To: 2024 Negotiated Rulemaking Program Integrity and Institutional Quality Committee

From: Carolyn Fast and Barmak Nassirian

Date: January 18, 2024

Re: Accreditation Regulations

There was much discussion last week at the table about the Department's proposed changes to the definition of "Representative of the Public" in 602.3, which we certainly support. While the Department's proposed draft thoroughly addresses the proper attributes of the public members of accreditors' decision-making bodies, it fails to articulate any safeguards about potential disqualifiers for other members of such decision-making bodies beyond the generic requirement in 602.15(a)(6) that agencies should have policies to prevent or resolve conflicts of interests.

We write to propose that, at the very least, individuals barred from employment and contracting with Title IV participating institutions under final regulations in subsections 668.14(b)(18)(i) and (ii) and 668.16(k)—scheduled to go into effect on July 1, 2024—be also barred from employment, contracting, and all volunteer activity (most obviously, as decision-makers) with accrediting bodies that are or seek be to recognized by the Secretary. If certain individuals' prior conduct disqualifies them from direct involvement with participating schools and their contractors, we would surely not want them to be involved in federally recognized quality assurance efforts either. We would welcome additional thoughts on other potential required qualifications or disqualifiers for service on decision-making bodies of recognized accreditors.

In addition, we propose that the Department finally regulate HEA 496(b)(4), which requires that accrediting agency budgets to be developed "without review or resort to consultation with any other entities" to explicitly bar owners, executives, and fiduciaries of institutions that are or seek to be accredited from serving on the boards of any recognized accreditor and any accreditor seeking recognition. By virtue of their respective positions with accredited entities, such individuals represent said entities, and their involvement with accreditors' budget decisions is tantamount to the involvement of those entities.

As you are aware, the statutory language was explicitly incorporated into the text of the HEA as part of program integrity provisions of the 1992 Amendments. Section 496(b)'s "Separate and Independent" provisions were intended to prevent institutions from exerting control or undue influence on accrediting bodies. The language on accreditor budgets was explicitly intended to prevent institutions from starving recognized accreditors of the resources they would realistically need to effectively enforce their standards and policies. Despite the black letter of the law, accreditors routinely include owners, executives, and fiduciaries of institutions on their boards, and thus allow them to participate in the development and approval of their budgets. There is a clear conflict of interests inherent in any arrangement that enables regulated entities to determine their regulators' budgets. In this case we also have an affirmative statutory provision that prohibits the involvement of individuals who, by virtue of their specific roles, represent entities of sufficient concern to Congress, which explicitly sought to protect recognized accreditors from their reach.