UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of Policy Planning
Bureau of Competition

September 21, 2026

David Barker
Assistant Secretary for the Office of
Postsecondary Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Re: **Accreditation, Innovation, and Modernization: The Secretary's Recognition of Accrediting Agencies, Institutional Eligibility Under the Higher Education Act of 1965, as Amended, Student Assistance General Provisions (Docket ID ED-2025-OPE-1042)**

Dear Assistant Secretary Barker:

We are the Directors of the Federal Trade Commission's (FTC or Commission) Office of Policy Planning and Bureau of Competition.[1] The Office of Policy Planning engages with federal agencies, state legislatures, regulatory boards, and other government officials on competition and consumer protection issues to champion the interests of the American people. The FTC's Bureau of Competition enforces America's antitrust laws. Competition is the lifeblood of the American economy, spurring innovation, expanding output and employment, lowering prices, improving quality, and increasing access to goods and services. Eliminating regulatory barriers that raise prices, prop up entrenched monopolies, or otherwise restrain the competitive economy is key to achieving these goals.[2]

Combating anticompetitive regulatory failures at the federal and state level is a central mission of the Commission. Indeed, President Trump's Executive Order 14267, "Reducing Anti-Competitive Regulatory Barriers," directed the FTC to work with other agencies, including the Department of Education (Department), to "eliminat[e] anti-competitive regulations to revitalize the American economy."[3] Last year, Executive Order 14279, "Reforming Accreditation to Strengthen Higher Education," also called on the Department "to increase competition and accountability" among agencies that accredit higher education institutions.[4] President Trump recognized that these "accreditors are the gatekeepers that decide which colleges and universities"

[1] The views expressed in this statement represent the views of the Commission.
[2] Letter from Andrew N. Ferguson, Chairman of the FTC, to Russell Vought, Dir. of the Off. of Mgmt. and Budget, 1 (Sept. 16, 2025) [hereinafter Ferguson Vought Letter], https://www.ftc.gov/system/files/ftc_gov/pdf/Anticompetitive-Regulations-Ferguson-Letter.pdf ("Over the years, the Federal Register has swollen with all manner of regulations that create barriers to competition, entrepreneurship, and innovation that hinder American growth[] . . . and lock out new competitors.").
[3] Exec. Order No. 14267, Reducing Anti-Competitive Regulatory Barriers, 90 Fed. Reg. 15629, 15629 (Apr. 15, 2025).
[4] Exec. Order No. 14279, § 3(b)(i), Reforming Accreditation to Strengthen Higher Education, 90 Fed. Reg. 17529, 17,529 (Apr. 28, 2025).

are eligible for billions in federal student loan funding.[5] He noted that accreditors have "abused their enormous authority" and failed to ensure that "colleges and universities focus on delivering high-quality academic programs at a reasonable price."[6] To address these concerns, the Department issued an August 20, 2026 notice of proposed rulemaking (NPRM), "proposing a comprehensive modernization of the regulations for recognition of accrediting agencies."[7] This letter responds to the NPRM's request for comment.

The Commission has substantial experience evaluating the competitive effects of accreditation, professional licensing, and related restrictions across the U.S. economy. The Commission's prior advocacy highlights the risks of entrusting market participants to act as gatekeepers for their profession or to set the terms on which they and their competitors may compete.[8] The Commission has also warned that incumbent providers can harm competition by imposing costly educational requirements to discourage new competitors from seeking professional licensure.[9] Professional associations can impose such competitive harms through their control over accreditation.[10] As Part II discusses below, the American Bar Association (ABA) is a cautionary tale for the competitive harms that a monopolist programmatic accreditor can impose.[11]

The Department's proposed rulemaking addresses competition issues directly. We applaud the Department for recognizing that "increasing competition among recognized accrediting

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[5] *Id.* § 1.

[6] *Id.*

[7] Dep't of Education, *Accreditation, Innovation, and Modernization: The Secretary's Recognition of Accrediting Agencies: Institutional Eligibility Under the Higher Education Act of 1965, as Amended, Student Assistance General Provisions*, 91 Fed. Reg. 53940, 53940 (Aug. 20, 2026) [hereinafter NPRM].

[8] *See* MAUREEN K. OHLHAUSEN, FED. TRADE COMM'N, PREPARED STATEMENT OF THE FEDERAL TRADE COMMISSION BEFORE THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY SUBCOMMITTEE ON ANTITRUST, COMPETITION POLICY AND CONSUMER RIGHTS, "LICENSE TO COMPETE: OCCUPATIONAL LICENSING AND THE STATE ACTION DOCTRINE," 1–2 (Feb. 2, 2016) [hereinafter Ohlhausen Senate Statement], https://www.ftc.gov/system/files/documents/public_statements/912743/160202occupationallicensing.pdf ("[W]hen regulatory authority is delegated to a board composed of members of the occupation it regulates," their "private interests may lead to . . . restrictions that discourage new entrants, deter competition among licensees and from providers in related fields, and suppress innovative products or services that could challenge the status quo."); *Selected Advocacy Relating to Occupational Licensing*, FED. TRADE COMM'N, https://www.ftc.gov/policy/advocacy-research/advocacy/economic-liberty/selected-advocacy-relating-occupational-licensing (last visited Sept. 16, 2026) (linking to over 20 such advocacies).

[9] Fed. Trade Comm'n, FTC Staff Comment Letter on Washington Administrative Code 4-25-710, § IV (Mar. 18, 1996), https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-honorable-jean-silver-concerning-washington-administrative-code-4-25-710-require/v960006.pdf (cautioning that requiring 150 hours of undergraduate coursework to sit for the CPA examination could "increase the cost of entry and may raise prices to consumers of CPA services," and recommending that the state "seek persuasive evidence that, notwithstanding these concerns, the net effect of the amendment on consumers would be positive").

