Higher Learning Commission

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August 26, 2026

VIA ELECTRONIC MAIL

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

RE: **Docket ID ED-2025-OPE-1042**

Dear Mr. Kent:

The Higher Learning Commission (HLC) respectfully submits this comment on the Notice of Proposed Rulemaking published by the U.S. Department of Education (ED) on August 20, 2026 (the "Proposed Rule").

As background to this comment, HLC is the largest institutional accrediting agency in the United States, accrediting approximately 950 colleges and universities, with a geographic footprint spanning nearly the entire United States. HLC's membership consists of every type of institution of higher education, from large, land-grant public universities to open access community colleges and to small, faith-based institutions. In all, millions of students and thousands of employers rely on HLC's quality assurance.

Relying on more than a century of experience in higher education, HLC submits this comment to both highlight some of the positive changes contained in the Proposed Rule and make recommendations for modifications to be made to the final rule, based on concerns regarding other changes that will have negative consequences for students, institutions, and accreditors.

It is important to place HLC's comment within the context of its mission, which is to:

> Advance the common good through quality assurance of higher education as the leader in equitable, transformative and trusted accreditation in the service of students and member institutions.

In pursuit of this mission, HLC recently articulated seven Guiding Values that "inform HLC's accreditation standards; how HLC conducts its accreditation activities in order to provide value to its members and the students served by those members; and how HLC pursues other activities and operations beyond accreditation."

Ultimately, HLC appreciates that ED convened the Accreditation, Innovation, and Modernization negotiated rulemaking committee ("AIM Committee") to "reform and strengthen [America's] higher education accreditation system." HLC strongly agrees with ED that, as stated in the preamble of the Proposed Rule, "innovation is key to advancing evaluation of academic quality."

The preamble of the Proposed Rule states that the Proposed Rule will, among other things, "reduce administrative costs that are negatively impacting college affordability." This is also a goal that HLC unequivocally shares.

ED's desire to be innovative with respect to accreditation and reduce unnecessary burden on institutions while maintaining rigorous quality assurance, thus allowing for accreditation to create the conditions for institutions to be innovative and nimble, is well-aligned with HLC. Specifically, one of HLC's Guiding Values is:

> **Partner in Innovation.** HLC evolves through continuous improvement and innovation and encourages the same from its member institutions and others.

HLC consistently demonstrates a deep commitment to innovation and continuous improvement, particularly in order to reduce unnecessary burden on institutions and create conditions that promote innovation at institutions, while preserving rigorous quality assurance for student success. This includes, for example, having flexible and scalable accreditation processes that adapt to institutional needs and allow institutions to innovate at a pace that aligns with the institution's unique mission, as well as the recent launching of the Credential Lab as an innovation hub that supports institutions and learners in navigating the complex ecosystem of short-term postsecondary credentials. There is always room for growth and change in response to an evolving higher education landscape, and navigating with the current of that change is central to HLC's approach to quality assurance overall.

For example, there are numerous aspects of the Proposed Rule that will continue to help create the conditions for institutional innovation, such as the proposed revisions to 34 CFR §602.22. HLC supports these changes and looks forward to continuing to foster innovation as aligned with the regulatory changes in the Proposed Rule.

Similarly, HLC strongly supports efforts across the higher education ecosystem to improve transfer mobility. HLC has been engaged in a variety of projects in this area, including publishing a white paper that emphasizes accreditor flexibility with respect to an individual institution's transfer policies. The proposed revisions to 34 CFR 602.24(e) will help to further this transfer mobility.

Likewise, HLC is committed to its essential quality assurance role as one part of the Program Integrity Triad ("the Triad"). Indeed, one of HLC's Guiding Values is:

> **Affirmation of Shared Quality Assurance for the Public Good.** As part of the program integrity Triad, HLC is a thought leader and collaborates with the Federal government and the states in advancing higher education as a public good.

Shared responsibility across the Triad is a hallmark of the American system of higher education. HLC looks forward to continued collaboration across the Triad and respect for the individual role of each entity within the Triad, as aligned with the regulatory changes in the Proposed Rule.

Indeed, HLC has the capacity to comply with the requirements of the Proposed Rule by its implementation date, although HLC estimates that responsible implementation of the Proposed Rule—including not only updating policies and procedures, but also creating resources and supports for institutions, training peer reviewers and decision-makers on revised policies and procedures, investing in technology to continue to try and reduce burden to institutions, and on-going compliance—will far exceed the hours as estimated in the Proposed Rule.

Given HLC's commitment to innovation, efforts to reduce burden while maintaining rigorous quality assurance, and collaboration across the Triad, HLC has several specific recommendations regarding the Proposed Rule, which are detailed below. In general, these suggestions respond to several of ED's Directed Questions, including whether "the requirements in the proposed regulation are clearly stated" and the request for suggestions as to ways the final rule "could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of [ED's] programs and activities."

These recommendations are intended to avoid a situation in which the Proposed Rule has the unintended consequence of creating significant burden on institutions without meaningfully improving quality assurance.

Ultimately, requirements for accreditors become requirements for institutions. Several provisions in the Proposed Rule may require institutions to develop extensive policies, procedures, and systems that may not currently exist in order to maintain accreditation. This will require institutions to shift resources away from teaching and learning to meeting new compliance requirements. This burden, in turn, is likely to actually stifle innovation and is not in the best interest of students.

