September 21, 2026

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Office of Postsecondary Education
400 Maryland Avenue, SW
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Submitted electronically

Re: Accreditation, Innovation, and Modernization: The Secretary's Recognition of Accrediting Agencies (Docket ID ED-2025-OPE-1042)

To Whom It May Concern:

This comment is submitted on behalf of EdTrust, a national nonprofit organization dedicated to advancing policies and practices that dismantle racial and economic barriers in the American education system, in response to the U.S. Department of Education (ED)'s proposed revisions to the regulations that govern accreditation.

Like ED, we strongly believe that the accreditation system is not working as well as it should. Accreditors often fail to hold institutions accountable for poor student outcomes, are notably ineffective at encouraging credit transfers between institutions, and face strong incentives to preserve institutional access to federal aid rather than impose meaningful sanctions when performance falls short. While the proposal includes several provisions intended to address these longstanding concerns, we believe they're ultimately undermined by other provisions that would structurally weaken accreditors' role in the program integrity triad.

As we detail below, there are several provisions in the proposal that would weaken accreditors' role as independent watchdogs for consumer protection and educational quality. At the same time, the proposal would assign accreditors a new role for which they lack the resources, expertise, and guidance to handle: enforcing this administration's widely contested interpretations of "academic freedom," "viewpoint and ideological neutrality," and "civil rights." We are deeply concerned that the ambiguity of these requirements and the threat of severe penalties for noncompliance would likely push both accreditors and institutions to preemptively self-censor lawful speech, curricula, and supports that help every student succeed. Given these concerns, we urge the Department to withdraw these provisions from the final rule.

Before turning to those concerns, we first provide: 1) requests for clarification on the preamble language; and 2) a response to the Department's directed question regarding the proposal's net budget impact.

Requests For Clarification on the Preamble Language

RE: Disaggregated Data for Program-Level Student Outcomes Data

The preamble language for § 602.23 creates ambiguity about whether the Department intends to prohibit accreditors and institutions from using program-level student outcomes data disaggregated by race, ethnicity, or sex based on the Department's interpretation of Title VI and Title IX.

> *"... in order to effectuate [President Trump's April 2025 Executive Order (EO) on accreditation, EO 14279], it states that the* ***Department must 'mandate that accreditors require member institutions to use program-level data on student outcomes to improve such outcomes, without reference to race, ethnicity, or sex'.*** *To codify the requirements of EO 14279, we propose paragraph § 602.23(h) to prohibit accrediting agencies from having polices [sic] that violate Federal or State law, including Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., and Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 et seq. (Title IX)." (emphasis added)*

We urge the Department to confirm in the final rule that this provision does not prohibit program-level student outcomes data disaggregated by race, ethnicity, or sex. As EdTrust has consistently raised, disaggregated data is essential for identifying disparities in academic performance and effectively responding to them. Without it, institutions and accreditors lose a critical tool for evaluating student outcomes across their student populations. Moreover, disaggregated data by race, ethnicity, and sex is not only permissible under federal law, but often required by it.

If the Department intends to prohibit disaggregated program-level student outcomes data, it would constitute a new substantive restriction that's not reflected in the consensus regulatory text; ED's representatives also never publicly suggested to negotiators that the proposal would prohibit the use of disaggregated student outcomes data — not when student outcomes were discussed, not when a negotiator underscored the value of disaggregated data, not when federal civil rights law was discussed, and not when § 602.23 itself was brought up for consideration.

To the contrary, a representative from ED's Office of General Counsel (OGC) said that the rule's student outcomes provisions leave accreditors free to "draw the lines where they think are necessary in terms of different student populations." He added that it's within accreditors' purview to evaluate "very specific student type populations and enumerate different standards" because "that flexibility is very important, both in terms of compliance with statute, but also in terms of the reality that some accreditors are serving institutions that have very diverse student populations and with different needs." We agree with ED OGC's assessment, both because of the value of disaggregation in student outcomes data and because decisions regarding such data clearly fall within accreditors' statutory authority under the Higher Education Act of 1965 (HEA) — § 496(g) & § 496(o).

