

Societal Leaders or Political Followers? Institutional Accreditation and the Rise of State Regulations

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ABSTRACT

This article traces the evolution of higher education accreditation and the impact of modern partisan critiques that challenge its traditional values. For example, the Trump-led Department of Education (ED) introduced new rules resulting in the end of regional boundaries related to accreditation. Moreover, questions have emerged related to oversight of accreditation agencies. Some states have attempted to break up the *higher-education cartels*, by requiring institutions to change institutional accreditors, threatening university policies related to shared governance and academic freedom and exerting political control over hiring processes. In light of this, the ED and accreditors have pushed back by issuing guidance reasserting its oversight of such changes, outlining required procedures, and reinforcing the values of accreditation. Recently, Florida has filed suit against ED challenging the constitutionality of the accreditation regime. Against that backdrop, this paper considers how higher education leaders should respond in light of Douglass' (2021) political determinist hypothesis.

Keywords: higher education, accreditation, politics, states

To begin, it is important to understand what is meant by what the term *accreditation* means in the context of higher education. For the purpose of this article, accreditation refers to the process that “accreditors,” recognized non-government entities, use to “ensure that institutions of higher education meet acceptable levels of quality,” which is required to for students attending accredited institutions to receive federal student aid (i.e., quality assurance) (Department of Education [ED], 2023b, n.p.). In this way, the federal government, through the ED has a key role in recognizing accreditors. While states have the primary authority to charter, authorize, and/or regulate

institutions of higher education within their borders and provide important sources of funding and financial aid, without being accredited by a federally-recognized accreditor, institutions would not be eligible to accept the “\$112 billion available in annual student aid” (ED, 2023a).

These accreditors accredit the institution as a whole. Historically, these federally-recognized entities have been known as either *national accreditors*, which accredit vocations, some religious, and online institutions, and *regional accreditors*, which accredit the vast majority of colleges and universities based on geographic region and include organizations like the Southern Association of Colleges and Schools Commission on Colleges and the Higher Learning Commission (ED, 2023c). Based on recent changes discussed below, both national and regional accreditations are now collectively identified and recognized as *institutional accreditors*. While there are also accreditors referred to as programmatic, specialized, or *secondary* accreditors, which evaluate specific academic programs or disciplines, these do not serve a federal gatekeeper function and are not the focus of this article.

In his 2014 book, *Higher Education Accreditation: How It’s Changing and Why It Must*, Paul L. Gaston provides a sweeping review of the opportunities and challenges facing the accreditation of higher education. There, he notes, “From the beginning, there was an implicit partnership between accreditation and government. Simply put, accreditation offers oversight and quality assurance that in the rest of the world remains largely the responsibility of government bureaucracies” (Gaston, 2014, p. 58). Since that time, questions have emerged related to whether the current relationship between accreditation and government constitutes an “unconstitutional delegation of governmental authority to private bodies” (National Advisory Committee on Institutional Quality and Integrity [NACIQI], 2021, p. 3). More specifically, there is a growing concern “that governance for the public institution is established by state law and that accreditor intrusion into these matters is inappropriate and outside the proper purview of accreditors in their role as Title IV gatekeepers” (NACIQI, 2021, p. 3).

Economic and political pressures facing higher education have only added to those concerns related to accreditation. In a 2018 study, Gallup found that confidence in higher education has significantly decreased stemming from perceptions related to accessibility and rising cost (Markin, 2021). In fact, data show that from 2009 to 2020, total undergraduate enrollment decreased by 9%, from \$17.5 million to \$15.9 million (Irwin et al., 2022). Despite this decrease, between 2010 and 2020, outstanding federally-backed student loans more than doubled, from \$749.8 billion to \$1.56 trillion (Federal Student Aid, 2022). In addition to increased pressure brought on by declining enrollment, skyrocketing student debt, and inflationary costs, what has long been a common concern related to affordability and how best to ensure quality improvement has, like many other topics, turned increasingly political and partisan.

For example, the Gallup study cited above shows that between 2015 and 2018 a larger drop in confidence relating to higher education occurred among Republicans (from 57% to 39%) than among Democrats (from 68% to 62%; Jones, 2015). Likewise, a 2019 study by the Pew Charitable Trust revealed that partisanship significantly impacts Americans' perceptions of whether colleges and universities have a positive effect on “the ways things are going in the country” (Mitchel, 2022,

n.p.). Specifically, the study found the 12% increase between 2012 and 2019 in Americans with a negative view of higher education came almost exclusively from Republicans and independent-leaning Republicans, who went from 37% to 59% as opposed to the Democrats 68% to 62% (Mitchell, 2022).

Additional studies from the Pew Charitable Trust reveal that while 61% of Americans have doubts about the direction of higher education, their underlying reasons for concern underscore a large partisan divide. For example, 92% of Democrats are concerned with high tuition costs (compared to 77% of Republicans), and 56% are concerned about the students developing skills needed to succeed in the workplace (compared to 73% of Republicans). However, the largest disparities stem from ideological factors with 75% of Republicans pointing to “[university] attempts to protect students from views they might find offensive” (compared to 31% of Democrats) and “professors . . . bringing social and political views into the classroom” (compared to 17% of Democrats; Mitchell, 2022, n.p.). Taylor attributes this expanding partisan divide to “white rage about steps toward equity and concerns about public expenditures from economic elites” while also pointing to both a rise in unified Republican control of states, during the Obama Presidency, along with a decline in “white [student] overrepresentation” in higher education (Taylor, 2023, p. 4). In this regard, Taylor summarizes:

In the 2010s, many partisans on the right entered the fray not with ideas for improving higher education’s performance but with aims to rally their political base by colliding with higher education. This pattern is consistent with research by political scientist showing a Republican Party that is increasingly hostile to democratic processes, civic participation, and social institutions. (Taylor, 2023, p. 152)

Others have been more direct, pointing specifically to the impact of former President Donald Trump’s “anti-intellectualism and distrust of experts” (Douglass, 2021, p. 62) as he advanced his “right-wing populist movement” in the face of high-profile campus protests that were leveraged to portray all universities as “symbols of intolerant liberal activism” (Douglass, 2021, p. 89).

Despite these growing economic and political concerns regarding higher education, Congress has not undertaken any significant higher education or accreditation reform. The *Higher Education Act of 1965 (HEA)*, which was scheduled for reauthorization in 2013, provides an opportunity for Congress to address modern bipartisan solutions for the underlying challenge facing higher education. However, instead of advancing legislative reform, legislatures are currently leveraging the partisan divide described above to further entrench voters’ partisan ideologies.

For example, in 2021, House Republicans created a Campus Free Speech Caucus and hosted an annual Free Speech Roundtable focusing on combating “woke” faculty and cancel culture (Geis, 2021). In March 2023, the Higher Education and Workforce Development Subcommittee, led by Congressional Republicans, held hearings on free speech on college campuses focusing on DEI initiatives and suggesting “the committee . . . explore possible legislative avenues to create the right incentives to remind universities of the trust we give them when we fund them through tax dollars” (Committee on Education and the Workforce., 2023). To that end, Senators Marco Rubio and Mike Lee have introduced legislation that would prevent private

accrediting agencies from developing or applying DEI standards to their member universities (Rubio, 2023). On the other hand, Democrats remain focused on addressing college debt and continue to push unfunded free-college initiative through bills like the *College for All Act* (Padilla, 2023).

Efforts by the Executive Branch, under Presidents Obama, Trump, and Biden have all attempted to fill the gap left by Congress. In 2019, the Trump-led ED advanced new administrative approaches to reform accreditation, which will be discussed further below. In March 2023, President Biden's ED followed suit announcing an upcoming round of negotiated rulemaking related specifically to accreditation (Office of Information and Regulatory Affairs, 2022). At the same time, state governments, led primarily by 2024 presidential hopefuls, have taken positions and promoted policies aimed at addressing the partisan concerns most important to their base (both inside and outside their states). As a result, a 2022 survey of college presidents shows that 79% of university presidents worry about "Republicans' increasing skepticism about higher education," and 78% agreed "the perception of colleges as places that are intolerant of conservatives views is having a major negative impact on attitudes about higher education," while only 22% agree that "Republican doubts about higher education are justified" (Jaschik & Lederman, 2022, n.p.).