While HLC provides recommendations as to the language of the Proposed Rule as part of its commitment to the Triad, HLC is nonetheless concerned that aspects of the Proposed Rule exceed ED's regulatory authority under the Higher Education Act (HEA), including the following provisions:

> Nothing in this chapter shall be construed to permit the Secretary to establish criteria for accrediting agencies or associations that are not required by this section. Nothing in this chapter shall be construed to prohibit or limit any accrediting agency or association from adopting additional standards not provided for in this section. Nothing in this section shall be construed to permit the Secretary to establish any criteria that specifies, defines, or prescribes the standards that accrediting agencies or associations shall use to assess any institution's success with respect to student achievement. *See* 20 U.S.C §1099b(g).
>
> Notwithstanding any other provision of law, the Secretary shall not promulgate any regulation with respect to the standards of an accreditation agency or association… *See* 20 U.S.C §1099b(o).
>
> Nothing in subsection…shall be construed to restrict the ability of…an accrediting agency or association to set, with the involvement of its members, and to apply, accreditation standards for or to institutions or programs that seek review by the agency or association; or…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. *See* 20 U.S.C. §1099b(p).

This is problematic under principles of administrative law. *See* 5 U.S.C. §706(2)(C), in that the regulations are "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right."

This concern exists, for example, whether requirements are placed under §602.17, "Application of standards in reaching accreditation decisions," or §602.16, "Accreditation and preaccreditation standards." ED indicates that "the proposed regulations do not prescribe the substantive content of institutional accreditation standards, but instead establish minimum expectations regarding the processes, consistency, transparency, and lawful administration of those standards." However, the preamble of the Proposed Rule also clearly indicates that the requirements in §602.17 are intended to "set expectations to which accrediting agencies must adhere" as related to particular standards. As such, regardless of the location of requirements in the regulations, there are several instances where agencies are functionally required to adopt particular standards set forth by ED.

Similarly, HLC is also concerned that parts of the Proposed Rule are not aligned with the HEA's requirement that an agency respect institutional mission, including the following provisions:

> [An] agency…consistently applies and enforces standards that respect the stated mission of the institution of higher education, including religious missions. *See* 20 U.S.C. §1099b(a)(4)(A).
>
> [T]he standards for accreditation of the agency…assess the institution's…success with respect to student achievement in relations to the institution's mission, which may include different standards for different institutions or programs, as established by the institution. *See* 20 U.S.C. §1099b(a)(5)(A).

HLC is in agreement with ED's commitment to retain the language in 34 CFR §602.18 requiring an agency to "consistently apply and enforce standards that respect the stated mission of" an institution. One of HLC's Guiding Values is:

> **Prominence of Institutional Mission.** HLC pursues rigorous quality assurance in a manner that emphasizes the distinctiveness and centrality of each individual institution's mission.

HLC's own Criteria for Accreditation, which form the crux of HLC's quality assurance framework, state that:

> Mission is foundational to an institution's curriculum, instructional activities and the success of its students. Mission further informs an institution's research and innovation pursuits, its community engagement activities and services, its role within the higher education ecosystem, its student body, and its decisions regarding operations and resource allocations. An institution's distinctive mission is the cornerstone around which the institution's effectiveness, integrity

> and commitment to continuous improvement are evaluated…Specifically, the distinctiveness of an institution's mission may inform the strategies it adopts and the evidence it provides to demonstrate that it meets [HLC's quality assurance standards].

Unfortunately, many of the changes in the Proposed Rule create prescriptive and one-size-fits-all rules for institutions that will prohibit an agency from allowing an institution to demonstrate its compliance with agency standards based on its mission. This does not allow an agency to respect an institution's mission and thus is not aligned with 20 U.S.C. §1099b(a)(4)(A) nor, in the context of student achievement, 20 U.S.C. §1099b(a)(5)(A). This is particularly the case with respect to various changs in §602.17, where the preamble of the Proposed Rule specifically states that the regulatory "changes…are intended to provide flexibility when taking into account institutional mission, program type, and other contexts."

Institutional accreditation must be able to accommodate various institutional missions so as not to limit the educational opportunities for students.

Finally, HLC is also concerned that aspects of the Proposed Rule are vague or subjective in their meaning such that they will be impossible for accreditors to consistently implement with respect to institutions and impossible for ED to consistently enforce with respect to agencies.

Together, all of these concerns threaten the orderly and successful implementation of the Proposed Rule and create uncertainty for agencies, institutions, and—most importantly—students.

Specific Comments Regarding the Proposed Rule

Below, HLC makes several recommendations related to specific provisions of the Proposed Rule for ED to consider as it finalizes the Proposed Rule. Many of these recommendations go directly to HLC's goals of ensuring that the final rule is appropriately within ED's statutory authority, is aligned with the HEA overall, is clear enough to allow for implementation and enforcement by both agencies and ED, and otherwise meets ED's goal of reducing burden.

All of the following regulatory citations are to Title 34 of the Code of Federal Regulations (CFR) in the Proposed Rule.

