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It's Time for Congress to Dismantle the Higher Education Accreditation Cartel

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KEY TAKEAWAYS

As Congress renews its work on HEA reauthorization, one area of higher education policy is in desperate need of reform: the dysfunctional accreditation system.

Accreditation is often a costly process for institutions, while offering little quality control, and it increasingly mandates "woke" university policies.

Congress can take several steps to rectify this situation and return accreditation to its original function as a mechanism for quality assurance and improvement.

Congress last reauthorized the Higher Education Act of 1965 (HEA) in 2008. The HEA is the primary federal law governing higher education policy and, notably, authorizes the federal government's massive student loan and grant portfolio through Title IV of the act. As Congress renews its work on HEA reauthorization, one area of higher education policy is in desperate need of reform: accreditation.

There is growing, bipartisan agreement among those working in higher education policy that any attempt at higher education reform must address the dysfunctional nature of the current accreditation system. Originally, accreditation was designed as a voluntary, peer review–based system of quality assurance. Its nature and function shifted with the advent of the original GI bill following World War II, when the federal government needed a mechanism to determine

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the quality of the programs that were eligible to receive GI bill funds. The HEA further expanded this role by making accreditors the gatekeepers for all federal student loan and grant programs as established in Title IV.

As a 2015 Senate Health, Education, Labor and Pensions (HELP) Committee white paper on accreditation notes: "[B]efore the advent of federal financial aid programs, colleges and universities sought accreditation as a badge of distinction and honor." Today, however, accreditation "is simply no longer a voluntary undertaking for most colleges and universities. It has become a near universal requirement for colleges and universities, as access to federal student aid keeps these institutions' doors open."[1]

So long as federal taxpayer resources continue to be disbursed for postsecondary education, some kind of quality control, such as accreditation, remains necessary. Yet, there is scant evidence that accreditation serves to ensure quality. Instead, it often proves to be a costly and intrusive process for institutions, while doing little to ensure that institutions produce the outcomes they purport to achieve. At the same time, accreditation often mandates "woke" policies and practices within universities, even among those institutions that may object on the grounds that they stifle the free exchange of ideas that is foundational to their educational mission.[2]

Absent a reform to return student financial aid to the private sector, Congress could take several steps to help to rectify this situation and return accreditation to its original function as a mechanism for quality assurance and improvement as Congress considers reauthorization of the HEA. Ending the regional monopolies enjoyed by accreditors, confining accreditors to the enumerated powers delegated to them in the HEA, and breaking the link between accreditation and Title IV eligibility must be top priorities. Several additional reforms at the state and federal levels would further improve accreditation.

Three Key Reforms for Any HEA Reauthorization

First, Congress should take further steps to remove the monopoly still enjoyed by regional accreditors, instead allowing these agencies to specialize in the oversight of particular types of institutions nationwide and allowing institutions the opportunity to choose agencies that are the most appropriate for their mission. Until recently, most colleges and universities had only one regional accreditor from which to choose, as regional accreditors would not encroach on each other's territory.[3]

Accreditors have abused this power, particularly regarding governance. The Southern Association of Colleges and Schools (SACS) has done so most frequently and egregiously. For example:

- In January 2023, the board of trustees of the University of North Carolina created a new School of Civic Life and Leadership. The president of SACS commented that she would "either get them to change it, or the institution will be on warning with [SACS]."[4]

- In May 2021, SACS interfered with the Florida State University presidential search, arguing that a candidate who was also on the governing board must step down. Yet the candidate was also the state's education commissioner, and "[t]he state Constitution requires the education commissioner to have a seat on the university system's Board of Governors."[5]

- In April 2021, SACS politicized the chancellor search at the University System of Georgia to thwart the selection of a former governor, arguing that he might not be able to run a university system.[6]

- In October 2019, SACS interfered with the University of South Carolina's presidential search and launched an inquiry into the proceedings.[7]

- In January 2013, SACS opened an investigation after the governor expressed an opinion about choosing a new University of Florida president, which, of course, he had the "right and duty" to do.[8]

- In December 2012, SACS put the University of Virginia on warning status because its trustees worked to remove its president, which was, of course, within the board's power.[9]

Other institutional and programmatic accreditors have occasionally abused their power as well:

In July 2019, the Northwest Commission on Colleges and Universities (NWCCU) intervened in Alaska's budget decisions. The NWCCU wrote the state legislature threatening the accreditation of the state's universities unless the legislature appropriated more money.[10]

In its role as an accreditor of law schools, the American Bar Association bullied the law school of George Mason University beginning in 2000, demanding that the school use racial preferences in admissions. The school initially resisted but ultimately backed down, yet "still the ABA was not satisfied.... The law school finally got its reaccreditation after six long years of abuse—just in time for the next round in the seven-year reaccreditation process."[11]

After regulatory reform in 2020, colleges and universities were allowed to pursue accreditation with accreditors outside their regions; the "regional"

accreditors effectively became national in scope. Although this was an important change, further reform could be accomplished by (1) changing the current law at 20 U.S. Code § 1099b(h) to allow schools to change accreditors more easily—which is readily accomplished by adding a presumption in favor of the institution's ability to change accreditors—and by (2) repealing current language at 20 U.S. Code § 1099b(a)(1) that prohibits accreditors from operating solely as regional institutions, requiring instead that they either be linked to a specific state, or be prepared to operate nationally.

