



# How the Trump Administration Is Undoing College Accreditation

By Antoinette Flores April 18, 2019

This month, on April 3, the U.S. Department of Education completed the first part of its monthslong effort to deregulate higher education in the name of “innovation.”<sup>1</sup> The process was as wonky, arcane, and convoluted as anything in the halls of the federal government. But the result set in motion would be a momentous change for taxpayers and college students: the unraveling of federal oversight of college quality.

The Education Department and a group of stakeholders reached an agreement on the new set of rules, which would rewrite how the department oversees college accreditation agencies and how these organizations are supposed to ensure college quality. The agreed-upon language<sup>2</sup> still needs to be published for public comment, but—if finalized—the Trump administration will have accomplished the largest unraveling in history of rules that guide accreditation, weakening the ability of accreditors to serve as watchdogs over colleges and removing mechanisms to hold accreditors responsible for their oversight. If the past serves as a predictor,<sup>3</sup> the revised rules will mean that millions more students will enroll in low-quality colleges that fail to leave them with a quality education, and taxpayers will foot much of the bill by covering federal loans that students will be unable to pay.

Although news coverage emphasized that the Education Department abandoned a few of its most incendiary proposals,<sup>4</sup> negotiators reached consensus partly because the department filled the negotiating table primarily with representatives of accrediting agencies, trade groups, and the colleges they represent. The final agreement contains regulations that benefit colleges and accreditors rather than the students and borrowers served.

This issue brief looks at seven of the most troubling changes that emerged in the proposal.

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## The rules would offer a fast track to outsourcing programs

While the department backed away from one of its most dangerous proposals,<sup>5</sup> which would have allowed colleges to outsource 100 percent of an academic program to an unaccredited provider, it did agree to language that would fast-track outsourcing decisions and require a less rigorous review.<sup>6</sup> These new changes would keep the percentage of a program that can be outsourced at the current rate of less than 50 percent but would allow outsourcing proposals to undergo review from accreditor staff, rather than an accrediting agency's commissioners. The new rule would also require outsourcing applications to be approved within 90 days of receipt unless there are significant circumstances. An accreditor's commission—essentially, its board of directors—is supposed to ensure that colleges' changes and decisions undergo in-depth quality review. Commissioners are typically voted in by the institutions the agency oversees and are subject to policies that protect against conflicts of interest. Commissions include public members who help ensure an unbiased review of the decisions that the accreditor makes.<sup>7</sup> Subverting an accreditor's commission undermines the accountability of that decision-making authority.

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## The rules fail to adequately address school closures

The new rule-making occurred against a backdrop of three large for-profit college closures that have left students mired in debt and unsure of their next steps.<sup>8</sup> Rather than attempting to stem the flow of taxpayer money to troubled schools, new changes under the proposal would make it easier for companies to purchase closed campuses and revive failing colleges that are likely to eat up more taxpayer dollars and student tuition. Under these changes, purchasers would be responsible for the most recent year of financial liability rather than the current rule's requirement that the company cover all liability.<sup>9</sup> The department would also extend taxpayer money to closing or failing institutions for up to 120 days after its participation in federal aid programs ends, including if the institution is closing.<sup>10</sup> The main for-profit college lobbying group in the United States, the Career Education Colleges and Universities, has lobbied Congress for both of these changes.<sup>11</sup>

One of the biggest challenges for students in the wake of a college closure is figuring out where to continue their education and whether any other school will accept their credits. Accreditors are required, but have continually failed, to obtain teach-out options from the accredited school when a school is at risk of closure.<sup>12</sup> These options set up transfer options with other schools willing to accept students and credits. Unfortunately, language in the rule-making does little to strengthen these requirements. Negotiators representing an accreditor, Distance Education Accrediting Commission, and the New York Legal Aid Group, a legal services group, submitted a proposal to the Education Department to strengthen teach-out options and ensure that schools establish formal agreements sooner in the process.<sup>13</sup> But

the proposal was severely weakened during the negotiating process, and the agreed-upon language still leaves the requirement of obtaining teach-out agreements up to the discretion of accrediting agencies<sup>14</sup>—a task they have largely failed to fulfill.