Relying heavily on the foundation laid by Paul L. Gaston in 2014, this article begins with a brief historical context related to the accreditation of higher education in the United States before turning to current political challenges that have emerged since Gaston's writing. It then concludes by considering how higher education leaders should respond in light of Douglass' (2021) political determinist hypothesis.

Background and Context of Higher Education Accreditation

From State Oversight to Federal Gatekeeper

While states have historically provided oversight of state supported institutions of higher education and other private institutions operating in their territories and/or receiving government support, accreditation by an external association or agencies did not originally exist (Gaston, 2014). The U.S. Department of Education emerged in 1867 and began overseeing the provision of the Second *Morrill Act* in 1890, which provided federal support for land-grant institutions of higher education (Gaston, 2014). Around the same time, regional accrediting associations emerged with an eye toward "separating wheat from chaff" and facilitating the transfer of academic credits between those institutions (Gaston, 2014, p. 18). In other words, at the outset, accreditation of higher education emerged as a wholly voluntary process separate from federal requirements. Under this process, regional associations developed guidelines for accreditations related to institutional quality and established peer review processes for membership (Hegji, 2020).

The independent nature of accreditation changed in the early 1950s with the emergence of what has become known as the *gatekeeping* role for federal financial assistance programs. The *Veterans Readjustment Assistance Act of 1952* (also known as the Korea GI Bill) lacked adequate means to identify reputable accreditors so the U.S. Commissioner of Education turned to the existing federally recognized

accreditation associations (Hegji, 2020). The *National Defense of Education Act of 1958* formally adopted this approach by making funding contingent on the recipient attending an institution of higher education that was accredited by an agency or association recognized by the Commissioner (Hegji, 2020). Therefore, as Kelchen (2018) notes, “[a]lthough institutional accreditation remain[ed] optional in theory, it [became] essential for colleges’ survival” (p. 93).

Genuine Oversight

The *HEA* expanded access to education through new federal student aid programs available through Title IV of that act (Hegji, 2020). Again, this expansion further entrenched recognized accreditors as financial aid gatekeepers. Still, the *HEA* included few, if any, requirements regarding what it took to be an accrediting agency recognized by the ED (Hegji, 2020). In 1968, there was a notable rise in federal involvement in the accreditation process when the Accreditation and Institutional Eligibility Advisory Committee was established, but “the federal government still had a great degree of latitude in determining the recognition process” (Kelchen, 2018, p. 105).

By 1988, the ED developed federal regulations related to criteria for recognition relating to “recruitment and admission practices; program length; and ‘success with respect to student achievement in relation to the [the school’s] mission,’ which could include consideration of course compilation, state licensing exams, and job placement rates” (Hegji, 2020). Therefore, from the beginning, regulations required accreditors to review how colleges and universities marketed to and enrolled their students, determined the length of academic programs, and ensured success outcomes relevant to their mission.

Still, it was not until the 1992 *Higher Education Act Amendment* (HEAA) that Congress established a process by which accrediting organizations were officially recognized by the ED, which to a large extent, codified the existing federal regulations (Hegji, 2020). Specifically, concerns regarding fraud and abuse stemming from the *proprietary sector* of higher education, which remain to this day, resulted in the federal laws applicable to all recognized accreditors (Hegji, 2020). Once again, the 1998 *HEA* reauthorization further expanded the criteria used to recognize accrediting agencies based on the rise and concerns relating to distance education (Hegji, 2020). The last *HEA* reauthorization (the *Higher Education Opportunity Act of 2008; [HEOA]*) brought about additional requirements reflective of the global economic downturn and higher education’s concerns related to financial stability including (1) transparency of decision-making and due process requirements associations would use to bring adverse actions against schools, (2) teach-out plan requirements, and (3) public transfer-of-credit policies (Hegji, 2020).

Roles Within Modern Accreditation

Modern accreditation involves four primary players: the ED, the NACIQI, recognized institutional accreditors, and colleges and universities. In this regime, the ED is authorized to recognize or approve accreditors and maintains the list of those

accreditors (ED, 2023d). In other words, the ED does not directly accredit institutions of higher education. Instead, existing accreditors are recognized every five years following a review and recommendation for recognition by the ED's Accreditation Group staff and NACIQI, which is an advisory board established in 1992 but reconvened in 2010 following the 2008 *HEOA* reauthorization (ED, 2023c).

In addition to reviewing accreditors for recognition, NACIQI advises the ED Secretary regarding accreditation matters like the establishment and enforcement of criteria for recognition, certification under Title IV, the relationship between recognition and Title IV certification, and has released three policy reports in 2012, 2015, and 2018 (ED, 2023c; Hegji, 2020). NACIQI has 18 members who serve staggered six-year terms and meet no less than twice a year (Hegji, 2020). The ED Secretary, Speaker of the House, and President *Pro Tempore* of the Senate each appoint six advisory members with knowledge or expertise in higher education and/or who represent the higher education sector and various types of schools including public universities, private non-profit (including faith-based) university, for-profit universities, and community colleges (ED, 2023c). The appointments are made on a bipartisan basis with each party in the House and the Senate each submitting three appointees. A list of the current members of NACIQI is attached (see Appendix A).

Accrediting bodies are independent nonprofit entities that are sustained and controlled by member institutions and staffed by a relatively small number of accreditation professionals, who have prior experience as faculty, deans, provosts, and/or presidents in institutions of higher education. These staff members support a wide variety of volunteer boards and committees populated by current higher education administrators from member institutions. In short, the majority of the work and review of recognized accrediting bodies is done by representatives of current member institutions. This includes establishing and approving accrediting standards or principles (based on federal requirements and best practices); offsite and onsite peer-review processes; decision-making related to substantive changes, accreditation, and reaccreditation; and ongoing monitoring (ED, 2023c). In terms of peer reviews themselves, review committees are staffed by faculty and administrators from outside the state and typically come from the same sector in higher education as the institution under review. For example, a medium-sized, private, faith-based institution would usually be reviewed by an accreditation committee consisting of volunteer faculty and administrators from similar institutions in other states. At least one staff member from the accrediting body also participates in the review process.

In addition to faculty and administrators of member institutions, accrediting entity boards include public members from outside the academy. For example, the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) 77-member board includes 11 public members from outside the academy representing each of the states that have historically included SACSCOC (2023). These public representatives are often a trustee or regents of an institution of higher education or elected representative in the state. While states themselves do not have formal roles related to accreditation, they often rely on institutional accreditations related to continued recognition or operation within the state.

Finally, accreditors require college and university presidents to identify one staff member at each institution as an *accreditation liaison*. These roles are typically filed

by a senior faculty member or administrator and may report directly to the president or provost. This role serves as the primary conduit between the accreditor and the institution by (1) staying up to date on accreditation requirements; (2) notifying the institution related to ensuring compliance with such requirements; (3) notifying accreditors of substantive changes and coordinating annual profiles and reports to the accreditors; (4) serving as a resource person during reaccreditation; and (5) maintaining university records related to accreditation.

Void of Updated Federal Regulations

No new federal laws have addressed accreditation since the 2008 *HEOA* reauthorization. In short, it has been a decade since the 2013 reauthorization deadline. Moreover, a review of proposed legislation over the last ten years reveals divergent solutions regarding what needs to be done to address accreditation. Not surprisingly, this divergence runs along party lines with Republicans focused on alternatives to current accreditation regimes, and Democrats focused on further outcome-based accountability of existing accreditors. This comparison also shows Republicans pushing for new innovative opportunities for career-related training and Democrats concerned about for-profit institutions and business partners not fulfilling their promises.

