

United States Senate

WASHINGTON, DC 20510

September 21, 2026

The Honorable Linda McMahon
Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington, D.C. 20202

The Honorable Nicholas Kent
Under Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington, D.C. 20202

Docket ID ED-2025-OPE-1042

Dear Secretary McMahon and Under Secretary Kent:

We write to provide our comments on the Department of Education's (Department) Notice of Proposed Rulemaking (NPRM) published on August 20, 2026, that would overhaul accreditation and higher education. We urge you to ensure any reforms to the accreditation system prioritize what is best for students and taxpayers not partisan, political actors.

Accreditation from a Department-recognized agency assures students and taxpayers of an institution or program's quality and enables students to participate in financial assistance programs authorized under Title IV of the *Higher Education Act* (HEA), like Pell grants and Direct Loans. To preserve academic and institutional independence, federal law prohibits the Department from establishing specific accreditation standards, including those relating to curricula, faculty, admissions, and student support.¹ Instead, the Department's primary role within the accreditation system is to recognize individual agencies and ensure that they are applying rigorous standards consistently, affirm those standards promote program quality, and provide robust due process procedures in the recognition process.

The provisions outlined in the Department's proposed rule threaten this system by inserting undue influence from the executive branch into the higher education accreditation process. Such changes place the academic freedom and intellectual diversity of our nation's higher-education institutions in jeopardy. Additionally, elements of the proposal meant to loosen regulations around the accreditation process will lower the standards for new accreditors and enable institutions to escape accountability and sanctions more easily. These provisions will make accreditation a race to the bottom, leaving students and taxpayers vulnerable to fraud and misrepresentation.

Several components of the NPRM take positive steps to support program quality such as efforts to streamline transfer of credit policies, strengthen conflict of interest controls and student achievement standards. However, we urge the Department to consider the consequences other elements of this proposal will have on accreditors' ability to assess institutional quality objectively and safeguard students and taxpayers from waste, fraud, and abuse on the part of predatory or unscrupulous institutions.

¹ 20 U.S.C. § 1099b(o)

Below, we provide more detailed input on the regulations proposed by the Department.

Academic Freedom, Intellectual Diversity, and Institutional Policies

The Department is proposing that accreditors must, among other requirements, “establish a policy that is designed to support, promote, and appropriately prioritize intellectual diversity and the free exchange of ideas amongst faculty....”² By mandating that accreditors create standards for the “intellectual diversity” of faculties—a term which the rule never defines—the Department can dictate who institutions can hire and continue to employ under the guise of correcting any perceived ideological imbalance amongst faculty at our nation’s institutions.

Additionally, the Department is proposing that accreditors require institutions to have policies which ensure “sufficient flexibility in instructional staffing policies to respond to persistent material changes in student demand, program viability, or financial conditions.”³ This language could enable accreditors to force institutions to reduce faculty tenure protections. Tenure is a crucial safeguard for academic freedom, allowing faculty to conduct research, publish findings, and exercise freedom of speech without the threat of losing their position due to outside pressure.⁴

Such a politicization of faculty hiring and tenure gives the executive branch undue political influence over who institutions hire and what research their faculties produce. These provisions will narrow the scope of future research and dissuade faculty from producing findings that might be unpopular with the corporate or political forces which can influence hiring and firing decisions at institutions. This rule will have a negative downstream effect on the pipeline of future innovation that drives economic growth and improves the lives of all Americans.

The proposal includes a requirement for accreditors to assess whether institutions allow “a range of academic perspectives” to be expressed “without adverse action based on lawful viewpoints unrelated to professional or academic competence....”⁵ This language could be easily weaponized to suppress free speech or discourse on campus based on what the executive branch interprets to be a “lawful” viewpoint. Similarly, the Department is proposing that accreditors assess whether institutions adequately protect First Amendment rights⁶ and refrain from allowing institutions to “violate any Federal or State law,” including Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments Act of 1972.⁷ Institutions are, of course, already required to follow these laws and are subject to legal action if they are accused of violating them. The Department’s rule will mandate that accreditors, which do not have the expertise of federal civil rights or First Amendment law, arbitrate on these matters.