Second, Congress must prevent accreditors from using their gatekeeping power to impose inappropriate regulations on institutions. Federal law at 20 U.S. Code § 1099b(g) allows accreditors the unlimited right to adopt standards not otherwise covered in the HEA, an "elastic clause" immune from regulation. As a result, accreditors impose standards related to issues, such as institutional governance (triggered in cases like those listed above), which ultimately become barriers to innovation or prescriptive mandates that can run counter to institutional mission and values. Institutions hesitate to pursue creative initiatives lest they jeopardize their access to Title IV funds.

Accreditors, including programmatic accreditors, also mandate politicized standards, which can even conflict with federal law:

- In 2006, the sole accreditor of law schools, the American Bar Association, effectively required law schools to use racial preferences in admissions and in faculty and staff hiring, in violation of the race neutrality required by California law and federal law known as Title VI. In response, the American Law Deans Association complained that the accreditor "inappropriately inserts itself into the internal affairs of the institutions it accredits...in a way that forces homogeneity, and conversely stifles innovation and diversity, among law schools."[12]

- The Council of Social Work Education (CSWE) Commission on Accreditation requires that social work programs produce graduates who "understand the pervasive impact of White supremacy and privilege"; "demonstrate anti-racist and anti-oppressive social work practice"; and know "the global intersecting and ongoing injustices throughout history that result in oppression and racism."[13]

- The New England Commission of Higher Education requires that an institution have "goals for the achievement of diversity, equity, and inclusion [DEI] among its students."[14]

- Apart from official standards, accrediting agencies demonstrate a distinctively left-leaning agenda that is likely at odds with many colleges. Nevertheless, colleges must bow to the accreditation cartel. For example, as The Heritage Foundation's Jonathan Butcher recently detailed:

- The Western Association of Schools and Colleges' Accrediting Commission for Community and Junior Colleges pledged to create a "climate" of "anti-racism" among schools it accredits.[15]

- The NWCCU "has a set of 'anti-racism resources' on their [sic] website, which includes material produced by the radical Southern Poverty Law Center's education arm, Learning for Justice.[16] The material includes information on 'identity, power, and justice', along with 'gender-neutral practices.' The resource page also includes an article from Racial Equity Tools called 'Whiteness and White Privilege.'"[17]

Congress should amend the "elastic clause" so that an institution cannot lose eligibility to Title IV funding based on standards not enumerated in the HEA. Closing this loophole would go a long way toward eliminating accreditors' potential to intrude upon institutions' self-governance and ensuring that accreditors once again focus on issues of academic quality.

In other words, Congress should require accreditors to offer a form of accreditation based only on the enumerated criteria of 20 U.S. Code § 1099b(a)(5)(A)-(J). Such an amendment would permit accreditors to maintain any standards they choose for their own purposes, while limiting accreditors' gatekeeping power to student loans and grants to those criteria enumerated in the HEA.

Finally, Congress should create an alternate path to Title IV funding eligibility. The link between accreditation and Title IV (student loans and grants) eligibility puts pressures on the accreditation system that it was never intended to bear, and it often serves to obscure or even undermine the appropriate role of accreditors as guarantors of quality.

By decoupling Title IV funding from accreditation, Congress would enable a much broader range of entities to accredit and credential not only institutions but individual classes and courses of study, while opening other paths to Title IV Federal Student Aid eligibility, such as demonstrated outcomes consistent with an institution's mission.[18] The Higher Education Reform and Opportunity (HERO) Act, for example, would allow states to create their own alternative accreditation systems.[19] Decoupling could also ease delays at the U.S. Department of Education when it comes to decisions

about accreditation. One goal could be eliminating the Title IV connection to accreditation by 2027—75 years after they were first joined. To this end, Congress could identify, or enable the Secretary of Education to identify, the kinds of outcomes that would enable alternative Title IV eligibility.

These three reforms, (1) prohibiting regional monopolies being held by accreditors, (2) repealing the "elastic clause," and (3) decoupling federal financing from accreditation, would be strong first steps in restoring accreditation as a *voluntary* and meaningful quality-assurance measure, as opposed to its current role as guarantor of federal funds, for which it is ill-designed.