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## The rules would create a black box of department oversight

The Education Department must regularly review and approve every accreditation agency that wants to grant access to federal financial aid. The new rules would make it much easier for accreditors that do not fully meet federal recognition criteria to become and remain federally recognized as gatekeepers to taxpayer money.<sup>15</sup> For example, current rules state that agencies that fail to meet federal standards must come into compliance within 12 months and go under review by the Education Department, followed by a public body of independent experts known as the National Advisory Committee on Institutional Quality (NACIQI).<sup>16</sup> The new rules, however, would reduce public oversight and allow the Education Department to conduct reviews without public transparency and with less of a paper trail.

The new policy would undermine this authority by creating two new terms that the department can employ when an accreditor is out of compliance: “monitoring report” and “substantial compliance.” In short, if an agency is mostly in compliance but not entirely, it will undergo a monitoring and review report conducted solely by the Education Department—instead of the typical review that includes NACIQI. To justify this change, the department stated during negotiations that it would only use such monitoring to address minor issues as part of evidence it meets federal criteria.<sup>17</sup> However, in an exceptional decision, the Education Department is already using<sup>18</sup> exactly this process to monitor the Accrediting Council of Independent Colleges and Schools (ACICS) outside of the public eye, and the concerns about ACICS are anything but minor. Its failings are so numerous and fundamental that the previous administration sought to remove its authority altogether,<sup>19</sup> an unprecedented decision that was overturned under the leadership of Education Secretary Betsy DeVos.<sup>20</sup>

The new language would also shrink the public record of what the Education Department considers when reviewing accreditation agencies. This would make it harder to determine if the department is simply rubber-stamping accreditors. Under the current process, an agency has to submit evidence that it meets federal criteria, including examples of its own work. A review by the inspector general’s office last year found that cherry-picking plagued this process, with accreditors choosing a minimal number of examples of their best work.<sup>21</sup> The review also found that the process largely failed to consider other information, such as data compiled by the department to evaluate agencies.

Partially in response to the inspector general's report, the new rule-making lengthens the time it will take the department to review agencies and requires it to look at more documentation, both of which are welcome changes. However, new language would supplement the typical document request with a file review conducted at an accreditor's office.<sup>22</sup> The department has indicated it would only incorporate documents into the public record in cases where it finds problems during the file review.<sup>23</sup> This means there would be no documentary evidence in areas where the department finds no problems. This approach makes it impossible for anyone outside of the analysts reviewing the agency to determine whether the department is actually conducting thorough reviews of accreditors or simply rubber-stamping applications.

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### The rules would extend time and taxpayer money to troubled or failing schools

One key critique of accreditation agencies is that they do not act swiftly enough when problems arise and rarely remove a school's accreditation.<sup>24</sup> The new rule language would give accreditors even more leeway to not take action and would extend time for troubled schools to clean up their act. Under current regulation,<sup>25</sup> accreditors must immediately take adverse action to revoke accreditation if a school does not meet standards or give colleges a maximum of two years to fix issues. In reality, however, there are usually numerous steps leading up to a serious accreditor action such as probation or show cause, as well as monitoring and reviews, which typically starts the two-year clock; thus, it can take significantly more than two years before an agency removes a school's accreditation.<sup>26</sup>

New language in the rule eliminates the immediate action requirement. Instead, it takes a softer approach and allows accreditors to wait up to four years before removing a school's accreditation, which means that problems could fester significantly longer than they already do, subjecting multiple cohorts of students to an inadequate education without public awareness.