- **§602.14(b)(6)—**It is essential for an agency to have a robust complaints process that allows for members of the public to raise concerns both about an agency's member institutions as well as the agency itself. If the intention of §602.14(b)(6) is for an agency to include information regarding complaints related to the agency's own adherence to the "separate and independent requirements," as is perhaps the case given the placement of this item in §602.14, then HLC suggests that the language be revised to read "that are material to the agency's adherence to the 'separate and independent' requirements in this section." As written, the phrase "complaints received during the current recognition period that are material" is not clearly linked to the purpose of §602.14(b)(6), as "material" lacks context and is otherwise undefined. If materiality is intended to be broader than that, HLC suggests moving the language in §602.14(b)(6) to §602.30 and clarifying the scope of materiality, beyond the separate and independent requirements, in the regulations.

- **§602.15(a)—**Peer review is at the heart of the HEA's reliance on accreditation as a marker of quality assurance. Eliminating the requirement that an agency's decision-making bodies must include a mix of academic and administrative personnel, educators, and practitioners creates the possibility that an agency will not use a peer review-based process at all, which weakens the system of accreditation as a whole and undermines the intent of the HEA. This concern also relates to the definition of "accrediting agency or agency" in §602.3, making it an option, not a requirement, for an agency to use peer review to conduct its accrediting activities.

  One of HLC's Guiding Values is:

  > **Commitment to Peer Review.** HLC relies on representative, qualified, and objective peer review as the basis for effective quality assurance through transparent and evidence-based decision-making that provides due process for all stakeholders.

  HLC will continue its commitment to peer review regardless of the regulatory changes.

- **§602.15(d)—**HLC supports that an institution should have the ability to choose an accreditor and supports minimizing artificial and bureaucratic barriers to such mobility. Similarly, HLC has collaborated and will continue to collaborate with ED as appropriate on a wide variety of topics to support quality higher education and students. HLC suggests that language be added to §602.15(d) clarifying that an agency is not required to modify its standards or process for seeking accreditation as a part of the collaboration. Additionally, HLC suggests that language be added to §602.15(d) to clarify what is meant by "will cooperate with other agencies and the Department in the development of common templates and forms for institutions or programs to submit when seeking to change accrediting agencies." It would not, for example, be realistic that an institutional accreditor would independently collaborate with every other recognized accreditor, including programmatic accreditors, regarding "the development of common templates and forms for institutions…to submit when seeking to change accrediting agencies." Finally, HLC suggests that language should be added to the regulations indicating that participating in the collaboration required by §602.15(d) does not violate antitrust laws.

- **§602.15(e)(2)—**HLC suggests removing §602.15(e)(2). Accrediting agencies are private entities. While these proposed changes purport to address conflict of interest issues, the relationship between this concern and the ultimate requirement is not clear given the lack of supporting rationale for the change. The end result is that the new requirements dictate the governance structures of private entities. Beyond the narrow items delineated in the HEA regarding public members in 20 U.S.C. §1099b(b)(2), an agency is free to determine how it organizes its governance.

- **§602.15(f)—**HLC suggests removing §602.15(f). This language is unnecessary as accreditors do not, and cannot under the law, restrict an institution's legal obligations, including as it relates to the First Amendment. At a minimum, HLC suggests revising §602.15(f) to read "accreditation standards and polices must not…", as the term "enforcement practices" is vague; and clarifying how the phrase "unless the institution has a religious mission" relates to the preceding clauses in that sentence. As currently written, the sentence suggests that, if an institution has a religious mission, an agency may restrict that private institution's guarantee of First Amendment-like protections to students or faculty.

- **§602.17(a)(1)**—HLC appreciates ED's commitment to ensuring that accreditors engage in rigorous quality assurance as related to an institution's student success outcomes. One of HLC's Guiding Values is:

  > **Focus on Students.** Students are at the center of all HLC's activities and operations. HLC fosters positive student learning outcomes and student development, and embraces a variety of understandings of student success.

  The preamble of the Proposed Rule shows that the population of institutions accredited by HLC has significant variation as to three metrics of student success: graduation rates, completer earnings, and loan delinquency rates. The preamble of the Proposed Rule then draws the conclusion that the "variation in outcomes across institutions recognized by the same agency suggest[s] that, in practice, accrediting agencies have few meaningful standards on student outcomes."

  HLC respectfully disagrees with this conclusion.

  HLC's Criteria for Accreditation, which are HLC's primary evaluative standards, require that an "institution's student success outcomes demonstrate continuous improvement, taking into account the student populations it serves and benchmarks that reference peer institutions." HLC also has a risk indicator process focused on student success outcomes.

  As noted above, HLC's membership consists of approximately 950 member institutions that represent every type of institution of higher education, from large, land-grant public universities to open access community colleges and from tribal colleges and universities to small, faith-based institutions.

  Given this range of institutional type, and even more, range of institutional mission, a singular approach with rigid quantitative thresholds for student success outcomes is not a feasible or effective standard for accreditation. Indeed, HLC's experience has proven that such minimum standards are typically insufficient or ineffective on their own to promote genuine improvement.

  As such, HLC's approach to student success outcomes, which encompasses student achievement, underscores that an individual student's success can be measured in more ways than just the achievement of one particular data point. Moreover, HLC supports continuous improvement at the institutional level, rather than prescriptive, arbitrary thresholds for student success metrics, as that is most effective to accomplish sustained continuous improvement in student outcomes.

