



September 21, 2026

Mr. Nicholas Kent  
Under Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

Re: Docket ID ED–2025–OPE–1042

Dear Mr. Kent:

ASPA, the Association of Specialized and Professional Accreditors, is submitting this comment regarding the August 20, 2026, Notice of Proposed Rulemaking for Accreditation, Innovation, and Modernization: The Secretary’s Recognition of Accrediting Agencies: Institutional Eligibility Under the Higher Education Act of 1965, as Amended, Student Assistance General Provisions, hereafter referred to as “AIM” in this comment.

ASPA is a national association of 60 programmatic accreditors that advances good accreditation policy and practice. Half of ASPA’s members – 30 accrediting agencies – are recognized by the Secretary of Education. Collectively, ASPA members accredit more than 28,000 programs at postsecondary institutions in the United States and around the world. As ASPA noted in its letter to the Department last fall, our member accreditors are committed to outcomes, accountability, transparency, continuous improvement, and respect for institutional governance.

ASPA members require outcomes assessment as a condition of accreditation, including measures of student competency, graduation and retention, licensure and certification performance, employment outcomes, and program-defined indicators. They require transparency in reporting outcomes, regularly evaluate and revise their standards and practices in response to changes in the professions and workforce, and respect institutional mission and autonomy while holding programs accountable for educational quality and student success. These principles are central to specialized and professional accreditation and to ASPA’s *Code of Good Practice*.

While ASPA and its members support accreditation innovation and modernization via appropriate deregulation, we are concerned about the AIM process, statutory authority, new regulatory burden, and provisions that do not adequately account for programmatic accreditation. On behalf of Secretary-recognized member agencies, ASPA respectfully submits the following comments on AIM.

## **Regulatory Effects**

ASPA and its members are concerned that the Department has not achieved its stated objective to “reduce regulatory burden.” Instead, the proposed regulations would create several new areas of regulatory responsibility and compliance for accrediting agencies. During negotiations, Department staff themselves characterized certain proposed requirements as potentially becoming exercises in compliance “box checking,” precisely the type of regulatory activity the Department has repeatedly stated it seeks to reduce.

The NPRM is presented as a deregulatory initiative intended to reduce regulatory burden, yet in several areas it replaces existing requirements with new, more prescriptive federal mandates governing the standards, processes, governance, and oversight activities of accrediting agencies. These additional requirements will impose time and costs on accreditors and, ultimately, on the programs and institutions they accredit. Those costs may also be borne indirectly by students.

The NPRM recognizes that accrediting agencies are private, nongovernmental quality assurance organizations, yet several provisions would increasingly enlist those organizations in implementing or monitoring federal policy objectives beyond the traditional determination of educational quality. This tension warrants careful reconsideration, particularly where other federal or state authorities already possess direct jurisdiction and enforcement responsibility. It is difficult to reconcile the Department’s stated deregulatory intentions with provisions that would require accreditors to assume additional and duplicative oversight responsibilities in areas already subject to enforcement by federal and state governmental authorities.

ASPA urges the Department to examine the cumulative regulatory effect of the proposed changes rather than evaluating each provision in isolation. Removing certain existing requirements while simultaneously imposing new compliance obligations does not necessarily result in deregulation. The complete proposed regulatory framework does not reduce the administrative and compliance burden on accreditors and the institutions and programs they serve.

## **Negotiated Rulemaking**

### Committee Composition

ASPA and its members remain deeply concerned about the composition of the AIM negotiated rulemaking committee. In its January 27, 2026, Federal Register notice announcing its intent to establish the AIM committee, the Department stated:

“We intend to select negotiators for the Committee who represent the interests of those significantly affected by the issues proposed for negotiation. In so doing, we will comply with the requirement in section 492(b)(1) of the HEA (20 U.S.C. 1098a) that the individuals selected must have demonstrated expertise or experience in the relevant topics proposed for negotiations.”

The Department specifically identified “programmatic accrediting agencies recognized by the Secretary under 34 CFR part 602” as a constituency to be represented on the committee. Yet no individual from or representing a Secretary-recognized programmatic accrediting agency was

appointed as the primary negotiator for that constituency. Instead, the Department designated a primary negotiator who leads an organization that is not an agency recognized by the Secretary.

By virtue of federal recognition, Secretary-recognized programmatic accreditors have undergone the Department's recognition process and have been determined to be reliable authorities as to the quality of the education or training provided by the programs they accredit. Moreover, programmatic accreditors constitute approximately 60 percent of all Secretary-recognized accrediting agencies. Nevertheless, this largest group of recognized accreditors did not have one of its agency leaders serving as the primary negotiator for the constituency expressly established to represent it, even though these agencies are directly and significantly affected by the regulations developed through the AIM process.

Under 34 CFR part 602, Secretary-recognized programmatic accreditors play a distinct role in assuring educational quality at the program level. Their work frequently includes evaluation of student achievement and professional outcomes, including graduation and retention, employment outcomes, licensure examination performance, and demonstrated competencies for graduates entering professions that directly serve and protect the public. These accreditors therefore brought experience directly relevant to many of the subjects under negotiation, including student outcomes, accreditation standards, monitoring, enforcement, and the Department's recognition process.

The absence of an individual from a Secretary-recognized programmatic accrediting agency as a primary and voting negotiator raises serious concerns about whether the committee's composition provided the full scope of expertise and representation contemplated by section 492(b)(1) of the HEA and by the Department's own January 27 notice. The Department expressly created a constituency for "programmatic accrediting agencies recognized by the Secretary under 34 CFR part 602." ASPA believes that constituency should have been represented in the primary seat by an individual from a Secretary-recognized programmatic accrediting agency. The Department clearly had the ability to appoint leaders of Secretary-recognized accrediting agencies to accreditor constituencies, as it did for the institutional accreditor constituency in both the primary and alternate seats. ASPA nominated two leaders of Secretary-recognized programmatic accrediting agencies to serve in the primary and alternate seats for the programmatic accreditor constituency; however, neither was selected. The Department's decision to exclude leaders of Secretary-recognized programmatic accreditors from both seats was particularly disappointing and inconsistent with the relationship among the federal government, states, and accreditors that is fundamental to the higher education Triad. Substantively, it also resulted in the Committee not having a primary negotiator with a full range of understanding of how the proposed regulations might actually impact recognized programmatic agencies.

Given the breadth and significance of the regulatory changes under consideration, Secretary-recognized programmatic accreditors should have had a voting representative at the table who directly represented their experience, responsibilities, and interests throughout the negotiations.

