

ACCREDITATION FOR COLLEGE EXCELLENCE ACT OF  
2023

APRIL 23, 2024.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

Ms. FOXX, from the Committee on Education and the Workforce,  
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 3724]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 3724) to amend the Higher Education Act of 1965 to prohibit recognized accrediting agencies and associations from requiring, encouraging, or coercing institutions of higher education to meet any political litmus test or violate any right protected by the Constitution as a condition of accreditation, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Accreditation for College Excellence Act of 2023”.

**SEC. 2. PROHIBITION ON POLITICAL LITMUS TESTS IN ACCREDITATION OF INSTITUTIONS OF HIGHER EDUCATION.**

(a) OPERATING PROCEDURES REQUIRED.—Section 496(c) of the Higher Education Act of 1965 (20 U.S.C. 1099b(c)) is amended—

(1) by striking “and” at the end of paragraph (8);

(2) in paragraph (9), by striking the period at the end and inserting “; and”;

and

(3) by adding at the end the following:

“(10) confirms that the standards for accreditation of the agency or association do not—

“(A) except as provided in subparagraph (B)—

- “(i) require, encourage, or coerce any institution to—
    - “(I) support, oppose, or commit to supporting or opposing—
      - “(aa) a specific partisan, political, or ideological viewpoint or belief or set of such viewpoints or beliefs; or
      - “(bb) a a specific viewpoint or belief or set of viewpoints or beliefs on social, cultural, or political issues; or
    - “(II) support or commit to supporting the disparate treatment of any individual or group of individuals on the basis of any protected class under Federal civil rights law, except as required by Federal law or a court order; or
  - “(ii) assess an institution’s or program of study’s commitment to any ideology, belief, or viewpoint;
  - “(B) prohibit an institution—
    - “(i) from having a religious mission, operating as a religious institution, or being controlled by a religious organization (in a manner described in paragraph (1), (2), (3), (4), (5), or (6) of section 106.12(c) of title 34, Code of Federal Regulations (as in effect on the date of the enactment of this paragraph)), or from requiring an applicant, student, employee, or independent contractor (such as an adjunct professor) of such an institution to—
      - “(I) provide or adhere to a statement of faith; or
      - “(II) adhere to a code of conduct consistent with the stated religious mission of such institution or the religious tenets of such organization; or
    - “(ii) from requiring an applicant, student, employee, or contractor to take an oath to uphold the Constitution of the United States; or
  - “(C) require, encourage, or coerce an institution of higher education to violate any right protected by the Constitution.”
- (b) LIMITATION ON SCOPE OF CRITERIA.—Section 496(g) of the Higher Education Act of 1965 (20 U.S.C. 1099b(g)) is amended to read as follows:
- “(g) LIMITATION ON SCOPE OF CRITERIA.—
- “(1) IN GENERAL.—The Secretary shall not establish criteria for accrediting agencies or associations that are not required by this section.
  - “(2) INSTITUTIONAL ELIGIBILITY.—An institution of higher education shall be eligible for participation in programs under this title if the institution is in compliance with the standards of its accrediting agency or association that assess the institution in accordance with subsection (a)(5), regardless of any additional standards adopted by the agency or association for purposes unrelated to participation in programs under this title.”

## PURPOSE

H.R. 3724 amends the *Higher Education Act of 1965* to prohibit recognized accrediting agencies and associations from requiring, encouraging, or coercing institutions of higher education to meet any political litmus test or violate any right protected by the Constitution as a condition of accreditation.

## COMMITTEE ACTION

115TH CONGRESS

### *Second Session—Hearings*

On April 27, 2017, the Committee on Education and the Workforce held a hearing on “Strengthening Accreditation to Better Protect Students and Taxpayers.” The purpose of the hearing was to review the concerns that the current accreditation system is no longer focused on ensuring a high-quality education experience and examine ways to strengthen its mechanics to provide accountability for both students and taxpayers. Testifying before the Committee were Dr. Mary Ellen Petrisko, President, WASC Senior College and University Commission, Alameda, CA; Dr. George A. Pruitt, President, Thomas Edison State University, Trenton, NJ; Mr. Ben Miller, Senior Director for Postsecondary Education, Center for Amer-

ican Progress, Washington, D.C.; and Dr. Michale S. McComis, Executive Director, Accrediting Commission of Career Schools and Colleges, Arlington, VA.

116TH CONGRESS

*Second Session—Hearings*

On April 3, 2019, the Committee’s Higher Education and Workforce Investment Subcommittee held a hearing on “Strengthening Accountability in Higher Education to Better Serve Students and Taxpayers.” The purpose of the hearing was to review the triad accountability system of higher education, of which accrediting agencies and associations comprise one-third of the entities responsible for holding institutions accountable to students and taxpayers. Testifying before the Committee were Dr. Nicholas Hillman, Associate Professor of Education Leadership and Policy Analysis, University of Wisconsin-Madison, Madison, WI; Ms. Melissa Emrey-Arras, Director of Education, Workforce, and Income Security, United States Government Accountability Office, Washington D.C.; Mr. Noe Ortega, Deputy Secretary of the Office of Postsecondary and Higher Education, Pennsylvania Department of Education, Harrisburg, PA; and Dr. Barbara Brittingham, President, New England Commission of Higher Education, Wakefield, MA.

118TH CONGRESS

*First Session—Hearings*

On July 27, 2023, the Committee’s Higher Education and Workforce Development Subcommittee held a hearing on “Lowering Costs and Increasing Value for Students, Institutions, and Taxpayers.” The purpose of the hearing was to discuss with policy experts the root causes of student debt and how to lower the cost of college through reforms to the postsecondary education accountability system, including reforms to the accreditation system that prioritize academics over a social justice agenda. Testifying before the Subcommittee were Mr. Michael B. Horn, Author and Co-Founder of the Clayton Christensen Institute for Disruptive Innovation, Lexington, MA; Mr. Stig Leschly, President and Founder, Postsecondary Commission, Boston, MA; Dr. Stephanie Cellini, Professor of Public Policy and Public Administration, and of Economics, George Washington University, Washington, D.C.; and Dr. Andrew Gillen, Senior Policy Analyst, Texas Public Policy Foundation, Austin, TX.

*Second Session—Hearings*

On March 7, 2024, the Committee’s Higher Education and Workforce Development Subcommittee held a hearing on “Divisive, Excessive, Ineffective: The Real Impact of DEI on College Campuses.” The purpose of the hearing was to examine ways in which institutions and accreditors are engaging in harmful diversity, equity, and inclusion practices (DEI), including accreditors with DEI-based standards that institutions are obligated to meet. Testifying before the Subcommittee were Dr. Erec Smith, Associate Professor of Rhetoric, York College of Pennsylvania, Cato Research Fellow, York, PA; Dr. James Murphy, Director of Career Pathways and

Post-Secondary Policy, Education Reform Now, Washington, D.C.; Dr. Stanley Goldfarb, Chair, Do No Harm, Bryn Mawr, PA; and Dr. Jay Greene, Senior Research Fellow, The Heritage Foundation's Center for Education Policy, Fayetteville, AK.

