institution.[16] As a result, transfer students make up about 13% of all continuing and returning undergraduates.[17] As a long-term rate, roughly 1 in 3 college students transfer at least once before earning a degree.[18] For

[16] Ben Unglesbee, *Transfer Enrollment Ticked Up 4.4% in the Fall, Report Finds*, HIGHER ED DIVE, Mar. 5, 2025, https://www.highereddive.com/news/transfer-enrollment-ticked-up-44-in-the-fall-report-finds/741576/.
[17] *Id.*
[18] Government Accountability Office, "Higher Education: Students Need More Information to Help Reduce Challenges in Transferring College Credits," GAO-17-574, Aug. 14, 2017, https://www.gao.gov/products/gao-17-574.

each of those students, transferring from one institution to another carries a significant risk of lost credits, lost time, and higher loan amounts.[19]

Acknowledging this reality, DFI strongly supports the Department's focus, to be codified at 34 C.F.R. § 668.43, on transfer of credit issues. Few accreditation policies will have such an immediate and measurable effect on individual students. A system in which academically sound coursework can lose value merely because a student changes institutions imposes direct costs on the very students that accreditation is intended to protect.

When an institution requires a student to repeat sufficiently comparable coursework, the consequences are not abstract: students pay twice for essentially the same learning, consume additional Pell Grant or federal loan eligibility, delay graduation, incur living expenses for additional semesters, and postpone entry or advancement in the workforce.

The Department's proposed presumption in favor of accepting successfully completed undergraduate coursework where content and learning outcomes are comparable directly addresses those harms while preserving the receiving institution's legitimate academic role in determining whether coursework is comparable.

Just as importantly, the proposed approach places the emphasis where it belongs: on the substance of the student's learning rather than the historical label attached to the institution's accreditor. Recognition by the Secretary means that an accrediting agency has been determined to be a reliable authority regarding educational quality within its scope. Institutions should therefore have compelling academic reasons when refusing otherwise comparable coursework.

[19] *Id.*; Sharon Y. Hart, *Fixing the Transfer Process*, CMTY. COLL. DAILY, Jan. 4, 2026, https://www.ccdaily.com/2026/01/fixing-the-transfer-process/.

DFI believes this reform has the potential to produce one of the NPRM's most tangible benefits for students. A student who has successfully completed college-level work should not unnecessarily be required to purchase that education a second time. Requiring transparent transfer policies, meaningful consideration of comparable coursework, and student-specific explanations when credit is rejected can simultaneously preserve institutional academic judgment and promote affordability, mobility, timely completion, and more responsible use of federal student-aid dollars.

III. Expressions of Notable Concern

As identified throughout this public comment, DFI supports the Department's efforts to strengthen accreditation, reduce unnecessary regulatory burdens, and ensure that institutions receive meaningful due process when accreditation is at stake; however, certain provisions of the NPRM move in the opposite direction.

By restricting the use of binding arbitration while simultaneously altering established due process requirements, the proposal risks replacing efficient and workable protections with a system that is more costly, more protracted, and less likely to produce timely, correct, and final resolutions. DFI urges the Department to preserve binding arbitration as an available means of resolving accreditation disputes and to reconsider changes to the existing due process framework that are unnecessary to protect institutions and may ultimately make those protections less effective.

The proposed changes to § 602.20(e) defy the text and purpose of the HEA mandate directing binding arbitration between institutions and accreditors.

The Department's proposed treatment of "initial arbitration" rests on an unnecessarily restrictive interpretation of the HEA and would undermine one of arbitration's principal benefits: providing schools and accreditation agencies with an efficient, cost-effective, and final mechanism for resolving disputes without prolonged, unpredictable, and costly litigation. The Department should reconsider the proposed § 602.20(e).

The HEA states as follows:

> The Secretary may not recognize the accreditation of any institution of higher education unless the institution of higher education agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration prior to any other legal action.[20]

Congress thus expressly required arbitration to precede litigation in covered accreditation disputes. Nothing in the text of § 1099b(e), however, expressly states that the arbitration must be non-binding.

The NPRM nevertheless proposes to require that "[a]ny agency arbitration standard or policy must be nonbinding," unless the institution and accreditor separately agree to binding arbitration after a dispute has arisen.[21] The Department reasons that the use of the word "initial" means Congress necessarily contemplated the availability of subsequent litigation.[22] According to the Department, therefore, a binding arbitration agreement would impermissibly prevent an institution from pursuing that subsequent legal action.