For example, in 2015 and 2017, then-Congressman Ron DeSantis (R-Florida) and Senator Tom Lee (R-Utah) proposed the *Higher Education Reform and Opportunity (HERO) Act*. In an article touting the bill entitled “Breaking Up the Higher-Ed Cartel”, DeSantis and Lee identified the ED, regional accreditors, and colleges and universities as a “bureaucratic iron triangle” and “a kind of education cartel that stifles new, innovative education models that could bring down the cost of acquiring the skills that are critical to securing the good jobs and achieving higher earning potential” (DeSantis & Lee, 2015, n.p.). On his website, Senator Lee further explains, “[t]he HERO Act would [change] the way schools are accredited. The *HERO Act* would enable each state to accredit any institution that provides post-secondary education. With this new accreditation power, states would be able to authorize innovative new education options (for example, massive online open courses, competency-based offerings, and certification exams) for students in any learning situation” (Lee, n.d., n.p.). Specifically, the bill proposes that the respective states would enter into alternate accreditation agreements with the Secretary of Education to create their own process for accreditation (Lee n.d.).

According to the *HERO Act* itself, however, a state’s department of education need not be the alternative accreditor. The agreement could instead identify, “another State agency, an industry-specific accrediting agency, or another entity, and an explanation of the process through which the State will select” (*HERO Act*, 2017a, n.p.). While the bill did not provide specific standards that these entities must meet to serve as accreditors, it did provide that the agreement between the state-selected entity and the ED Secretary should set out “[t]he standards or criteria that an institution that provides postsecondary education and a postsecondary education course or program must meet to become accredited” (*HERO Act*, 2017a, n.p.). In 2017, the bill garnered 77 co-sponsors in the House and one co-sponsor in the Senate:

Tim Scott (R - South Carolina), who recently dropped out of the 2024 Presidential race (*HERO Act*, 2017b, n.p.; *HERO Act*, 2017c, n.p.).

Similarly, the *Higher Education Innovation Act of 2022 (HEIA)*, which was a rare bi-partisan effort from Senators Rubio (R - Florida) and Bennet (D - Colorado), attempted to create *innovation authorizers*, an alternative system to recognized institutional accreditors (Bennet, 2022, n.p.). These *authorizers*, which could be any entity, would submit a proposal for a five-year pilot program with the ED that included performance metrics relating to student learning, completion, the benefit to the student, and affordability (*HEIA*, 2022a). So long as certain statutory thresholds were met related to the metrics, participants of “eligible entities” would be authorized to receive federal financial aid (*HEIA*, 2022a, n.p.). However, if they did not, innovation authorizers would pay the ED Secretary “an amount equal to not less than 25 percent of the amount of federal student loans that are held by current and former students of any eligible entity authorized by the innovation authorizer . . . and that [were] in default each fiscal year” (*HIEA*, 2022a, n.p.). This bill received no additional co-sponsors (*HIEA*, 2022b, n.p.).

Bills proposed by Democrats focused on increased accountability and transparency of existing accreditors. Examples include the *Accreditation Reform and Enhanced Accountability Act of 2016 (AREAA)*, which was sponsored by U.S. Senators Elizabeth Warren (D - Massachusetts), Dick Durbin (D - Illinois) and Brian Schatz (D - Hawaii) and required ED to increase accountability and transparency by setting students success outcomes and thresholds, requiring public disclosure of accreditation documents, addressing conflicts of interest between accreditors and institutions, and allowing different levels of accreditation (e.g., accredited with distinction or accredited with risk; *AREAA*, 2016, n.p.). More recently, the *Accreditation Reform Act of 2020 (ARA)* was sponsored by three Democrats in the House (*ARA*, 2020). Specifically, it sought to: (1) increase the information ED considers in recognizing accreditors; (2) strengthen and expand the oversight of the NACIQI and require it to participate in on-site inspections and reviews of colleges and universities, and (3) make all final documents that are part of universities accreditation or reaccreditation processes publicly available (Trahan, 2020). The bill only attracted three additional sponsors (*ARA*, 2020.). Similarly, the *Quality Higher Education Act of 2021 (QHEA)* attempted to increase the objective criteria and outcomes on which accreditors measure schools and hold them accountable (Wilson, 2021). Specifically, if passed, the bill would have required accreditors to have schools identify one measure of student achievement related to completion, workforce preparation, and progress toward completion and participation standards as well as making those publicly available (*QHEA*, 2021a). Additionally, it also expanded the role of NACIQI to create benchmarks for accreditors by comparing their schools’ outcomes to measure accreditor effectiveness (*QHEA*, 2021a). The bill received thirteen co-sponsors (*QHEA*, 2021b).

In conclusion, while no new laws were enacted related to accreditation, it is important to note that the majority of the bills did not propose undermining the historical values of accreditation and higher education like voluntariness, shared governance, academic freedom, or external influence. Instead, most focused on ways

to balance innovation and accountability and relied on ED and NACIQI to provide oversight in one way or another.

Continued Criticism, Negotiated Rulemaking, and More Changes Ahead

Instead of new laws, recurring critiques of accreditation since the 2008 reauthorization have resulted in multiple rounds of negotiated rulemaking. In 2014, Gaston addressed several of these critical reports highlighting the reoccurring concerns. Since then, more reports have emerged from government and non-government sources calling for various reforms to higher education accreditation (see Appendix B). These more recent reports reflect several recurring recommendations:

- 1) *Regional Boundaries* - Move away from regionally-bound accrediting bodies to promote competition;
- 2) *Differentiated Review* - Risk-based and/or expedited review to allow accreditors to modify the reaccreditation process based on an institution's standing;
- 3) *Levels of Accreditation* - Move away from binary accreditation status by adopting levels or tiers of accreditation (with some suggesting modified access to federal student aid based on tiering);
- 4) *New Pathways* - New pathways to accreditation/Title IV eligibility for non-college providers (e.g., "independent authorizers");
- 5) *Credit Hour* - Striking the definition of the "credit hour;"
- 6) *Substantive Change* - Streamline and/or reduce requirements related to "substantive change;" and
- 7) *NACIQI* - Clarifying boundaries between ED and NACIQI to ensure NACIQI independence.

In response, the ED undertook its last round of negotiated rulemaking in 2019, which addressed several of the recommended changes highlighted above (Council of Higher Education Accreditation [CHEA], 2018). Specifically, the negotiated rulemaking made significant changes to accreditation regulations, which took effect in July 2021. Those changes include the following:

- 1) *End of Regional Boundaries* - Eliminated geography to determine an accreditor's scope of recognition;
- 2) *Student Achievement* - Increased expectations concerning student achievement through the collection and analysis of key data and indicators, including institution's or program's performance and measures of student achievement;
- 3) *Increased Flexibility* - Provided flexibility for accreditors to support innovation in higher education, recognizing that innovation has inherent risk, and monitoring the innovation carefully to intervene when student success is at risk;
- 4) *Innovation* - Open the door to student aid for non-institutional educational offerings from colleges and universities, including partnerships with alternative providers;
- 5) *Employer participation* - Encouraged employer participation in developing educational programs by clarifying that institutions may modify their

curricula based on industry advisory board recommendations without relying on a traditional faculty-led decision-making process;

- 6) *Expedited Review* - Reduced the time and complexity associated with approving an accreditor's application for initial or renewal of recognition;
- 7) *Credit Hour* - Provide flexibility to distance education, competency-based education (CBE), and other types of educational programs that emphasize demonstration of learning rather than seat time when measuring student outcomes; and
- 8) *Substantive change* - Simplify substantive change provisions to require that fewer of these changes be reviewed (CHEA, 2019; ED, 2019).

In short, these changes largely reflect many of the concerns raised by earlier reports and address traditional underlying economic concerns related to innovation and accountability. However, these changes failed to address earlier concerns related to university governance and the role of NACIQI.