### *Legislative Action*

On May 25, 2023, Higher Education and Workforce Development Subcommittee Chairman Burgess Owens (R-UT) introduced the *Accreditation for College Excellence (ACE) Act of 2023* (H.R. 3724) with Representatives Brandon Williams (R-NY), Byron Donalds (R-FL), and Erin Houchin (R-IN). The bill was referred solely to the Committee on Education and the Workforce. On March 21, 2024, the Committee considered H.R. 3724 in legislative session and reported it favorably, as amended, to the House of Representatives by a recorded vote of 24–14. The Committee considered the following amendments to H.R. 3724:

1. Representative Owens offered an Amendment in the Nature of a Substitute (ANS) that makes technical changes to the text to align the language more closely to the same prohibition included in the text of H.R. 6951, the *College Cost Reduction Act*, which the Committee passed on January 31, 2024. The amendment was adopted by voice vote.

2. Representative Suzanne Bonamici (D-OR) offered an amendment to require religious institutions that seek a core curricula exemption from their accreditor to publish a description of the request and final determination by the accreditor. The amendment failed by a recorded vote of 14–23.

## COMMITTEE VIEWS

### INTRODUCTION

Accrediting agencies or associations (accreditors) that force institutions to subscribe to certain partisan beliefs or viewpoints, such as DEI, quash academic freedom and therefore are antithetical to American exceptionalism. Further, the prevalence of DEI-based standards is concerning at a time when the value of a degree has decreased<sup>1</sup> and the cost of college has increased.<sup>2</sup> Accreditors that require colleges to adopt DEI initiatives are forcing colleges to make the DEI bureaucracy a priority instead of lowering college costs for students and taxpayers. H.R. 3724, the *Accreditation for College Excellence Act*, would allow institutions to regain academic freedom by prohibiting accreditors from requiring institutions to meet partisan and ideological litmus tests to receive accreditation.

### TODAY'S IDEOLOGY

There is no one definition of DEI. Rather, DEI is a framework of practices that has ideological roots in neo-Marxist theory that attribute virtually all group differences to systemic discrimination.<sup>3</sup> These practices are grounded in “critical race theory” (CRT), which

<sup>1</sup> <https://freopp.org/is-college-worth-it-a-comprehensive-return-on-investment-analysis-1b2ad17f84c8>.

<sup>2</sup> <https://www.bls.gov/opub/ted/2023/college-tuition-and-fees-up-4-7-percent-since-february-2020.htm>.

<sup>3</sup> <https://thehill.com/opinion/education/3718803-what-do-we-really-mean-by-diversity-equity-and-inclusion/>.

is a legal framework developed in the 1970s and 1980s<sup>4</sup> that argues that racism is always subconsciously occurring and impacting society, even if it does not exist in the law. The CRT movement has spread beyond the legal field to become an activist crusade that questions and seeks to change mainstream institutions. Kimberle Crenshaw, the theorist who coined the term CRT, has called for the creation of a “counter-hegemony” to challenge traditional liberalism.<sup>5</sup> On its surface, DEI seems to promote values that all people would agree with, but in practice modern DEI works against the definitions of its own values of “diversity,” “equity,” and “inclusion” by prioritizing certain groups over others. DEI argues that, regardless of equal treatment under the law, discrimination always will be present within society due to power struggles between social groups. According to DEI in its current form, inequality of outcome is discrimination; therefore, inequality of outcome must be prevented to be sure that discrimination has been truly addressed. Further, merit, fairness, and equality under law are insufficient to remedy this inequality of outcomes, so equal opportunity is abandoned for favored treatment of certain groups so as to achieve the desired equal outcomes. Fundamentally, modern DEI divides individuals into groups based on stereotyped social constructs and treats them according to their group identity rather than as autonomous agents with the freedom to make their own choices and shape their own lives.

Unfortunately, postsecondary education has embraced Marxist ideology through DEI, to inform many aspects of university life. Beyond problems with Marxist theory itself, more generally no partisan viewpoints or ideologies should ever be taken as a framework for postsecondary education. Universities should be marketplaces for all ideas, and this is undermined by the embrace of any one ideological framework.

There are multiple ways in which DEI has manifested in postsecondary education. First, standardized tests, and universities’ use of them as evaluative measures, have been criticized by DEI proponents as being “inequitable” due to different student outcomes. The National Education Association described standardized tests as “instruments of racism and a biased system.”<sup>6</sup> Advocate group FairTest says that standardized testing poses “racial, class, gender, and cultural barriers”<sup>7</sup> and as a result reports that over 2,000 U.S. colleges are now test-optional or test-free when it comes to SAT or ACT scores. To fight supposed “systemic racism,” at least 40 medical institutions have dropped the requirement that all applicants take the MCAT.<sup>8</sup> Arguments against standardized testing embody DEI’s framework for outcomes. Standardized tests, by nature, ask all students the same questions regardless of their diverse background, objectively evaluating the individual’s ability without consideration of their race, gender, or socioeconomic class. To DEI advocates, however, standardized tests are designed to target certain social groups. Rather than seeing difference of outcome as a sign

<sup>4</sup> <https://www.edweek.org/leadership/what-is-critical-race-theory-and-why-is-it-under-attack/2021/05>.

<sup>5</sup> <https://www.aei.org/wp-content/uploads/2022/07/Prohibit-Diversity-Equity-and-Inclusion-Statements.pdf?x91208>.

<sup>6</sup> <https://www.nea.org/nea-today/all-news-articles/racist-beginnings-standardized-testing>.

<sup>7</sup> <https://fairtest.org/about/>.

<sup>8</sup> <https://breakpoint.org/medical-education-infected-with-dei/>.

of individual capability, DEI advocates see it as symptomatic of a system of oppression, again focusing on the group rather than the individual. Despite these criticisms of standardized tests, some universities that were previously test-optional have recently announced a return to standardized tests because they recognize that eliminating standardized tests can have the opposite effect. In announcing its decision, Dartmouth said, “SAT/ACTs can be especially helpful in identifying students from less-resourced backgrounds who would succeed at Dartmouth but might otherwise be missed in a test-optional environment.”<sup>9</sup> In other words, DEI values ultimately undermine the very individuals it purports to help, reducing them to victims of circumstance and members of a monolithic group rather than as individuals with potential.

A further effect of DEI on postsecondary education can be seen in changing tenure standards. The American Association of University Professors found that over 20 percent of institutions responding to a recent survey said they include DEI criteria in their tenure standards and another almost 40 percent reported they are considering adding them.<sup>10</sup> These DEI statements are not simple “anti-discrimination” statements but rather are coerced commitments to a larger ideology. Further, a 2021 American Enterprise Institute report found that one out of every five American professors is hired based on his or her commitment to the principles of DEI instead of on his or her merit.<sup>11</sup> Conformity toward any ideology is directly at odds with the principles of academic freedom, and it is troubling that increasingly tenure is being granted not solely based on the academic and teaching excellence of professors but rather based on their commitment to an ideology. This proliferation of DEI administrators places importance on adherence to a social and ideological movement rather than on education and serving students.<sup>12</sup> Although DEI costs significant resources, there is very little evidence such efforts help students.<sup>13</sup> What there is evidence of is the rising cost of college.<sup>14</sup> Every dollar a university puts into a DEI administrator hire is a dollar a university is not putting toward faculty devoted to core curriculum, direct student resources, or lowering tuition for students.

Another effect of DEI on universities is the ballooning of administrative positions and resources dedicated to DEI initiatives. These DEI offices and staff at universities share similarly vague mission statements but seem to have little practical impact on student success outcomes.<sup>15</sup> The 2021 report *Diversity University: DEI Bloat in the Academy* found that large public universities averaged 45 DEI personnel, with some institutions well surpassing that number: the University of Michigan had 163 DEI staff, the University of Virginia and the Ohio State University each had 94 DEI staff, and Virginia Tech, the University of California Berkley, Stanford University, the University of Illinois, and the University of Maryland

<sup>9</sup> <https://thehill.com/homenews/education/4458907-the-days-of-optional-sat-scores-may-be-coming-to-an-end/>.