### Timeframe

Negotiators were given an initial draft comprising more than 150 pages of redlined regulatory text, containing scores of significant proposed revisions as well as numerous additional technical, clarifying, and conforming changes. Yet the Department provided only nine days of negotiated

rulemaking—less than two business weeks—for negotiators to review, analyze, discuss, revise, and ultimately reach consensus on this extensive overhaul of the federal accreditation regulations.

The compressed timeline is particularly concerning given both the breadth and complexity of the proposed changes and their potential consequences for accrediting agencies, institutions, programs, students, and the broader postsecondary education system. Substantial negotiated rulemaking requires more than an opportunity to react to regulatory language; it requires sufficient time for negotiators to consult with the constituencies they represent, evaluate the interaction among proposed provisions, consider unintended consequences, develop alternative language, and engage in informed deliberation. Nine days was inadequate for a regulatory undertaking of this magnitude.

### Consensus

Secretary-recognized programmatic accreditors, speaking with one voice through ASPA, made clear to the individual appointed by the Department as the primary negotiator for “programmatic accrediting agencies recognized by the Secretary under 34 CFR part 602” that they did not support consensus on the regulatory package. Yet the individual who has no relationship to any Secretary-recognized programmatic accrediting agency supported consensus.

This outcome raises serious questions about whether the consensus process accurately reflected the views of the constituency the seat was expressly created to represent. Under the protocols, consensus required the absence of dissent by any member of the committee. While the Department now characterizes the entire proposed regulatory package as having achieved consensus, we wish to make clear that the regulatory package upon which consensus was reached was not supported by ASPA or any recognized programmatic accrediting agency whose interests that seat was intended to represent.

Taken together, ASPA’s concerns regarding committee composition, the compressed negotiating timeline, the lack of true representation of recognized programmatic accreditors during the consensus process, and the substance of the proposed regulations reflect a broader concern about partnership and trust. Effective regulation of accreditation depends upon collaboration among the federal government, states, accrediting agencies, institutions, programs, and other stakeholders. ASPA urges the Department to use the public comment process to address our concerns and restore the collaborative approach that should characterize the federal government’s relationship with the accreditation enterprise in the United States.

### **Outcomes**

The Department has repeatedly stated that accreditation is an enterprise focused too heavily on inputs and not sufficiently on student outcomes. ASPA’s research demonstrates that this characterization does not accurately reflect the practices of its member programmatic accreditors. As documented in ASPA’s recent white paper, *The Outcomes Story in Specialized and Professional Accreditation – Standards*, programmatic accreditors add significant value to the programs they accredit through the extensive use of outcomes-based standards.

Based on ASPA’s study, which achieved a 95% response rate, outcomes assessment is universal among participating ASPA member accreditors regardless of recognition status. Competency

assessment is universal across the standards reviewed, and most accreditors use a blended approach incorporating competency assessment, quantitative bright line measures, and program-determined indicators. Even where programs establish their own levels of competency achievement, accreditors evaluate the assessment process and evidence of attainment in determining compliance. Quantitative bright line measures are prevalent, with approximately 65% of survey respondents reporting their use. These outcomes standards are backed by enforcement mechanisms ranging from monitoring and required corrective action to denial or revocation of accreditation.

These findings reveal a significant disconnect between the Department's stated concern that accreditation is insufficiently focused on outcomes and the documented practices of ASPA's programmatic accreditor members. Before imposing additional federal requirements in this area, the Department should recognize and account for the substantial outcomes-based quality assurance already occurring in programmatic accreditation and avoid imposing duplicative requirements that add compliance burden without improving educational quality.

This disconnect also underscores ASPA's concerns regarding the composition of the AIM negotiated rulemaking committee discussed above. The absence of an individual from a Secretary-recognized programmatic accrediting agency from the primary seat deprived the negotiations of direct representation from the sector whose existing practices are particularly relevant to evaluating the Department's assumptions about outcomes-based accreditation.

## **Statutory Authority and Limitations**

### The Proposed Rule Exceeds the Clear Limitations on the Department's Authority under the Higher Education Act (HEA)

The proposed rule would expand the Department's regulatory authority in ways that are explicitly limited or prohibited by the Higher Education Act of 1965, as amended ("HEA"). First, Section 496(g) of the HEA provides that nothing in the statute "shall be construed to permit the Secretary to establish criteria for accrediting agencies or associations that are not required by this section" and that "[n]othing in this Chapter...shall be construed to prohibit or limit any accrediting agency or association from adopting additional standards not provided for in this section." See 20 U.S.C. §1099b(g). These provisions clearly limit the Secretary's authority to mandate specific criteria for accreditors (both in their recognition and in their evaluation of the programs they accredit) if such criteria are not expressly set forth in the HEA. The Secretary also cannot restrict the ability of an agency to set any other standards that it deems appropriate. In addition, Section 496(g) of the HEA goes on to provide that the Department may not "establish any criteria that specifies, defines, or prescribes the standard that accrediting agencies or associations shall use to assess any institution's success with respect to student achievement." 20 U.S.C. §1099b(g).

Furthermore, Section 496(o) provides that "[n]otwithstanding any other provision of law, the Secretary shall not promulgate any regulation with respect to the standards of an accrediting agency or association described in subsection (a)(5)." 20 U.S.C. §1099b(o). The subsection (a)(5) standards encompass those that an agency must maintain for recognition, including standards relating to student achievement, institutional finances, faculty, curricula, student services, and facilities. The "notwithstanding" clause renders this prohibition absolute, which means, among other things, that the Department may not properly claim superseding authority under other

statutory provisions or through executive orders.<sup>1</sup> Section 496(p) of the Higher Education Act goes on to state that “nothing in subsection (a)(5) shall be construed to restrict the ability of ... an accrediting agency or association to set, with the involvement of its members, and to apply accreditation standards for or to the institutions or programs that seek review by the agency or association.”

The provisions of the HEA governing recognition of accrediting agencies could not be any clearer. In short: (1) the Department is prohibited from prescribing the content of any of the areas of standards required by subsection (a)(5); (2) the Department is prohibited from prescribing the specific content of an agency’s student achievement standards; (3) the Department is prohibited from requiring any criteria not required under Section 496; and (4) the Department must allow an agency to set standards as it determines appropriate with the input of its members. The Department states in the NPRM that “[e]xcept where expressly required by statute, the proposed regulations do not prescribe the substantive content of accreditation standards, but instead establish minimum expectations regarding the processes, consistency, transparency, and lawful administration of the standards.”<sup>91</sup> Fed. Reg. 53940, 53945 (August 20, 2026). The only problem with this statement is that it is demonstrably false.

