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Higher Education Alert

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Department of Education proposes overhauled accreditation rules

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Sweeping proposed ED accreditation changes target governance, staffing flexibility, ROI metrics, research integrity (including AI), and DEI constraints.



What's the impact?

- New requirements emphasize student outcomes (ROI, wages, completion), faculty evaluations, and research integrity, increasing compliance demands despite claims of deregulation.
- Changes aim to increase competition among accreditors and ease switching, but may fragment the system and introduce new operational and strategic risks for institutions.

On May 21, 2026, the Department of Education's (Department) Accreditation and Institutional Metrics (AIM) negotiated rulemaking committee reached final consensus, setting the stage for a formal proposed rule for colleges and universities. The draft proposes sweeping changes to the federal accreditation regulations under 34 C.F.R. Parts 600 and 602. If the Department publishes a final rule by November 1, 2026, the changes are expected to take effect July 1, 2027.

The proposal represents one of the most significant federal interventions into accreditation in decades and reflects the administration's broader effort to reshape higher education oversight around cost, workforce outcomes, intellectual diversity, and civil rights compliance. The proposed rule is expected to generate significant public comment and likely litigation before any implementation date. As we have seen with the Department's recent AHEAD and RISE negotiated rulemaking efforts, the consensus draft language will likely closely resemble the proposal ultimately published for notice and comment.

The 173-page draft would substantially reshape the role of accreditors, expand federal expectations surrounding institutional governance and student outcomes, and alter long-standing assumptions about academic freedom, transfer credit, and accreditor oversight. It would also likely accelerate competition and fragmentation within the accreditation ecosystem itself by lowering barriers to new accreditors and making it easier for institutions to switch accrediting agencies.

Below are several key areas colleges and universities should monitor closely.

Academic freedom and “intellectual diversity” become accreditation issues

For the first time, the draft regulations would define “academic freedom” in federal accreditation regulations. Proposed § 602.17(c) protects faculty rights to teach, research, and publish without undue interference, but expressly excludes discussion of material “not germane to the subject of the course being taught.” The draft also permits institutions and accreditors to adopt policies designed to promote “intellectual diversity” and the “balanced presentation of competing perspectives.”

In parallel, accreditors would be required to evaluate whether institutions maintain policies protecting a range of viewpoints and whether academic freedom protections are applied consistently regardless of viewpoint or ideology. Public institutions would additionally face accreditor scrutiny regarding compliance with First Amendment obligations.

Together, these provisions could significantly expand accreditor involvement in institutional speech, free inquiry, and faculty governance disputes. Institutions should review existing academic freedom, free speech, and faculty evaluation policies, as well as any faculty handbooks, for consistency, clarity, and defensibility.

The proposal is also likely to generate legal scrutiny regarding academic freedom, institutional autonomy, and the extent to which the Department may regulate curricular and viewpoint-related issues through accreditation standards.

Faculty evaluations and staffing flexibility face new accreditation expectations

The draft regulations would also impose new expectations regarding faculty performance evaluations, remediation processes, and institutional staffing flexibility. Proposed § 602.17(a)(3)(i)–(iv) requires accreditors to evaluate whether institutions maintain written, periodic faculty performance evaluations with defined standards and meaningful mechanisms to address sustained nonperformance.

At the same time, institutions would be expected to maintain “sufficient flexibility in instructional staffing” to respond to changes in enrollment demand, program viability, and financial conditions.

Although the draft does not expressly target tenure systems, faculty unions, or shared governance structures, the practical implications could be significant. Many institutions, particularly public universities and unionized campuses, operate within contractual, statutory, and governance frameworks that intentionally limit unilateral administrative action regarding faculty workload, program discontinuance, evaluation standards, discipline, or termination.

As drafted, the proposed rule may create tension between longstanding higher education governance norms and the Department’s apparent emphasis on institutional managerial flexibility and accountability metrics. Institutions may face difficult questions regarding:

- / Whether existing faculty evaluation systems are sufficiently formalized and consistently enforced;
- / How accreditors will assess “persistent deficiencies” in instructional quality or program relevance;
- / Whether tenure and collective bargaining protections could be viewed as inconsistent with required staffing flexibility or faculty evaluation protocols; and
- / How accreditor expectations may intersect with faculty senate authority and shared governance processes.

The draft rule restructures the accreditor marketplace

The proposed regulations would eliminate the historical distinction between “regional” and “national” accreditors and prohibit the Department from favoring one accreditor over another. The draft also lowers barriers for new accreditors seeking federal recognition and creates a more permissive framework for institutions seeking to change accreditors.

The Department has framed these changes as increasing competition in the accreditor marketplace and reducing perceived barriers that have historically limited institutional mobility and innovation. Critics, however, have raised concerns that the changes could fragment the

accreditation system and encourage the development of mission- or ideology-aligned accreditors.

At the same time, the draft significantly tightens the “separate and independent” requirements applicable to accrediting agencies—particularly specialized and programmatic accreditors. Proposed § 602.14(b)(7)–(14) would prohibit accreditors from sharing personnel, facilities, office space, or operational services with related trade associations, membership organizations, or professional bodies. Officers and leadership personnel generally could not serve dual roles across affiliated organizations, and accreditors would be required to maintain expanded conflict-of-interest controls, annual CEO certifications, and anonymous complaint mechanisms.