<sup>10</sup> [https://www.aaup.org/file/2022\\_AAUP\\_Survey\\_of\\_Tenure\\_Practices.pdf](https://www.aaup.org/file/2022_AAUP_Survey_of_Tenure_Practices.pdf).

<sup>11</sup> <https://www.aei.org/research-products/report/other-than-merit-the-prevalence-of-diversity-equity-and-inclusion-statements-in-university-hiring/>.

<sup>12</sup> <https://www.heritage.org/education/report/diversity-university-dei-bloat-the-academy>.

<sup>13</sup> <https://www.heritage.org/education/commentary/dei-doesnt-work-taxpayers-shouldnt-pay-it>.

<sup>14</sup> <https://www.bls.gov/opub/ted/2023/college-tuition-and-fees-up-4-7-percent-since-february-2020.htm>.

<sup>15</sup> <https://www.heritage.org/education/report/diversity-university-dei-bloat-the-academy>.

all had between 70 and 90 DEI personnel on campus.<sup>16</sup> This hiring spree of DEI administrators further injures students by deprioritizing hiring for other chronically understaffed departments and offices. For example, the University of Michigan has roughly 14 DEI staff for every one person providing services to students with disabilities.<sup>17</sup> An updated 2024 analysis of the University of Michigan's DEI office found there to be 241 paid DEI employees and that payroll costs for those employees exceeding \$30 million annually.<sup>18</sup> To put that amount in context, with that same amount the University could instead cover in-state tuition for over 1,700 undergraduate students. Further, DEI officers are often paid at significantly higher rates than professors. For example, the university's Chief Diversity Administrator has a salary of \$402,800, over two times the average salary of a professor.<sup>19</sup>

#### ACCREDITORS' ROLE

Accreditation is a non-governmental peer review process created by colleges and universities to review and improve the academic quality of postsecondary institutions and programs. Accreditors are voluntary, private organizations composed of members from accredited schools. The postsecondary accreditation system predates the *Higher Education Act of 1965* (HEA), but within the HEA Congress required institutions to be accredited by a nationally recognized accrediting agency or association as a condition of receiving federal funding.<sup>20</sup> In order for an accreditor to assess institution quality for the purposes of HEA funding, the accreditor must first be recognized by the Department of Education (ED). Section 496 of the HEA outlines the operating procedures accreditors must meet before they can be a recognized accreditor.<sup>21</sup> H.R. 3724 amends section 496(c) of the HEA to specifically require that an accreditor confirm it has no standards in place to require, encourage, or coerce an institution to support or oppose a partisan or ideological litmus test. Additionally, accreditors that wish to be recognized must renew recognition every five years. Therefore, H.R. 3724 will ensure that accreditors regularly confirm that no litmus test standards exist before recognition is renewed, providing ongoing protection from future attempts to push ideological standards on institutions.

Section 496 also outlines the process which institutions must undergo to be recognized by an accreditor and the requirements accreditors may hold institutions to maintain their accreditation status. Accreditation of colleges and universities generally serves the following two purposes: assuring quality and fostering continuous improvement. The federal government and the public rely on accreditation as a signal that an accredited institution meets at least a minimum standard of quality and that federal funds are flowing only to credible, legitimate, and high-quality institutions. Conversely, colleges and universities use the accreditation process

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> <https://www.thecollegefix.com/umich-now-has-more-than-500-jobs-dedicated-to-dei-payroll-costs-exceed-30-million/>. The institution disputes the total number because some faculty are part-time and have other responsibilities at the institution.

<sup>19</sup> *Ibid.*

<sup>20</sup> Higher Education Act of 1965, Pub. L. No. 89-329, § 801.

<sup>21</sup> HEA Section 496(c).

as a way to help shape and guide the continuous improvement of their institutions and academic programs. There are 10 statutory standards of accreditation that are most commonly referenced when discussing what the law requires accreditors to consider and require institutions to measure themselves against. Accreditors, in coordination with their member institutions, develop criteria around the required statutory standards. To gain accreditation, an institution or program must be evaluated through a number of steps outlined by an accreditor. These procedures are guided, in part, by the federal requirements in the HEA and by regulation; however, the specific procedures for evaluation reviews adopted by accreditation agencies vary by agency. Importantly, section 496(g) of the HEA also includes an “elastic clause” that allows accreditors to impose additional conditions for HEA Title IV eligibility.<sup>22</sup> This provision has allowed accreditors to impose many additional requirements on institutions and is the authority that accreditors can assert to create additional litmus test standards for institutions. H.R. 3724 would close this loophole and confirm that neither the Secretary nor the accreditor can require additional standards for institutions to receive Title IV federal financial aid not otherwise outlined in statute.

#### DIVERSITY, EQUITY, AND INCLUSION IN ACCREDITATION

Colleges and universities are not the only postsecondary education entities that push a required commitment to a partisan ideology or viewpoint. Accreditors have begun including a commitment to DEI as a required standard for accreditation.<sup>23</sup> For example, one of the largest formerly regional accreditors, the Western Association for Schools and Colleges, Senior College and University Commission (WSCUC), includes in its standard for all institutions to develop their institutional mission a requirement that the mission “makes explicit commitment to diversity, equity, and inclusion.”<sup>24</sup> This is not an isolated instance: the only formerly regional accreditor that does not have an explicit standard requiring commitment to DEI is the Southern Association of Colleges and Schools Commission on Colleges (SACSOC). But even SACSOC does have a position statement supporting institutions that may want to adopt DEI-based activities.<sup>25</sup> Most concerning of all is the extension of this new DEI priority to medical schools. The Liaison Committee on Medical Education, a programmatic accreditor, has been measuring the success of a medical school by the identity of the faculty hired and whether or not the medical school also requires the same type of identity-only diversity of its student applicants.<sup>26</sup> Standards such as this should be scrutinized for the potential of racial discrimination. While accreditors are self-governing organizations in which standards are often adopted through a participatory process involving input from the institution members as a form of self-regulation, accreditors and member institutions are still promoting a forced commitment to ideologies like DEI, and

<sup>22</sup> Section 496(g).

<sup>23</sup> <https://www.chronicle.com/article/the-new-accountability>.

<sup>24</sup> <https://www.wscuc.org/handbook2023/#standards-of-accreditation>.

<sup>25</sup> <https://sacsoc.org/app/uploads/2019/08/DiversityStatement.pdf>.

<sup>26</sup> <https://www.bcm.edu/about-us/community-engagement-health-equity/equity-and-inclusion-policies/accreditation>.



any opposition to the adoption of these standards is likely chilled or dismissed as a minority view.

Another example of conformity to the DEI agenda is found throughout the accreditation hierarchy. The Council for Higher Education Accreditation (CHEA) is a non-profit membership organization of institutions and accreditors that has a commitment to DEI. In CHEA's standards for accreditation structure and organization, CHEA states that a recognized accrediting organization should demonstrate that it manifests a commitment to DEI. An example of such a commitment is the inclusion of a value statement regarding DEI in an institution's official mission statement and evidence of integration of DEI in policies and procedures.<sup>27</sup> In order to be recognized by CHEA, an accreditor must meet this standard. CHEA currently recognizes approximately 60 accreditors.<sup>28</sup> With CHEA's influence, it is easy to understand how many accreditors and thus institutions now are holding themselves to DEI-based standards.