But that is the point of arbitration agreements—to deflect litigation (and its great cost) by requiring parties to pursue binding alternative dispute resolution. To moot the need for litigation, arbitration must occur before either party commences litigation, an obvious point made in the HEA. The Department must be careful not to over-interpret the statutory language. The statute establishes the sequence in

[20] 20 U.S.C. § 1099b(e).
[21] *See* 91 Fed. Reg. at 54010 (for codification at 34 C.F.R. § 602.20(e)).
[22] *See* 91 Fed. Reg. at 53960.

which a covered dispute must proceed but does not prescribe the legal effect of the arbitration award or require that another legal action follow. Congress could readily have required "non-binding arbitration," "non-binding initial arbitration," "mediation," "dispute resolution," or "settlement" or expressly guaranteed a right to subsequent judicial review if that were its intent. It did not do so.

The Department should be reluctant to transform the word "initial" into a substantive prohibition against binding arbitration that Congress did not include in the statutory text. Doing so undercuts the very meaning of the word "arbitration." Section 1099b(g) reinforces this conclusion. If Congress required arbitration but did not specify that arbitration must be non-binding, the Department should not impose that additional limitation through the recognition regulations. At a minimum, the statutory text does not compel the Department's interpretation, and the final rule should not characterize non-binding arbitration as the only permissible reading of § 496(e). The meaning and purpose of arbitration contemplate only a final, binding decision.

The Department's reliance upon *Dear Colleague Letter* ("DCL") GEN-23-14 is also misplaced.[23] The previous administration's DCL points to the American Arbitration Association and JAMS as possible sources of procedures, but *both* organizations see arbitration as binding.[24] Otherwise, arbitration would just result in more delay and greater expense by requiring arbitration and then, should one party remain

[23] Nasser H. Paydar, Ass't Sec'y, Off. Of Postsecondary Educ., *Dear Colleague Letter*, "Regulations Governing the Recognition of Accrediting Agencies, Institutional Eligibility, and Arbitration," DCL ID: GEN-23-14, updated Dec. 5, 2023, *available at* https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2023-11-03/regulations-governing-recognition-accrediting-agencies-institutional-eligibility-and-arbitration-updated-dec-5-2023.

[24] JAMS Arbitration Services, "Arbitration Defined: What Is Arbitration?," https://www.jamsadr.com/arbitration-defined (last visited Sep. 15, 2026) ("Arbitration is a binding procedure."); American Arbitration Association, "What Is Arbitration?" https://www.adr.org/arbitration/ (last visited Sep. 15, 2026) ("[A]rbitration is a private, legally binding process . . . .").

dissatisfied with the result, allowing litigation on the same issues. Simply stated: this cannot be what Congress intended by referencing arbitration.

Even apart from the statutory question, requiring arbitration to be non-binding as a matter of policy creates significant practical concerns. Under the NPRM's approach, an institution challenging a final adverse accreditation action may proceed through the accreditor's internal processes, participate in an arbitration proceeding, receive an arbitrator's decision, and then initiate federal litigation concerning the same underlying accreditation dispute. Instead of functioning as an alternative to litigation, arbitration would become yet another expensive procedural stage preceding it.

That regrettable structure will increase the burdens associated with accreditation disputes. The parties will need to retain counsel, develop a factual record, prepare witnesses and experts, brief legal and accreditation issues, participate in an evidentiary hearing(s), and obtain a reasoned arbitration decision, only to repeat that work in federal court. For both institutions and agencies, that means additional attorney fees, staff time, expert costs, and delay. More importantly, uncertainty concerning an institution's accreditation status can have consequences extending well beyond the parties themselves, affecting students, employees, institutional operations, transfer relationships, other regulatory requirements, and access to federal student aid.

Recent revelations at a meeting of NACIQI underscored this point. On July 23, 2026, an accrediting agency described for NACIQI members how its efforts to withdraw accreditation from a member institution, in April 2021, led to arbitration, followed by five years of litigation, including oral argument before the U.S. Court of Appeals for the Fourth Circuit, at the cost of at least a quarter of a million dollars in attorney's fees and expert fees.[25]

[25] U.S. Dep't of Educ., Nat'l Comm. on Institutional Quality & Integrity, *Advisory Committee Metting Transcript,* July 23, 2026, at 69–72, *available at*

Frankly, our professional experience indicates that long before this process will come to an end, even if the institution was wronged, it will have run out of resources, thwarting the institution from successfully seeing the case through to its conclusion.