Moving from Accreditation to Quality Assurance

Accreditation as it currently exists creates barriers to entry for innovative start-ups in the higher education market, while being a poor gauge of program quality and the skills students gain (or fail to gain) while attending college. What began as a voluntary system of accreditation in the 19th century became a de facto requirement, with accreditation losing much of its value as a result. In order to harness the potential of new learning modes, policymakers should consider meaningful structural changes to this ossified system. The appendix includes additional state and federal reform recommendations.

Any higher education reform worthy of the name must include accreditation reform. Addressing these issues would be a good step toward improving the system of higher education quality control and putting American higher education on the path to regaining its status as a model for the world.

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Appendix

The reforms listed above, such as decoupling federal student loans and grants from a de facto federal system of accreditation through the Higher Education Reform and Opportunity (HERO) Act, are the core reforms to advance in accreditation. Following are several potential reforms in law, regulation, or state action to provide further reform.

Federal Reforms in Law

1. Congress should **allow or facilitate alternative accreditors**. Current law at 20 U.S. Code § 1099b(a)(2)(A) requires accreditors to be membership associations that have accreditation "as a principal purpose." There is conflict of interest in being a member of the organization that serves as one's accreditor; everyone approves each other and is wary of innovators who could upset the status quo. But business associations, state authorizers under their own accreditation plans, and new accreditors focused on start-ups, short-term programs, sub-program accreditation, competency-based education, or innovations are all reasonable evaluators of fundamental capabilities and qualities. Business and trade associations are particularly well-suited to certify achievement in skills and competencies in degree programs as well as non-credit certificate programs, although care must be given to ensure that such self-regulatory systems do not become insular guilds that create artificial barriers to new entrants.[20]

2. All-or-nothing Title IV Federal Student Aid eligibility gives institutions no incentive for stepwise improvement. While maintaining safe harbor for risk-taking innovations, Congress should **allow variable eligibility criteria based on performance**, consistent with the type of institution and even type of program within an institution. (For example, open-access institutions cannot be held to the graduation rate standards of highly selective institutions; theology and engineering degrees cannot be held to the same income standards.) Congress or the Secretary of Education could establish a list of outcomes (such as graduation rate, loan default rate, retention rate, test scores, graduate admissions, and debt and income levels) from which accreditors could choose their preferred measures, and each institution could, in turn, choose the accreditor that employs measures best suited to the institution. Similarly, Congress could allow variable amounts of regulatory relief and

sliding amounts of risk-sharing (such as institutional responsibility for student loans, or various kinds of insurance) based on such outcomes.

3. Congress should directly **prohibit accreditors from instituting diversity, equity, and inclusion (DEI) requirements for colleges and universities or interference in governance**. While the reforms above would increase competition and let institutions avoid accreditors known to abuse their power, only a ban on such abuses (at least for Title IV student aid purposes) would ensure institutional autonomy and institutional academic freedom in areas such as admissions, hiring, and governance. Conversely, Congress should require accreditors to respect students' freedom of conscience by insisting that institutions (other than faith-based institutions) not restrict or punish a student (such as a social work or nursing trainee) who cannot serve a client due to potential violations of the student's religion or conscience. Congress should also build on the Coats–Snowe amendment and require accreditors to respect fully institutions' freedom of conscience on deep moral questions related to abortion and sexuality, and to refrain from discriminating against the pedagogical and moral approaches used by religious institutions, in particular.

4. Congress should **reduce the need for federal financial aid in order to reduce the importance of accreditation as a gatekeeper for this aid**. There is a broad, bipartisan consensus that college has simply become too expensive, a trend which has directly led to the increased prominence of accreditors and the proliferation of student loan debt. The rising cost of college has coincided with increased spending, with many colleges and universities prioritizing expensive amenities and administrative bureaucracies which have little impact on student learning outcomes.[21] Policymakers should scrutinize how much revenue drawn from federally backed loans is spent on costs that do not benefit students. In addition, Congress should require federal agencies to omit any job requirement for a postsecondary credential unless the agency can demonstrate that such a degree or credential is necessary for the job.

Federal Reforms in Regulation

While any regulatory reform could be a reform in the Higher Education Act (HEA), the U.S. Department of Education could achieve the following reforms whether the HEA is amended or not. The Department of Education should:

1. **Make provisional accreditation for start-ups easier.** This reform would acknowledge that innovation involves calculated risks and as such, should permit different tracks for different kinds of new institutions. To avoid situations where the Department of Education sits on a decision for years, the regulation would establish a timeline and a deadline for approval (with automatic approval if the department has made no decision by the deadline). Similarly, accreditors should fast-track approval or pre-approval of innovations, perhaps using outcomes or projected outcomes, such as program return-on-investment as measures of viability. Furthermore, the Department of Education should set an even higher bar before changes are deemed "substantive" and must be reported and approved by accreditors.