In 2019, SACSCOC as well as the Northwest Commission on Colleges and Universities (NWCCU) issued warnings to the Universities of South Carolina and Alaska, respectively, stemming from their concerns regarding the governors of those states improperly asserting undue political interference on the university board (Lederman, 2019). In the first situation, SACSCOC was concerned that the governor, while an ex-officio member of the board, had improperly used that role to influence a divided board to hire Robert L. Calsen as president (Lederman, 2019). In Alaska, NWCCU issued a warning to the governor after he had allegedly offered to minimize the size of a cut to the university's budget if it reduced spending in certain areas (Lederman, 2019). As a result of these allegation and concerns, NACIQI commissioned a subcommittee to investigate and consider the "appropriate of accreditors in dealing with political influence at public universities" with some members concerned about the accreditors improperly interfering in "matters that are dictated by state law" and other members that support accreditors calling out "politicians who overstep their bounds" (Lederman, 2019, n.p.).

At its July 2020 meeting, the NACIQI Subcommittee on Governing Board Independence and Political Interference submitted its finding report (NACIQI, 2021). Oddly, while the subcommittee spoke to the multiple accreditation agencies and national organizations that support and advocate on behalf of university trustees, "scheduling or other reasons" prohibited them from hearing directly from governors or trustees (NACIQI, 2021, n.p.). The committee disagreed regarding "whether the evidence demonstrated that accreditors had overstepped the application of their standards" (NACIQI, 2021, n.p.). However, surprisingly, when discussing the role of accreditors as gatekeepers of Title IV funding, the subcommittee concluded:

the [Higher Education Act, which] allows accreditors to establish additional standards (including governance) beyond the statute and regulations, . . . specifically set out only 10 criteria for determination of Title IV funding. The Department has, in turn, ruled that it (and by extension NACIQI) has no authority to review or act on accreditor application of standards specifically outside the Act. The subcommittee discussed how best to resolve the tension between what is allowed and what is required . . . A majority of the subcommittee believes that the accreditor sanctions on governance come up rarely, that there was no

evidence presented in which accreditation was actually revoked based on the governance standard (or that standard alone), and that accreditors are allowed to include criteria for approval beyond the 10 mandated by the Act. These subcommittee members argue that there is no evidence that the threat of revocation of Title IV eligibility has constrained governing boards or institution ownership entities from acting as they wish. It is the majority sense of the subcommittee that the present legislative arrangement is necessary and important to preserve board independence. However, a minority of subcommittee members find it problematic that an agency could revoke or deny accreditation, and thus terminate access to Title IV, for reasons that the Department (and NACIQI) has no authority to review or oversee. These subcommittee members agree with testimony from a non-agency witness that this may *amount to unconstitutional delegation of governmental authority to private bodies*. These subcommittee members fear that the mere threat of revocation of Title IV eligibility might create a chilling effect on governing boards attempting to address challenging issues of cost and quality. There was general (but not unanimous) agreement that governance is often a gray zone where boards are not as fully independent as they may seem on paper (as in those aforementioned examples) and that accreditation agencies need to recognize that reality and wade into those waters in a measured and careful way. A minority of subcommittee members believe that governance for public institutions is established by state law and that accretor intrusion in these matters is inappropriate and outside the proper purview of accreditors in their role as Title IV gatekeepers (NACIQI, 2021, emphasis added).

In other words, because the undue external influence standards, which have been established by the recognized institutional accreditors, are not part of the statutorily prescribed gatekeeper function, ED (and NACIQI) do not have legal authority to review the accretor's application of the standard (see Appendix C). However, those accretor-established standards could still be used to deny accreditation and terminate Title IV funds. The majority finds consolation that there is no evidence that accreditation has ever been revoked based on this standard alone. However, the question remains with regard to what happens when states consistently violated these non-statutory accreditation requirements related to non-government standards like governance, academic freedom, and shared governance? In light of the rise of state regulations appearing to violate these standards, as discussed further below, this seems to deserve the further consideration of both institutional leaders and federal lawmakers.

On March 23, 2023, the ED announced another round of negotiated rulemaking related to the ED's recognition of accrediting agencies (CHEA, 2023). While the specifics related to the rulemaking agenda are still unknown, it is suspected that it is related to oversight of colleges and universities by both states and accreditors following the end of regional boundaries and rise of state regulations (Knott, 2023).

Discussions are also currently underway regarding the possible reauthorization of the HEOA under the leadership of former faculty member and college community president Representative Virginia Foxx (R - North Carolina). Still, progress seems unlikely based on the partisan divide focused on ever-increasing divide regarding the

purpose and function of higher education. In the past, solutions that addressed both innovations along with accountability and oversight might have been able to find support. In other words, policy solution addressing both of these long-held priorities seemed possible.

However, as the following case study indicates, states like Florida are increasingly contributing to the partisan polemic surrounding higher education and accreditation has a major focus of these efforts. As opposed to raising questions related to how new laws might create room for alternative innovations while ensuring appropriate accountability, Republicans in these states are attacking fundamental principles of higher education accreditation like voluntariness, shared governance, academic freedom, and external influence. The following case studies consider how these approaches are making it more difficult to develop federal solutions. In short, the following case studies seems to indicate that by attempting to undercut the underlying principles of higher education as opposed to bridging the innovation and accountability divide, states, largely for partisan political reasons, appear to be moving accreditation (and higher education) in the wrong direction.

THE RISE OF STATE REGULATIONS AND ITS IMPACT ON ACCREDITATION (AND HIGHER EDUCATION)

In the recent book, *Neo-Nationalism and Universities: Populist, Autocrats, and the Future Higher Education*, edited by Douglass (2021), chapter authors examine “the rise of neo-nationalism and its impact on the missions, activities, behaviors, and productivity of . . . universities” across the globe (n.p.). According to Douglass (2021), neo-nationalism is a “radical form of populism with specific characteristics, including protagonists leveraging the politics of fear to attack and blame perceived enemies . . . wrapped in the mantle of patriotism” (p. 17). With each chapter focusing on a different county, the book explores “the role of national politics and norms in shaping the role of universities in nation-states, . . . and . . . ways in which universities are societal leaders or followers” (Douglass, 2021, p. xvii).

Based on these studies, Douglass advances a hypothesis he calls the *political determinist* view, which suggest that because of deep connection between universities and the modern nation-state, “the national political environment, past and present, is perhaps the most powerful influence on the mission, role, and effectiveness of universities . . . more than internally derived academic cultures, labor market demands, or the desires of students” and “largely . . . determine the internal organization and academic culture of universities” (p. 23). Moreover, “[t]he consequence [for failing to act as societal leaders in the face of increasing neo-nationalism] is increasing government control of university governance and management” (McLeMee, 2021). Therefore, by establishing this political determinist view, Douglass (2021) asks “When are universities societal leaders, and when are they followers - reinforcing the existing political order?” (p. 32).

Whereas Douglass and his fellow contributors consider this political determinist view using international case studies, concluding that most institutions are followers, this paper considers this hypothesis in the context of a state: Florida. Specifically, using the political determinist view in reviewing states’ attempts can inform higher

education leaders not only as they guide their institutions but proactively engage in accreditation reformation at the federal, state, and agency level. Moreover, if Florida’s efforts are not recognized for what they are, it is possible that it and other states will continue to not only derail accreditation policy but continue to deinstitutionalize higher education as a whole.