Because accreditors play such a prominent role in the adoption of an ideological framework in postsecondary education, H.R. 3724 rightly stops accreditors from continuing to proliferate standards that require institutions to adopt or commit to support or oppose any partisan, political, ideological viewpoint or belief. H.R. 3724 also requires an accreditor to confirm it does not have standards in place that would cause an institution to support the disparate treatment of any protected class. H.R. 3724 would provide appropriate protections for religious institutions to be able to adhere to their religious tenets. It is troubling that accreditors have become enforcers of institutions' DEI standards but have not made more progress in holding institutions accountable for producing workforce-ready graduates. H.R. 3724 rejects ideological and partisan agendas from being embedded into postsecondary education and returns a focus on academic quality to postsecondary education.

#### CONCLUSION

At every level of postsecondary education, administratively powerful entities, such as institutions, accreditors, and large postsecondary membership bodies that advise on accreditation, have committed to and are coercing other postsecondary institutions into adopting non-academic agendas, like DEI-based standards or programs. The DEI Marxist framework should not be forced on any institution. Partisan ideologies have no place in postsecondary education, and H.R. 3724 would protect and promote a return to academics instead of conformity to ideology as a priority for universities and accreditors.

#### SUMMARY

##### H.R. 3724 SECTION-BY-SECTION SUMMARY

The *Accreditation for College Excellence (ACE) Act*, introduced by Representative Owens, prohibits accreditors from mandating that

<sup>27</sup> [https://www.chea.org/sites/default/files/other-content/CHEA\\_Standards\\_and\\_Procedures\\_for\\_Recognition-FINAL.pdf](https://www.chea.org/sites/default/files/other-content/CHEA_Standards_and_Procedures_for_Recognition-FINAL.pdf).

<sup>28</sup> <https://www.chea.org/about-recognition>.

institutions adopt DEI standards in order to receive accreditation. Specifically, the *ACE Act*:

*Section 1—Short title*

- Accreditation for College Excellence Act of 2023

*Section 2—Prohibition on political litmus tests in accreditation of institutions of higher education*

- Requires an accreditor to confirm that standards do not require, encourage, or coerce an institution to support or oppose specific partisan or political beliefs or viewpoints on social or political issues or to support the disparate treatment of any individual or group;
- Requires an accreditor to confirm that it does not assess an institution’s commitment to any ideology, belief, or viewpoint for the purposes of receiving accreditation for HEA funding;
- Requires an accreditor to confirm that its standards do not prohibit an institution from having a religious mission and ability to require adherence with religious practices or codes of conduct;
- Ensures that an accreditor cannot require, encourage, or coerce an institution to violate any right protected by the Constitution; and
- Closes the “elastic clause” loophole and limits accreditors from requiring institutions to adopt any additional standards for accreditation to receive HEA funding.

EXPLANATION OF AMENDMENTS

The amendments, including the amendment in the nature of a substitute, are explained in the body of this report.

APPLICATION OF THE LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. H.R. 3724 prohibits accrediting agencies from requiring, encouraging, or coercing institutions of higher education to meet political litmus tests or violate constitutional rights as a condition of accreditation, and therefore does not apply to the Legislative Branch.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the Congressional Budget and Impoundment Control Act of 1974, Public Law No. 93–344 (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act of 1995, Public Law No. 104–4), the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office (CBO) pursuant to section 402 of the Congressional Budget and Impoundment Control Act of 1974.

EARMARK STATEMENT

H.R. 3724 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

ROLL CALL VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee Report to include for each record vote on a motion to report the measure or matter and on any amendments offered to the measure or matter the total number of votes for and against and the names of the Members voting for and against.

Date: 3/21/24

**COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE**

Roll Call: 5                      Bill: H.R. 3724                      Amendment Number: n/a

Disposition: Not Adopted by a Full Committee Roll Call Vote (14 y – 23 n)

Sponsor/Amendment: Rep. Bonamici/ AMD3724\_01

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mrs. FOXX (NC) (Chairwoman)		X		Mr. SCOTT (VA) (Ranking)	X		
Mr. WILSON (SC)		X		Mr. GRIJALVA (AZ)			X
Mr. THOMPSON (PA)		X		Mr. COURNTEY (CT)			X
Mr. WALBERG (MI)		X		Mr. SABLAN (MP)	X		
Mr. GROTHMAN (WI)		X		Ms. WILSON (FL)			X
Ms. STEFANIK (NY)		X		Ms. BONAMICI (OR)	X		
Mr. ALLEN (GA)		X		Mr. TAKANO (CA)	X		
Mr. BANKS (IN)		X		Ms. ADAMS (NC)	X		
Mr. COMER (KY)		X		Mr. DESAULNIER (CA)	X		
Mr. SMUCKER (PA)		X		Mr. NORCROSS (NJ)			X
Mr. OWENS (UT)		X		Ms. JAYAPAL (WA)	X		
Mr. GOOD (VA)		X		Ms. WILD (PA)	X		
Mrs. MCCLAIN (MI)		X		Ms. MCBATH (GA)	X		
Mrs. MILLER (IL)		X		Mrs. HAYES (CT)	X		
Mrs. STEEL (CA)		X		Ms. OMAR (MN)	X		
Mr. ESTES (KS)		X		Ms. STEVENS (MI)	X		
Ms. LETLOW (LA)			X	Ms. LEGER FERNÁNDEZ (NM)			X
Mr. KILEY (CA)		X		Ms. MANNING (NC)	X		
Mr. BEAN (FL)		X		Mr. MRVAN (IN)	X		
Mr. BURLISON (MO)		X		Mr. BOWMAN (NY)			X
Mr. MORAN (TX)			X				
Mr. JAMES (MI)		X					
Ms. CHAVEZ-DEREMER (OR)		X					
Mr. WILLIAMS (NY)		X					
Ms. HOUCHIN (IN)		X					

TOTALS: Ayes: 14

Nos: 23

Not Voting: 8

Total: 45 / Quorum:37 / Report:

(25 R - 20 D)

Date: 3/21/24

**COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE**

Roll Call: 6                      Bill: H.R. 3724                      Amendment Number: n/a

Disposition: Motion to Report H.R. 3724, as amended, passed by a Full Committee Roll

Call Vote (24 y – 14 n)

Sponsor/Amendment: Rep. Owens/ ANS3724\_01/ Motion to Report

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mrs. FOXX (NC) (Chairwoman)	X			Mr. SCOTT (VA) (Ranking)		X	
Mr. WILSON (SC)	X			Mr. GRIJALVA (AZ)			X
Mr. THOMPSON (PA)	X			Mr. COURNTEY (CT)			X
Mr. WALBERG (MI)	X			Mr. SABLAN (MP)		X	
Mr. GROTHMAN (WI)	X			Ms. WILSON (FL)			X
Ms. STEFANIK (NY)	X			Ms. BONAMICI (OR)		X	
Mr. ALLEN (GA)	X			Mr. TAKANO (CA)		X	
Mr. BANKS (IN)	X			Ms. ADAMS (NC)		X	
Mr. COMER (KY)	X			Mr. DESAULNIER (CA)		X	
Mr. SMUCKER (PA)	X			Mr. NORCROSS (NJ)			X
Mr. OWENS (UT)	X			Ms. JAYAPAL (WA)		X	
Mr. GOOD (VA)	X			Ms. WILD (PA)		X	
Mrs. MCCLAIN (MI)	X			Ms. MCBATH (GA)		X	
Mrs. MILLER (IL)	X			Mrs. HAYES (CT)		X	
Mrs. STEEL (CA)	X			Ms. OMAR (MN)		X	
Mr. ESTES (KS)	X			Ms. STEVENS (MI)		X	
Ms. LETLOW (LA)	X			Ms. LEGER FERNÁNDEZ (NM)			X
Mr. KILEY (CA)	X			Ms. MANNING (NC)		X	
Mr. BEAN (FL)	X			Mr. MRVAN (IN)		X	
Mr. BURLISON (MO)	X			Mr. BOWMAN (NY)			X
Mr. MORAN (TX)			X				
Mr. JAMES (MI)	X						
Ms. CHAVEZ-DEREMER (OR)	X						
Mr. WILLIAMS (NY)	X						
Ms. HOUCHIN (IN)	X						

TOTALS: Ayes: 24

Nos: 14

Not Voting: 7

Total: 45 / Quorum: 38/ Report:

(25 R - 20 D)

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goal of H.R. 3724 is to prohibit recognized accrediting agencies and associations from requiring or encouraging institutions of higher education to meet political litmus tests or violate rights protected under the Constitution as a condition of accreditation.

## DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 3724 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

## REQUIRED COMMITTEE HEARING

In compliance with clause 3(c)(6) of rule XIII of the Rules of the House of Representatives the following hearing held during the 118th Congress was used to develop or consider H.R. 3724: On March 29, 2023, the Subcommittee on Higher Education and Workforce Development held a hearing entitled, "Diversity of Thought: Protecting Free Speech on College Campuses."

## NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for H.R. 3724 from the Director of the Congressional Budget Office:

<b>H.R. 3724, Accreditation for College Excellence Act of 2023</b>			
As ordered reported by the House Committee on Education and the Workforce on March 21, 2024			
By Fiscal Year, Millions of Dollars	2024	2024-2029	2024-2034
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	0	0
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Statutory pay-as-you-go procedures apply?	No
		<b>Mandate Effects</b>	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

H.R. 3724 would prohibit accrediting agencies from requiring institutions of higher education to support or oppose certain political or ideological beliefs as a criterion for accreditation. The bill also would prevent those agencies from denying accreditation to an institution of higher education based on that institution's religious mission.

Accrediting agencies are private educational associations that develop evaluation criteria and conduct peer evaluations to assess whether institutions of higher education meet those criteria. Generally, institutions must meet those criteria to be accredited, and thus be eligible to participate in the federal student aid programs.

In CBO's current baseline projections, we do not expect any change in the number of schools that would be accredited with respect to the criteria that would be prohibited in the bill. On that basis, CBO estimates that enacting the bill would not affect federal spending or revenues.

The CBO staff contact for this estimate is Margot Berman. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,  
*Director, Congressional Budget Office.*

#### COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 3400. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when, as with the present report, the Committee adopts as its own the cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

**HIGHER EDUCATION ACT OF 1965**

\* \* \* \* \*

**TITLE IV—STUDENT ASSISTANCE**

\* \* \* \* \*

**PART H—PROGRAM INTEGRITY**

\* \* \* \* \*

**Subpart 2—Accrediting Agency Recognition**

**SEC. 496. RECOGNITION OF ACCREDITING AGENCY OR ASSOCIATION.**

(a) **CRITERIA REQUIRED.**—No accrediting agency or association may be determined by the Secretary to be a reliable authority as to the quality of education or training offered for the purposes of this Act or for other Federal purposes, unless the agency or association meets criteria established by the Secretary pursuant to this section. The Secretary shall, after notice and opportunity for a hearing, establish criteria for such determinations. Such criteria shall include an appropriate measure or measures of student achievement. Such criteria shall require that—

(1) the accrediting agency or association shall be a State, regional, or national agency or association and shall demonstrate the ability and the experience to operate as an accrediting agency or association within the State, region, or nationally, as appropriate;

(2) such agency or association—

(A)(i) for the purpose of participation in programs under this Act, has a voluntary membership of institutions of higher education and has as a principal purpose the accrediting of institutions of higher education; or

(ii) for the purpose of participation in other programs administered by the Department of Education or other Federal agencies, has a voluntary membership and has as its principal purpose the accrediting of institutions of higher education or programs;

(B) is a State agency approved by the Secretary for the purpose described in subparagraph (A); or

(C) is an agency or association that, for the purpose of determining eligibility for student assistance under this title, conducts accreditation through (i) a voluntary membership organization of individuals participating in a profession, or (ii) an agency or association which has as its principal purpose the accreditation of programs within institutions, which institutions are accredited by another agency or association recognized by the Secretary;

(3) if such agency or association is an agency or association described in—



(A) subparagraph (A)(i) of paragraph (2), then such agency or association is separate and independent, both administratively and financially of any related, associated, or affiliated trade association or membership organization;

(B) subparagraph (B) of paragraph (2), then such agency or association has been recognized by the Secretary on or before October 1, 1991; or

(C) subparagraph (C) of paragraph (2) and such agency or association has been recognized by the Secretary on or before October 1, 1991, then the Secretary may waive the requirement that such agency or association is separate and independent, both administratively and financially of any related, associated, or affiliated trade association or membership organization upon a demonstration that the existing relationship has not served to compromise the independence of its accreditation process;

(4)(A) such agency or association consistently applies and enforces standards that respect the stated mission of the institution of higher education, including religious missions, and that ensure that the courses or programs of instruction, training, or study offered by the institution of higher education, including distance education or correspondence courses or programs, are of sufficient quality to achieve, for the duration of the accreditation period, the stated objective for which the courses or the programs are offered; and

(B) if such agency or association has or seeks to include within its scope of recognition the evaluation of the quality of institutions or programs offering distance education or correspondence education, such agency or association shall, in addition to meeting the other requirements of this subpart, demonstrate to the Secretary that—

(i) the agency or association's standards effectively address the quality of an institution's distance education or correspondence education in the areas identified in paragraph (5), except that—

(I) the agency or association shall not be required to have separate standards, procedures, or policies for the evaluation of distance education or correspondence education institutions or programs in order to meet the requirements of this subparagraph; and

(II) in the case that the agency or association is recognized by the Secretary, the agency or association shall not be required to obtain the approval of the Secretary to expand its scope of accreditation to include distance education or correspondence education, provided that the agency or association notifies the Secretary in writing of the change in scope; and

(ii) the agency or association requires an institution that offers distance education or correspondence education to have processes through which the institution establishes that the student who registers in a distance education or correspondence education course or program is the same student who participates in and completes the program and receives the academic credit;

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

(A) success with respect to student achievement in relation to the institution's mission, which may include different standards for different institutions or programs, as established by the institution, including, as appropriate, consideration of State licensing examinations, consideration of course completion, and job placement rates;

(B) curricula;

(C) faculty;

(D) facilities, equipment, and supplies;

(E) fiscal and administrative capacity as appropriate to the specified scale of operations;

(F) student support services;

(G) recruiting and admissions practices, academic calendars, catalogs, publications, grading and advertising;

(H) measures of program length and the objectives of the degrees or credentials offered;

(I) record of student complaints received by, or available to, the agency or association; and

(J) record of compliance with its program responsibilities under title IV of this Act based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and any such other information as the Secretary may provide to the agency or association;

except that subparagraphs (A), (H), and (J) shall not apply to agencies or associations described in paragraph (2)(A)(ii) of this subsection;

(6) such an agency or association shall establish and apply review procedures throughout the accrediting process, including evaluation and withdrawal proceedings, which comply with due process procedures that provide—

(A) for adequate written specification of—

(i) requirements, including clear standards for an institution of higher education or program to be accredited; and