[10] *See* Press Release, Fed. Trade Comm'n, *FTC Announces Investigation of American Medical Association* (Apr. 13, 1976) (on file with Fed. Trade Comm'n) (announcing that the FTC had "commenced an investigation to determine whether the American Medical Association may have illegally restrained the supply of physicians and health care services through activities relating to . . . accreditation of medical schools and graduate programs").

[11] The Commission recently emphasized these concerns in letters advocating that state supreme courts reduce their reliance on American Bar Association (ABA) accreditation in determining eligibility to take state bar examinations. *See* Fed. Trade Comm'n, FTC Staff Comment to the Ohio Supreme Court Regarding Amendments to the Supreme Court Rules for the Government of the Bar of Ohio (July 10, 2026) [hereinafter FTC Ohio Supreme Court Letter], https://www.ftc.gov/legal-library/browse/advocacy-filings/ftc-staff-comment-supreme-court-ohio-concerning-amendments-supreme-court-rules-government-bar-ohio.

agencies is likely to improve the quality, responsiveness, and effectiveness of accreditation."[12] To that end, the Department has proposed reforms to reduce regulatory barriers that impede the entry of new accreditors and to promote competition by making it easier for education institutions to switch accreditors.[13] The NPRM also includes steps to limit the ability of trade and professional associations to use their influence over accrediting agencies to restrain competition.[14] Trade and professional associations have inherent incentives to induce accreditors to adopt excessive educational standards, and the reforms in the NPRM are laudable efforts to prevent such abuse.

I. Accreditation offers benefits, but limited competition and adverse incentives risk anticompetitive harm.

Effective accreditation in American higher education can benefit students and consumers. Higher education can open doors to many rewarding careers, but it is often quite expensive and may saddle students with heavy debt. Accreditation could provide prospective students with reliable information they need to make such consequential decisions.[15] Accreditation could also protect taxpayers. American students receive more than $100 billion per year in federal student loans and Pell Grants.[16] To qualify their students for such funding, higher education institutions must obtain accreditation from an accreditor recognized by the Department.[17] Effective accreditation could help ensure that federal funds pay for worthy educational programs that enhance loan recipients' employment prospects.[18] Finally, accreditation could benefit employers and consumers of professional services by providing useful information about whether a professional received a quality education.[19]

At the same time, anticompetitive accreditation harms prospective students, consumers, taxpayers, and the broader American economy. It can facilitate coordination by educational institutions to impose excessive costs and exclude lower cost competitors, leading to higher tuition.[20] Overly burdensome or restrictive accreditation standards also stifle innovation and

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[12] NPRM, *supra* note 7, at 53944.
[13] *See* Part III.A, *infra*.
[14] *See* Part III.B, *infra*.
[15] Judith S. Eaton, Council for Higher Educ. Accreditation, An Overview of U.S. Accreditation 2 (2015), https://files.eric.ed.gov/fulltext/ED569225.pdf (explaining that "[a]ccredited status is a signal to students and the public that an institution or program meets at least threshold standards").
[16] Exec. Order No. 14279, *supra* note 4, § 1.
[17] Cong. Rsch. Serv., An Overview of Accreditation of Higher Education in the United States, Summary (Apr. 12, 2024), https://www.congress.gov/crs_external_products/R/PDF/R43826/R43826.12.pdf ("Postsecondary schools seeking to participate in these federal programs must meet a variety of requirements, including being accredited by an agency recognized by the U.S. Department of Education (ED) as a reliable authority on the quality of the education being offered.").
[18] *See id.*, at Summary (explaining that accrediting agencies should "assess student achievement in relation to the institution's mission, including, as applicable, course completion, passage of state licensing examinations, and job placement rates").
[19] Eaton, *supra* note 15, at 3 (accreditation "is important to employers when evaluating credentials of job applicants").
[20] *See, e.g.*, Roger E. Meiners & Andrew P. Morriss, *Accreditation as Cartelization: Applying Antitrust Principles to Higher Education*, 18 DREX. L. REV. 633, 650 (2025) (accreditation is "[t]he primary way colleges are able to collude to the detriment of their consumers (students)" since it "solves a fundamental problem of cartelization"); Lindsey M. Burke & Stuart M. Butler, Accreditation: Removing the Barrier to Higher Education Reform 8, Heritage Foundation (Sept. 21, 2012), https://perma.cc/292J-SYLX (accreditation "can [] become a barrier to entry in a market, enabling existing providers to use licensing to thwart competition"); NPRM, *supra* note 7, at 53961 ("An ineffective and

prevent higher education institutions from competing to attract students with inventive, creative programs that may offer a better, more cost-effective education for some students.[21]

Competition among accreditors could encourage accreditors to provide the quality-assurance benefits of accreditation without imposing undue burdens.[22] Universities faced with an accreditor that imposes unnecessary costs or unduly limits innovation could choose another accreditor with more reasonable, flexible standards.[23] Unfortunately, as the Department recognizes, "[a]ccreditation has historically seen very little competition."[24] Many institutions are "accredited by a handful of institutional accrediting agencies,"[25] and "both new accrediting agency recognition and changes in agency by institutions are rare."[26] Further, despite the Department's 2019 decision freeing the former major regional accreditors to operate outside of their traditional territories, little has changed. These incumbents continue to largely accredit institutions within those geographic confines, while few institutions have switched between accreditors.[27]

The composition of accreditors may also cause a misalignment in incentives that can discourage innovation and promote higher costs.[28] Many accreditors are dominated by higher education interests, such as university administrators, faculty, and lobbyists. For example, 21 out of the 27 commissioners for the Middle States Commission on Higher Education are college or university faculty or administrators.[29] Such individuals may offer valuable experience and expertise that informs accreditation standards. But incumbent universities' employees also have strong anticompetitive incentives to impose excessive accreditation standards.[30] Expensive tuition, often financed by crushing student debt, funds their salaries and provides them with job security;

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outdated accrediting agency is not a good use of taxpayer dollars via the institutions or programs it accredits and may leave students without a good return on investment and with insurmountable student loan debt that they may struggle to repay . . . .").