Such a prohibition would also be inconsistent with the Department's actions elsewhere — both procedurally and substantively. For example, in its 2025 interpretative rule on 90/10 requirements, the Department stated that a "preamble cannot be used to add substantive duties that the regulations do not contain" under the Administrative Procedure Act (APA). Additionally, ED created a new requirement for institutions to report admissions data that is disaggregated by race and sex through the Admissions and Consumer Transparency (ACTS) survey.

RE: Inconsistencies in Preamble Language for § 602.17

In the preamble language under "VI. Authority for this Regulatory Action" near the start of the proposed rule, ED notes the "Congress provided that the Secretary shall not promulgate regulations with respect to the standards of an accrediting agency described in Section 496(a)(5)" and that the proposed regulations accordingly "do not prescribe the substantive content of institutional accreditation standards, **but instead establish minimum expectations regarding the processes, consistency, transparency, and lawful administration of those standards"** (emphasis added).

Yet, the preamble language for § 602.17 — which covers the application of the standards described in HEA § 496(a)(5) — does not consistently reflect that distinction. In some instances, the Department describes provisions in § 602.17 as expectations, such as those related to student outcomes standards. In others, it characterizes them as mandatory and prescriptive requirements, such as those governing faculty standards. Adding to the confusion, ED's own press release following negotiated rulemaking appears to frame all these changes as mandatory requirements. These inconsistences are poised to cause confusion for both accreditors and institutions about what is actually required of them to comply with these provisions.

The preamble language for § 602.17 also contains inconsistencies with the regulatory text itself. Regarding the provisions on academic freedom, research integrity, and the First Amendment, the Department inconsistently describes whether accreditors or institutions are responsible for implementing them. For example, within a single paragraph, ED writes that "the **accrediting agency** would be required to maintain academic freedom protections" but later states that the "agency would evaluate whether the **institution** maintains academic freedom protections." The regulatory text clearly assigns that responsibility to institutions, not accreditors. Similarly, the preamble language states that "the **agency** would also be required to maintain policies regarding the integrity of scholarly activity, research, and practices," whereas the regulatory text assigns that responsibility to institutions.

These inconsistencies in the preamble — some even within a single paragraph — create uncertainty regarding the obligations of accreditors and institutions under the proposal. They also suggest that the rulemaking was rushed. Nothing requires these regulations to take effect on July 1, 2027. Given the number of drafting inconsistencies, delaying implementation by one regulatory cycle would impose only a modest cost while allowing time to resolve ambiguities before the regulations take effect.

Directed Questions

In the proposed rule, ED notes that it "seeks feedback on the reasonability of the estimate that the proposed regulations will not have a significant net budget impact and sources of data or analysis for further consideration of this question as we prepare the final regulations" and that it is "interested in receiving comments regarding possible impacts not identified by the Department, along with supporting data and analysis."

We disagree with the Department's assessment that the proposal will not have a significant net budget impact. An analysis of an analogous proposal suggests otherwise. H.R. 4054, the Accreditation Choice and Innovation Act, would also expand the number of eligible accreditors by allowing states to recognize accreditors for purposes of serving as Title IV gatekeepers.

As New America reported, a Congressional Budget Office (CBO) analysis of the bill estimated that it would "increase total direct spending for federal student aid by $437 million" over 10 years, driven by increased direct student loans and mandatory Pell Grant spending. The CBO also estimated that the discretionary Pell Grant spending would increase by $1.1 billion over the same period.

The factors that the CBO identified as driving these costs closely mirror our concerns regarding the proposed rule, such as the creation of an "incentive to reduce [accreditation] requirements to avoid having a postsecondary institution select another agency that uses less stringent accreditation requirements" and expectations that "the percentage of institutions facing adverse action or loss of accreditation would decline."