(ii) identified deficiencies at the institution or program examined;

(B) for sufficient opportunity for a written response, by an institution or program, regarding any deficiencies identified by the agency or association to be considered by the agency or association—

(i) within a timeframe determined by the agency or association; and

(ii) prior to final action in the evaluation and withdrawal proceedings;

(C) upon the written request of an institution or program, for an opportunity for the institution or program to appeal any adverse action under this section, including denial, withdrawal, suspension, or termination of accreditation, taken against the institution or program, prior to such action becoming final at a hearing before an appeals panel that—

(i) shall not include current members of the agency's or association's underlying decisionmaking body that made the adverse decision; and

(ii) is subject to a conflict of interest policy;

(D) for the right to representation and participation by counsel for an institution or program during an appeal of the adverse action;

(E) for a process, in accordance with written procedures developed by the agency or association, through which an institution or program, before a final adverse action based solely upon a failure to meet a standard or criterion pertaining to finances, may on one occasion seek review of significant financial information that was unavailable to the institution or program prior to the determination of the adverse action, and that bears materially on the financial deficiencies identified by the agency or association;

(F) in the case that the agency or association determines that the new financial information submitted by the institution or program under subparagraph (E) meets the criteria of significance and materiality described in such subparagraph, for consideration by the agency or association of the new financial information prior to the adverse action described in such subparagraph becoming final; and

(G) that any determination by the agency or association made with respect to the new financial information described in subparagraph (E) shall not be separately appealable by the institution or program;

(7) such agency or association shall notify the Secretary and the appropriate State licensing or authorizing agency within 30 days of the accreditation of an institution or any final denial, withdrawal, suspension, or termination of accreditation or placement on probation of an institution, together with any other adverse action taken with respect to an institution; and

(8) such agency or association shall make available to the public, upon request, and to the Secretary, and the State licensing or authorizing agency a summary of any review resulting in a final accrediting decision involving denial, termination, or suspension of accreditation, together with the comments of the affected institution.

(b) SEPARATE AND INDEPENDENT DEFINED.—For the purpose of subsection (a)(3), the term “separate and independent” means that—

(1) the members of the postsecondary education governing body of the accrediting agency or association are not elected or selected by the board or chief executive officer of any related, associated, or affiliated trade association or membership organization;

(2) among the membership of the board of the accrediting agency or association there shall be one public member (who is not a member of any related trade or membership organization) for each six members of the board, with a minimum of one such public member, and guidelines are established for such members to avoid conflicts of interest;

(3) dues to the accrediting agency or association are paid separately from any dues paid to any related, associated, or affiliated trade association or membership organization; and

(4) the budget of the accrediting agency or association is developed and determined by the accrediting agency or association without review or resort to consultation with any other entity or organization.

(c) OPERATING PROCEDURES REQUIRED.—No accrediting agency or association may be recognized by the Secretary as a reliable authority as to the quality of education or training offered by an institution seeking to participate in the programs authorized under this title, unless the agency or association—

(1) performs, at regularly established intervals, on-site inspections and reviews of institutions of higher education (which may include unannounced site visits) with particular focus on educational quality and program effectiveness, and ensures that accreditation team members are well-trained and knowledgeable with respect to their responsibilities, including those regarding distance education;

(2) monitors the growth of programs at institutions that are experiencing significant enrollment growth;

(3) requires an institution to submit for approval to the accrediting agency a teach-out plan upon the occurrence of any of the following events:

(A) the Department notifies the accrediting agency of an action against the institution pursuant to section 487(f);

(B) the accrediting agency acts to withdraw, terminate, or suspend the accreditation of the institution; or

(C) the institution notifies the accrediting agency that the institution intends to cease operations;

(4) requires that any institution of higher education subject to its jurisdiction which plans to establish a branch campus submit a business plan, including projected revenues and expenditures, prior to opening the branch campus;

(5) agrees to conduct, as soon as practicable, but within a period of not more than 6 months of the establishment of a new branch campus or a change of ownership of an institution of higher education, an on-site visit of that branch campus or of the institution after a change of ownership;

(6) requires that teach-out agreements among institutions are subject to approval by the accrediting agency or association consistent with standards promulgated by such agency or association;

(7) makes available to the public and the State licensing or authorizing agency, and submits to the Secretary, a summary of agency or association actions, including—

(A) the award of accreditation or reaccreditation of an institution;

(B) final denial, withdrawal, suspension, or termination of accreditation of an institution, and any findings made in connection with the action taken, together with the official comments of the affected institution; and

(C) any other adverse action taken with respect to an institution or placement on probation of an institution;

(8) discloses publicly whenever an institution of higher education subject to its jurisdiction is being considered for accreditation or reaccreditation; **[and]**

(9) confirms, as a part of the agency's or association's review for accreditation or reaccreditation, that the institution has transfer of credit policies—

(A) that are publicly disclosed; and

(B) that include a statement of the criteria established by the institution regarding the transfer of credit earned at another institution of higher education**[.]**; and

(10) *confirms that the standards for accreditation of the agency or association do not—*

(A) *except as provided in subparagraph (B)—*

(i) *require, encourage, or coerce any institution to—*  
(I) *support, oppose, or commit to supporting or opposing—*

(aa) *a specific partisan, political, or ideological viewpoint or belief or set of such viewpoints or beliefs; or*

(bb) *a a specific viewpoint or belief or set of viewpoints or beliefs on social, cultural, or political issues; or*

(II) *support or commit to supporting the disparate treatment of any individual or group of individuals on the basis of any protected class under Federal civil rights law, except as required by Federal law or a court order; or*

(ii) *assess an institution's or program of study's commitment to any ideology, belief, or viewpoint;*

(B) *prohibit an institution—*

(i) *from having a religious mission, operating as a religious institution, or being controlled by a religious organization (in a manner described in paragraph (1), (2), (3), (4), (5), or (6) of section 106.12(c) of title 34, Code of Federal Regulations (as in effect on the date of the enactment of this paragraph)), or from requiring an applicant, student, employee, or independent contractor (such as an adjunct professor) of such an institution to—*

(I) *provide or adhere to a statement of faith; or*

(II) *adhere to a code of conduct consistent with the stated religious mission of such institution or the religious tenets of such organization; or*

(ii) *from requiring an applicant, student, employee, or contractor to take an oath to uphold the Constitution of the United States; or*

(C) *require, encourage, or coerce an institution of higher education to violate any right protected by the Constitution.*

(d) **LENGTH OF RECOGNITION.**—No accrediting agency or association may be recognized by the Secretary for the purpose of this Act for a period of more than 5 years.

(e) **INITIAL ARBITRATION RULE.**—The Secretary may not recognize the accreditation of any institution of higher education unless the institution of higher education agrees to submit any dispute involv-

ing the final denial, withdrawal, or termination of accreditation to initial arbitration prior to any other legal action.

(f) JURISDICTION.—Notwithstanding any other provision of law, any civil action brought by an institution of higher education seeking accreditation from, or accredited by, an accrediting agency or association recognized by the Secretary for the purpose of this title and involving the denial, withdrawal, or termination of accreditation of the institution of higher education, shall be brought in the appropriate United States district court.

[(g) LIMITATION ON SCOPE OF CRITERIA.—Nothing in this Act 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 Act 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.]