In numerous areas of the rules, the Department essentially ignores these restrictions on its authority. For the first time since the enactment of Section 496, the Department is proposing, as part of its revisions at Section 602.17(a)(1), (2), and (3), to prescribe the specific content of standards on matters such as faculty qualifications and performance-evaluation criteria; “academic freedom and intellectual diversity” requirements; specific requirements regarding what needs to be in standards regarding student facilities and support services (including a mandated cost-benefit analysis of their utility); program length; and detailed student achievement standards and metrics. These mandates do not merely supplement existing statutory requirements; they constitute an entirely new layer of substantive standards that the Secretary lacks authority to impose. In effect, the Department is seeking to supplant its judgment for that of education experts and to force each accreditor to adopt standards with required content in these areas. The placement of these requirements in Section 602.17 does not change the fact that these requirements dictate specific content of what must be the (a)(5) standards. This is prohibited by the HEA, and these provisions, if enacted, will be unlawful.

While ASPA and its members support strong student achievement and outcomes (see Outcomes section above), the proposed language at 602.17(a) goes well beyond what is permitted by statute by requiring that an agency’s student achievement standard must include five specific areas: (i) licensing or certification exam results, where applicable; (ii) program retention, completion, or graduation rates; (iii) post-graduation employment outcomes; (iv) scores on relevant standardized assessments taken for admission to a higher-level degree; and (v) education and economic returns relative to the cost of attendance (i.e., tuition). Again, these requirements far exceed the Department’s authority by specifying, defining, and prescribing the standards that accrediting agencies or associations must use to assess any institution’s success with respect to student achievement. With respect to programmatic agencies that have voluntary membership and whose principal purpose is to accredit higher education institutions or programs for purposes of participation in non-HEA program funds, Section 496(a)(5) states that such provisions shall not

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<sup>1</sup> See, e.g., Exec. Order No. 14279, “Reforming Accreditation to Strengthen Higher Education,” available at <https://www.whitehouse.gov/presidential-actions/2025/04/reforming-accreditation-to-strengthen-higher-education/>.

apply. See 20 U.S.C. § 1099b(a)(5). Similarly, such programmatic agencies are not required to have standards pertaining to program length under the statute.

Finally, the proposed rule at 602.16(f) provides that a recognized agency may set additional standards only to the extent such standards are lawful and also “are consistent with ensuring institutional or programmatic quality and integrity as it deems appropriate.” This provision imposes an inherent limitation on the authority of an accrediting agency to set its standards, which the Department is not permitted to do pursuant to Section 496(g) of the HEA. While it is self-evident that standards must be lawful, the implication is that the Department could seek to deem any standard with which it disagrees unlawful. Further, the remaining language of the requirement appears designed to allow the Department to judge whether standards pertain to academic quality. Accrediting standards cover a wide range of requirements, not all of which pertain directly to academics, but include areas such as operations, finances, and administration. This provision should be deleted. As noted at length above, circumscribing the nature and purpose of accrediting standards in this way is beyond the limited authority of the Department under the statute.

#### The Proposed Rule Violates the Department of Education Organization Act

Many of the proposed revisions, particularly the new requirements proposed at Sections 602.17(a)(2), (3), and (4), would violate the Department of Education Organization Act (Pub. L. 96–88; 20 U.S.C. §1232a), which provides that “[n]o provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system.” This prohibition is a foundational principle of federal education law and has long stood for the principle that the federal government may not impose its policy views on institutions by micromanaging them indirectly: that is, by improperly seeking to exert authority over curricula, instructional programs, administration, or personnel decisions. By extension, and consistent with the principles and limitations imposed by the HEA, the Department may not use the recognition process as a back-door means to accomplish these same ends. The proposed regulations seek to circumvent this essential statutory limitation on federal power. Requiring accreditors to impose federally prescribed standards as set forth at Section 602.17 clearly violates the express limitation on the Department’s authority over such matters.

#### The Proposed Rule Exceeds the Department’s Limited Statutory Jurisdiction and Authority

Under the Administrative Procedure Act (“APA”), an agency cannot act “in excess of statutory jurisdiction, authority, or limitations[.]” 5 U.S.C. § 706(2)(C). In exceeding the agency’s statutory authority under the HEA, the proposed rule also seeks to exercise discretionary authority that the Department does not possess. The Supreme Court’s decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), forecloses any claim of deference that might otherwise be invoked to permit the Department to interpret and apply the provisions set forth in Section 496(a) in a manner that would allow it to revise the recognition criteria and in particular the provisions at Sections 602.13, 602.14, 602.15, 602.17, and 602.23 in the manner it seeks through this rulemaking. The Department may not rely on claims of administrative deference to sustain regulatory interpretations—much less clear regulatory requirements, as the proposed rule seeks to impose—if they flatly exceed the statutory boundaries of black-letter law. Under the APA and *Loper*

*Bright* framework, courts are tasked with exercising their independent judgment as to whether an agency has acted within its statutory authority. Here, the statutory text is so clear in its express limitations upon the Secretary's authority that there can be little question. Multiple statutory provisions expressly prohibit the Department from prescribing the content of accrediting standards, and the Secretary cannot, for example, seek to rewrite the "separate and independent" regulations in a manner that both goes beyond the clear language set forth in the statute and also violates the clear statutory intent of excepting agencies recognized for non-HEA purposes from such requirements. Quite simply, under the APA and *Loper Bright* framework, the Department has acted well outside the clear limitations on its authority that are clearly set forth by the HEA. This is exactly the type of regulatory rulemaking in excess of statutory authority that the APA and the *Loper Bright* decision require agencies to refrain from.

### The Proposed Rule Improperly Seeks to Expand the "Separate and Independent" Requirements

The proposed rule seeks to improperly expand the "separate and independent" requirements for accrediting agencies in ways that Congress not only did not intend, but which Congress declined to permit. First, Section 602.14 of the proposed rule seeks to eliminate the statutorily required waiver process for the "separate and independent" requirements currently set forth at 34 C.F.R. § 602.14(d). Second, by deleting the term "non-HEA" and replacing it with "Federal" in describing the types of Federal funding links, it appears that the Section 602.14(a)(3) category of agencies has been revised to allow the Department to find that such agencies may now be subject to the "separate and independent" requirements. Further, the complete bar on sharing of resources, personnel, and facilities set forth in Section 602.15(e)(4) appears to effectively extend the "separate and independent" requirements to all accrediting agencies, including purely programmatic, non-Title IV gatekeeping agencies that Congress has expressly exempted from these requirements. These expansions of the rule's scope to entities that Congress specifically and explicitly excluded exceed the manner in which Congress intended that the "separate and independent" requirements be applied by the Department. Specifically, Sections 496(a)(2) and (3) of the HEA exempted purely programmatic non-Title IV gatekeeping agencies from these requirements, recognizing that accrediting agencies that are part of larger professional organizations and that are non-HEA gatekeepers for Federal funds may continue to be part of or affiliated with related membership and professional organizations. See 20 U.S.C. § 1099b(a)(2)(ii) and (3); see also *Nat'l League for Nursing, Comm'n for Nursing Educ. Accreditation*, Dkt. No. 20-44-AC, U.S. Dep't of Educ. (Decision of the Secretary) (May 24, 2021).