ED should consider whether the budgetary impacts projected by the CBO for this bill are relevant for this proposal and explain why its own analysis reaches a different conclusion. We believe the CBO's analysis appears more analogous to the proposed rule than the broader economic literature cited by the Department in its analysis (e.g., Joseph Schumpeter's *Capitalism, Socialism and Democracy* from 1942).

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The Notice of Proposed Rulemaking (NPRM) Would Weaken Accreditors' Consumer Protection and Educational Quality Assurance Role

The Education Department argues that the proposed changes to § 602.17(a)(1)(ii) will "emphasiz[e] merit and student outcomes" by requiring accreditors to establish minimum expectations for a range of student outcome measures, including "educational and economic returns aligned to the program's credential level, length, and occupational context relative to the total cost of attendance." EdTrust and others have long argued that the higher education accountability system too often allows federal financial aid dollars to flow to institutions that produce poor economic outcomes, particularly for students from underrepresented backgrounds, who have the most to lose. Viewed in isolation, these provisions could be a meaningful step toward stronger accountability. Yet, we believe they are undermined by other technical changes in the draft rule that collectively weaken accreditors' ability to enforce *any* standard:

Sanctioned Institutions Could Shop for a New Accreditor - § 600.11

Under the NPRM, an institution's request to change or have multiple accreditors would be automatically approved unless ED actively intervenes. At the same time, ED would eliminate existing safeguards that prohibit institutions from changing or having multiple accreditors if, within the prior two years, their accreditation was withdrawn, revoked, or terminated, or if they had been subject to a probation, show-cause, or suspension order. As a result, institutions facing accreditation sanctions — including those related to poor student outcomes — could avoid heightened scrutiny by switching to a less rigorous accreditor. By removing these guardrails, the proposal weakens accreditors' ability to hold institutions accountable and increases the risk of accreditation shopping. We urge the Department to withdraw these proposed amendments.

Untested Accreditors Could Win Federal Recognition - § 602.12

Under the NPRM, newly created accreditors could apply for federal recognition as soon as they establish accreditation standards and operating procedures and receive an application from at least one institution. While an agency would still need to accredit at least one institution before gaining recognition, the proposal removes the longstanding requirement that new accreditors have at least two years of experience making accreditation decisions before seeking recognition.

By lowering the bar for recognition, ED risks admitting unproven accreditors into the federal quality assurance system, thereby weakening confidence in accreditation as a safeguard for students and taxpayers. This concern is amplified by the presence of aspiring accreditors such as the National Association for Academic Excellence (NAAE), which New America has reported is comprised of former for-profit college officials linked to lawsuits and fraud allegations. We urge the Department to withdraw these proposed amendments.

The Department Could Second-Guess Accreditor Enforcement Decisions - § 602.26(h)

Under the NPRM, ED would have the authority to continue an institution's Title IV eligibility while an adverse accreditation action is under appeal, arbitration, or judicial review.
As negotiators have flagged during the rulemaking, existing accreditation processes already provide institutions with extensive due process protections. Accreditors are required to maintain appeals and arbitration procedures, and institutions generally retain both their accreditation and access to Title IV funding while those proceedings are

underway. If an accreditor is ultimately found to have violated its own policies, the adverse action can be reversed through those established processes.

Accordingly, we are concerned that this provision codifies a new avenue for ED intervention in accreditation decisions. Neither the preamble nor regulatory text explains the circumstances under which the Department would choose to exercise — or decline to exercise — this authority. As a result, we believe this provision introduces a new layer of federal subjectivity into the accreditation process and creates uncertainty about when institutions will face the consequences of an accreditor's adverse action. In doing so, it risks undermining accreditors' independent role within the triad and weakening the consistency and credibility of the accreditation system to ensure educational quality for students. We urge the Department to withdraw these proposed amendments.

The NPRM Would Undermine Accreditation's Role as a Safeguard for Academic Freedom

There is a reason accreditors exist as independent entities, distinct from both the federal government and states: to protect higher education from political interference. Their role is to ensure that teaching, learning, and research are evaluated by academic experts rather than by changing political priorities or ideological preferences.