If arbitration is to serve a meaningful function, the regulatory framework should give parties an important incentive to invest in the process and treat the resulting decision as final. A mandatory but nonbinding proceeding that neither side is ultimately required to accept risks becoming a costly procedural waypoint rather than a genuine dispute-resolution mechanism.

Further, binding arbitration addresses that problem by providing something particularly important in accreditation disputes: finality. Once the accreditor's internal review and appeal processes have concluded and an independent arbitrator has considered the dispute, the institution and accreditor can know that the matter has reached a definitive resolution, subject to the limited judicial review applicable to arbitration awards. The parties can then move forward rather than remain engaged in litigation that may continue for years.

> *The proposed changes to 34 C.F.R. § 602.25 should be reconsidered because they are unnecessary and risk weakening meaningful due process.*

DFI very much supports the administration's broader effort to reduce unnecessary administrative burden and expense. Indeed, the NPRM repeatedly recognizes that regulatory and accreditation requirements impose real costs on institutions and, ultimately, their students. The Department appropriately proposes elsewhere in the NPRM to reduce duplicative reporting, eliminate unnecessary procedural requirements, and give institutions and accrediting agencies greater flexibility to

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https://sites.ed.gov/naciqi/files/2026/08/Day1_Final2_July-2026-Meeting_508compliant.pdf.

accomplish legitimate quality-assurance objectives in more efficient ways. The proposed changes to due process requirements, however, move in the opposite direction.

Section 1099b(a)(6) states that an accrediting agency "shall establish and apply review procedures throughout the accrediting process, including evaluation and withdrawal proceedings, which comply with due process procedures . . . ." Current regulations, at 34 C.F.R. § 602.25(f), prescribe that an agency must demonstrate that the procedures it uses satisfy due process. The NPRM proposes to eliminate §§ 602.25(f)(1)(iii) and (iv), which state that an institution's appeal of an adverse action must take place at a hearing before an appeals panel that:

> (iii) Does not serve only an advisory or procedural role, and has and uses the authority to make the following decisions: To affirm, amend, or remand adverse actions of the original decision-making body; and
>
> (iv) Affirms, amends, or remands the adverse action. A decision to affirm or amend the adverse action is implemented by the appeals panel or by the original decision-making body, at the agency's option; however, in the event of a decision by the appeals panel to remand the adverse action to the original decision-making body for further consideration, the appeals panel must explain the basis for a decision that differs from that of the original decision-making body and the original decision-making body in a remand must act in a manner consistent with the appeals panel's decisions or instructions.

The Department states that the rescission would "remove prescriptive regulations that are not required in the HEA and would implement one of the orders under E.O. 14279 that directed the Department to reduce unduly burdensome requirements to accrediting agencies."[26]

[26] 91 Fed. Reg. at 53967.

Due process is essential, especially when an accrediting agency takes an action that may threaten an institution's or program's accreditation; however, the Department's justifications for its proposed changes to § 602.25 are unpersuasive. Although we appreciate the mandate to deregulate and understand the administration's priorities in implementing Executive Order 14279, this is not the provision to target for deregulation purposes. Unlike so many other places in the regulations, the current provisions are necessary for the purpose they are intended to serve. Indeed, DFI acknowledges that the HEA does not favor prescriptive regulations, but that statutory prohibition does not extend to elements of due process.

Ultimately, the Department should preserve the current due process framework, which sufficiently protects institutions without recreating the burdens of litigation inside the accreditation process. Meaningful due process requires fairness, impartiality, and a genuine opportunity to be heard; it does not require endless process. The current regulatory framework provides those protections to a sufficient extent, while allowing disputes to reach timely and final resolution. DFI thus supports abandoning this rescission in favor of the currently existing regulatory provisions.

IV. Addressing the Implementation and Applicability of Final Regulations

In addition to the above comments, DFI urges the Department to provide clear transition rules governing the application of the final regulations to accrediting agencies that are currently preparing, submitting, or awaiting consideration of applications for recognition.

The changes proposed in the NPRM are substantial; they not only alter discrete procedural requirements, but important elements of the compliance framework through which the Department evaluates whether an accrediting agency qualifies for recognition. New and emerging agencies necessary rely upon that framework when developing their own standards, policies, structures, review processes, and, ultimately, their applications for recognition. Those organizations need predictability, before undertaking that work, on the rules against which their applications will be evaluated and the standards to which they will be accountable after their applications are accepted.