Assuring educational quality, which is a fundamental role of recognized accreditors, is assisted by the relationship between professional organizations and their associated programmatic accrediting bodies. Requiring purely programmatic, non-Title IV gatekeeping agencies to completely withdraw from those organizations and to become separate legal entities is not only not required by statute, it is categorically prohibited. Yet under proposed Section 602.15(e)(4), the Department attempts to circumvent the intent of Congress by conflict-of-interest policies that would prohibit agencies from sharing any resources, personnel, support services, or facilities with a related or affiliated professional or trade organization. Further, under proposed Section 602.15(e)(2), the proposed rule would effectively prohibit individuals employed by accredited institutions – including faculty members, academic deans, and university presidents – from playing any role in setting accrediting standards or policies. This would make programmatic accreditation dependent on individuals who lack the subject-matter expertise necessary to define, establish, or enforce meaningful professional and educational standards.

The accreditation system has long derived its legitimacy and effectiveness from the principle that standards are set by practitioners and experts within the relevant field. Consequently, interpreting the “separate and independent” requirements to bar such participation would undermine the quality of the accreditation process itself. Prohibiting individuals affiliated with accredited schools from participating in standard-setting would also violate the express language set forth at Section 496(p) of the HEA, which specifically prohibits the Secretary from restricting the ability “of an accrediting agency or association to set, with the involvement of its members, and to apply, accrediting standards for or to institutions or programs that seek review by the agency or association.” See 20 U.S.C. § 1099b(p). There is no meaningful difference between allowing employees of member programs and institutions who sit on decision-making bodies to be involved in setting standards and allowing the institutions and programs themselves to be directly involved in that same process. The Department also has not provided a reasoned rationale as to why employees, officers, and directors of accredited programs and institutions should be precluded from setting or voting on the adoption of accrediting standards.

#### The Proposed Rule Improperly Seeks to Have Accrediting Agencies Enforce Federal and State Laws

Through its revisions to 34 C.F.R. §§ 602.17 and 602.23, the proposed rule would fundamentally transform the role of accrediting agencies from evaluators of educational quality into enforcement arms of the federal government and, simultaneously, of the 50 state and U.S. territorial governments. Similarly, the proposed language at Section 602.17(a)(2) requires accrediting agencies to interpret and apply the First Amendment as well as state and Federal civil rights laws. Accreditors would also have to assess the religious missions of institutions in applying such laws. At the same time, proposed Section 602.23(h) provides that accrediting agencies may not maintain policies or practices 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, among other things. The effect of these provisions is to require accrediting agencies to both monitor all federal and state laws and assess whether each accredited institution is in compliance with the full breadth of applicable federal and state civil rights law, a function that Congress assigned to the Department of Justice and the Office for Civil Rights, not to private, nongovernmental accrediting organizations. Accrediting agencies lack the investigative authority, legal expertise, adjudicative processes, and administrative capacity to make reliable compliance determinations across this vast body of federal law, as well as state laws, and nothing in the HEA authorizes the Secretary to conscript them for that purpose.

Here, too, the Department simply lacks statutory authority to impose these obligations. The HEA carefully circumscribes the Secretary’s power over accrediting standards, as noted at length above, and nothing in these provisions nor elsewhere in the HEA authorizes the Department to condition recognition on an agency’s willingness to serve as a compliance monitor or enforcer of the entire corpus of federal and state civil rights law, other than requirements under Title IV of the Higher Education Act. See 20 U.S.C. § 1099b(a)(5)(J). The rule would also effectively require the accrediting body to monitor each and every federal and state law to ensure that none of its standards violate those laws. The proposed language also places accreditors at the front of the Triad, requiring them not only to engage in ensuring academic and institutional quality and integrity but also to potentially enforce all the laws of the states and the federal government. This clearly was not the intent of Congress when it established the limited role for accrediting agencies under the HEA.

## The Proposed Rule Contains Conflicting Antitrust Requirements

Proposed Section 602.13(a) of the proposed rule expressly states that accrediting agencies are not immune from federal or state antitrust laws. It is unclear why the Department believes it needs to state this in the regulations. There is no specific exemption for accrediting agencies in the antitrust laws, and case law has long supported the view that accrediting agencies are subject to such laws. Yet, at the same time, Section 602.17(a)(1)(ii)(E) requires accrediting agencies, in setting and applying student achievement standards, to assess the reasonableness of institutional and programmatic earnings relative to cost of attendance. The Department also seeks to have accrediting agencies conduct a “cost-benefit” analysis under proposed Section 602.17(a)(3) of an institution’s “budget, resource utilization, and allocation.” These provisions are fundamentally irreconcilable with the statement that accrediting agencies are subject to antitrust laws.

Accrediting agencies that undertake cost-related assessments of institutional programs risk exposure to significant antitrust liability, as the evaluation of pricing and economic returns among competing institutions is precisely the type of activity that raises serious concerns under federal antitrust law. In fact, the Federal Trade Commission, in a 1995 advisory opinion, specifically found that accrediting agencies cannot assess the reasonableness of tuition even if such assessment is required by the Department of Education. See *Letter from Fed. Trade Comm’n to Accrediting Comm’n on Career Schs. and Colls. of Tech.* (Jan. 19, 1995), FTC File No. P94 4015. By compelling accrediting agencies to engage in cost-based assessments while simultaneously denying them any antitrust protection for doing so, the proposed rule creates a trap: an agency that complies with the Department’s mandate exposes itself to an antitrust claim or enforcement action, while an agency that declines to comply in order to mitigate antitrust risk faces loss of recognition. The Department cannot lawfully impose regulatory obligations that force accrediting agencies to violate antitrust laws while simultaneously stating that such agencies are not immune from those laws. This is the proverbial “catch-22.” This fundamental conflict must be resolved, and as currently drafted, the proposed rule fails to do so.