The importance of this independence is well established. Both history and Congress have repeatedly affirmed the principle of academic freedom and the need to shield educational decision-making from government control. Indeed, accreditors have historically acted to restrain some of the most damaging political impulses directed at American higher education, though observers note that this protective capacity has "atrophied" in recent years.

The NPRM would further weaken that capacity by effectively transforming accreditors into enforcers of the administration's interpretation of academic freedom, viewpoint neutrality, and the First Amendment.

Policing Academic Freedom, Viewpoint Neutrality, and First Amendment Compliance

The NPRM proposes the following changes:

- **Academic Freedom**

    - Requires accreditors to evaluate whether an institution maintains academic freedom protections among its faculty – *§ 602.17(a)(2)(iii), § 602.17(a)(2)(vii)(A), and § 602.17(a)(2)(vii)(B)*
    - Requires accreditors to evaluate whether an institution maintains policies "regarding the integrity of scholarly activity" – *§ 602.17(a)(2)(vi)*
- **Viewpoint, Ideology, and Intellectual Neutrality**
    - Requires accreditors to evaluate whether an institution maintains policies "designed to support, promote, and appropriately prioritize intellectual diversity" among faculty, including measures of "student and faculty perceptions on the range of viewpoints and perspectives" – *§ 602.17(a)(2)(viii)*
    - Requires accreditors to ensure their decisions are "neutral with respect to viewpoint and ideology that are unrelated to its accrediting policies or standards" – *§ 602.18(b)(4)*
- **First Amendment**
    - For public institutions, requires that accreditors' "standards, policies, and enforcement practices" don't impede them from fulfilling their First Amendment obligations – *§ 602.15(f)*
    - For public institutions, requires accreditors to evaluate whether they maintain policies that protect the First Amendment – *§ 602.17(a)(2)(v)*
- **Mirroring Enforcement Actions by the Trump Administration**
    - Requires accreditors to "promptly review [their] accreditation or preaccreditation of [an] institution or program" if it has been subject to an adverse action "by a State agency or **Federal** agency" (emphasis added) – *§ 602.28(d)*

Although these requirements appear protective on paper, in practice they are poised to exert significant pressure on both accreditors and institutions to interpret and enforce academic freedom and constitutional protections according to the political priorities of the federal government. For instance, the administration has repeatedly suggested — most notably in its 2025 Compact for Academic Excellence in Higher Education — that activities traditionally protected by the First Amendment could lose that protection when associated with speech, curricula, or policies it considers politically objectionable.

This concern is compounded by the coercive penalties attached to these vague requirements. ED itself has struggled to articulate clear standards for compliance, at one point suggesting that a mere "sniff test" would suffice to determine whether an institution or accreditor has met its obligations. Yet, the consequences of failing that test are severe:

institutions risk losing access to Title IV funding, while accreditors risk losing recognition as Title IV gatekeepers.

Faced with such high stakes, institutions and accreditors would have powerful incentives to avoid regulatory scrutiny. This would likely lead to self-censorship of viewpoints, limited inquiry, and discouragement of teaching subjects deemed objectionable by the administration. Thus, under the guise of promoting ideological diversity, the NPRM would undermine the very foundation of academic freedom: the ability to debate, dissent, and engage with competing ideas without political interference.

To minimize the risk of losing federal recognition under these vague and coercive requirements, accreditors would have little choice but to divert substantial resources toward compliance. Rather than investing in educational quality assurance or advancing ED's stated goals for student outcomes and success, accreditors may find themselves hiring lawyers and creating new compliance infrastructures. This outcome also runs counter to ED's stated objective of reducing "unnecessary financial, compliance, and administrative burdens." The NPRM would almost certainly produce the opposite result.