This need for clarity is particularly important because the recognition process does not occur instantaneously. A nascent agency will spend substantial time and resources developing its accreditation model and preparing its recognition application. Plus, additional time may pass between submission of an application and consideration of that application by Department staff and NACIQI.

An effective date of July 1, 2027, creates a foreseeable transition problem: an agency could prepare and submit an application under existing regulations, but have that application reviewed only after the new regulations become effective. Indeed, an application could be filed after a November 1, 2026, publication date by an agency anticipating review and consideration after July 1, 2027. In this latter scenario, DFI concludes that there is no need for an agency to match its policies, procedures, standards, and practices on rules that will no longer be effective. The Department should not leave applicants in limbo on whether the governing rules will be determined by the date an application is submitted, the date that Department staff begins its review, the date of the NACIQI meeting, the date of the senior Department official's decision, or some other point in the recognition process.

Regulatory certainty is particularly important because one of the Department's principal objectives in this NPRM is to encourage the formation and recognition of new accrediting agencies by reducing barriers to entry and avoiding requirements that unnecessarily discourage innovative accrediting organizations. An ambiguous transition between existing and new recognition regimes works against these objectives. The result could be applicants that delay applications, expend resources attempting to satisfy multiple regulatory frameworks, or face the possibility of preparing an application in good faith under one set of requirements only to be evaluated under another.

The Department should not require applicants to infer the applicable rule from general principles concerning regulatory effective dates. DFI thus encourages the Department to address the transition directly in the Final Rule and subsequent clarifying guidance. At a minimum, the Department should specify the regulatory framework applicable to applications 1) pending when the Final Rule is published; 2) submitted after publication, but before the July 1, 2027, effective date; and 3) submitted before the July 1, 2027, effective date, but scheduled to be considered after that date.

Providing an explicit transition rule promotes fairness without compromising the Department's oversight responsibilities. Regardless of the framework, the applicant should still bear the burden of demonstrating that it satisfies all applicable statutory and regulatory requirements for recognition. The issue is not whether applicants should be held to rigorous standards—they *all* should. The issue is whether applicants should know which standards they must satisfy before they invest substantial time and resources demonstrating compliance with them.

As a result, DFI recommends that the Department establish a limited transition election for applications submitted after the Final Rule's publication date but before the effective date. In that circumstance, the applicant should be permitted to elect whether its application will be evaluated under the recognition regulations in effect when the application was submitted or under the new regulations effective July 1, 2027. This opportunity for election should also extend to currently pending applications. Any election should be made in writing by a date established by the Department and, once made, should govern the application through the remainder of the recognition process.

This approach would recognize the legitimate reliance interests of applicants that have spent months, or even years, developing their agencies and preparing applications under the existing regulations, while also avoiding the regrettable result of requiring an applicant considered well after July 1, 2027, to proceed under a regulatory framework that it would prefer *not* to use. Further, and possibly most important, an election would eliminate the possibility that the timing of the departmental process determines which regime applies. Two similarly situated agencies submitting applications at approximately the same time should not potentially face different requirements merely because one application reaches NACIQI before July 1 and the other reaches NACIQI afterward.

A transition election would also further the Department's stated objectives of increasing competition and transparency and reducing barriers to entry for new accrediting organizations.

Accordingly, DFI recommends that the Final Rule expressly address the issue of pending and transitional applications submitted by accrediting agencies. Such a transition framework would provide fair notice, offer reasonable reliance, avoid unnecessary duplication of effort, and advance the Department's broader objective of creating a more accessible and competitive accreditation system.

V. Conclusion

The Department's AIM NPRM presents an important opportunity to refocus accreditation on its essential statutory purpose: serving as a reliable authority regarding the academic quality of American higher education. Accreditors' responsibilities have for too long been obscured by unnecessary regulatory burdens, anticompetitive practices, and cozy occupational self-interest that increase costs and restrict opportunities without demonstrably improving educational quality.

DFI thanks the Department for the opportunity to submit our public comment. We believe that a stronger accreditation system should protect students and taxpayers while promoting institutional autonomy, competition, innovation, and meaningful measures of student success. As higher education responds to rapid changes in technology, educational delivery, and the skills demanded by the American workforce, accreditation must be capable of evolving with it.

The NPRM is more than an opportunity to create a "revolution" in accreditation; it is an opportunity to redefine American higher education, refocus a distracted system, and ensure that new and existing accreditors refocus on educational quality and student success.

Sincerely,

Robert S. Eitel
President & Co-Founder

Paul F. Zimmerman
Senior Counsel, Policy & Regulatory