Furthermore, Section 602.15(e)(7) seeks to prohibit accrediting agencies from adopting standards or requirements that “restrict access to employment in a profession, occupation or vocation, unless the agency provides notice of clear and convincing evidence to the Secretary” that, among other things, the standard or requirement is needed to protect the public interest, its benefits outweigh its costs to the public, and there is “no less restrictive alternative....” Effectively, the Department seeks to develop its own antitrust regulations, similar to the “rule of reason” test. But the Department itself cannot adjudicate antitrust law, define occupational “necessity,” or penalize legitimate curricular standards without clear congressional authorization. The Department must identify a clear HEA basis for any antitrust-related recognition criteria and cannot rely on broad policy goals or generalized “compliance” language to create antitrust obligations not explicitly found in § 496 of the HEA. It is crucial that the Department and the eventual final rule recognize that professional and accreditation standards often serve quality, safety, licensing, consumer protection, and educational functions, thus creating more complex antitrust analyses than simply reviewing whether such standards have anticompetitive effects. See *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 501 (1988) (recognizing that promulgating standards “based on the merits of objective expert judgments and through procedures that prevent the standard-setting process from being biased by members with economic interests in stifling product competition . . . can have significant procompetitive advantages”).

ASPA does not disagree that accreditors may be subject to antitrust compliance policies, conflict-of-interest safeguards, and the review of standards affecting the employability of graduates. However, it is inappropriate for the Department to promulgate a rule that would effectively make the Department an antitrust enforcement agency and potentially expose accrediting agencies to antitrust liability based on vague, unclear requirements that differ from those of the Department of Justice or the Federal Trade Commission. The Department should let those agencies undertake enforcement of antitrust laws against accrediting agencies, if necessary. There is no need for conflicting requirements in this area that were never contemplated as being within the authority of the Secretary under the HEA.

The proposed rule also constrains and conflicts with the longstanding role of states in establishing professional standards and enforcing consumer protection requirements. States have a compelling interest in and broad power to establish standards for licensing and regulating professions, even though professional services are not categorically exempt from antitrust law, and many accreditors operate in fields where state licensing boards, professional regulators, or certification bodies rely on accrediting bodies for purposes of licensure. Yet the proposed rule risks displacing critical, protected state-level judgments about professional entry in various fields. See *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 792 (1975) (“We recognize that States have a compelling interest in the practice of professions within their boundaries, and that as part of their power to protect the public health, safety, and other valid interests they have broad power to establish standards for licensing practitioners and regulating the practice of professions. We also recognize that in some instances the State may decide that forms of competition usual in the business world may be demoralizing to the ethical standards of a profession.”) (internal quotations omitted). Moreover, the proposed rule would delegate to the Department a highly specific area of analysis in which it has no expertise. Antitrust reasonableness analyses are fact-intensive and often involve determining whether a restraint suppresses competition or instead regulates and perhaps promotes competition. See *California Dental Ass’n v. F.T.C.*, 526 U.S. 756, 780-81 (1999) (“[T]here is generally no categorical line to be drawn between restraints that give rise to an intuitively obvious inference of anticompetitive effect and those that call for more detailed treatment . . . rather, [it] is an enquiry meet for the case, looking to the circumstances, details, and logic of a restraint”).

In short, the proposed rule creates serious and conflicting obligations for accreditors, given that fundamental matters such as clinical hour requirements, degree requirements, faculty qualifications, curricular requirements, and even substantive change requirements pertaining to changes of ownership, new programs, and monitoring growth could all be viewed as “unnecessarily” restricting employment access. Setting professional standards often requires a more nuanced inquiry because rules that appear restrictive may address information asymmetries, quality, safety, competence, and consumer protection aims. Inserting the Department into the process of determining which standards or requirements might be anticompetitive will be difficult to implement and will essentially result in the Department having to approve accrediting standards or requirements that could be viewed, directly or indirectly, as limiting access to a profession.

#### The Proposed Rule Would Improperly Deny the Constitutional Due Process Rights of Accrediting Agencies

Section 602.13(c) of the proposed rule asserts that recognition “does not create a property interest or entitlement,” thereby seeking to preemptively foreclose accrediting agencies’ ability to challenge adverse recognition decisions on due process grounds. This assertion has no basis in the HEA or in

governing constitutional jurisprudence. *Mathews v. Eldridge*, 424 U.S. 319 (1976), long ago established that the determination of whether a constitutionally protected interest exists turns on the nature of the interest at stake and the sufficiency of existing procedural protections—not on a regulatory declaration by the very agency whose actions are subject to challenge. An agency cannot, by its own fiat, strip regulated entities of constitutional protections that would otherwise apply.

The Supreme Court has held that “[a]lthough the underlying substantive interest is created by ‘an independent source such as state law,’ *federal constitutional law determines* whether that interest rises to the level of a ‘legitimate claim of entitlement’ protected by the Due Process Clause.” *Town of Castle Rock, Colorado v. Gonzales*, 545 U.S. 748, 757 (2005) (emphasis in original). The Supreme Court has further explained that “[p]roperty cannot be defined by the procedures provided for its deprivation any more than can life or liberty.” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985) (internal quotations omitted). In other words, property rights guaranteeing due process are a constitutional matter that cannot be defined solely by an agency’s regulations.

Importantly, once a substantive entitlement is created, the government may not define the property interest by the procedures available for removing that entitlement. See *id.* (“While the legislature may elect not to confer a property interest . . . it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards.”). In effect, the HEA and 34 C.F.R. Part 602 create, for accrediting agencies, a criteria-bound entitlement to recognition for a granted term, meaning that § 602.13(c) cannot simply eliminate the constitutional protections that attach to a deprivation of that interest. While recognition does not guarantee renewal beyond its term, the Department cannot preclude courts from determining whether existing recognition, continued recognition pending a completed process, or criteria-bound renewal protections create a protected interest.

The HEA specifically requires due process procedures for accreditor evaluation and recognition, including notice, a hearing, an opportunity for subsequent compliance, and a mandate that the Department provide procedures for the recognition of accrediting agencies and for the appeal of Department recognition decisions. See, e.g., 20 U.S.C. § 1099b(l), (o). These features clearly show that Congress understands accreditation and recognition as a structured legal regime with consequences for institutions, accreditors, students, and federal programs more generally – each affecting an assessment of whether continued recognition constitutes a property interest or entitlement under the Fifth Amendment.