  HLC's current standards require an institution to have goals for improving student success outcomes that are sufficiently rigorous and appropriate to its mission and the priority of ongoing improvement. In addition, HLC takes into account minimum thresholds as a component of quality assurance in cases where such thresholds are useful and necessary, for example through its risk indicator process.

In fact, as part of its continued recognition process in 2023, HLC engaged in a lengthy discussion with members of the National Advisory Committee on Institutional Quality and Integrity (NACIQI) regarding the fact that various datasets often fail to capture an institution as a whole and do not sufficiently address the unique, mission-driven context within which the data is situated. In that regard, HLC was, and remains, committed to ensuring its standards are appropriately contextualized with respect to the individual institution and its mission while ensuring both quality and continuous improvement.

Additionally, even by using such limited measures of student achievement, data across all sectors of HLC's membership showed improvement since NACIQI first piloted the Accreditor Dashboards in 2017.

Ultimately, variability in student success outcomes cannot be said to be indicative of inadequate standards, and such an assertion rests on an incomplete view of the data and underlying factors across sectors.

Likewise, simply mandating that institutions demonstrate particular metrics with respect to student success outcomes, without partnering with institutions in order to help build that data capacity, is unlikely to prove effective or achieve sustainable results. As currently stated, the Proposed Rule would require significant investment on behalf of institutions in technology infrastructure and associated data collection processes without a defined plan for collaboration or consistency across institutions. In this regard, improving federal data remains a critical need and HLC continues to welcome participation in such efforts.

HLC is committed to engaging with institutions, its partners in the Triad, and other stakeholders to invest collaboratively to improve student success outcomes and data capacity across its membership. Likewise, HLC is deeply devoted to engaging in collaborative conversations about how accreditors can themselves improve rigorous and sustainable quality assurance in the area of student success outcomes.

Over the past decade, HLC has engaged in various collaborations and projects on these issues. A few key initiatives include:

- Growing With Data: A Partnership with the National Student Clearinghouse
- Testing Student Success Data: Findings and Recommendations
- A paper series on defining student success data, including Recommendations for Changing the Conversation

HLC stands ready to continue this work, including across the Triad.

Based on this, HLC has several specific suggestions for this section:

- If ED intends for the language in §602.17(a)(1) to be voluntary for agencies, as suggested by language in the preamble of the Proposed Rule ("encourages accrediting agencies to include new criteria that evaluates program and institutional outcomes"), that should be clarified in the Proposed Rule itself. As written, the language creates a requirement for agencies.

- HLC suggests clarifying that an agency must ensure that an *institution* is setting minimum expectations incorporating the items in §602.17(a)(1)(ii)(A)–(E), at both the institutional and program level. As currently written, it is not clear how the language in §602.17(a)(1) ("evaluates whether an institution or program") relates to the language in §602.17(a)(1)(ii) ("[a]s appropriate to its own standards, reviews an institution's student success with respect to student achievement at both the institutional and program levels, including minimum expectations, by assessing"). Together this reads that an agency must evaluate "whether an institution or program…[a]s appropriate to its own standards reviews an institution's student success." It is not clear what is expected of institutions or agencies because it is not clear whether the word "its" refers to the institution or the agency. While language in the preamble of the Proposed Rule also seems to suggest that *agencies* must set these minimum expectations ("accrediting agencies are required to review the use of additional student outcome metrics in their standards for institutions…including minimum expectations regarding student outcomes"), that conclusion is neither aligned with the Proposed Rule as currently written nor within statutory limitations.

- HLC suggests removing "[s]cores on relevant standardized assessments taken for admission to a higher-level degree, during and after the time of enrollment at an institution" in §602.17(a)(1)(ii)(D). Such scores are not related to "an institution's student success with respect to student achievement" at either the institutional or program level. Furthermore, the standardized test scores contemplated by §602.17(a)(1)(ii)(D) are generally not available to institutions past a student's time of attendance at the institution, and the proposed language would impose significant burdens on institutions to establish processes for collecting and analyzing such information without any benefit to quality assurance. If "relevant standardized assessments" remains in §602.17(a)(1)(ii), HLC suggests that any sub-regulatory guidance on this item, which is mentioned in the preamble of the Proposed Rule, clarify that an institution, not an agency, is responsible for determining which standardized assessments are "relevant," if any.

- HLC suggests omitting "educational…returns" from §602.17(a)(1)(ii)(E) and limiting the section to "economic returns." The concept of "educational…returns" is unclear and is not related to "enhanced Unemployment Insurance wage records, or other reliable earnings data." Indeed, the preamble of the Proposed Rule indicates that the regulatory changs are intended to "focus accrediting agencies on important objective measures of student and institution performance such as completion, licensure pass rates, and economic returns." Alternatively, if the phrase "[e]ducational and economic returns" is intended to "ad[d] a little bit more flexibility for programs that don't necessarily themselves directly lead to employment in a position, but allow…a student to move into another…degree program," then HLC suggests the phrase be revised to be "educational *or* economic returns" (emphasis added). *See* AIM Negotiated Rulemaking Transcript, Session 1, Day 5, Morning, April 17, 2026, available at https://www.ed.gov/media/document/2026-negotiated-rulemaking-aim-transcripts-day-5-am-113987.pdf.