[21] *See, e.g.*, Mary Watson Smith & Joshua Hall, *Keeping College Pricey: The Bootlegger and Baptist Story of Higher Education Accreditation*, 44 OKLA. CITY U. L. REV. 33, 53 (2019) (describing how the University of Virginia was sanctioned by its accreditor, the Southern Association of Colleges and Schools, when it "remove[d] the university president . . . in favor of one more focused on cost controls") (footnote omitted).

[22] NPRM, *supra* note 7, at 53944 ("institutions seek credible signals of educational quality, and [] in a competitive accreditation market, agencies would compete to provide those signals").

[23] *Ibid.* ("Competition creates incentives for agencies to innovate, respond to workforce changes, expand choices for institutions among agencies engaged in various types of innovative activities and to develop new measures for assessing student success by institutions.").

[24] *Ibid.*

[25] *Ibid*.

[26] *Id.* at 53984. In part, this is because "institutions face difficulty in changing accrediting agencies due to high switching costs and potential risks in maintaining eligibility for Federal student aid for their students." *Id*. at 53944.

[27] *Id.* at 53984 ("since 2020, only ten institutions have voluntarily switched from one of the agencies formerly known as a regional accrediting agency, and that fewer than 50 have ever voluntarily switched away from these accreditors").

[28] *See id.* at 53944 ("barriers to switching generally reduce competition and increase market power through a lock-in effect").

[29] *See Commissioners*, Middle States Commission on Higher Education, https://www.msche.org/commissioners/ (last visited Sept. 16, 2026). Other former regional accreditors have similar compositions. *See, e.g.*, *Commissioner Directory*, Northwest Commission on Colleges and Universities, https://nwccu.org/commissioners/ commissioner-directory/ (last visited Sept. 16, 2026) (20 out of 26 commissioners are college or university faculty or administrators); *Meet the Commission*, New England Commission of Higher Education, https://www.neche.org/about/#commission (last visited Sept. 16, 2026) (22 out of 31 commissioners are college or university faculty or administrators); *HLC Board of Trustees*, Higher Learning Commission, https://www.hlcommission.org/about-hlc/leadership/board-of-trustees/ (last visited Sept. 16, 2026) (15 out of 18 trustees are college or university faculty or administrators).

[30] *See, e.g.*, FTC Ohio Supreme Court Letter, *supra* note 11, at 3–4.

their livelihoods depend on the expensive status quo. This reality provides a strong incentive for accreditors dominated by higher education interests to impose burdensome requirements that prevent the development of lower cost education models that could reduce tuition and the demand for incumbent universities.

The situation for programmatic accreditors—accreditors for specific education programs, including those preparing students for entry into a profession such as law schools or medical schools—is often worse. Like institutional accreditors, many programmatic accreditors are influenced by higher education interests.[31] But programmatic accreditors are also often guided by incumbent members of the profession and are affiliated with the professional associations that represent the current professionals' interests.[32] These two groups, educators and incumbent professionals, dominate many programmatic accrediting boards.[33] While higher education interests and incumbent professionals (and their professional associations) may have valuable expertise regarding the education needed to prepare students for the profession, they also have inherent anticompetitive incentives. Crucially, both groups share similar incentives to use influence over accreditation to raise educational costs and impede the introduction of lower-cost alternatives.[34] Doing so enables incumbent professionals to keep their wages and prices high by raising the cost for others to enter the profession.[35]

To make matters worse, many programmatic accreditors are monopolists who dictate the requirements for nearly every school for certain professions (e.g., law).[36] When these programmatic accreditors go too far, the professional schools may have little choice but to comply if there are no competing accreditors. Granting professional associations a monopoly to dictate the education requirements for entering their profession is therefore inimical to the principles on which competition law rests. Professional and trade associations have violated the antitrust laws by

[31] *See infra* Part II (discussing accreditation of law schools by the ABA Council).
[32] *See* Meiners & Morriss, *supra* note 20, at 688 (describing how "AICPA [the American Institute of CPAs], AMA, and ABA leverage accreditation requirements to restrict entry into their professions through excessive educational mandates").
[33] *See, e.g.*, *Section of Legal Education and Admissions to the Bar Leadership*, ABA, https://www.americanbar.org/groups/legal_education/about/leadership/ (last visited Sept. 16, 2026) (showing the professional titles of the 21 Council members, including 15 listing current or former positions at law schools or universities and three practicing lawyers); *Board of Commissioners*, Accreditation Commission for Education in Nursing, https://www.acenursing.org/about/board-of-commissioners (last visited Sept. 16, 2026) (listing 17 members, including seven nurses and seven nursing school educators); *Accreditation*, American Board of Funeral Service Education, https://www.abfse.org/html/committee.html (last visited Sept. 16, 2026) (stating that the Committee on Accreditation is composed of 12 members, including six representing funeral service educators and three representing funeral home organizations).
[34] FTC Ohio Supreme Court Letter, supra note 11, at 7–9.
[35] *Id.* at 4–6.
[36] *See* NPRM, *supra* note 7, at 53990 ("there are usually, at most only one or two, and in rare cases multiple, programmatic agencies that provide recognition for a given field or occupation," so they "very often have dominance in their field").

entering into agreements unduly restricting competition among themselves,[37] or by interfering with the ability of others to compete.[38]

The Commission has repeatedly emphasized harm to competition that can result from relying on the members of a professional association to control accreditation, and thereby determine the education required to enter into the profession.[39] This "inherent conflict of interest and a risk of anticompetitive abuse" arises "in any accreditation program where market participants wield the power to exclude"—"for even the most selfless and well-intentioned decision makers" may be influenced when decisions "direct[ly] implicat[e] their own status . . . and well-being."[40] These concerns are particularly strong when a professional association and the accreditor share an organization structure, for example, when the professional association has a role in selecting those who wield accreditation authority.[41]

II. The ABA's anticompetitive use of its law school accreditation monopoly shows the harms of insufficient accreditation competition, particularly for professional programs.