Political Determinism

Douglass (2021) proposes the following escalating tiers from the basic role (Tier I) to highest order (Tier IV) to determine whether universities are political followers or leaders in their societies (see Table 1):

Table 1: Escalating Tiers (Douglass, 2021, p. 40)

Tiers	Variables
I	1) Educating a talented labor force and citizenry 2) Technological innovation and economic development 3) Preserving the study of art, history, and culture
II	4) Socioeconomic mobility 5) Global engagement
III	6) Public service engagement 7) Research related to societal problems
IV	8) Critical analysis of society

As opposed to these positive variables of social leadership, Douglass (2021) also points to factors reflective of institutions as political followers, which include: (1) a lack of academic culture openly critical of political leaders; (2) few protections related to academic freedom; (3) conclusions that discussion of significant social and even many scientific problems reflect poorly on the existing political regime. Douglass concludes by averring that whether universities are followers or leaders is the proverbial canary in a coal mine as it relates to the political trajectory of a nation noting that “[t]heir governance and management structure, including the level of autonomy and legal authority for management of their affairs offer a glimpse . . . into the political priorities and the fears and opportunities perceived by . . . leaders and government” (p. 42).

Taylor (2023) refers to this undermining of the societal role of higher education as “deinstitutionalization” that “compromises institutional independence [giving] colleges and universities . . . less latitude to pursue their missions [and results in] campus leaders . . . prioritiz[ing] compliance with political demands over the educational mission” (Taylor, 2023, n.p.). However, unlike Douglass, Taylor suggests that campus leaders have primarily evoked *partial defenses* to these efforts based on higher education’s extrinsic contributions such as economic growth or

workforce development outcomes and should instead replace them with “a more robust defense of higher education’s intrinsic value and core purposes” (Taylor, 2022, p. 151).

Douglass’ tiers do not ask leaders to choose one approach or the other but recognize a progression that seems to build from extrinsic to intrinsic. Specifically, it is interesting to note how these tiered leadership factors balance both long-standing, mainstream goals related to invitations and results (e.g., labor force outcomes, technological innovation, economic development, and socioeconomic mobility), as well as what higher education leaders and insiders might point to as missional aspirations. These variables are not an either-or proposition but can serve as a road map to understanding how institutions of higher education can serve as societal leaders by meeting a variety of important functions. In short, the variables do not reflect partisan goals, but recognize the common good served through institutions of higher education. With that in mind, the following case study considers a current context where partisan effort at the state level are seeking to undermine traditional values of higher education accreditation.

Florida

Recent actions by Florida are raising accreditor concerns related to bedrock academic principles of academic freedom, shared governance, improper influence, voluntariness. In one example, SACSCOC followed up on news reports that three political science faculty members at the University of Florida had originally been barred from serving as expert witnesses in a lawsuit brought against the state of Florida related to the removal absentee ballots being racially discriminatory (Ellis, 2021). In a statement entitled, University Statement on Academic Freedom and Free Speech, the university attempted to clarify that it did not bar the faculty members’ rights, but “denied requests of these full-time employees to undertake outside paid work that is averse to the university’s interests as a state of Florida institution,” despite the fact the faculty had undertaken such work previously when the testimony did not relate to allegations against the state (Ellis, 2021, n.p.). After the situation resulted in negative attention from the media and SACSCOC, the university president allowed the faculty to testify, however, this also allegedly served to fuel Florida’s eventual break with SACSCOC discussed below.

Still, since then, more direct threats to traditional faculty oversight of the curriculum and academic freedom have emerged with regard to the New College of Florida. Specifically, since Governor DeSantis’ recent appointment of several new board members at the school, the Board has reportedly sought to overhaul the school’s curriculum in violation of accreditation standards that require faculty to have responsibility for directing the learning enterprise (Rosenburg, 2023). Finally, Florida’s *Individual Freedom Act*, also known as the Stop *Woke Act*, which is currently blocked by a federal judge, turned academic freedom, another key tenant of accreditation, on its head by banning “professors from expressing disfavored views in the classroom while permitting unfettered expression of the opposite viewpoints” (Rosenburg, 2023, n.p.) In striking down the law in regard to college faculty, the court concludes, “Defendants argue that, under this Act, professors enjoy ‘academic

freedom' so long as they express only those viewpoints of which the State approves. This is positively dystopian" (Rosenburg, 2023, n.p.).

As noted above, by 2020, negotiated rulemaking brought an end to historical geographic requirement of *regional accreditation*, which appeared to allow institutions to choose between any accreditor the ED recognized as an *institutional* accreditor. Then, in 2021, a conflict arose related to who would be selected as the next president of Florida State University (FSU). Richard Cochran, a former Republican speaker of the Florida House of Representatives and Governor Ron DeSantis's appointed head of Florida's Commission of Education, was being considered for the position (Ceballos, 2022). Concerns arose based on Cochran's role as on the State University System's Board of Governors, the body charged with choosing the president, as well as his qualifications to serve as president. Specifically, both his alleged lack of qualifications and the conflict of interest related to his role on the hiring board raised concerns for the university's accreditor about the potential violation of existing accreditation standards (Wheelan, 2021). In fact, public coverage of this possible hire resulted in a warning letter from the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC; Wheelan, 2021). Specifically, the letter warned that if unresolved, FSU's accreditation could be jeopardized (Wheelan, 2021). As a result, Cochran did not move forward, but the Florida legislature passed a new bill in March 2022 requiring all public colleges and universities in the state to regularly change its institutional accreditor. Specifically, the law provides:

A public postsecondary institution may not be accredited by the same accrediting agency or association for consecutive accreditation cycles. In the year following reaffirmation or fifth-year review by its accrediting agencies or associations, each public postsecondary institution must seek and obtain accreditation from an accrediting agency or association identified by the Board of Governors or State Board of Education, respectively, before its next reaffirmation or fifth-year review date. (*FL Senate Bill 7044*, 2020, n.p.).

In short, the new law all but required all public institutions in Florida to find a new accreditor. Based on the evaluation of the State Board of Education, Florida institutions must now apply for accreditation with one of the following institutional accreditors instead of SACSCOC: Higher Learning Commission, Middle States Commission on Higher Education, or the Northwestern Commission on Colleges and Universities (Florida Department of Education, n.d.) If refused by the above accreditors, schools can remain with SACSCOC only if all other ED recognized institutional accreditors deny them accreditation (Florida Department of Education, n.d.). In regard to this change, the Florida Department of Education concluded,

the reaffirmation or reaccreditation process with SACSCOC has become rote; a process primarily viewed as 'a box that must be checked.' The opportunity for improved efficiency, greater flexibility, and educational innovation is great. Our colleges and universities are excited to leverage, finally, the opportunity afforded to them by the 2020 USED regulatory changes. (Florida Department of Education, n.d., n.p.)

Despite this alleged excitement, when asked for comment related to this and other changes that Florida has made or is in the process of making related to revamping

college and universities in their state, none of the 40 presidents representing public institutions were willing to make a public statement, even when guaranteed anonymity (Moody, 2023).

In response to the new Florida law, the ED's Office of Student Financial Aid released a Dear Colleague Letter in July 2022 reminding institutions that it must have reasonable cause to change its accrediting agency and such changes must receive prior approval from the ED (Office of Student Financial Aid, 2022). According to that guidance, reasonable cause asks whether the change (1) would strengthen institutional quality, (2) allow institutions to fall under new standards more closely aligned with the institution's mission, and (3) is voluntary (Office of Student Financial Aid, 2002). In a letter written to institutional accreditors the same day, the ED focused on whether changes based on Florida's law were voluntary: "Florida law . . . requires public institutions in Florida to seek new accrediting agencies, which potentially undermines the voluntary nature of the relationship and the independent roles of the various actors" (Office of Post-Secondary Accreditation, n.d., n.p.).