If the Department is challenged in court by an accrediting agency due to a recognition decision, it certainly has the ability at that time to argue that recognition is not a property interest under the U.S. Constitution, but that is a matter for a court to decide, not for the Department to assert as a matter of law in its regulations. Including such a provision, which appears designed to limit the rights to constitutional due process by accrediting agencies, is exceptionally concerning. We urge the Department to drop this provision, which not only is not constitutional but appears aimed at allowing the Department to take actions against accrediting agencies without affording due process protections.

Provisions in the proposed rule requiring revision therefore include but are not limited to: 34 C.F.R. §602.13(c), asserting that recognition by the Secretary “does not create a property interest or entitlement” and purporting to conclusively dictate the constitutional meaning of “property” and

“entitlement” for Fifth Amendment purposes; and 34 C.F.R. §602.10, requiring, contrary to the HEA, that agencies have an “active” federal program link required by institutions or programs (when the HEA deems a future interest in non-HEA programs to be adequate for recognition).

## **Proposed Regulations: Additional Comments**

### Subregulatory Guidance and the Accreditation Handbook

The Department states that it may provide additional subregulatory guidance through the Accreditation Handbook concerning matters including student engagement, site visits, complaint processes, faculty structure and evaluation, and terminology such as “peer review” and “evaluation teams.” These are substantive areas that could significantly affect how accrediting agencies interpret and implement the final regulations.

ASPA is concerned that significant regulatory expectations should not be established subsequently through subregulatory guidance without appropriate transparency and stakeholder input. This concern is particularly important where the Department proposes to remove or broaden requirements in the regulations themselves while indicating that their meaning may later be clarified through the Accreditation Handbook.

**Requested revision.** The Department should identify, to the greatest extent practicable, the subjects on which it anticipates issuing subregulatory guidance and provide accrediting agencies and other affected stakeholders a meaningful opportunity to review and comment on significant new or revised Accreditation Handbook guidance before it becomes effective.

### Peer Review and Professional Expertise

*Proposed definitions in § 602.3 and staffing requirements in § 602.15.*

The proposal would revise the definition of an accrediting agency so that accreditation is conducted through voluntary, non-Federal review that “may include peer review.” It would also remove the current requirement that programmatic agencies include educators, practitioners, and employers on evaluation, policy, and decision-making bodies. The Department characterizes these changes as providing “flexibility.” However, for specialized and professional accreditors, peer review is the cornerstone of how an agency determines whether specialized and professional education programs prepare their graduates for competent practice.

ASPA does not construe the term “peer” narrowly. A sound evaluation team may include educators, practitioners, employers, public members, data experts, and others whose knowledge fits the review. If the Department is concerned that “peer” review should not imply rigid conformity, the antidote to an overly narrow interpretation is a clear, inclusive definition. Making peer review optional is not the appropriate response.

ASPA is additionally concerned that these changes, when considered together with proposed § 602.15(e)(2)'s additional conflict-of-interest restrictions on certain standards-setting and decision-making body members, could improperly diminish the role of educators and practitioners in accreditation. ASPA supports appropriate conflict-of-interest safeguards, but such safeguards

should be narrowly tailored to address actual or apparent conflicts without unnecessarily limiting the professional expertise that is fundamental to specialized and professional accreditation.

**Requested revision.** Retain peer review in the definition of “accrediting agency or agency.” Retain the substance of current § 602.15(a)(4), while allowing agencies to determine the appropriate balance of educators, practitioners, employers, public members, and other experts for each role and review.

#### Administrative and Compliance Burden

ASPA supports the principle reflected in proposed § 602.15(c), which would require accrediting agencies to conduct their accreditation activities in a manner that “seeks to avoid unnecessary financial, compliance, and administrative burdens,” including by avoiding “duplicative reporting, excessive documentation requirements, and unwarranted prescriptive processes.” ASPA believes the Department should apply the same principle to the regulatory framework it establishes for accrediting agencies.

There is a significant tension between this proposed requirement and other provisions of the NPRM. While § 602.15(c) directs accrediting agencies to minimize unnecessary burden, the proposed regulations would simultaneously impose numerous new federal requirements concerning accreditor governance, organizational relationships, standards, training, data collection, student achievement, cost-benefit analysis, transfer of credit, reporting, and other accreditation processes. The Department's own Regulatory Impact Analysis recognizes substantial costs associated with implementation of the proposed rule.

ASPA supports eliminating unnecessary burden on institutions and programs. That objective, however, should apply equally to the Department's regulation of accrediting agencies. The Department should therefore evaluate each new requirement under the same principles embodied in proposed § 602.15(c): whether it creates duplicative reporting, excessive documentation, unnecessary compliance costs, or unwarranted prescriptive processes, and whether a less burdensome means exists to accomplish the Department's stated objective.

**Requested revision.** Retain the principle reflected in proposed § 602.15(c) but apply that principle consistently throughout part 602, modifying or eliminating proposed requirements that impose unnecessary, duplicative, or prescriptive burdens on accrediting agencies and the institutions and programs they accredit.

#### Cost-Benefit Analysis § 602.17(a)(3)(i)

Proposed § 602.17(a)(3)(i) would require accrediting agencies to review an institution's budget, resource utilization and allocation, certain planning documents, and whether the institution considers whether the expected benefits of its activities justify associated financial, administrative, and opportunity costs. The Department states in the preamble that its intent “is not to require burdensome analyses for every expenditure, but to encourage prudent, evidence-based decision-making.”

ASPA appreciates that limitation, but it should appear in the regulation itself. Without it, the operative language could reasonably be interpreted more broadly than the Department says it intends and could generate substantial new compliance costs for accrediting agencies and the institutions and programs they accredit.

For programmatic accrediting agencies, an additional concern exists. Proposed § 602.17(a)(3)(i) refers to review of an institution's budget, resource utilization and allocation, strategic planning, and capital expenditures. A programmatic accreditor that does not accredit the institution should not be required to undertake an institution-wide financial and operational review that duplicates the responsibilities of the institutional accreditor and extends beyond the programmatic agency's scope of accreditation. The Department should clarify that a programmatic accreditor's review is limited to resources relevant to the program or programs it accredits.

This concern is particularly significant given the Department's proposed § 602.15(c), which directs accrediting agencies to avoid unnecessary financial, compliance, and administrative burdens, including excessive documentation and unwarranted prescriptive processes.

**Requested revision.** Incorporate into § 602.17(a)(3)(i) the limitation expressed in the preamble and make clear that accrediting agencies are not expected to conduct or require transaction-by-transaction cost-benefit analyses or review every institutional expenditure.