The ABA's abuse of its monopoly control over law school accreditation illustrates the harms that may arise when professional associations exercise control over accreditation. The ABA is the largest voluntary professional organization in the world; its purported "mission is to be the national representative of the legal profession," serving a membership filled with practicing attorneys.[42] The ABA's Council of the Section of Legal Education and Admissions to the Bar (ABA Council) establishes the standards that law schools must meet to become accredited, covering areas such as faculty, admissions, curriculum, governance, and libraries and other facilities.[43] It also determines whether law schools have complied with these standards and warrant ABA accreditation.[44] The ABA Council has twenty-one members who are predominantly current or former law school or other university administrators or faculty; the remainder include practicing

[37] *See, e.g.*, *Goldfarb v. Va. State Bar*, 421 U.S. 773, 783 (1975) (holding that a county bar association rule establishing a minimum fee schedule enforced via potential disciplinary action was "a classic illustration of price fixing" by the state bar); *FTC v. Ind. Fed'n of Dentists*, 476 U.S. 447, 456–65 (1986) (affirming an FTC order that an Indiana Federation of Dentists policy requiring its members to withhold x-rays violated the antitrust laws).

[38] *See, e.g.*, *E. States Retail Lumber Dealers' Ass'n v. United States*, 234 U.S. 600, 611–14 (1914) (affirming a Sherman Act violation against associations of retail lumber dealers who conspired to prevent competition from wholesale dealers); *Fashion Originators' Guild, Inc. v. FTC*, 312 U.S. 457, 463–65 (1941) (affirming an FTC order that a trade association of garment manufacturers cease an organized boycott designed to thwart the sale of lower-priced garments that are similar to the trade association members' original styles).

[39] *See, e.g.*, FTC Ohio Supreme Court Letter, *supra* note 11.

[40] Marina Lao, *Discrediting Accreditation?: Antitrust and Legal Education*, 79 WASH. U. L. Q. 1035, 1036–37 (2001).

[41] *See* Bryan Cutsinger & Siri Terjesen, *Captured Gatekeepers: Structural Conflicts of Interest in U.S. Higher Education Accreditation*, EUR. ECON. REV. (forthcoming 2026), https://www.sciencedirect.com/science/article/pii/S0014292126002114 (assessing the degree of capture of accreditors by professional associations with close organizational ties).

[42] *Consumer FAQs*, ABA, https://www.americanbar.org/groups/professional_responsibility/resources/resources_for_the_public/consumer_faqs/ (last visited Sept. 16, 2026).

[43] *See* ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2026–2027 [hereinafter ABA Standards], https://www.americanbar.org/groups/legal_education/accreditation/standards/standards-rules/ (last visited Sept. 16, 2026).

[44] *Schools Seeking Council Approval*, ABA, https://www.americanbar.org/groups/legal_education/accreditation/ (last visited Sept. 16, 2026). The law school accreditation application process is lengthy, including payment of a fee, preparation of studies by the applicant, collection of data, and a site evaluation team visit and report. *See id*.

lawyers, judges, and a law student.[45] These ABA Council members are selected by an ABA Section largely composed of law school faculty and administrators.[46]

The ABA currently has a monopoly on the accreditation of American law schools.[47] There are over 200 law schools in the United States, and the ABA accredits over 80% of them.[48] The ABA is the sole law school accreditor recognized by the Department and the only one to operate on a national level across multiple states. Law schools therefore lack alternatives to ABA accreditation through which to signal quality or obtain access to federal student-loan funding.[49] This monopoly power is further protected by rules and regulations in most states that make eligibility for their respective bars depend either entirely or heavily on graduation from an ABA-accredited law school.[50]

The ABA, unfortunately, has a long history of using its law school accreditation monopoly to harm competition. Thirty years ago, the United States Department of Justice (DOJ) brought a Sherman Act complaint against the ABA and challenged conduct that dated back to 1973.[51] The DOJ alleged that the ABA allowed "[l]egal educators" to capture the accreditation process, "at

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45 *Section of Legal Education and Admissions to the Bar Leadership*, ABA, https://www.americanbar.org/groups/legal_education/about/leadership/ (last visited Sept. 16, 2026) (showing the professional titles of the 21 Council members, with 15 listing current or former positions at law schools or universities and three listing positions as lawyers). The ABA Council's standards setting committee is likewise dominated by current and former faculty members. *Id.* (showing that nine of the eleven members of the ABA Council's Standards committee are current or former law school or university faculty or administrators or are lawyers).

46 The ABA's Section of Legal Education and Admissions to the Bar has over 17,000 members. *About the Section of Legal Education and Admissions to the Bar*, ABA, https://www.americanbar.org/groups/legal_education/about/ (last visited Sept. 16, 2026); *New to Bar Admissions? What You Might Like to Know About: The ABA's Connection to Bar Admissions*, 90 THE BAR EXAMINER 86 (Spring 2021), https://thebarexaminer.ncbex.org/article/spring-2021/new-bar-admissions-aba-connections/ (reporting that the Section's "membership is generally composed of legal educators and bar examiners" but "is open to any ABA member").

47 *See* WORKGROUP ON THE ROLE OF THE AMERICAN BAR ASSOCIATION IN BAR ADMISSION REQUIREMENTS: FINAL REPORT 16 (Oct. 27, 2025) [hereinafter Florida Workgroup Report], https://www-media.floridabar.org/uploads/2025/10/Final-Report-of-the-Workgroup-on-the-Role-of-the-ABA-in-Bar-Admission-Requirements.pdf ("[T]he [ABA], through its Council, holds a near monopoly over legal education accreditation in the United States."); George B. Shepherd & William G. Shepherd, *Scholarly Restraints? ABA Accreditation and Legal Education*, 19 CARDOZO L. REV. 2091, 2198 (1998) ("The ABA accreditation system creates almost complete monopoly control over each of the three markets for hiring law faculty, for legal training, and for legal services.").