According to a June 2023 lawsuit filed by the State of Florida against officials at the U.S. ED (*State of Florida v. Miguel Cardona et al.*, 2023), some Florida institutions began seeking approval from the DOE to switch from SACSCOC to the Higher Learning Commission, another institutional accreditor, in early 2023. In response, ED requested documentation related to communication between schools and Florida and questions about voluntariness: "Absent the mandatory language requiring a change of accreditors, would [your institution] seek an alternative accrediting agency? Please explain." (*State of Florida v. Miguel Cardona et al.*, 2023). While these requests were pending, Florida filed suit claiming institutional accreditation was unconstitutional because it violates "private non-delegation doctrine," which prohibits private entities from exercising government power without sufficient government oversight (*State of Florida v. Miguel Cardona et al.*, 2023). Specifically, remanence of concerns previously raised by some NACIQI members, Florida argues that the DOE cannot delegate the power to set and apply Title IV eligibility standards to accreditors, which "have the power to hold billions in federal education dollars hostage based on the formulation and application of substantive education standards that are immune from meaningful government supervision" (*State of Florida v. Miguel Cardona et al.*, 2023, p. 16). Florida also advanced claims related to the Constitution's appointment and spending clauses and the federal Administrative Procedure Act (*State of Florida v. Miguel Cardona et al.*, 2023).

According to the ED's Motion to Dismiss, which was filed in September 2023, it has approved two of the seven Florida institutions that have applied for permission to change accreditors after receiving the requested sufficient information for those two institutions (*State of Florida v. Miguel Cardona et al.*, 2023). In regard to the merits of the case, the ED asks the court to dismiss the case with regard to the "private non-delegation" doctrine claiming that accreditors do not actually exercise the power of the federal government but simply rely on their expertise to determine where students can spend federal dollars (*State of Florida v. Miguel Cardona et al.*, 2023, n.p.). In this regard, ED argues that when institutions voluntarily meet eligibility standards to accept student dollars, it does not transform those standards into federal regulations (*State of Florida v. Miguel Cardona et al.*, 2023). In other words, they

contend that being motivated to meet standards to gain the benefit of accepted federal funds do not transform those standards to legally binding rules (*State of Florida v. Miguel Cardona et al.*, 2023).

In response to the lawsuit, the President of the United Faculties of Florida, Florida's union for professors at public institutions, said:

I think it's telling, and it should be telling to anyone observing this lawsuit, that not a single faculty member, student, member of administration, donor supporter, nobody in the higher education community in Florida was asking for this. What this fundamentally comes down to is [the] Governor . . . wants to have unilateral authority to control what does and does not get taught in higher education classrooms across Florida. One of the most significant barriers to the kind of authoritarian control is higher education accreditation. (Greenfield, 2023, n.p.)

Societal Leaders or Political Followers?

In regard to whether the institutions in Florida are acting as societal leaders or following political orders, while a few faculty senates and groups like the United Faculties for Florida have questions or pushed back against the changes, the lack of response from institution leaders reflects that it is the latter (Moody, 2022). More specifically, these responses reflect almost directly what Douglass (2021) identifies as signs of political determinism: the institution's unwillingness to be openly critical of political leaders or stand up for protections related to academic freedom. Additionally, recent attacks on faculty testifying against efforts to reduce ballot access as well as diversity, equity, and inclusion efforts in many states reflect the conclusions that discussion of significant social problems are not welcomed when they reflect poorly on the existing political regime. As a result, institutions, especially those in Florida, are left as an involuntary pawn in state efforts to use higher education "a proxy for a broader culture war issue, aimed to leverage his policies for a White House run" (Moody, 2023).

Still, in order to emerge as societal leaders in this highly partisan context, institutional leaders (and those within higher education) must recognize that the opposite of political determinism is not a free will that is simply liberated to choose what it wants and avoid accountability. Again, Douglass' variables are helpful in this regard. For example, to qualify as the highest order of societal leader, institutions must not only address extrinsic goals or effectiveness outcomes related to economic growth and socioeconomic mobility but reemphasize universities' intrinsic purposes connected to public engagement and addressing societal problems through critical analysis. However, it is important to understand that such engagement and analysis is not only externally focused but should be applied internally to institutions of higher education. In other words, to qualify as a societal leader, institutions must be willing to research and analyze themselves. In the past, institutions have accomplished this in part through accreditation. In that regard, accreditation, though continual refinement, can adapt to new economic challenges and provides opportunities to lead (as opposed to simply respond). This requires institutions to adopt standards that require objectives goals and measures, increased transparency, and similar methods have been suggested in the past (see Appendix B).

At the same time, institutional leaders can work to undercut their partisan critics by upholding important higher education's principles like academic freedom, free speech, and encouraging the discussion of important social issues. In other words, political determinism is weakened when internally derived academic culture do not favor partisan voices or perspectives. For this reason, as state legislatures continue to pass new laws related to devise concepts, institutional leaders must double down on protecting open and honest debates and academic inquiry related to any topic of study on their campuses and avoid anything that would weaken historic academic protections.

In this regard, one such leader encouraged institutions to "reimagine student encounters on campus and infuse debate into campus programming" (Daniels et al., 2021, p. 244). Specifically, in *What Universities Owe Democracy*, John Hopkins University President Ronald Daniels encourages universities to move past simply diversifying student bodies to proactively "consider how students engage with one another after they arrive ... not by policing student's behavior after the fact, but modeling what healthy debate looks like as part of the educational function (p. 244)." More recently, other institutional leaders at elite colleges have responded to on-campus controversy by developing thoughtful and public defenses to academic freedom and free speech (at Stanford), refusing to include trigger warnings in university syllabi (Cornell), and creating faculty councils on academic freedom "devoted to free inquiry, intellectual diversity, and civil discourse" (at Harvard; French, 2023, n.p.). In short, institutional leaders should not allow any one group to claim exclusive right to nor undercut these long-held academic principles.

Implications for Accreditation

Accreditation has long provided institutions with opportunities that attempt to address both the extrinsic and intrinsic goals of higher education. Unfortunately, many no longer view accreditation as an opportunity to advance higher education, but a necessary act of compliance. What started as a voluntary effort to measure quality has largely been overshadowed by a requirement to maintain and justify federal financial support. In this regard, institutional leaders should consider how the tiered approach outlined by Douglass (2021) could serve as a common language and approach in addressing accreditation reform. In other words, could the graduated tiers of societal leadership, which incorporated both an extrinsic and intrinsic approach, provide a new way forward? For example, the following revised and simplified version of the Douglass' (2021) tiers should be considered as a possible reframing that could establish levels of accreditation (see Table 2).

Table 2: Douglass' (2021) Reframing of Accreditation

Accreditation Tier	Standards
I	1) Educating a talented labor force and citizenry 2) Providing opportunities for socioeconomic mobility
II	3) Preserving the study of art, history, and culture 4) Engaging and serving publicly and globally
III	5) Critical analyzing society 6) Improving society through research and innovation

The specific federally required recognition factors (see Appendix C) could be reconsidered in light of these standard as well allowing societal leadership to be a guiding principle for all institutions while also recognizing that universities and college might strive to achieve different tiers based on their own mission and goals. Moreover, to be eligible for base levels of financial aid through Title IV, all institutions would need to be accredited as Tier I institutions ensuring the economic considerations and objective factors were guiding investment of federal funds. This would also allow for other types of institutions to serve as Tier 1 institutions.

Therefore, under this framework, accreditors can ensure all institutions are offering programs that provide students with the skills and knowledge needed to succeed in today's workforce. This can involve partnerships with industry leaders, as well as the integration of cutting-edge technology and methodologies into coursework. Additionally, this assumes that all institutions should be educating students not only as future workers, but citizens, ensuring that the partisan concerns are addressed head on by ensuring free speech and academic freedom is the norm on all campuses.

In terms of more advanced tiers, institutional leaders can continue to prioritize the preservation and promotion of the arts and humanities through their accreditation policies. They can ensure that programs in these areas are well-funded and that they encourage students to engage with their communities and explore diverse cultural perspectives. Furthermore, institutional leaders can move beyond more narrow concepts of civic engagement to consider issue related to global citizenship by encouraging international collaborations and exchanges, as well as by ensuring that their accreditation policies prioritize (as opposed to avoid) diversity, equity, and inclusion. As universities advance to the final tier, leaders can encourage critical thinking and analysis among their students and faculty. They can ensure that accreditation policies prioritize research that addresses pressing societal challenges and encourages innovation that benefits society as a whole. Additionally, leaders can advocate for policies that promote collaboration between academia, industry, and government, and that support the translation of research findings into practical applications that improve people's lives. In this way, institutional leaders can to act

as societal leaders by incorporating intrinsic and extrinsic values in higher education accreditation.