#### Facilities and Compliance with Applicable Law § 602.17(a)(3)(iii)

Proposed § 602.17(a)(3)(iii) would require an accrediting agency to review the sufficiency and proper maintenance of an institution's facilities and determine that those facilities comply with applicable safety standards, laws, and regulations. The proposal does not adequately define the scope of this obligation, the evidence an agency must obtain, the expertise its reviewers must possess, or the extent to which independent verification is required.

Accrediting agencies appropriately evaluate whether facilities are adequate and safe for delivery of the educational program. That educational-quality review is fundamentally different, however, from independently determining compliance with building codes, zoning requirements, permitted-use restrictions, fire and safety codes, and other state and local legal requirements. Requiring accrediting agencies to independently make those determinations could duplicate the responsibilities of governmental authorities and qualified professionals while imposing substantial new costs and requiring expertise unrelated to accreditation.

**Requested revision.** Clarify that an accrediting agency may reasonably rely upon applicable governmental approvals, inspection records, certifications, and reports of appropriately qualified professionals, together with institutional disclosure of known material violations and corrective actions. Accrediting agencies should not be required to conduct independent building-code inspections, engineering assessments, or legal determinations concerning zoning or permitted uses. An agency should be required to take appropriate action when credible information materially calls the evidence relied upon into question or indicates a serious risk to students.

### Stakeholder Communications and Formal Complaints § 602.23(c) and (l)

Proposed § 602.23(l) would require an accrediting agency to establish a direct means through which students, faculty, staff, and other affected stakeholders may communicate concerns to the agency. ASPA supports accessible communication between accrediting agencies and affected stakeholders. The NPRM, however, expressly describes this mechanism as operating “in addition to the formal complaint process already mandated under § 602.23(c).”

That distinction should be reflected clearly in the regulatory text. Without clarification, agencies could be required to determine whether every communication received through the § 602.23(l) mechanism must also be processed as a formal complaint under § 602.23(c), undermining the distinction the Department itself draws between stakeholder communications and formal complaints.

**Requested revision.** Clarify in § 602.23(l) that communications received through that provision do not constitute formal complaints under § 602.23(c) unless they satisfy the agency's established requirements for initiating a formal complaint. Nothing should prevent an agency from treating information received through § 602.23(l) as a complaint when appropriate under its policies.

### Transfer of Credit § 602.24

The Department explains in the preamble that the proposed transfer-of-credit provisions are “intended to apply primarily to undergraduate credit,” reflecting the greater prevalence of student mobility and credit transfer at the undergraduate level. That limitation, however, is not consistently reflected in the proposed regulatory text.

This distinction is particularly important for specialized and professional accreditation. Graduate and professional education may involve sequential curricula, specialized competencies, clinical education, professional licensure requirements, and other considerations that make transfer-of-credit decisions materially different from undergraduate credit transfer.

**Requested revision.** If the Department intends these requirements to apply only or primarily to undergraduate education, that limitation should be stated expressly in the operative regulatory language rather than solely in the preamble. At a minimum, the Department should clarify the application of § 602.24 to graduate and professional programs.

### Five-Year Public Record of Accreditation Actions § 602.26(f)

Proposed § 602.26(f) would require an accrediting agency to maintain on its website “a clear record of all actions taken” for each institution or program it accredits or preaccredits for a period of at least five years. The Department explains that this provision is intended to broaden transparency and public notification.

The proposed regulation does not make clear whether this requirement is prospective or whether agencies would be expected, upon the effective date of the final rule, to reconstruct and publish accreditation actions taken during the preceding five years. A retroactive interpretation could

require agencies to review thousands of historical records, determine which prior actions fall within the new disclosure requirement, prepare materials for web publication, and address records created under policies and disclosure expectations that predated the new requirement.

**Requested revision.** Clarify that § 602.26(f) applies prospectively to accreditation actions taken on or after the effective date of the final regulation. Agencies should not be required to reconstruct and publish five years of historical accreditation actions that occurred before the requirement became effective.

## **Directed Questions**

### § 602.15 – Administrative and Fiscal Responsibilities

With respect to proposed § 602.15(e), the Department specifically seeks public comment on the practical effects of the proposed conflict-of-interest and organizational separation requirements on accrediting agencies that currently share certain resources or benefits with related, associated, or affiliated trade or professional organizations. In particular, the Department requests information regarding shared employee benefits and resources, including retirement and health insurance arrangements, the time and resources that would be required to separate those arrangements, and the length of time agencies would need to unwind existing relationships affected by the proposed requirements. ASPA offers the following comments in response to these directed questions.

In response to the Department's specific request for information regarding the cost and time required to unwind shared retirement and health insurance plans, some ASPA member accrediting agencies estimate that it would require not months but potentially years to fully separate these arrangements from affiliated organizations. More significantly, an agency estimates that obtaining health insurance, retirement benefits, and human resources support independently would result in approximately \$250,000 in additional recurring costs each year.

The \$250,000 estimate is limited to these three functions and does not include other potential costs associated with organizational separation, such as information technology, accounting, legal services, insurance, facilities, equipment, payroll systems, or other administrative infrastructure that may currently be shared. There may be additional one-time costs associated with establishing and transitioning to separate arrangements. Accordingly, the total financial impact of the proposed separation requirements on this agency could be substantially greater than \$250,000.

The consequences of unwinding shared employee-benefit arrangements are not limited to the accrediting agency's administrative costs. Employees may also be affected by changes in retirement-plan participation, vesting schedules, employer contributions, health-plan networks, premiums, deductibles, and other benefit terms. Agencies will need sufficient time to obtain benefits and ERISA counsel, evaluate replacement arrangements, procure and implement new plans, communicate changes to employees, and transition employees without unnecessarily disrupting their benefits.

This example demonstrates that the requirements proposed in § 602.15(e) may create substantial continuing costs rather than merely temporary transition expenses. Shared administrative and employee-benefit arrangements can provide significant economies of scale, particularly for smaller programmatic accrediting agencies. Requiring an agency to obtain these services independently

may permanently increase its operating costs without necessarily producing a corresponding improvement in accreditation quality or independence.

ASPA therefore urges the Department to account for one-time transition costs, recurring annual costs, and temporal constraints in its Regulatory Impact Analysis and to consider whether appropriate governance, financial independence, conflict-of-interest policies, recusal requirements, and other safeguards could address the Department's concerns without requiring complete operational separation from an affiliated organization. ASPA requests that the Department consider less burdensome alternatives to a categorical prohibition on shared resources. For example, an accrediting agency could be permitted to participate in employee-benefit or administrative arrangements made available through an affiliated organization where the underlying service is provided and administered by an independent third party, the arrangement is documented through a written agreement or memorandum of understanding, the accrediting agency bears an appropriate share of the cost, and the affiliated organization exercises no authority over the accrediting agency's standards, policies, evaluations, accreditation decisions, or staff in carrying out accreditation responsibilities.

