

**To: Institutional and Programmatic Negotiating Committee**  
**From: Barmak Nassirian**  
**Date: 2/25/2022**  
**Subject: Public/Non-profit Definition**

Throughout our discussions, I have flagged the importance of addressing governance requirements for institutions seeking to attain or maintain non-profit or public status as participants in federal student aid programs. I have previously submitted written suggestions in the relevant sections (financial responsibility and changes of ownership).

This is a plea for a serious consideration of well-established governance norms as critical requirements for addressing emerging threats to institutional integrity. Imposing these perfectly ordinary requirements now would be entirely non-controversial, since nearly all publics and nonprofits are already governed by these conventions. Failure to incorporate them into these regulations, however, will open a path of least resistance for emerging forms of questionable practice that could quickly be normalized by their ubiquity.

### **Public institutions**

The treatment of public institutions as financially responsible is predicated on the full faith and credit of a governmental entity backing their liabilities. But the extension of that full faith and credit has always been based on the mandatory application of public transparency, open meetings, and public governance laws to ensure that state taxpayers can understand the financial consequences of decisions about all commitments of their public resources. In recent years, however, we have seen the emergence of sketchy arrangements that have sought to impart public status on for-profit entities through complex and opaque “acquisitions” and revenue-sharing agreements, but that have exempted from the uniform rules that apply to all other public entities in their states. The apparent purpose of these arrangements is to enable subpar providers to evade for-profit rules and to misrepresent themselves to prospective students as parts of the participating states’ public university systems. The Department has an opportunity to stop the likely spread of these fundamentally misleading and questionable practices by better articulating its definition of “public institution” in its financial responsibility and change-of-ownership regulations. Doing so will be politically non-controversial if done now but will prove quite challenging once the rot sets, as should be evident in the difficulties the Department is now facing in attempting to put the OPM genie back in the bottle.

### **Non-profit Institutions**

An equally as corrosive a set of practices has already emerged in connection with for-profit conversions, either directly or through changes of ownership, to “non-profit” status. The Internal Revenue Service has no discretion regarding the normative legitimacy of the “charitable purposes” that organizations seeking non-profit status purport to be advancing: it simply relies on the financial viability of the organization—assumed to come mainly from charitable donations—as proof of the good work it must be doing. Little does the IRS know (or apparently, care) that converted for-profits remain de facto businesses that garner virtually no charitable support and that rely entirely on funding from other governmental agencies, i.e., the Departments of Education, Veterans Affairs, and Defense. Given that the latter two agencies rely on the Department of Education for gatekeeping purposes, it is incumbent

that the Department explicitly articulate additional safeguards against fake nonprofits in its regulations. These safeguards must include standard non-profit governance requirements, including independent boards of directors that exclude former owners and their affiliates, a ban on revenue-sharing or seller-financing by owners and their affiliates, a detailed business plan that explains specific and measurable public benefits the non-profit would deliver that the for-profit does not, as well as a modest requirement that a new non-profit must demonstrate its viability as a charitable organization by deriving at least 10 percent of its revenues from unrelated charitable donations for five years.