48 *See Council-Approved Law Schools*, ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, https://www.americanbar.org/groups/legal_education/accreditation/approved-law-schools (last visited Sept. 16, 2026) (reporting that 198 law schools have ABA accreditation); *Other Law Schools*, L. SCH. ADMISSION COUNCIL, \\https://www.lsac.org/choosing-law-school/find-law-school/other-law-schools (last visited Sept. 16, 2026) (listing 32 non-ABA-accredited law schools in the United States).

49 Independent law schools rely on ABA accreditation to make their students eligible for federal financial aid. Students at law schools attached to a university that has its own accreditation, which includes most law schools, could rely on the university's accreditation to access federal financial aid. *See* Emma Cueto, *ABA Faces Uphill Battle to Remain as Law School Accreditor*, ABA J. (Aug. 27, 2026), https://www.law360.com/competition/articles/2518015.

50 *See, e.g.*, *Comprehensive Guide to Bar Admission Requirements*, NAT'L CONFERENCE OF BAR EXAM'RS, https://reports.ncbex.org/comp-guide/charts/chart-3/ (last visited Sept. 16, 2026) (summarizing the requirements in each state); Florida Workgroup Report, *supra* note 47, attach. B: Chart of Educational Requirement to Sit for the Bar Examination in the United States (same).

51 *See* Compl., *United States v. Am. Bar Ass'n*, No. 95-cv-01211 (D.D.C. June 27, 1995), https://www.justice.gov/atr/case-document/file/485696/dl; Competitive Impact Statement, *United States v. Am. Bar Ass'n*, No. 95-cv-01211 (D.D.C. July 14, 1995), https://www.justice.gov/atr/case-document/file/485691/dl.

times act[ing] as a guild that protected the interests of professional law school personnel."[52] The complaint stated that ABA "salary standards and their application . . . unreasonably restricted competition in the law school labor market and" forced accredited schools to "ratchet[] up law school salaries."[53] According to the DOJ, other restrictions "deterr[ed] effective competition from [non-ABA-accredited] law schools."[54] The ABA settled, resolving the lawsuit through a consent decree.[55] In 2006, the U.S. District Court for the District of Columbia found that "on multiple occasions the ABA ha[d] violated clear and unambiguous provisions" of that consent decree; it ordered the ABA to comply and pay $185,000 to compensate the DOJ for the costs of the investigation.[56]

Nonetheless, the ABA continues to wield its law school accreditation monopoly in a manner that harms competition. When it strikes the right balance, accreditation can be procompetitive and serve the state's interest in "safeguard[ing] a baseline of legal educational quality and support."[57] The ABA fails to do so. It forces every law school to follow its preferred costly, elitist model of legal education.[58] Over twenty years ago, Professor Marina Lao scrutinized the ABA's accreditation standards, finding that they "reflect the profession's preference for the elite-model law school," and exclude schools providing a "nonelite legal education [that] is perfectly adequate for many types of legal practice."[59]

Secure in its state-protected monopoly position, the ABA Council has brushed off such calls for a commonsense approach that sets baseline requirements to ensure a law school's graduates are competent to practice law. Instead, the ABA's standards impose excessive restrictions that unnecessarily "drive up costs for law schools"[60] and protect the interests of incumbent higher education institutions and their faculty.[61] By increasing the costs of legal

[52] Competitive Impact Statement, *supra* note 51, at 2, 4.
[53] Compl., *supra* note 51, ¶ 16.
[54] Competitive Impact Statement, *supra* note 51, at 6–7.
[55] The consent decree prohibited standards relating to compensation paid to law school faculty and administrators, restricted the collection and dissemination of information regarding compensation, and eliminated certain restrictions on accepting transfer credits from state-accredited law schools or enrolling graduates of such schools in post-J.D. programs. It also included structural provisions designed to insulate the ABA Council's conduct from influence by interested parties such as legal educators. *See United States v. Am. Bar Ass'n*, 934 F. Supp. 435, 436–37 (D.D.C. 1996). The decree was modified in 2001 to limit the role of the ABA House of Delegates in reviewing Council decisions and conform with Department of Education regulations. *United States v. Am. Bar Ass'n*, 135 F. Supp. 2d 28, 30, 32 (D.D.C. 2001).
[56] *United States v. Am. Bar Ass'n*, No. 95-cv-1211, 2006 U.S. Dist. LEXIS 42645, at *2 (D.D.C. June 26, 2006); Petition by the United States for an Order to Show Cause Why Defendant ABA Should Not Be Found in Civil Contempt ¶¶ 11–17, *United States v. Am. Bar Ass'n*, No. 95-cv-1211 (D.D.C. June 23, 2006), Dkt. No. 101.
[57] Florida Workgroup Report, *supra* note 47, at 17 (footnote omitted).
[58] *See, e.g.*, Letter from Robert Chesney, Dean of the University of Texas School of Law, to the Honorable Chief Justice and Justices of the Supreme Court of Texas § 2 (June 30, 2025) (on file with FTC).
[59] Lao, *supra* note 40, at 1102. *See also* Shepherd & Shepherd, *supra* note 47, at 2103 ("Formal study at an elite-style law school is certainly one way to train lawyers. But it is not necessarily the best or most cost-effective method for all potential lawyers.").
[60] Florida Workgroup Report, *supra* note 47, at 21.
[61] *See* Shepherd & Shepherd, *supra* note 47, at 2096 (explaining that "faculty control the law schools, and, consciously or not, they operate them to maximize benefits for faculty"). Moreover, ABA Council members from colleges or universities without law schools have an interest in the ABA's insistence that law school students obtain an undergraduate degree prior to starting law school.

education, the ABA's excessive accreditation standards also limit the supply of new lawyers.[62] Thus, ABA accreditation serves the interests of lawyers and law school faculty who dominate the ABA and Council, while potentially injuring consumers of legal services and saddling law students with high costs.[63]