(g) LIMITATION ON SCOPE OF CRITERIA.—

(1) IN GENERAL.—*The Secretary shall not establish criteria for accrediting agencies or associations that are not required by this section.*

(2) INSTITUTIONAL ELIGIBILITY.—*An institution of higher education shall be eligible for participation in programs under this title if the institution is in compliance with the standards of its accrediting agency or association that assess the institution in accordance with subsection (a)(5), regardless of any additional standards adopted by the agency or association for purposes unrelated to participation in programs under this title.*

(h) CHANGE OF ACCREDITING AGENCY.—The Secretary shall not recognize the accreditation of any otherwise eligible institution of higher education if the institution of higher education is in the process of changing its accrediting agency or association, unless the eligible institution submits to the Secretary all materials relating to the prior accreditation, including materials demonstrating reasonable cause for changing the accrediting agency or association.

(i) DUAL ACCREDITATION RULE.—The Secretary shall not recognize the accreditation of any otherwise eligible institution of higher education if the institution of higher education is accredited, as an institution, by more than one accrediting agency or association, unless the institution submits to each such agency and association and to the Secretary the reasons for accreditation by more than one such agency or association and demonstrates to the Secretary reasonable cause for its accreditation by more than one agency or association. If the institution is accredited, as an institution, by more than one accrediting agency or association, the institution shall designate which agency's accreditation shall be utilized in determining the institution's eligibility for programs under this Act.

(j) IMPACT OF LOSS OF ACCREDITATION.—An institution may not be certified or recertified as an institution of higher education under section 102 and subpart 3 of this part or participate in any of the other programs authorized by this Act if such institution—

(1) is not currently accredited by any agency or association recognized by the Secretary;

(2) has had its accreditation withdrawn, revoked, or otherwise terminated for cause during the preceding 24 months, unless such withdrawal, revocation, or termination has been rescinded by the same accrediting agency; or

(3) has withdrawn from accreditation voluntarily under a show cause or suspension order during the preceding 24 months, unless such order has been rescinded by the same accrediting agency.

(k) RELIGIOUS INSTITUTION RULE.—Notwithstanding subsection (j), the Secretary shall allow an institution that has had its accreditation withdrawn, revoked, or otherwise terminated, or has voluntarily withdrawn from an accreditation agency, to remain certified as an institution of higher education under section 102 and subpart 3 of this part for a period sufficient to allow such institution to obtain alternative accreditation, if the Secretary determines that the reason for the withdrawal, revocation, or termination—

(1) is related to the religious mission or affiliation of the institution; and

(2) is not related to the accreditation criteria provided for in this section.

(l) LIMITATION, SUSPENSION, OR TERMINATION OF RECOGNITION.—(1) If the Secretary determines that an accrediting agency or association has failed to apply effectively the criteria in this section, or is otherwise not in compliance with the requirements of this section, the Secretary shall—

(A) after notice and opportunity for a hearing, limit, suspend, or terminate the recognition of the agency or association; or

(B) require the agency or association to take appropriate action to bring the agency or association into compliance with such requirements within a timeframe specified by the Secretary, except that—

(i) such timeframe shall not exceed 12 months unless the Secretary extends such period for good cause; and

(ii) if the agency or association fails to bring the agency or association into compliance within such timeframe, the Secretary shall, after notice and opportunity for a hearing, limit, suspend, or terminate the recognition of the agency or association.

(2) The Secretary may determine that an accrediting agency or association has failed to apply effectively the standards provided in this section if an institution of higher education seeks and receives accreditation from the accrediting agency or association during any period in which the institution is the subject of any interim action by another accrediting agency or association, described in paragraph (2)(A)(i), (2)(B), or (2)(C) of subsection (a) of this section, leading to the suspension, revocation, or termination of accreditation or the institution has been notified of the threatened loss of accreditation, and the due process procedures required by such suspension, revocation, termination, or threatened loss have not been completed.

(m) LIMITATION ON THE SECRETARY'S AUTHORITY.—The Secretary may only recognize accrediting agencies or associations which accredit institutions of higher education for the purpose of enabling such institutions to establish eligibility to participate in the programs under this Act or which accredit institutions of higher edu-

cation or higher education programs for the purpose of enabling them to establish eligibility to participate in other programs administered by the Department of Education or other Federal agencies.

(n) INDEPENDENT EVALUATION.—(1) The Secretary shall conduct a comprehensive review and evaluation of the performance of all accrediting agencies or associations which seek recognition by the Secretary in order to determine whether such accrediting agencies or associations meet the criteria established by this section. The Secretary shall conduct an independent evaluation of the information provided by such agency or association. Such evaluation shall include—

(A) the solicitation of third-party information concerning the performance of the accrediting agency or association; and

(B) site visits, including unannounced site visits as appropriate, at accrediting agencies and associations, and, at the Secretary's discretion, at representative member institutions.

(2) The Secretary shall place a priority for review of accrediting agencies or associations on those agencies or associations that accredit institutions of higher education that participate most extensively in the programs authorized by this title and on those agencies or associations which have been the subject of the most complaints or legal actions.

(3) The Secretary shall consider all available relevant information concerning the compliance of the accrediting agency or association with the criteria provided for in this section, including any complaints or legal actions against such agency or association. In cases where deficiencies in the performance of an accreditation agency or association with respect to the requirements of this section are noted, the Secretary shall take these deficiencies into account in the recognition process. The Secretary shall not, under any circumstances, base decisions on the recognition or denial of recognition of accreditation agencies or associations on criteria other than those contained in this section. When the Secretary decides to recognize an accrediting agency or association, the Secretary shall determine the agency or association's scope of recognition. If the agency or association reviews institutions offering distance education courses or programs and the Secretary determines that the agency or association meets the requirements of this section, then the agency shall be recognized and the scope of recognition shall include accreditation of institutions offering distance education courses or programs.

(4) The Secretary shall maintain sufficient documentation to support the conclusions reached in the recognition process, and, if the Secretary does not recognize any accreditation agency or association, shall make publicly available the reason for denying recognition, including reference to the specific criteria under this section which have not been fulfilled.

(o) REGULATIONS.—The Secretary shall by regulation provide procedures for the recognition of accrediting agencies or associations and for the appeal of the Secretary's decisions. Notwithstanding any other provision of law, the Secretary shall not promulgate any regulation with respect to the standards of an accreditation agency or association described in subsection (a)(5).



(p) RULE OF CONSTRUCTION.—Nothing in subsection (a)(5) shall be construed to restrict the ability of—

(1) 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

(2) 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.

(q) REVIEW OF SCOPE CHANGES.—The Secretary shall require a review, at the next available meeting of the National Advisory Committee on Institutional Quality and Integrity, of any change in scope undertaken by an agency or association under subsection (a)(4)(B)(i)(II) if the enrollment of an institution that offers distance education or correspondence education that is accredited by such agency or association increases by 50 percent or more within any one institutional fiscal year.

\* \* \* \* \*

## MINORITY VIEWS

### INTRODUCTION

H.R. 3724, the *Accreditation for College Excellence Act of 2023*, amends the *Higher Education Act of 1965* (HEA) in ways Committee Democrats firmly believe will lower the quality of higher education. The bill proposes changes to the standards under which accrediting bodies determine the quality of institutions of higher education. These changes are solutions in search of problems. The provisions in this bill are largely a rehash of proposals the Committee marked up earlier this session in H.R. 6951, the so-called *College Cost Reduction Act*, which the Committee passed on a party-line vote.<sup>1</sup> They were bad policy then, and remain so now.