- **§602.17(a)(2)(iii), (v), (vii), and (viii)—**HLC has several specific suggestions for these sections:

  - HLC suggests revising §602.17(a)(2)(iii) and §602.17(a)(2)(vii)(A) to end after the word "ideology" in the current first sentence of each item and revising §602.17(a)(2)(viii) to end after the word "program" in the current first sentence of that item. The concept of the institution's religious mission informing the institution's own determination as to the scope and meaning of its academic freedom protections is implied. Relatedly, for the same reasons, HLC also suggests that the clause "unless the institution has a religious mission" be removed from §602.17(a)(2)(vii)(B) where it also exists (but without the added explanation of what the agency is expected to do in that instance). Requiring an agency to determine whether the manner in which an "institution maintains academic freedom protections [is] consistent with the institution's religious mission" creates a situation where an agency must impermissibly assess the institution's religious mission. This type of determination inherently raises concerns related to the assessment of the validity of religious beliefs under the Religious Freedom Restoration Act.

  - HLC suggests removing §602.17(a)(2)(iii). The language of §602.17(a)(2)(iii) and §602.17(a)(2)(vii)(A) is identical. Both sections relate to §602.16(a)(1)(iii). The policy required by §602.17(a)(2)(vii)(A) would subsume the issues addressed in §602.17(a)(2)(iii). Additionally, although §602.17(a)(2)(iii) and §602.17(a)(2)(vii)(A) appear to require that "an institution maintains…[a]cademic freedom protections," the preamble of the Proposed Rule alternately suggests that an "accrediting agency would be required to maintain academic freedom protections," and that "agencies adopt and implement standards for evaluating if an institution has a policy for academic freedom."

  - HLC suggests clarifying §602.17(a)(2)(v) and §602.17(a)(2)(vii) to specify that an agency is not expected to conduct a legal evaluation related to the First Amendment. The preamble of the Proposed Rule is clear that neither §602.17(a)(2)(v) nor §602.17(a)(2)(vii) is intended to "make accrediting agencies the arbiters of constitutional law, but to ensure institutions have and apply policies consistent with legal requirements." This is aligned with statements made by ED representatives during the negotiated rulemaking process that the regulatory changes were not intended to "create a new role…for accreditors." *See* AIM Negotiated Rulemaking Transcript, Session 1, Day 5, Morning, April 17, 2026, available at https://www.ed.gov/media/document/2026-negotiated-rulemaking-aim-transcripts-day-5-am-113987.pdf. These understandings track to accreditor common practice. Many accreditors, including HLC, have a requirement that a member institution must "remai[n] in compliance at all times with all applicable laws." However, the language of the Proposed Rule explicitly requires that an agency "evaluat[e] whether an institution maintains…consistently applied policies" that protect the First Amendment (or similar policies for private institutions). This requirement would inherently require a legal analysis on the part of an agency.

  - The requirements of §602.17(a)(2)(v) are clearly delineated between the requirements for public institutions and private institutions. However, this distinction is not clear in §602.17(a)(2)(vii). HLC suggests clearly delineating in (vii) which obligations apply to public institutions and which obligations apply to private institutions. Currently, §602.17(a)(2)(vii)(C) refers to private institutions, but the introduction to (vii) does not limit the rest of (vii) to only public institutions. Likewise, as noted above with respect to academic freedom, although §602.17(a)(2)(v) and §602.17(a)(2)(vii) both refer to evaluating whether an "institution maintains" policies related to, as applicable, the First Amendment, the preamble of the Proposed Rule alternately indicates that "the agency would be required to consistently apply polic[i]es that protect the First Amendment" or "evaluate whether institutions" have such a policy. Thus, as written, it is not clear how to implement the requirements of §602.17(a)(2)(v) and §602.17(a)(2)(vii).

- HLC likewise suggests also clarifying this same issue of whether an institution or an agency is required to have a particular policy in §602.17(a)(2)(viii), as related to intellectual diversity. The language of the Proposed Rule indicates that an agency must "evaluat[e] whether an institution maintains…[a] policy" regarding intellectual diversity. However, the preamble of the Proposed Rule indicates that "a recognized accrediting agency [would be required to] establish a policy" regarding intellectual diversity. Thus, as written, it is not clear how to implement the requirements of §602.17(a)(2)(viii).

- **§602.17(a)(vi)—**HLC suggests that §602.17(a)(vi) be revised to simply require that an agency must evaluate whether an institution has a policy that is intended to "prevent, detect, and address…research misconduct," as defined by the institution, and whether that policy includes "mechanisms for timely investigation, corrective actions, and, as appropriate, public disclosure." As written, it is not clear how to implement §602.17(a)(vi) because the regulatory language lists some items that would be included in the definition of "research misconduct" ("fabrication, material misrepresentation or falsification, plagiarism") and the preamble of the Proposed Rule includes various other items that would be included in the definition of "research misconduct" ("material misrepresentation of research findings, including through undisclosed selective reporting or other practices that distort the accuracy or reliability of results…engaging in improper authorship attribution, citation manipulation, or coordinated practices intended to inflate or misrepresent scholarly impact").