The excesses of ABA accreditation take various forms. There are longstanding concerns that the ABA standards "focus on inputs" that increase costs more than "educational outputs" that ensure the schools provided actual educational benefits.[64] For example, critics question the ABA's requirements for physical libraries, demands for full-time (rather than adjunct) faculty, strict limits on faculty teaching loads, and emphasis on faculty research.[65] ABA standards also severely limit online courses and programs that could provide lower cost educations.[66]

Moreover, in recent years, the ABA has even dictated that law schools enact measures that conform to controversial ideological views prevalent among legal elitists, notwithstanding public opposition and the measures' irrelevance to ensuring a baseline level of legal education. Of particular concern has been the ABA's use of ABA Standard 206 to impose DEI requirements on American law schools to obtain accreditation.[67] Attorneys General of 21 states declared that Standard 206 "all but *compels* law schools to consider race in both the admissions and employment contexts" and thereby "to defy the [Supreme] Court's clear directive" in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023).[68]

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[62] *See, e.g.*, FTC Staff Comment Letter on Washington Administrative Code 4-25-710, *supra* note 9, § III (explaining that an increase in the course work hours required for CPA exam eligibility can increase the costs of entry into the profession, and therefore serve the "economic self-interest" of incumbent suppliers).

[63] The other members of the ABA Council also have anticompetitive incentives. University faculty and administrators benefit from the Council's requirement that students complete an undergraduate degree to qualify for admission to law school. *See* FTC Ohio Supreme Court Letter, *supra* note 11, at 8 n.51. Student representatives on a programmatic accreditor also "have little incentive to promote standards that lower costs" because they expect to soon enter the profession and would then benefit from high education costs that deter others from entering the profession and becoming their competitors. *See id*. at 9 n.53.

[64] Florida Workgroup Report, *supra* note 47, at 18 (quoting Benjamin M. Lepak, Breaking the ABA's Law School Cartel: A Proposal to Make Oklahoma Top-Ten in Innovative Lawyer Education 4, 1889 INST. (2020), https://1889institute.org/wp-content/uploads/2020/10/1889_ABAaccreditation_PolicyAnalysis.pdf); *id*. at 19 (including criticisms from a former ABA Accreditation Committee member that input requirements "have no real connection to the quality of education").

[65] Florida Workgroup Report, *supra* note 47, at 18–21; Lao, *supra* note 40, at 1040–43, 1074–78 (describing the wide range of law school operations covered by the ABA's "elite-style law school" standards and their anticompetitive impact); John S. Elson, *Why and How the Practicing Bar Must Rescue American Legal Education from the Misguided Priorities of American Legal Academia*, 64 TENN. L. REV. 1135, 1141–42 (1997) (noting that these standards "keep out of the legal education market schools that would prefer to focus their resources on preparing students for practice").

[66] Generally, ABA accreditation requires that law schools offer no more than half their courses online. *See* ABA Standards, *supra* note 43, at 26–27 (Standard 306).

[67] *See* ABA Standards, *supra* note 43, at 17 (Standard 206).

[68] Letter from State Attorneys General to David A. Brennen, Council Chair, ABA Section of Legal Educ. and Admissions to the Bar, at 2 (Jan. 6, 2025), https://www.scag.gov/media/ru4dwwfm/multistate-comment-re-standard-206-filed.pdf; *see also* Letter from Pamela Bondi, Att'y Gen., U.S. Dep't of Justice, to David A. Brennen, Council Chair, ABA Section of Legal Educ. and Admissions to the Bar, at 1 (Feb. 28, 2025), https://www.justice.gov/ag/media/1392081/dl?inline (stating that Standard 206 "blatantly violates our nation's civil rights laws and conflicts with the Supreme Court's decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*"). After much delay, the ABA Council finally voted to repeal Standard 206 on September 8, 2026. *See* Julianne Hill, *ABA Legal Ed council repeals DEI standard*, ABA J. (Sept. 8, 2026), https://www.abajournal.com/web/article/legal-ed-council-kills-dei-standard.

Competition in law school accreditation could blunt the ability of the ABA to insist that law schools provide expensive, ideologically biased educations. If other, differentiated law school accreditors existed, schools that wished to compete by offering a distinct, more affordable product could seek accreditation from those ABA alternatives. Competitive market forces could thus spur innovation in the stagnant market for legal education. Even the ABA's allies, including a former managing director for the ABA Council, recognize that alternative accreditors could offer valuable options to "[s]chools that think that the current ABA process is too expensive, too slow, too burdensome, or too intrusive on matters that should be left to schools to determine."[69] Fortunately, as discussed directly below, the Department recognizes the importance of promoting competition among accreditors, and has made this outcome a central goal of the accreditation reforms proposed in the NPRM. The Department has also proposed changes to attempt to reduce the anticompetitive incentives that plague some programmatic accreditors, like the ABA.

III. The Department's proposed reforms promote competition in markets for accreditation and educational services, while protecting against professional and trade associations' abuse of accreditation to impede competition.

The NPRM addresses concerns with anticompetitive abuses by accrediting agencies in two ways. First, several reforms seek to increase competition in accreditation markets by encouraging the entry of new accreditors and increasing competitiveness among existing accreditors. Second, the NPRM attempts to reduce the extent to which accreditors' incentives favor the interests of incumbent universities and professionals over students and taxpayers.