#### Regulatory Impact Analysis – Data Constraints

ASPA is concerned by the Department's acknowledgment that there is limited data available to estimate the proposed regulations' effects on accrediting agencies, institutions, and students. This acknowledgment is particularly significant because the Department repeatedly identifies reduced regulatory burden, increased competition, innovation, affordability, and improved student outcomes among the principal rationales and anticipated benefits of the AIM regulations. The Department simultaneously acknowledges that there is "little critical data available" upon which to estimate the proposed regulations' effects on the accrediting agency marketplace or the responses of institutions and students.

The Department is proposing a substantial restructuring of the federal accreditation framework while acknowledging significant limitations in the evidence available to determine whether several of its anticipated benefits will result. The Department expressly seeks information through this NPRM regarding the relationship between accreditation reform and accreditor innovation, competition, quality, student behavior, and student outcomes. ASPA appreciates the Department's request for additional information but believes these data limitations warrant greater caution in adopting broad regulatory changes premised upon anticipated effects for which the Department acknowledges the evidence remains limited.

This concern is important when considered alongside the Department's own estimate that the proposed regulations would generate approximately \$417.9 million in annualized costs. Before imposing regulatory changes of this magnitude, the Department should have a sufficiently developed evidentiary basis to demonstrate that the anticipated benefits are reasonably likely to justify the costs and burdens imposed on accrediting agencies, institutions, programs, and ultimately students.

ASPA therefore urges the Department to carefully reconsider provisions whose asserted benefits depend substantially upon assumptions regarding innovation, competition, cost reduction, or student behavior for which the Department acknowledges that adequate data are presently unavailable. At a minimum, the Department should fully evaluate the information submitted in

response to these directed questions and explain in any final rule how that evidence supports or does not support the assumptions underlying its Regulatory Impact Analysis.

### **Regulatory Impact Analysis**

The costs associated with implementing the proposed regulations could be substantial. As an illustrative example, an accrediting agency could reasonably incur implementation costs for legal review (approximately \$50,000); development of an implementation plan (\$10,000); modification of existing systems (\$20,000); staff training (\$20,000); development and revision of educational and guidance materials for accredited programs (\$40,000); training of peer reviewers (\$40,000); development, collection, and analysis of new data and outcome measures (\$40,000); and implementation of processes and actions associated with those new measures (\$40,000). Using these illustrative assumptions, initial implementation costs alone could exceed \$260,000 for an accrediting agency, before accounting for ongoing compliance costs.

Other ASPA members have provided concrete examples of the potential costs of the proposed separation requirements. One agency estimates that separating its college accreditation activities from its affiliated professional organization would cost at least \$850,000 in the first year and at least \$750,000 annually thereafter. With only a small group of accredited institutions, the accreditor estimates that the recurring cost alone represents approximately \$68,000 per accredited institution annually. Yet another ASPA member agency estimates that newly borne costs will result in a 50% increase to existing accreditation fees to accredited programs.

These examples demonstrate that the costs contemplated by proposed § 602.15(e) are not limited to one-time administrative expenses associated with “unwinding” existing relationships. They may create substantial permanent increases in the operating costs of specialized and professional accrediting agencies. Those costs ultimately must be absorbed by the accrediting agency, passed to accredited programs and institutions through increased fees, and indirectly to students.

These figures are estimates intended to illustrate the types and potential magnitude of implementation expenses rather than to represent a formal cost study. Actual costs would vary considerably depending upon an agency’s size, structure, existing standards and systems, number of accredited programs, and the extent of changes required by the final regulations.

The Department's assumption regarding programmatic accreditors does not reflect the organizational realities of specialized and professional accreditation. ASPA's data demonstrate that dominance within a specialized accreditation field is not synonymous with organizational size or financial capacity. Among all ASPA member accreditors, the median staff size is six full-time equivalent employees. Among ASPA's 30 Secretary-recognized member accreditors, the median annual budget is approximately \$1.93 million; 10 have budgets below \$1 million. Using the median budget and illustrative example above, approximately 13% of a recognized agency’s budget could be expended to comply with the new federal accreditation regulations.

The Department defines a “significant economic impact” for purposes of its analysis as an impact exceeding three percent of an entity's revenues. The Department estimates a \$47,273 compliance burden for institutional accrediting agencies. Although the Department did not perform the same analysis for programmatic accrediting agencies, applying that amount as a sensitivity test to ASPA's actual member budget data illustrates the significance of the omission: a \$47,273

compliance burden would exceed the Department's own three-percent threshold for 11 of the 29 Secretary-recognized ASPA members for which budget data are available or approximately 38 percent. For five agencies, that amount would exceed ten percent of their annual budgets.

These data demonstrate why market position within a specialized profession is a poor proxy for an accrediting agency's organizational capacity to absorb new federal compliance costs. A programmatic accreditor may be the principal or only recognized accreditor within its professional field while remaining, in practical terms, a small nonprofit entity with a limited staff and budget. ASPA therefore urges the Department to reconsider its decision not to treat programmatic accrediting agencies as small entities for purposes of its Regulatory Flexibility Act analysis.

## **Format**

ASPA notes that the NPRM's Table of Contents contains two sections numbered "VII.": Public Participation and Significant Proposed Regulations. Section VIII., Regulatory Impact Analysis, follows these two sections. If this duplication was unintentional, ASPA recommends that Significant Proposed Regulations be renumbered as Section VIII. and Regulatory Impact Analysis as Section IX., with any subsequent section numbering and cross-references revised accordingly.

## **Conclusion**

ASPA supports thoughtful modernization of the federal recognition framework. For the reasons described above, ASPA urges the Department to reconsider provisions that exceed or strain statutory limitations on federal regulation of accreditation standards; revise the organizational-separation and conflict-of-interest provisions to focus on actual independence and inappropriate influence rather than categorical separation; preserve meaningful peer and professional expertise; clarify requirements that extend beyond the appropriate scope of programmatic accreditation; fully account for the one-time and recurring costs demonstrated by ASPA members; and provide a realistic, multi-year implementation period where significant structural changes remain.

ASPA appreciates the opportunity to comment on the AIM NPRM and welcomes continued engagement with the Department as it considers the public record developed through this rulemaking.

Sincerely,



Zach Waymer, MPA  
Executive Director  
Secretary, Board of Directors