  Additionally, HLC suggests clarifying that an institution, not an agency, is required to have policies related to research misconduct. The language of the Proposed Rule indicates that an agency must "evaluat[e] whether an institution maintains…[p]olicies" regarding various aspects related to research. However, the preamble of the Proposed Rule indicates that "[t]he agency would…be required to maintain policies regarding the integrity of scholarly activity…" Thus, as written, it is not clear how to implement the requirements of §602.17(a)(2)(vi).

- **§602.17(a)(3)—**HLC has several specific suggestions regarding this section:

  - First, HLC suggests modifying §602.17(a)(3)(i) to clarify that the agency is reviewing the cost/benefit analysis that the institution itself has conducted using the required elements. Currently, the language appears to require that the agency itself conduct the "cost/benefit analysis" ("which means a review by the agency of…"). Some language in the preamble of the Proposed Rule confirms this understanding ("require accrediting agencies to conduct a cost/benefit analysis"). However, other language in the preamble of the Proposed Rule suggests that an institution would conduct the cost/benefit analysis ("[i]f some institutions prove to be incapable of conducting credible cost/benefit analyses"). Additionally, during the negotiated rulemaking process, statements by ED representatives also suggested that an institution would be expected to conduct the cost/benefit analysis and that agencies would not be required to "second-guess" this analysis. *See* AIM Negotiated Rulemaking Transcript, Session 1, Day 2, Afternoon, April 14, 2026, available at https://www.ed.gov/media/document/2026-negotiated-rulemaking-aim-transcripts-day-2-pm-113992.pdf.

Second, HLC suggests clarifying the scope of the cost/benefit analysis contemplated by §602.17(a)(3)(i). §602.17(a)(3) indicates that the cost/benefit analysis relates to §602.16(a)(1)(iv) (facilities, equipment, and supplies) and §602.16(a)(1)(vi) (student support services). However, in the preamble of the Proposed Rule, the cost/benefit analysis is linked to "sufficient flexibility in instructional staffing policies and policies regarding integrity of scholarly activity." Sufficient flexibility in instructional staffing policies and policies regarding integrity of scholarly activity are referenced in §602.17(a)(2)(iv) and §602.17(a)(2)(vi) and relate to §602.16(a)(1)(iii) (faculty), not §602.16(a)(1)(iv) (facilities, equipment, and supplies) and §602.16(a)(1)(vi) (student support services). Thus, as written, it is not clear how to implement §602.17(a)(3)(i).

Finally, if the intention is for the revised regulations on this topic to provide "greater institutional flexibility to control costs and to make cost efficiency a factor," the regulations should be revised to specify this flexibility. As written, the requirements increase, rather than decrease, the need for "burdensome analyses," which is the opposite of ED's intent as stated in the preamble of the Proposed Rule.

- HLC suggests removing §602.17(a)(3)(ii). The phrase "practices and capabilities regarding the administration of student aid programs" is not clear. Additionally, determinations about an institution's adherence to Title IV requirements are the purview of the federal government, and determinations about an institution's adherence to the state aid requirements of a particular state are the purview of that state. The requirements of §602.17(a)(3)(ii) intrude on the division of roles in the Triad. Moreover, an agency's obligations in this regard are already addressed in §602.28.

- HLC suggests limiting §602.17(a)(3)(iii) to "sufficiency and proper maintenance" of institutional facilities. The phrase "and that such facilities comply with applicable safety standards, laws, and regulations" is not clear and is not something that an agency can meaningfully evaluate. Safety requirements vary widely by jurisdiction and can be voluminous; for example, §602.17(a)(3)(iii) would require an agency to understand, review, and apply every building code applicable to an institution. Not only would this requirement impose significant burdens on agencies and institutions to attempt to comply, it would be impossible for an agency to effectively and fully comply with this language. During the negotiated rulemaking process, ED representatives indicated that the "big issue" related to facilities is "deferred maintenance costs." Limiting §602.17(a)(3)(iii) to "sufficiency and proper maintenance" would accomplish the goal of guarding against excessive deferred maintenance. *See* AIM Negotiated Rulemaking Transcript, Session 1, Day 2, Afternoon, April 14, 2026, available at https://www.ed.gov/media/document/2026-negotiated-rulemaking-aim-transcripts-day-2-pm-113992.pdf.

- **§602.17(e)—**HLC suggests clarifying that §602.17(e) applies to agency statements, not institutional statements. The language of §602.17(e) is clear in this regard in that it speaks to requirements about the "accuracy, completeness, and integrity of all representations made by the agency." However, the preamble of the Proposed Rule states that §602.17(e) is intended to "mandate that the accrediting agency has a policy that ensures that accredited institutions only present factual information to stakeholders." This rationale is unrelated to the text of §602.17(e). Thus, as written, it is not clear how to implement the requirements of §602.17(e).

- **§602.17(g)—**HLC suggests ending §602.17(g) after the first clause or including the word "unlawful" before "preferences on the basis of race." The phrase "including by having policies that provide any preferences on the basis of race" is not reasonably related to the phrase "may not have standards that encourage, direct, or otherwise require institutions or programs to violate Federal or State law," as there are "preferences on the basis of race" that do not "violate Federal or State law." Alternatively, the phrase is redundant.

  HLC also suggests consolidating §602.17(g) with §602.23(h) ("agency must not have policies that require institutions or programs to violate any Federal or State law") to avoid confusion that they are intended to mean two different things.