A. Reforms to increase competition in accreditation markets.

The NPRM emphasizes the importance of accreditation competition to "promote high-quality, high value, and affordable education for students."[70] The Department recognizes that competition in accreditation has been limited by historical factors and the costs institutions face in switching accreditors.[71] Its reforms "are intended to increase competition among accrediting agencies by reducing barriers to entry, facilitating institutional mobility among recognized agencies, and reducing regulatory requirements that may unnecessarily discourage the formation of innovative accrediting organizations."[72] With these proposed reforms, the hope is that "more agencies will choose to enter the marketplace and greater numbers of institutions will choose to change accreditors, thereby enhancing competition."[73]

The Department wisely proposes reducing the regulatory barriers that inhibit the entry of new accreditors. It would eliminate the requirement that an accrediting agency engage in accrediting activities for at least two years prior to seeking recognition, explaining that this "removes a significant competitive barrier to entry."[74] This proposed change enhances the Department's ongoing effort to reduce the "cumulative four-to-five year timeframe" for new

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[69] Letter from Barry Currier to Justices of the Tx. Sup. Ct., Comments on the Court's Reliance on the ABA Law School Accreditation System 4 (June 23, 2025) (on file with Fed. Trade Comm'n). Mr. Currier "wr[o]te as the former Managing Director of Legal Education and Accreditation at the American Bar Association (2012–2020), which manages the law school regulatory process for the Council." *Id*. at 1.
[70] NPRM, *supra* note 7, at 53943; *see also* EO 14279, *supra* note 4, § 3(a)(i).
[71] NPRM, *supra* note 7, at 53944, 53984.
[72] *Id.* at 53944.
[73] *Id.* at 53984.
[74] *Id.* at 53951.

accreditors to obtain recognition, which substantially increases entry costs.[75] The Department explains that it "expects [this action] will induce more accreditation agencies to pursue recognition and ultimately increase competition in the accreditation market."[76] The logic is sound and consistent with the Commission's competition advocacy and enforcement. The elimination of regulatory barriers to entry was a centerpiece of the FTC Chairman's list of anticompetitive regulations that warrant revision or elimination, prompted by President Trump's executive order on "Reducing Anti-Competitive Regulatory Barriers."[77] Protecting the ability of new firms to enter and compete is crucial to combatting monopoly power and promoting innovation.[78]

The proposed reforms also "incorporate the policies and practices" designed to reduce the costs institutions face in switching accreditors, many of which the Department outlined in a Dear Colleague Letter in May 2025.[79] Notably, the proposed regulations provide that the Secretary will generally accept an institution's stated reason for switching accreditors or seeking accreditation from multiple accreditors to "promote flexibility and innovation while maintaining necessary and robust guardrails."[80] These proposed reforms appear well-suited to encourage competition among accreditors because high costs and delays to switch accreditors can greatly reduce a university's incentive to switch to competing accreditors. Indeed, the antitrust caselaw acknowledges that high switching costs can allow incumbents to exploit locked-in customers,[81] and economic research shows that lowering barriers to switching encourages incumbent firms to compete more aggressively.[82] In addition, high switching costs can discourage the entry of new accreditors, as successful entry would likely depend on the ability of the new accreditors to attract institutions willing to switch from an incumbent accreditor.[83]

B. Reforms to prevent anticompetitive abuse of accreditation by professional or trade associations.

Recognizing that concentrated, even monopolistic accreditation markets will not transform overnight, the NPRM seeks to reduce incumbent accreditors' willingness and incentives to behave

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[75] U.S. Dep't of Educ., Regulatory Guidance Relating to the Criteria and Process for Initial Recognition of an Accrediting Agency, 91 Fed. Reg. 9709, 9709–11 (Feb. 27, 2026) (quoting 34 C.F.R. § 602.12(a)).
[76] NPRM, *supra* note 7, at 53951 (explaining that this reform enables the Department to begin its process).
[77] Ferguson Vought Letter, *supra* note 2.
[78] *See* Dep't of Just. & Fed. Trade Comm'n, Merger Guidelines § 2.4 (Dec. 18, 2023) (recognizing that the entry of new firms into a market can provide considerable benefits to consumers, and, as a result, "[m]ergers can substantially lessen competition by eliminating a potential entrant" or otherwise creating barriers to entry that block new competitors from entering a market).
[79] NPRM, *supra* note 7, at 53947; Dep't of Educ., Office of Postsecondary Education, Changes to the Approval Process for Changing Accrediting Agencies, at 3 (May 1, 2025), https://www.ed.gov/media/document/dear-colleague-letter-changes-approval-process-changing-accrediting-agencies-may-1-2025-109941.pdf.
[80] NPRM, *supra* note 7, at 53947.
[81] *Eastman Kodak Co. v. Image Technical Servs., Inc.*, 504 U.S. 451, 476 (1992) ("If the cost of switching is high, consumers who already have purchased the equipment, and are thus 'locked in,' will tolerate some level of service-price increases before changing equipment brands.").
[82] Jiawei Chen et al., *Reducing Switching Costs to Promote Competition: The Case of Mobile Number Portability*, 68 REV. IND. ORG. 461 (2026) (finding that the implementation of mobile number portability reduced consumers' costs of switching mobile phone providers and led to substantial price reductions and shifts to higher quality providers).
[83] Aaron S. Edlin & Robert G. Harris, *The Role of Switching Costs in Antitrust Analysis: A Comparison of Microsoft and Google*, 15 YALE J. L. & TECH. 169, 185 (2012-2013) (explaining that, in *U.S. v. Microsoft*, "'the applications barrier to entry'" arose from the "difficult[y] for a rival operating system to attract users when users who switch from Windows will bear a large compatibility switching cost") (citing *U.S. v. Microsoft Corp.*, 253 F.3d 34, 55 (D.C. Cir. 2001); *U.S. v. Microsoft Corp.*, 87 F. Supp. 2d 30, 36 (D.D.C. 2000)).

anticompetitively. Proposed Section 602.13 makes clear that Department recognition does not immunize accreditors' conduct that violates the antitrust laws, a point that courts have also made clear.[84] Proposed Section 602.23(i) requires accrediting agencies to have "internal controls to ensure compliance with antitrust laws."[85] And proposed Sections 602.31(d) and 602.32(a)(3) provide that the Department can view "anticompetitive conduct that is violative of the antitrust laws" as a negative factor in evaluating accreditors, specifically including collusion between an accreditor and professional association to inflate the requirements for entry into the profession.[86] Robust antitrust enforcement is essential to enabling effective competition, and highlighting that regulators are attuned to the antitrust risks may deter violations.