² Accreditation, Innovation, and Modernization: The Secretary’s Recognition of Accrediting Agencies, 91 Fed. Reg. 53940, 54008 (proposed Aug. 20, 2026) (to be codified at 34 C.F.R. pts. 600, 602, 668)

³ *Id.* at 54008

⁴ <https://www.aaup.org/tenure>

⁵ Accreditation, Innovation, and Modernization: The Secretary’s Recognition of Accrediting Agencies, 91 Fed. Reg. at 54008

⁶ *Id.*

⁷ *Id.* at 54012

The provision which includes Title VI and Title IX rights concludes that such a mandate means that “agencies must not have policies that require institutions or programs to provide unlawful preferences to students, faculty, staff, contractors, or any employees based upon their race, color, national origin, or sex, including in admissions, hiring, and the selection of contracts.”⁸ Such language parallels the Department’s attempts to purge diversity, equity, and inclusion (DEI) programs and protections for transgender students from college campuses based on the current administration’s interpretation of civil rights law, whether through conducting politically charged civil rights investigations⁹ or, within the accreditation space, threatening accreditors’ recognition by pressuring them to drop their DEI policies.¹⁰

Beyond forcing accreditors to adhere to this administration’s interpretation of civil rights law and protections, the Department’s proposals around institutional policies and academic freedom exceed the authority exceed the Department’s authority under the HEA and the *Department of Education Organization Act of 1979*. The HEA grants accreditors the authority to set their own standards on assessing an institution’s faculty, curriculum, and admissions practices independent of the Department’s regulations, while limiting the Department from prescribing accreditor standards.¹¹ The *Department of Education Organization Act* prohibits the Department from exercising “any direction, supervision, or control” over the “curriculum, program of instruction, administration, or personnel” of any institution or accrediting agency.¹² Such prescriptions on accreditors’ policies, which in turn affect the policies of their constituent institutions, trample the Congressionally mandated independence of accreditors from the executive branch, jeopardizing accreditors’ role as a safeguard for taxpayer dollars and setting a dangerous precedent accelerating this administration’s politicization of higher education.

New Accrediting Agencies

The HEA requires that accreditors seeking Department recognition “demonstrate the ability and the experience to operate as an accrediting agency or association...,”¹³ have a pool of voluntary members,¹⁴ consistently apply and enforce standards,¹⁵ and carry out regular accrediting activities like on-site inspections.¹⁶ The Department’s proposal to “streamline”¹⁷ the process for new accreditors to earn recognition, however, subverts the HEA by striking the regulations governing how much experience a prospective accrediting agency must demonstrate, instead, requiring no experience accrediting at all. The Department proposes that an agency can apply for recognition when it demonstrates that it can legally operate in the relevant jurisdiction, has adopted

⁸ *Id.*

⁹ SENATOR BERNIE SANDERS, PRESIDENT TRUMP’S DECISION TO GUT THE OFFICE FOR CIVIL RIGHTS HAS LEFT OVER 46 MILLION STUDENTS WITHOUT PROTECTION FROM DISCRIMINATION (2025).

¹⁰ Josh Moody, *Kent Warns Accreditors Over DEI*, INSIDE HIGHER ED (Mar. 18, 2026), <https://www.insidehighered.com/news/governance/accreditation/2026/03/18/kent-warns-accreditors-over-dei>.

¹¹ 20 U.S.C. § 1099b(o)

¹² 20 U.S.C. § 1232a

¹³ 20 U.S.C. § 1099b(a)(1)

¹⁴ 20 U.S.C. § 1099b(a)(2)

¹⁵ 20 U.S.C. § 1099b(a)(4)

¹⁶ 20 U.S.C. § 1099b(c)(1)

¹⁷ Accreditation, Innovation, and Modernization: The Secretary’s Recognition of Accrediting Agencies, 91 Fed. Reg. 53940, 53941 (proposed Aug. 20, 2026) (to be codified at 34 C.F.R. pts. 600, 602, 668)

accreditation standards, operating procedures, and institutional applications consistent with federal regulations, and has at least one institution or program which has applied for accreditation.¹⁸

The current regulation builds out the HEA's requirements by having prospective accreditors accredit at least one institution or program and carry out other typical accreditor duties for at least two years before seeking recognition from the Department.¹⁹ This waiting period enables the Department to examine whether a prospective accreditor is consistently and rigorously applying quality standards before it receives the ability to gatekeep federal funds for new institutions.

By striking the two-year requirement and allowing application and review without ever having accredited an institution, the Department's proposal will enable unproven and inexperienced accreditors to enter the market. Loosening these standards risks institutions actively seeking out accreditors who do not have the expertise necessary to hold them accountable to high standards, while creating perverse incentives for longstanding accreditors to scale back their own oversight efforts to remain competitive. A cost estimate produced by the Congressional Budget Office, when considering legislation that would open the accreditation marketplace, made assumptions that federal spending would increase as a result because new institutions would become accredited and existing accrediting agencies would be less likely to remove accreditation from existing institutions in a competitive market.²⁰ The Department has not considered these potential outcomes in its reasoning or cost estimates. The accreditation landscape this provision creates could give unscrupulous institutions a clear path to defrauding students and increasing costs for taxpayers. In fact, officials from the defunct accreditors of predatory for-profit institutions, which shuttered after investigations and left thousands of students in debt and with worthless degrees, are primed to establish new accrediting agencies under these new regulations.²¹

Changing Accreditors

The Department's proposal strikes the requirement that institutions be in good standing with their accreditors for the 24 months prior to changing accrediting agencies.²² As written, the Department's proposal would direct the Secretary to automatically approve a change in accreditor, unless the Secretary determines that the institution is seeking the change to evade federal law, avoid enforcement from its current accreditor, or obtain Title IV eligibility through some other form of misrepresentation.²³

¹⁸ *Id.*, at 53950

¹⁹ 34 C.F.R. § 602.12 (2026).