The Education Department justified this change by saying that schools sometimes need more time to make improvements—for example, in order to increase graduation rates. But this claim is based on a false assumption. The likelihood that an accreditor sanctions a college or threatens to remove accreditation solely because of a school's graduation rate is slim if not entirely nonexistent.<sup>27</sup> And the likelihood that an accreditor revokes a school's accreditation is already a rare occurrence.<sup>28</sup>

Other changes allow institutions to be out of compliance with accreditor standards for up to three years if there are exceptional circumstances, defined to include some fairly common scenarios such as a natural disaster, accepting students through a teach-out of a closing school, or economic changes, including a recession.<sup>29</sup>

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## The rules would lower the bar for federal recognition and accreditor expansion

New language would lower the bar for new accreditors to start granting access to federal aid, including those with minimal to no experience. Under current rules, an accreditor must demonstrate two years of experience evaluating college quality before it can apply for federal recognition.<sup>30</sup> Such recognition gives schools accredited by the organization access to federal financial aid and taxpayer money. Agreed-upon language makes it easier for new accreditors that are affiliated with another recognized agency to get around this requirement. It also lets new agencies “share” the accreditation of an institution with recognized agencies, meaning that accreditors could become gatekeepers to federal aid based on the accreditation of an institution already approved by another, qualifying agency. Changes to current rules also eliminate the requirement that accreditors demonstrate experience when expanding their scope to approve new degree levels or types, such as distance education. Under current rules, if an agency that approves certificate programs wants to approve bachelor’s degrees, it has to demonstrate experience doing so.<sup>31</sup>

Finally, new changes eliminate a long-standing requirement that accreditors demonstrate wide acceptance from educators, institutions, licensing bodies, and other practitioners.<sup>32</sup> The Education Department previously faced criticism in this area in its evaluation of ACICS, when it incorrectly stated that other accreditors supported the agency.<sup>33</sup> This requirement is especially important; it is one of the few baseline criteria that new agencies need to meet in order to apply for federal recognition. New changes only require an agency to demonstrate support from parties that likely have a direct interest in seeing the agency is recognized, such as institutions that the agency oversees or will oversee—an obvious conflict of interest.

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## The rules would diminish the value of accreditor standards

New language diminishes the value of accreditor quality standards by allowing new programs to meet different agency standards to become accredited.<sup>34</sup> Under current regulation, accreditors are required to have one set of standards to evaluate the quality of all institutions and programs they accredit. Under new changes, agencies could develop separate standards to judge new programs. These standards may be less rigorous if the programs are tailored to recommendations of industry and employers or are “innovative,” a term which the rule-making does not define. These standards could also apply in cases of undue hardship, and it is not clear whether accreditors have to indicate which set of standards they have applied to any particular institution or program. These cavernous loopholes would eliminate the value of standards. “Innovative” programs that are not subject to the same level of rigor are likely to wind up being lower quality.

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## The rules would allow colleges to create new programs with minimal oversight

The proposal would allow colleges to fundamentally change their programs and add locations without approval from their accreditor. These changes include offering programs at a new degree level—not including graduate education—and establishing new branch campuses. For example, colleges that currently offer certificate degrees would be permitted to offer undergraduate degrees without approval. The current regulations surrounding “substantive change”<sup>35</sup> were put in place to address loopholes that colleges had abused to quickly create new programs and locations, typically of poor quality.<sup>36</sup> Loosening these rules raises the risk that colleges will again abuse loopholes to quickly scale up or fundamentally change operations without meeting quality standards.

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## Conclusion

These new rules have the potential to get worse before they are finalized. The Education Department will need to release a notice of proposed rule-making based on the consensus it achieved and solicit public comment. That creates another opportunity for industry to lobby the department and the White House to make the language even weaker; groups could lobby, for example, for colleges to be allowed to make even more changes without the approval of an accreditor. But even if the language does not change further, what was agreed to last month raises the likelihood of new risks that students and taxpayers simply cannot afford.

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## Endnotes

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