The Department places special emphasis on limiting the ability of professional and trade associations to use influence over programmatic accreditors to impose excessive educational requirements and costs on entrants. The NPRM proposes "major new changes that mandate separation between trade associations or affiliated organization and accrediting agencies."[87] As discussed above, this threat to competition is a central theme of the Commission's recent filings in state supreme courts regarding ABA influence over law school accreditation.[88] Professional associations should not be given the capacity to erect barriers to entry by competitors.[89] Moreover, state regulators and boards frequently rely on the standards set by these accreditors when setting licensing requirements for professionals in their states. In such cases, the harm from excessive educational requirements is exacerbated, since it is backed by state power.[90]

Some of the most extensive changes are proposed requirements in Section 602.15(e) for "clear and effective controls" accreditors must adopt to protect against anticompetitive abuses, which are designed "to increase the specificity of these requirements."[91] The Department starts by proposing to amend Section 602.3 to better identify the organizations that must maintain "clear firewalls" designed to "ensure the independence of accrediting bodies" and prevent "undue influence."[92] The Department's regulations currently permit sharing of facilities and personnel between accreditors and affiliated associations if the accreditor "pays the fair market value for its proportionate share of the joint use."[93] Proposed Section 602.15(e)(4) prohibits "shared resources, such as personnel, services, equipment, facilities, [] information technology, . . . [or] office space."[94] The Department explained that the current regulations "did not adequately restrict []

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[84] NPRM, *supra* note 7, at 53951–52; *see, e.g.*, *Mass. Sch. of Law at Andover, Inc. v. Am. Bar Ass'n*, 107 F.3d 1026, 1038–39 (3d Cir. 1997); *Found. for Interior Design Educ. Rsch. v. Savannah Coll. of Art & Design*, 244 F.3d 521, 531–32 (6th Cir. 2001).
[85] NPRM, *supra* note 7, at 53963.
[86] *Id.* at 54016–17; *see also id.* at 53971–72.
[87] *Id.* at 53986.
[88] *See* FTC Ohio Supreme Court Letter, *supra* note 11, at 2–3.
[89] *See* Maureen K. Ohlhausen & Gregory P. Luib, *Brother, May I?: The Challenge of Competitor Control over Market Entry*, 4 J. ANTITRUST ENF'T 111, 111 (2016).
[90] *See* FTC Ohio Supreme Court Letter, *supra* note 11, at 2–3.
[91] NPRM, *supra* note 7, 53954. This proposed Section in part implements the revised requirement of proposed Section 602.14(b)(3) that accreditors have "established and implemented mandatory conflict of interest controls." *Id.* at 53952.
[92] Proposed Section 602.3 identifies a "related, associated, or affiliated trade association" as one that "prepare[s] students to enter the work force of the same or substantially the same line of commerce, business, industry, or profession that organization promotes." *Id.* at 53948.
[93] 34 C.F.R. § 602.15(e)(4) (also requiring that the sharing does not "compromise the independence and confidentiality" of the accreditation process).
[94] NPRM, *supra* note 7, at 53954.

influence" that can result from "proximity" and relationships.[95] This proposal to enforce a true separation of the operations of the professional association and the accrediting agency is a wise prophylactic measure. The sharing of facilities of personnel and facilities creates opportunities for anticompetitive conduct and undue influence.[96]

Proposed Section 602.15(e)(7) represents perhaps the most direct attack on anticompetitive use of accreditation by professional and trade associations. It prohibits an accreditor from taking an action that "restrict(s) access to employment in a profession . . . unless the [accreditor] provides notice of clear and convincing evidence to the Secretary that: (A) the restriction is necessary to protect the public interest; (B) the expected public benefits outweigh the costs to the public from reduced access to the profession . . . ; and (C) no less restrictive alternative would adequately protect the public interest."[97] This requirement applies broadly to precisely the types of accreditor actions that can adversely limit the supply of professionals and impose a high standard for justifying decisions that may harm competition.[98] If this provision becomes final, we encourage the Department to ensure that it is enforced effectively. As the ABA has demonstrated, the potential for anticompetitive actions by professional accreditors is substantial.

IV. Conclusion

We commend the Department for its focus on reforming its accreditation regulations to encourage competition and "promote high-quality, high value, and affordable education for students."[99] As the ABA has demonstrated, a monopolist accreditor can impose overly burdensome requirements that drive up tuition, limit consumer choice, and inhibit innovation. The risk is particularly acute because many accreditors are controlled by incumbent providers of education and professional services invested in the status quo. We endorse the NPRM's reforms to encourage new accreditors to emerge and its steps to thwart anticompetitive incentives.

Sincerely,

/s/ Brendan Chestnut
Brendan Chestnut
Director
Office of Policy Planning

/s/ Daniel Guarnera
Daniel Guarnera
Director
Bureau of Competition

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[95] *Id.* at 53953. In addition, proposed Section 602.15(e)(5) includes a provision prohibiting "shar[ing] or solicit[ing] feedback" from associations regarding the accreditor's polices or decisions with respect to an institution or program. *Id*. at 53954.

[96] *See, e.g.*, Christopher R. Leslie, *The Decline and Fall of Circumstantial Evidence in Antitrust Law*, 69 AM. U. L. REV. 1713, 1730–31 ("Adam Smith famously asserted that '[p]eople in the same trade seldom meet together even for merriment or diversion, but the conversation ends in a conspiracy against the public and in some contrivance to raise prices.' Although Smith overstated the case, competing firms do often find opportunities for collusion in trade association conferences and other seemingly legitimate get-togethers.") (quoting *U.S. v. Taubman*, 297 F.3d 161, 164 (2d Cir. 2002) (per curiam) (quoting Adam Smith, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 55 (Great Books ed. 1952) (1776))) (footnotes omitted).

[97] NPRM, *supra* note 7, 54007.

[98] *Ibid.* (providing that the requirement covers "(A) taking steps to increase credentialing standards; (B) increasing the cost or level of required education or training; or (C) decreasing the availability of education or training in a manner that may benefit any related, associated, or affiliated trade association or professional organization").

[99] *Id.* at 53943; *see also* EO 14279, *supra* note 4, § 3(a)(i).