

January 8, 2024

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
Washington, DC 20202

To Whom It May Concern:

We write today regarding the Department's upcoming rulemaking, particularly with respect to the Secretary's recognition of accrediting agencies. As organizations dedicated to protecting students and taxpayers and advancing a more equitable and higher-quality postsecondary education system, we appreciate the Department's commitment to launching this rulemaking, and we welcome your efforts to make long-needed reforms to the accreditation system. Below, we address this need for change, and outline some of the improvements we hope the Department will seek to make throughout the rulemaking process.

Accrediting agencies are intended to serve as a stamp of quality approval for the education provided, and they make up one of the legs of the program integrity triad established by lawmakers to govern institutions' access to federal financial aid.¹ However, agencies have too often fallen short. Institutions with poor outcomes are able to maintain approval, predatory conduct is recognized with (at best) a slap on the wrist, and non-compliance with accreditation standards drags on for years and years, subjecting multiple years' worth of students to educational offerings that don't really meet the stamp of approval. Regulations promulgated under the prior Administration exacerbated many of these challenges, weakening accreditors' obligations to enforce their standards and creating new loopholes for underperforming institutions.

In the upcoming rulemaking, we urge the Administration to adopt critical changes to the regulatory requirements for the recognition process of accrediting agencies. While this list is not exhaustive, we hope it provides some guidance as to the changes we believe are most critical.

- **Enhance accreditors' focus on student achievement.** Accreditors are required to consider student achievement; but their standards on this issue are often vague and frequently go unenforced. The Department should establish common definitions for student achievement, improve the quality of data among accrediting agencies, and ensure agencies work with their institutions to establish targets for student outcomes and improvement.²
- **Ensure public members are not actually industry representatives.** Accrediting agencies are required to have sufficient representation of public members on their commissions – but often, those members actually come from the higher education industry, or even institutions accredited by that agency. The Department should establish clearer definitions of public members to prevent the inclusion of such industry representatives or conflicted individuals.³

¹ <https://www.newamerica.org/education-policy/reports/bermuda-triad/>

² <https://www.thirdway.org/blog/improving-how-accreditors-measure-student-achievement-in-negotiated-rulemaking>

³ <https://www.americanprogress.org/article/bolstering-public-voice-accreditation/>

- **Prevent the use of “alternative standards” to lower the bar for underperforming schools.** Regulations promulgated by the Trump Administration enabled accreditors to establish “alternative standards” for some of their institutions.⁴ However, these alternatives will presumably typically be lower standards, creating a loophole for select underperforming schools to evade compliance or accountability. The Department should eliminate this provision.
- **Shorten the time period in which an institution can be knowingly out of compliance with accreditor standards without consequence.** Under current regulations, accrediting agencies are permitted to be out of compliance with accreditor standards for three years – with the possibility of a good-cause extension – without any consequence.⁵ This could leave entirely students in the dark with respect to problems about which the institution and the accreditor are both aware. Even after the accreditor takes action to place the institution under sanction, colleges get as long as four years to resolve the issue before the accreditor takes issue, allowing students to continue enrolling and accruing debt for non-compliant colleges.⁶ These timeframes are simply too long to adequately protect students.
- **Require accrediting agencies to more closely monitor high-risk institutions.** High-risk institutions, like those with poor student outcomes, high levels of student complaints, or high rates of non-compliance with federal requirements, often remain accredited, even without action, for many years. This has enabled such low-quality institutions to maintain predatory practices across many years, or even led to college closures that left students with few options. The Department should clarify accreditors’ obligation to effectively monitor their highest-risk schools and take action as appropriate.
- **Strengthen substantive change reviews.** Under current substantive change rules, many colleges are able to launch new campuses without prior approval, and in some instances staff – rather than the accreditor’s commission – are able to sign off on changes.⁷ Stronger substantive change rules would better protect students and would prevent institutions from shape-shifting without oversight.
- **Codify requirements for accreditors’ complaint systems.** A review of accreditors’ complaint systems revealed that many agencies have systems for accepting and reviewing complaints from student, faculty, and the public that are outdated, nontransparent, and even unusable.⁸ Recent guidance from the Department sought to clarify many of these requirements, and we urge the Department to further strengthen and codify that guidance in the regulatory process.⁹

⁴ 34 CFR 602.18(c)

⁵ 34 CFR 602.18(d)

⁶ 34 CFR 602.20(a)

⁷ 34 CFR 602.22

⁸ <https://www.newamerica.org/education-policy/briefs/higher-education-accreditors-dont-want-to-hear-your-complaints/>

⁹ <https://www2.ed.gov/admins/finaid/accred/guidance-for-ensuring-complaint-procedures.pdf>

- **Institute stronger requirements for teach-out agreements.** Even after the last decade, in which dozens of colleges closed their doors precipitously and without planning or notice to students, accrediting agencies have failed to improve their standards requiring colleges to plan for possible closures.¹⁰ The Department’s teach-out regulations for accreditors present an opportunity to better identify colleges at risk of closure, and to require them to engage in thorough planning well before any actual closure announcement.
- **Ensure the recognition and oversight process is transparent and timely.** The current recognition process is largely a black box, with minimal opportunity for the public to understand staff reviews of accreditors and too little time to review the necessary documentation to provide well-informed public comments. While we appreciate the Department’s steps to address these issues at the subregulatory level, we also believe this rulemaking represents an opportunity to rethink recognition and oversight processes to ensure they are more transparent, that public comments are both useful to the Department and timely, and to better incorporate the expertise of the National Advisory Committee on Institutional Quality and Integrity (NACIQL), including incorporating much of the feedback that NACIQL provided through a recent subcommittee report.¹¹

Again, we appreciate the Department’s commitment to addressing many of the deficiencies in the current accreditation process to ensure it works better both for students and for taxpayers. We look forward to the rulemaking, and welcome the opportunity to provide additional feedback through formal opportunities to do so.

Sincerely,

American Association of University Women
 Arnold Ventures
 Center for American Progress
 The Century Foundation Higher Education Team
 David Halperin, Attorney
 The Education Trust
 The Institute for College Access & Success
 New America, Higher Education Policy Program
 Project on Predatory Student Lending
 Rise
 Third Way

¹⁰ <https://sheeo.org/project/college-closures/>; and <https://www.newamerica.org/education-policy/reports/anticipating-and-managing-precipitous-college-closures/>

¹¹ <https://sites.ed.gov/naciqi/files/2021/08/NACIQL-Subcommittee-Report.pdf>