Limitations and Future Research

A single, but important, case study like this one is somewhat limited in scope. Therefore, future research should consider other state-based case studies and institutional responses in light of the political determinist analysis. For example, the members of the Texas legislature recently proposed new legislation that would establish a Texas Higher Education Accreditation Commission (Middleton & Creighton, 2023). This commission would be directly accountable to the governor and task with ranking existing ED-recognized accreditors as unsatisfactory, satisfactory, or exemplary based on their average educational and labor marking outcomes for all the schools they accredit as well as “whether accreditor takes or considers taking action that would hinder or interfere with authority of the institution’s governing board and institution’s accountability to the legislature” (Middleton & Creighton, 2023). The governor, lieutenant governor, and speaker of the house would each appoint three commissioners, six of whom must be an employer or representative of an association of employers in a target occupations field, as determined by the Texas Workforce Commission (Middleton & Creighton, 2023). Accreditors ranked as unsatisfactory could not serve as an accreditor for public institutions, while institutions could stay with satisfactory accreditors for up to fifteen years and exemplary accreditors indefinitely (Middleton & Creighton, 2023). While the bill did not pass, it shows that Florida is not the only state worth studying. Moreover, future studies might revisit not only single states but the nation as a whole to continually measure this hypothesis in light of new federal laws, rules, and leaders.

CONCLUSION

With another round of negotiated ruling pending and opportunity to make progress on the reauthorization of the HEA, federal lawmakers and ED officials will have many decisions to make. Do they continue to prioritize the historical efforts related to incremental improvements of quality, innovation, and accountability or do they allow the current partisan divide to overshadow opportunities for progress? At the same time, how can institutional leaders push back against the deinstitutionalization of higher education by considering models that allow universities to emerge as societal leaders? In answering these questions, Douglass’ (2021) tiered variables provide a solid foundation for both institutional leaders and lawmakers to consider. Specifically, how can accreditation change to move higher education up those tiers and blunt populist attacks? Instead of staying silent, leaders must start addressing these populist challenges head on by continuing the work of improving quality, accessibility, accountability, and innovation in higher education and promoting a shared vision for the good higher education can do for all regardless of political affiliation.

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APPENDIX A - CURRENT MEMBERS OF NACIQI

Appointed by ED Secretary

- Wallace E. Boston, Ph.D., President Emeritus, American Public University System, Inc. Charles Town, West Virginia. Appointed by Secretary Betsy DeVos.
- Keith Curry, Ed.D., President/CEO, Compton College, Compton, California. Appointed by Secretary Miguel Cardona.
- David A. Eubanks, Ph.D., Assistant Vice President for Assessment and Institutional Effectiveness, Furman University, Greenville, South Carolina. Appointed by Secretary Betsy DeVos.
- Molly E. Hall-Martin, Ph.D., Director, W-SARA, Western Interstate Commission for Higher Education (WICHE), Boulder, Colorado. Appointed by Secretary Miguel Cardona.
- D. Michael Lindsay, Ph.D., President, Taylor University, Upland, Indiana. Appointed by Secretary Betsy DeVos.
- Mary Ellen Petrisko, Ph.D., Former President, WASC Senior College and University Commission, Pittsburgh, Pennsylvania. Appointed by Secretary Betsy DeVos.

Appointed by House

- Kathleen Sullivan Alioto, Ed.D., Strategic Advisor, Fundraiser, and Consultant, New York, New York, San Francisco, California, and Boston, Massachusetts. Appointed by Congresswoman Nancy Pelosi.
- Roslyn Clark Artis, Ed.D., President, Benedict College, Columbia, South Carolina. Appointed by Congresswoman Nancy Pelosi.
- Jennifer Blum, J.D., Principal, Blum Higher Education Advising, PLLC, Washington, DC. Appointed by Congressman Kevin McCarthy.
- Arthur E. Keiser, Ph.D., Chancellor, Keiser University, Fort Lauderdale, Florida. Appointed by Congressman Kevin McCarthy.
- Robert Mayes, Jr., CEO, Columbia Southern Education Group, Elberta, Alabama. Appointed by Congressman Kevin McCarthy.
- Robert Shireman, Director of Higher Education Excellence and Senior Fellow, The Century Foundation, Berkeley, California. Appointed by Congresswoman Nancy Pelosi.

Appointed by Senate

- Debbie Cochrane, Bureau Chief, California Bureau of Private Postsecondary Education, Alameda, California. Appointed by Senator Chuck Schumer.
- Zakiya Smith Ellis, Ed.D., Principal, Education Counsel, Atlanta, Georgia. Appointed by Senator Chuck Schumer.
- Michael Poliakoff, Ph.D., President, American Council of Trustees and Alumni, Washington, DC. Appointed by Senator Mitch McConnell.
- Claude O. Pressnell Jr., Ed.D., President, Tennessee Independent Colleges and Universities Association, Nashville, Tennessee. Appointed by Senator Mitch McConnell.
- José Luis Cruz Rivera, Ph.D., President, Northern Arizona University, Flagstaff, Arizona. Appointed by Senator Chuck Schumer.

APPENDIX B – CALLS FOR REFORMS TO HIGHER EDUCATION ACCREDITATION

Title (Year) Organization	Summary of Suggestions Changes
Recalibrating Regulation of Colleges and Universities (2015) Bi-Partisan Task Force on Federal Regulation of Higher Education	1) Provide unequivocal authority to accreditors for differentiated review 2) Strike the definition of “credit hour” 3) Limit the kinds of “substantive changes” that would require approval by accreditors 4) Limit “additional procedures” to only those cases where there are substantive changes or when branch campuses are up for accreditation review

- 5) Remove requirement for ED approval of change of accreditor for institutions not under sanction
- 6) Prohibit ED from requiring accreditors to review compliance with Title IV Program Participation Agreement
- 7) Change the resolution to allow accreditors to share information with institutions related to ED investigations except as it relates to criminal investigation
- 8) Clear boundaries should be established between ED and NACIQI to prevent micromanagement of NACIQI's activities by the Department
(American Council of Education, 2015).

Higher Education
Accreditation
Concepts and
Proposals (2015)

- 1) Repeal regulations and statutes unrelated to direct institutional quality and improvements (e.g., student verification for online programs, facilities maintenance plans, redundant Title IV eligibility compliance).

Senator Lamar
Alexander
Committee on Health,
Education, Labor &
Pensions

- 2) Permit flexibility and nuance in accreditation reviews (e.g., risk-adjusted or differentiated review for superior versus struggling institutions)
- 3) Encourage graduation, distinction, and clarity in accreditation status and review (e.g., move from binary pass/fail system to accredited with levels from meets the standard to exceeds standards and accreditors voluntarily release documents related to internal review)
- 4) Delink accreditation from institutional eligibility for federal student aid (e.g., tying reaccreditation to federal financial aid (1) creates disincentives for accreditors and their member schools to hold their peers accountable for anything but financial deficiencies and (2) allows accreditors too much authority and judgment over institutional autonomy and governance).
- 5) Establishing new pathways to accreditation and/or Title IV eligibility for non-college providers (e.g., current accreditors with approve nontraditional education providers and/or recognize alternative accrediting through states and for-profit entities)
- 6) Eliminate the geographic structure of regional accrediting agencies (e.g., inject market forces into accreditation selection to break up "regional monopolies" and create competition arguing that

“agencies will quickly stratify, with the toughest agencies attracting the best colleges and universities”)

- 7) Ensure NACIQI independence (e.g., limit any expansion of Secretary's authority in recognition decisions and hire NACIQI staff separate from ED staff to assist with the recognition process and recommendations).