²⁰ CONG. BUDGET OFF., H.R. 4054, ACCREDITATION CHOICE AND INNOVATION ACT, COST ESTIMATE (2025).

²¹ Jeremy Bauer-Wolf, *Meet the Would-Be Accreditors Tied to Predatory For-Profit Colleges*, NEW AMERICA (Apr. 28, 2025) <https://www.newamerica.org/insights/meet-the-would-be-accreditors-tied-to-predatory-for-profit-colleges/>.

²² Accreditation, Innovation, and Modernization: The Secretary's Recognition of Accrediting Agencies, 91 Fed. Reg. at 54003

²³ *Id.*

Current regulation forbids colleges from changing accreditors if their accreditation has been withdrawn, revoked, terminated, or placed on probation in the two years prior to the switch.²⁴ Under the Department's proposal, the Secretary would have to uncover evidence that the institution's intent in changing accreditors was to evade accountability.²⁵ This shift in a discretionary approach will lead to institutions switching accreditors or maintaining multiple accreditors to escape oversight or sanctions from an accrediting agency, especially in light of the personnel cuts at the Department. We are concerned that the Department will not have adequate staffing to properly review and evaluate institutions' applications to switch accreditors.

This laxing of standards around accreditation switching is compounded by the provision directing the Secretary to "not determine the cause of having multiple accrediting agencies to be unreasonable due to a withdrawal, revocation, other termination of accreditation, probation or equivalent, show cause order, or suspension order."²⁶ This means that the Secretary will not consider an institution seeking multiple accreditation while sanctioned by its current accreditor to be evading accountability. Such a provision incentivizes institutions to pursue or maintain multiple accreditation to protect against a loss of accreditation and eligibility for federal funds. This provision therefore puts students and taxpayer dollars at risk by allowing colleges who have rightfully been sanctioned for not meeting quality standards to continue receiving federal funding.

We urge the Department to reinstate the current regulations to maintain critical guardrails for students and to remain good stewards of taxpayer funds. The current regulation remains in line with Congressional intent and will ensure that the Department gives proper scrutiny to institutions attempting to evade accountability or sanctions by switching accreditors.

Conclusion

As the Department joins its counterparts across the executive branch of this administration in taking drastic steps to exert its influence within higher education, the proposed rule contains several policies which go against the statutory intent meant to give institutions and accreditors independence in setting and enforcing standards and protection against undue political influence. These changes set a dangerous precedent by forcing accreditors and, in turn, institutions, to answer to the political whims of the executive branch. Simultaneously, the provisions around new accrediting agencies and institutions' switching of accreditors will dilute higher education with inexperienced or hyper-ideological accreditors, incentivizing established accreditors to relax their standards and grant more opportunities for low-quality institutions and programs to escape accountability. Ultimately, taxpayer dollars will continue to flow to institutions which saddle students with extreme debt and worthless degrees.

In light of these concerns, we urge you to rescind the elements of the proposed rule which increase executive-branch involvement and influence in higher-education accreditation and

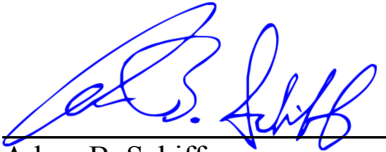
²⁴ 34 C.F.R. § 600.11 (2026).

²⁵ *Id.*

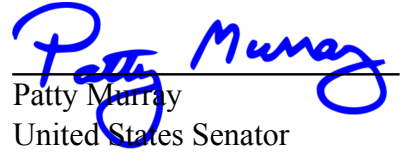
²⁶ Accreditation, Innovation, and Modernization: The Secretary's Recognition of Accrediting Agencies, 91 Fed. Reg. at 54003

invite lower-quality, inexperienced, and potentially unscrupulous actors to the market of millions in taxpayer dollars.

Sincerely,

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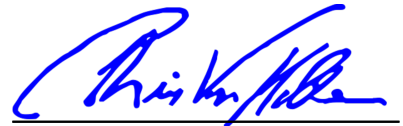
Adam B. Schiff
United States Senator

A handwritten signature in blue ink, appearing to read "Patty Murray", written over a horizontal line.

Patty Murray
United States Senator

A handwritten signature in blue ink, appearing to read "Dick Durbin", written over a horizontal line.

Richard J. Durbin
United States Senator

A handwritten signature in blue ink, appearing to read "Chris Van Hollen", written over a horizontal line.

Chris Van Hollen
United States Senator