- **§602.20(h)—**The meaning of §602.20(h) is unclear as proposed. Specifically, the phrase that an "agency *must* have a policy for restoring accreditation" (emphasis added) is not consistent with the language later in §602.20(h) indicating that the agency has the authority to determine the circumstances for when such restoration of accreditation is "appropriate." In turn, the notion that an agency may determine the circumstances for when restoring accreditation is appropriate does not align with the phrase "including if required by an applicable judicial decision." If ED's intention is that an agency must have a policy for restoration of accreditation (including retroactively), as seems to be indicated by language in the preamble of the Proposed Rule indicating that the regulations "now requir[e] an accrediting agency to have" a policy related to retroactive restoration of accreditation, and that such a policy must include at least "if required by an applicable judicial decision," and may also include any other circumstances deemed appropriate by the agency, then §602.20(h) should be rewritten to clearly state that.
- **§602.23(d)—**HLC suggests removing the newly revised language in §602.23(d) stating that "[t]he agency must require its accredited institutions or programs to publicly disclose any action by the agency that begins the enforcement timeline in §602.20(a) or (b)." This language is not necessary because it is redundant to language in §602.26(e) stating that "[f]or any decision listed in paragraph (c) of this section, requires the institution or program to disclose the decision to current and prospective students within seven business days of receipt…."

- **§602.23(j)—**HLC respects the distinct role that each entity has in the Triad. As such, HLC applies its standards in the context of the Triad. It is unclear in §602.23(j) what is included within the scope of "aspects of institutional governance of public institutions that are established by State law," beyond the issue of "appointment of institutional directors or officers by elected or appointed State officials." The preamble of the Proposed Rule describes §602.23(j) as intended to "direct accrediting agencies to refrain from interfering with institutional governance decisions that fall within the rightful purview of State governments, boards of trustees, or similar governing bodies, limiting their role to advisory purposes only," but this language is likewise unclear. If ED's intention is that an agency must not apply its standards in a manner that could result in an institution being out of compliance with the agency's standards based on the appointment of an institutional director or officer by elected or appointed State officials, then §602.23(j) should be rewritten to clearly state that. As written, it is not clear how to implement §602.23(j).

- **§602.23(k)—**HLC suggests removing §602.23(k). HLC supports an institution's ability to choose an accreditor that best matches its mission, goals, and scope and supports minimizing artificial and bureaucratic barriers to such mobility. However, §602.23(k) is confusing in that it says that an agency "may" have a process for accelerating an institution's ability to obtain accreditation status but then dictates minimum requirements for this optional process. Mandating the requirements of a process that an agency is not required to have at all discourages an agency from having the process in the first place and thus actually restricts institutional mobility between agencies.

- **§602.23(l)—**HLC suggests removing §602.23(l). The new requirements in §602.23(l) are redundant given the existing requirements for agencies in the regulations that are unchanged in the Proposed Rule, such as the requirement to allow members of the public to submit comments to an agency regarding an institution that the agency then reviews as applicable in §602.23(b) and the requirement to review complaints as detailed in §602.23(c). If §602.23(l) remains in the final rule, HLC suggests clarifying that the three options listed in (1)–(3) are three options for permissible mechanisms. As currently written, §602.23(l) seems to require either (1) or (2) and then also (3), in that (1) and (2) are separated with an "or," but (3) stands alone as a clause. (This appears to perhaps be a typographical error, as the three items are consecutively listed in this manner, as options with a single "or," in the recitation of the regulatory language in the preamble of the Proposed Rule.)

- **§602.24(c)—**HLC understands the importance of teach-out plan and teach-out agreements. In addition to HLC's extensive policies and procedures regarding teach-out plans and teach-out agreements, HLC has also compiled a Teach-Out Toolkit to assist institutions with responsible planning for situations that may require a teach-out. Institutional closures, particularly abrupt institutional closures without adequate planning, are extremely disruptive to students, and prompt collaboration across the Triad is critical to minimizing the negative effects of such situations on students.

  HLC supports many of the changes regarding teach-out plans and teach-out agreements in the Proposed Rule, including that institutions awarded preaccreditation status should not automatically be required to submit a teach-out plan.

  However, HLC raises a few specific issues for consideration:

  - HLC suggests that the language of §602.24(c)(1)(iii) revert to the previous language, requiring a teach-out plan for an ED-defined subset of institutions on provisional certification, rather than the newly proposed language requiring a teach-out plan for every institution on provisional certification. As noted in the preamble of the Proposed Rule, being placed on provisional certification can sometimes be "an early warning that an institution may have an increased risk of closure." However, being placed on provisional certification occurs in a wide range of circumstances. ED places institutions on provisional certification for a variety of reasons, including following a Change in Ownership while ED review is pending or due to various compliance issues. In some cases, an institution may even elect provisional certification as part of placement on Heightened Cash Monitoring. Upon review of data applicable to HLC, 44 member institutions are currently on provisional certification. Six of these 44 institutions are public institutions that are not at risk of closure, and another nine institutions have been placed on provisional certification as part of ED's standard Change in Ownership procedures. Under the Proposed Rule, these institutions would nonetheless be required to submit a teach-out plan for all programs absent any cognizable risk of closure. This is not an efficient use of institutional or agency time and resources. For example, a large public flagship institution placed on provisional certification would need to identify numerous institutions with which to potentially enter into teach-out agreements for a high number of educational programs. More importantly, required communications to students related to teach-out plans could cause confusion to students when there is not a risk of institutional closure.