(Alexander, 2015)

Report to the U.S.
Secretary of Education
(2015)

National Advisory
Committee on
Institutional Quality
and Integrity

- 1) Encourage accreditation agencies to develop common definitions of accreditation actions and terms procedures, timelines, and process (i.e., electronic)

- 2) Re-focus NACIQI reviews to direct greater attention to assessing the role of an accrediting agency in assessing the health and well-being and the quality of institutions of higher education, rather than on technical compliance with the criteria for recognition.

- 3) Grant accrediting agencies greater authority to develop standards tailored to institutional mission; to create different substantive tiers of accreditation; and to use different processes for different types of institutions, including expedited processes

- 4) Establish that the recognition review process differentiates among accrediting agencies based on risk or need with some identified as requiring greater levels of attention, and others lesser

- 5) Make accreditation reports about institutions available to the public.

- 6) Afford institutions the widest possible array of choice of accreditor for access to Title IV funds, including all place-based accreditors. Encourage place-based accreditation agencies to expand their scope. Provide greater flexibility for institutions to re-align themselves along sector, institution-type, or other appropriate lines. Allow for alternative accrediting organizations.

- 7) Establish less burdensome access to Title IV funding for high-quality, low-risk institutions.

- 8) Before eligibility for Title IV, require institutions to provide audited data on key metrics of access, cost and student success. These metrics would be in a consistent format across institutions, and easy for

students and the public to access.

9) Reconstitute the NACIQI as a committee with terminal decision-making authority and a staff. This will establish NACIQI as the final decision-making authority on accrediting agency recognition. In addition, ensure that the staff recommendation is provided to the NACIQI for its consideration and that the NACIQI decision will be the singular final action communicated to the senior Department official.

10) Establish that the NACIQI and the Education Secretary and other Department officials meet periodically for mutual briefings and discussions, including policy issues, and resulting in policy recommendations.

11) Establish that the NACIQI, itself, timely disseminates its reports to the Department and to the appropriate Congressional committees.

(NACIQI, 2015)

Higher Education:
Expert Views on U.S.
Accreditation (2017)

1) Modify oversight roles and responsibilities (e.g., reduce overlap and duplication of oversight between ED and states; repeal the statutory prohibition against ED setting and enforcing achievement standards)

Government
Accounting Office

2) Strengthening communication and transparency (e.g., improved communication between states and ED related to struggling schools, making accreditation information publicly available).

3) Using academic quality measures and expanding options (e.g., using student outcomes to measure schools' academic quality, risks-based or differentiated accreditation status, and corresponding aid eligibility)

4) Changing the structure of the accreditation system by establishing (a) "independent authorizers," (b) third party entities to set standards and thresholds for student outcomes and having ED conduct a review of those in good standing, (c) a Higher Education Quality Assurance Commission to coordinate with accrediting agencies instead of ED, or (d) a congressionally chartered accreditation governance entity that would take place of ED and accreditors. (Government Accounting Office, 2018)

Report to the U.S.
Secretary of Education
(2018)

1) The Committee recommends that the Secretary request enabling legislative language be drafted which allows accreditors to create and implement risk-informed

National Advisory Committee on Institutional Quality and Integrity	<p>reviews.</p> <p>2) Grant accrediting agencies greater authority to develop standards tailored to institutional mission; to create different substantive tiers of accreditation; and to use different processes for different types of institutions, including expedited processes.</p> <p>3) Strike the definition of “credit hour.” Education Department has, through regulation, created a federal definition of “credit hour.” It represents an inappropriate intrusion into the academic process. It also discourages the use of innovative models for measuring learning that are not tied to seat time.</p> <p>4) Allow accreditors to waive certain types of “substantive change procedures” that would require approval by accreditors for high-performing institutions. Established institutions should have the flexibility to make changes necessary to address their needs and those of their students.</p> <p>5) Re-focus NACIQI reviews to direct greater attention to assessing the role of an accrediting agency in assessing the health and well-being and the quality of institutions of higher education, rather than on technical compliance with the criteria for recognition. These reviews should be supported by staff analysis that focuses on the effectiveness of the accrediting agency in performing its work, rather than technical compliance.</p> <p>6) Draft legislative language which will support ongoing adjustments to NACIQI’s work to accommodate this newly developing risk-informed procedures and consider ways in which it might be implemented for institutional, programmatic, and specialized accrediting agencies within the advisory capacity of the Committee. (NACIQI, 2018)</p>
Appropriate Accountability for Accreditation and Federal Policy (2019)	<p>1) Rethink the requirements for the extent of experience in order to become a recognized accreditor</p> <p>2) Streamline what is considered “substantive change” for an institution or program in order that fewer changes are subject to this process</p> <p>3) Remove the definition of credit hour</p>
Council on Higher Education Accreditation	<p>4) Eliminate the requirement for confidentiality such that accreditors cannot inform institutions of investigations</p> <p>5) Eliminate requirement for common definitions and terms</p> <p>6) Remove USDE final oversight in posting accreditor</p>

actions and decision letters

7) Eliminate USDE oversight of differentiated review

8) Retain the right for statutory right for an accrediting agency to set, with the involvement of its members, and to apply, accreditation standards for or to institutions or programs that seek review by the agency or association and for an institution to develop and use institutional standards to show its success with respect to student achievement, which achievement may be considered as part of any accreditation review.

9) Oppose federal intrusion into academic leadership, institutional mission peer review or academic freedom.

10) Rethink the role of the National Advisory Committee on Institutional Quality and Integrity, including the creation of an alternative committee structure and operation

11) Further revise Negotiated Rulemaking to assure that it is routinely a balanced, transparent and consultative process

12) Require consultation with academics and accreditors for Dear Colleague Letters and Guidance Letters and clarify their role in federal oversight of accreditation. (CHEA, 2019)

The Case for the
Escape Hatches from
Higher Education
Accreditation
(2020)

1) Move away from binary accreditation (e.g., tiered accreditation system with corresponding levels of federal funding to wind down institutions that fail to improve)

2) Increase competition among accreditors (e.g., states and other new entities as accreditors)

Texas Public Policy

3) Provide federal student aid for programs that meet certain outcome threshold without the need of accreditation (e.g., using third-party certification exams (i.e., standardized tests) for college and labor market outcomes (i.e., rate of return or increase in median earnings)

(Gillen, 2020)

APPENDIX C – RECOGNITION OF ACCREDITING AGENCY OR ASSOCIATION

20 U.S. Code § 1099b - Recognition of Accrediting Agency or Association

(A) No accrediting agency or association may be determined by the Secretary to be a reliable authority as to the quality of education or training offered for the

purposes of this chapter or for other Federal purposes, unless the agency or association meets criteria established by the Secretary pursuant to this section. The Secretary shall, after notice and opportunity for a hearing, establish criteria for such determinations. Such criteria shall include an appropriate measure or measures of student achievement. Such criteria shall require that

...

(5) the standards for accreditation of the agency or association assess the institution's:

- (A) success with respect to student achievement in relation to the institution's mission, which may include different standards for different institutions or programs, as established by the institution, including, as appropriate, consideration of State licensing examinations, consideration of course completion, and job placement rates;
- (B) curricula;
- (C) faculty;
- (D) facilities, equipment, and supplies;
- (E) fiscal and administrative capacity as appropriate to the specified scale of operations;
- (F) student support services;
- (G) recruiting and admissions practices, academic calendars, catalogs, publications, grading and advertising;
- (H) measures of program length and the objectives of the degrees or credentials offered;
- (I) record of student complaints received by, or available to, the agency or association; and
- (J) record of compliance with its program responsibilities under this subchapter based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and such other information as the Secretary may provide to the agency or association.

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