These provisions could have particularly significant implications for professional accreditors whose accreditation functions historically have been deeply intertwined with broader professional organizations. The draft expressly targets arrangements in which accrediting standards, staffing, governance, or policymaking are integrated with professional membership associations or trade groups. As a result, these provisions could significantly reshape the accreditation landscape for professional schools and programs, including law, nursing, engineering, business, and healthcare disciplines.

Student outcomes metrics expand significantly

The draft substantially expands the student outcomes metrics accreditors must evaluate. Proposed § 602.17(b)(1) would require accreditors to assess licensing outcomes, retention and graduation rates, employment outcomes, further education, standardized assessments, and “educational and economic returns relative to the total cost of attendance,” using wage data where available. This reflects the administration’s broader emphasis on workforce alignment and return-on-investment metrics in higher education oversight.

The draft also prohibits accreditors from categorically rejecting short-term or accelerated programs eligible for federal financial aid so long as those programs demonstrate comparable outcomes.

Institutions should expect increased scrutiny of program-level return on investment, particularly for programs with weaker labor market outcomes or high debt burdens. Institutions exploring accelerated or nontraditional delivery models may simultaneously find new opportunities under the proposed framework.

Transfer credit oversight shifts toward consumer transparency

The Department retreated in the negotiated rulemaking process from earlier proposals that would have created a stronger presumption in favor of transfer-credit acceptance. Instead, the draft regulations focus heavily on transparency and process obligations.

Under the draft rule, institutions generally must award transfer credit for comparable coursework unless they provide a written, student-specific rationale for denial. Institutions would also need to disclose transfer-credit determinations before enrollment or financial commitment when transcripts are submitted on time, explain why credits were denied, estimate the cost and time required to replace denied credits, and provide an appeal opportunity.

As a result of these changes, registrar and admissions offices may face substantial new administrative burdens associated with individualized transfer-credit documentation and disclosure timelines.

DEI requirements face additional constraints

Consistent with broader administration policy priorities and recent executive actions, the draft would prohibit accreditors from maintaining standards that require institutions to provide preferences based on race, color, national origin, or sex in admissions, hiring, or contracting. While many accreditors have already taken steps to remove or no longer require such DEI provisions, any existing and continuing accretor expectations relating to faculty diversity, student composition, curriculum, and DEI programming may face challenges or require revisions when the rule becomes final.

Research integrity—including AI Use—moves into accretor oversight

The proposed regulations would also expand accretor oversight into research integrity and scholarly conduct. Proposed § 602.17(o) requires accreditors to evaluate whether institutions maintain policies and procedures addressing plagiarism, falsification, fabrication, citation manipulation, selective reporting, and improper authorship practices. The draft expressly addresses the use of artificial intelligence in research activities.

Research institutions should anticipate increased scrutiny of existing research misconduct policies, faculty training, AI governance frameworks, disclosure requirements, and investigation procedures.

Switching accreditors becomes easier

The draft creates a more permissive process for institutions seeking to change accreditors. The Secretary of the Department would be prohibited from treating adverse accrediting actions as automatic disqualifiers from switching accreditors, unless the institution is attempting to evade oversight or federal law.

The regulations would also facilitate dual accreditation arrangements in certain circumstances. These provisions could accelerate competition among accreditors and create strategic opportunities for institutions dissatisfied with current accrediting relationships. At the same time, institutions should anticipate that accretor changes may become increasingly tied to broader institutional positioning, governance philosophy, mission alignment, and political scrutiny.

The draft rule simultaneously promises deregulation and expands oversight

Although the Department has framed portions of the draft as reducing accreditation burden and lowering higher education costs, the regulations would also impose numerous new oversight obligations on accreditors themselves: the draft requires accreditors to demonstrate cost-effectiveness, avoid unnecessary administrative burdens, adopt antitrust compliance controls, train staff not to equate cost with educational quality, and refrain from reviewing certain state-governance issues at public institutions.

Notably, the draft attempts to simultaneously reduce accretor burden while expanding accretor responsibilities into areas such as intellectual diversity, research integrity, antitrust compliance, transfer-credit transparency, wage-based student outcomes, and civil rights oversight. Ultimately, this may increase institutional compliance obligations.

What institutions should do now

Although the proposed rule is not yet final, institutions may wish to begin:

- / Reviewing academic freedom and free speech policies;
- / Reviewing faculty handbook provisions, collective bargaining agreements, evaluation procedures, post-tenure review systems, and governance structures;
- / Assessing transfer-credit procedures and disclosure practices;
- / Evaluating research integrity and AI governance frameworks;
- / Modeling student outcome and wage-based metrics;
- / Monitoring accretor responses and potential revisions to standards; and
- / Considering whether current accretor relationships remain strategically aligned with institutional priorities.

We will continue monitoring the rulemaking process, anticipated public comments, and likely legal challenges as the proposal advances toward formal publication.

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