- HLC has concerns regarding the requirements in §602.24(c)(1) and §602.24(c)(3) that an agency must enforce a 30-day timeline for submission of a teach-out plan and/or teach-out agreement(s) for the reasons listed in §602.24(c)(1) and (2). (Although the 30-day requirement is not explicitly listed in §602.24(c)(2), as it is in §602.24(c)(1), the reference in §602.24(c)(3) makes clear that the 30-day requirement applies to both sections.)

  First, HLC suggests that the flexibility afforded in §602.24(c)(3) regarding §602.24(c)(2) also be extended to §602.24(c)(1). A 30-day timeline may be insufficient for a large institution to provide a comprehensive teach-out plan, as the institution would be required to consider all of its educational programs and campuses. This short timeline could result in an institution submitting a teach-out plan that lacks quality and thus lacks sufficient protection for students.

  Second, HLC suggests that ED be required in applicable regulations to *simultaneously* notify an agency if ED places one of the agency's member institutions on provisional certification, places one of the agency's member institutions on one of the other statuses that trigger a teach-out requirement, or takes any of the actions with respect to one of the agency's member institutions that trigger a teach-out requirement. Currently, an agency is not always systematically or promptly notified by ED when some of the actions listed in §602.24(c)(1) and §602.24(c)(2) are taken. Along these lines, HLC has observed confusion at institutions as to when "placement" on provisional certification officially occurs, given that there is often a delay between when an institution is notified that it will be placed on provisional certification and the execution of a Provisional Program Participation Agreement, which presumably is the actual effective date of the provisional certification.

- **§602.24(d)—**As noted above, HLC is committed to working across the Triad to support students in the unfortunate event of an institutional closure. Within this context, HLC suggests that new items in §602.24(d) be limited to (iii) and (iv), regarding providing information to the public and working across the Triad to assist students. Once an institution is no longer accredited by an agency, either following an adverse action or voluntary resignation, the agency has no relationship with the institution and cannot take any action with respect to the institution. Thus, it would never be "feasible" for an agency to secure teach-out options following an institutional closure, as contemplated by §602.24(d)(i) under the Proposed Rule, in that any agreement entered into after the institution is no longer a member institution of the agency could not be approved by the agency as a teach-out agreement. Likewise, the possibility in §602.24(d)(ii) regarding transfer options "with institutions identified in the teach-out plan" is also not feasible for an institution that closed "without a teach-out plan." While not requirements, including items that are impossible to effectuate in the regulations could create confusion for students and set unrealistic expectations of how an agency can assist students.

- **§602.26(f)—**HLC suggests that the requirements of §602.26(f) be limited to the actions listed in §602.26(b) and §602.26(c), which appears to have been ED's intention with the inclusion of the phrase "including in the agency's decision letter required pursuant to subparagraphs (b), (c), and (e) above." HLC also suggests that, regardless of whether §602.26(f) is limited to §602.26(b) and §602.26(c), there should not be a reference to §602.26(e) in §602.26(f), as §602.26(e) does not delineate any actions that could be disclosed. As written, an agency is required to "maintain on its website a clear record of all actions taken for each institution or program that it accredits or preaccredits for a period of at least five years." Under this language, this list would include, for example, all substantive change actions under an agency's policies and all staff actions, even those not required by federal regulation. Such changes could be as minor as changing a date of review. This large volume of information may make it difficult for students to decipher critical information, such as sanctions and adverse actions.

- **§602.28(d)—**HLC suggests that the scope of §602.28(d) be limited to recognized agencies and state authorizing agencies. There are numerous units of government that would fall within the category of "a State agency or Federal agency" that have oversight of aspects of an institution's operations that are far outside the purview of an agency's standards. For example, a state transportation agency could sanction an institution for having improper egress from a private parking lot to a public road, or the U.S. Department of Agriculture could sanction an institution for having invasive species on its property. Likewise, each of these units of government could have different enforcement schemes that include various actions that could be deemed to be a "similar action" to "probation or an equivalent status."

- **§602.31(a)—**HLC appreciates that it is helpful for ED to have some flexibility in the agency review timeline. HLC suggests that §602.31(a) include ranges, establishing minimum and maximum time periods for each stage in the review process. Additionally, HLC suggests that §602.31(a) include a requirement that ED apply the same timeline to all agencies or provide a rationale or criteria for differentiated timelines (for example, a longer time frame for review based on a larger agency size or scope). Without these guardrails, ED has unlimited discretion to impose timelines on individual agencies, which could be enforced inequitably.

HLC is committed to assuring and advancing quality higher education. To that end, HLC appreciates its long-standing relationship with ED and agrees with the goals underpinning the AIM Committee and with many aspects of the Proposed Rule. It is HLC's hope that these proposed recommendations will better align the final regulations with the intended purpose of the AIM Committee and will avoid a situation in which accreditation becomes more confusing, more burdensome, and more expensive for institutions and the students they serve.

Thank you for considering these comments. Please do not hesitate to contact me if you have any questions about HLC's comment.

Sincerely,

Barbara Gellman-Danley

Barbara Gellman-Danley
President