2. **Fast track reaccreditation and permit longer reaccreditation periods.** Institutions that meet certain benchmarks should be granted minimal reaccreditation requirements and very long periods of accreditation. This reform would save the significant expense of more frequent accreditation of institutions that are clearly performing well. Substantive changes would still need to be reported and approved.

3. **Make recognition of new accreditors easier.** Current regulations tend to reinforce the cartel of existing accreditors. Some programmatic accreditors (such as the American Bar Association) enjoy monopolies. In addition to permitting alternative kinds of accreditors as described above, regulations should facilitate rather than discourage new entrants among traditional kinds of accreditors.

4. **Establish penalties when accreditors violate autonomy** in governance, apply diversity pressures, or otherwise interfere with institutional academic freedom. The Department of Education, so long as it is the ultimate authority on access to Title IV funds, should entertain and investigate complaints against accreditors from institutions and students, as well as third parties, prohibit retaliation, and require increased reporting of complaints and resolutions. Institutions should be permitted to appeal any adverse action to the department.

5. **Require accreditors to enforce academic freedom and free speech standards.** Accreditors generally require institutions to adhere to their published standards. When an institution violates its

academic freedom or free speech policy (or other constitutional or civil rights as applicable), the institution's accreditor must at least investigate and report the outcome to the department. The department should issue a penalty if the accreditor fails to do so.

6. **Prohibit accreditors from imposing DEI requirements** (admissions, hiring, curriculum, board diversity, and mandatory DEI statements) as a matter of nondiscrimination under Title VI. The Department of Education should also require that accreditors demand transparency from institutions on these matters.

7. **Strengthen religious liberty protections.** Current regulations at 34 CFR § 602.18 purportedly protect an institution's religious mission, but paragraph (b)(3) of that regulation permits an accreditor to "require that the institution's or program's curricula include all core components required." This proviso permits abuse of power by accreditors to violate an institution's religious commitments or character (see the social work standards quoted in the main text under "Three Key Reforms for Any HEA Reauthorization") and should be revised.

8. **Reform the standardized "credit-hour" definition to facilitate innovation.** The current regulatory definition of "credit hour" was established in 2010,[22] based on the HEA's use of credit hour as a proxy for learning—but not as an actual measure of learning. Accrediting agencies held institutions to various credit-hour standards prior to that regulation. Accrediting agencies tend to use the new definition as a measure of student progress, despite its imperfections. Student progress should be measured in terms of demonstrated outcomes, not by seat time.

9. **Reduce accreditor disincentives to take adverse actions.** This reform should reduce the threat of litigation, which inhibits accreditors from taking necessary steps to hold institutions accountable for poor outcomes or other failings.

10. **Move from all-or-nothing Title IV eligibility to a sliding scale** (see federal law reform above) or fully decoupling accreditation from Federal Student Aid eligibility, for example, would go a long way toward restoring the traditional, cooperative, quality-improvement function of accreditation.

11. **Put political appointees in charge.** While a regulation is not required, the Secretary of Education should entrust political appointees with both the legal and the policy sides of accreditation. Career staff have tended to overregulate innovations out of existence, to require far more evidence of accreditors than necessary, and to nitpick accreditors regarding insubstantial violations. Putting political appointees closer to the details of decision-making risks politicizing some aspects of accreditation but would be more democratically responsive and would disempower career bureaucrats.

12. **Initiate antitrust action.** In cooperation with the Department of Education, the Department of Justice (DOJ) should treat several programmatic accreditors as the monopoly actors they are and initiate antitrust action. DOJ successfully caused the American Bar Association to change its practices in the mid-1990s.[23] It is time for DOJ to do so again—and not just in the discipline of law.

State Reforms

1. More states should adopt Florida's model and **require public institutions to change accreditors** periodically. This reform parallels the decisions by corporations to change auditors—to get fresh eyes on the organization's fundamentals and avoid cozy relationships with one's assessors.

2. States should assess the quality of accreditors, **ban the use of underperforming accreditors** or those with certain features (such as frequent violations of institutional academic freedom, including DEI requirements), and consider competitive bidding by accreditors for the ability to accredit public institutions in the state.

3. States should empower reform advocates on state boards and commissions and on public university boards of trustees to **insist on institutional autonomy and resist intrusions by accreditors**.

4. As on the federal level, states should follow the lead of several states—Alaska, Colorado, Georgia, Maryland, Pennsylvania, Utah, and more—and **eliminate a bachelor's degree requirement for the vast majority of government jobs**.

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