We appreciate ED's note in the preamble that the intent of these changes is not to "prescribe specific institutional policies or override institutional autonomy." However, codifying requirements for the terms and making them a condition of accreditor recognition would effectively position the federal government as the arbiter of the terms for both accreditors and institutions. We urge the Department to withdraw these proposed amendments.

Shielding State Political Interference From Accreditor Scrutiny

We believe the following provisions in the NPRM would also shield state lawmakers who encroach on academic freedom and institutional governance from accreditor scrutiny:

- **State overreach into accrediting standards:** This provision prohibits accrediting standards that "encourage, direct, or otherwise require institutions or programs to violate Federal or State law …." *– § 602.17(g)*
- **State overreach into institutional governance:** This provision prohibits accreditors from "reviewing aspects of institutional governance of public institutions that are established by State law, including the appointment of institutional directors or officers by elected or appointed State officials." *– § 602.23(j)*

- **Mirroring enforcement actions by state governments:** This provision requires accreditors to "promptly review [their] accreditation or preaccreditation of [an] institution or program" if it has been subject to an adverse action "by a **State agency** or Federal agency" (emphasis added) – *§ 602.28(d)*

Taken together, this means that if a partisan state legislature decides to micromanage a university's curriculum, dismantle tenure, or stack a university board with political operatives — actions that are currently happening and often undermine lawful programs and initiatives designed to uplift under-represented students — the accreditor would be required to look the other way. We urge the Department to withdraw these proposed amendments.

The NPRM Would Further Codify the Administration's Anti-DEI Campaign

We are concerned that the NPRM would provide the administration with a means to advance its widely contested interpretation of civil rights law and its broader anti-DEI agenda. In doing so, it would undermine the ability of accreditors and institutions to ensure that every student, regardless of race, gender, sexual orientation, or socioeconomic status, can access the resources, mentorship, and opportunities they need to succeed.

The administration has repeatedly treated DEI programs, or any race-conscious initiatives for that matter, as presumptively unlawful, even though many such programs remain lawful and serve important educational purposes. We believe the NPRM is poised to become another tool for the administration to do so, requiring accreditors to evaluate institutional compliance with vaguely defined civil rights obligations while prohibiting standards that could be construed as encouraging violations of federal or state law, including policies with "**any** preferences on the basis of race" (emphasis added).

Specifically, the NPRM:

- Requires accreditors to evaluate whether an institution maintains policies that "protect civil rights" among faculty – *§602.17(a)(2)(vii)*
- Prohibits accrediting standards that "encourage, direct, or otherwise require institutions or programs to violate Federal or State law, **including by having policies that provide any preferences on the basis of race**" (emphasis added) – *§ 602.17(g)*
- Prohibits accreditors from having policies that "require institutions or programs to violate any Federal or State law," including Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972 – *§ 602.23(h)*

- Requires accreditors to conduct a "cost/benefit analysis" of institutions' student support services to justify their costs – *§ 602.17(a)(3)(i)*

In light of these proposed changes, it bears repeating what we've consistently said throughout this administration's multipronged attack on DEI: programs that support Black, Latino, and Native students — alongside veterans, students from rural communities, students with disabilities, and other traditionally under-represented groups — are crucial. They help identify and close equity gaps, increase graduation rates, and foster environments where all students can achieve their full potential and have a shot at the American Dream. And as students of color now comprise nearly half of all higher education enrollment, silencing their voices, erasing their histories, and dismantling programs vital to their success will only deepen racial and economic inequities, widen achievement gaps, and weaken the nation's workforce. We urge the Department to withdraw these proposed amendments.

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In closing, we are deeply concerned about the proposed rule as currently written, which would undermine college accreditors' ability to protect students from low-quality programs and hold bad actors accountable, while creating new avenues for both federal and state politicians to erode academic independence and intensify attacks on programs that help students who need them most. We appreciate the opportunity to comment and urge the Department to withdraw the proposed amendments above.

If you have any questions about this comment, please contact Reid Setzer, director of government affairs, at rsetzer@edtrust.org.

Sincerely,
EdTrust