### BACKGROUND

Current law mandates operating procedures that any accrediting agency seeking federal recognition must follow when making determinations of school or program quality.<sup>2</sup> The procedures currently mandated by HEA are designed to ensure accreditors are monitoring schools in a timely and common sense fashion to ensure quality. This includes conducting ad hoc supervision as needed when schools create new programs or expand to new campuses, ensuring schools have policies around the transfer of credit that students are aware of, and that schools have plans in place to support students completing their education in the event of loss of accreditation.<sup>3</sup>

<sup>1</sup>The majority provided no rationale as to why they chose to mark up nearly identical language less than two months after its initial consideration by the Committee. However, the use of Committee time to consider a bill with no meaningful chance of consideration or passage in the Senate, let alone approval by the President is what explains the fact that the analysis that follows largely mirrors that which will appear in forthcoming minority views on H.R. 6951.

<sup>2</sup>Higher Education Act of 1965, § 496, 20 U.S.C. 1099b.

<sup>3</sup>*Id.*

*“Litmus Tests”*

On its face, H.R. 3724 makes slight modifications to the requirements HEA places on federally recognized accrediting agencies. First, the bill adds a provision<sup>4</sup> under which accrediting agencies must confirm that they do not require or entice a school to take a stance on any “specific partisan, political, or ideological viewpoint or belief or set of such viewpoints and beliefs.”<sup>5</sup> At markup, Chairwoman Virginia Foxx (R–NC) stated this provision “ensures colleges are not forced to commit to the principles of DEI to receive accreditation.”<sup>6</sup>

Diversity, Equity, and Inclusion (DEI) programs on college campuses are designed with the recognition that most college campuses are currently serving students from demographics they were not initially designed to serve. While no two DEI programs are identical, The Century Foundation has provided a broad definition of the three key terms as they are used in practice on college campuses.

Diversity refers to the range of different identities within a particular space, whether it is based on race, gender identification, sexual orientation, or other factors; organizations seeking diversity value having a community that represents humanity across the full range of identities. Equity refers to the allocation of an adequate amount of attention and/or resources toward each identity to ensure that all groups can reach a similar outcome; an organization seeking equity would counter a community member’s disadvantage by allocating more resources and support toward that person. Finally, inclusion refers to an organization’s policies that ensure its overall culture is welcoming to all identities; an organization seeking inclusion could create rules for conducting meetings or guidelines for what would be considered inappropriate conversations . . . DEI programs in colleges and universities aim to create a campus culture that values and celebrates all students’ diverse life experiences and cultural backgrounds. The central values of DEI are to ensure equal access to success in higher education and provide extra resources to specific populations to achieve success standards similar to their peers. Universities must provide adequate resources and tools for students from different backgrounds to excel, considering historical circumstances that often hindered their access to higher education. In short, DEI programs strive to foster an inclusive and equitable educational environment for all students.<sup>7</sup>

<sup>4</sup>H.R. 6951, §311(c)(5). This same provision is titled the “Prohibition on Litmus Tests” in H.R. 6951, the *College Cost Reduction Act*. Although this phrase does not appear in H.R. 3724, this provision is nearly identical to the “Prohibition on Litmus Tests” provision included in H.R. 6951, marked up by the Committee on Jan. 31, 2024.

<sup>5</sup>H.R. 3724, §2(a)(3).

<sup>6</sup>Press Release, H. Comm. on Educ. & the Workforce, Chairwoman Foxx Delivers Opening Remarks at Markup to Bolster Workforce and Advance Academic Freedom, Mar. 21, 2024, <https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=410332>.

<sup>7</sup>Jordan Nellums, *Universities Need to Mount and Offensive for Diversity, Equity, and Inclusion*, *The Century Foundation*, Aug. 17, 2023, <https://tcf.org/content/commentary/universities-need-to-mount-an-offensive-for-diversity-equity-and-inclusion/>. For a thorough debunking of the myths surrounding DEI, and a direct refutation of much of the anti-DEI rhetoric espoused in Committee proceedings during the 118th Congress, see USC Race & Equity Ctr., *Truths About*

Republicans have not wasted a chance to denounce DEI initiatives in industry, governmental, and educational settings. For example, the ruling in the Harvard and UNC affirmative action cases—in no way related to DEI—has been used as pretext for many Republicans to declare all DEI initiatives unconstitutional. Thirteen Republican state attorneys general wrote a joint letter to the CEOs of the Fortune 100 companies stating that “diversity, equity, and inclusion” (DEI) efforts may amount to “overt and pervasive racial discrimination . . . [that] violates both state and federal law.”<sup>8</sup> This initial insistence of DEI’s *prima facie* illegality has diminished as more states have passed laws to actually prohibit DEI programs in higher education—laws that would arguably be unnecessary if those initial claims of DEI illegality were true.<sup>9</sup> And in the most absurd sign of irrationality toward DEI, Republican state officials have taken to claiming DEI efforts are the cause of any and all societal ills including school fights, airplane malfunctions, and the collision of a container ship with a bridge and its subsequent collapse.<sup>10</sup>

H.R. 3724 also prohibits an accrediting agency from requiring, encouraging, or coercing schools to “support or commit to supporting the disparate treatment of any individual or group of individuals on the basis of any protected class under Federal civil rights law, except as required by Federal law or a court order”.<sup>11</sup> This statement only makes sense in a context where one believes DEI programs result in such disparate treatment. This is counter to what DEI programs are designed to do, which is to make campuses welcoming environments for all students.<sup>12</sup>

In a recent article examining this issue, the Chronicle of Higher Education found that while accreditors are examining college DEI policies as part of their assessment, that examination is largely focused on determining *whether schools are living up to what the universities themselves are claiming they are doing*.<sup>13</sup> For example the article cites Cal Lutheran, a school whose accreditor raised concerns around their treatment of faculty of color (30% of the school’s

DEI on College Campuses, 2024, <https://race.usc.edu/wp-content/uploads/2024/03/Harper-and-Associates-DEI-Truths-Report.pdf>.

<sup>8</sup>Letter from Kris Kobach, Atty. Gen. of Kan. & 12 other State Attys. Gen. to the CEOs of the Fortune 100 Companies (July 13, 2023), <https://ago.mo.gov/wp-content/uploads/corporate-racial-discrimination-multistate.pdf>.

<sup>9</sup>*DEI Legislation Tracker*, Chron. of Higher Educ., <https://www.chronicle.com/article/here-are-the-states-where-lawmakers-are-seeking-to-ban-colleges-dei-efforts?sra=true> (last visited Mar. 29, 2024).

<sup>10</sup>Summer Ballentine, *Missouri attorney general is accused of racial bias for pinning a student fight on diversity program*, Associated Press, Mar. 26, 2024; Ayana Archie, *The Texas attorney general is investigating a supplier of Boeing 737 parts*, Nat’l. Pub. Radio, Mar. 29, 2024 (“Paxton’s office will be requesting documents related to ‘the company’s organization, conduct and management,’ as well as its diversity, equity, and inclusion (DEI) practices to examine ‘whether those commitments are unlawful or are compromising the company’s manufacturing processes,’”); Erin Alberty, *Utah lawmaker blames DEI for Baltimore bridge collapse despite cargo ship collision*, Axios, Mar. 27, 2024.

<sup>11</sup>H.R. 3724, § 2(a)(3).

<sup>12</sup>USC Race & Equity Ctr., *supra* note 6, at 49 (“Claims that DEI programs mandate racial bias education or promote unequal treatment of individuals are unfounded and ignore many of the core principles of DEI, which are addressing systemic barriers to equity and ensuring that all individuals have equal opportunities to succeed.”).

<sup>13</sup>Eric Kelderman, *The New Accountability: How accreditors are measuring colleges’ diversity, equity, and inclusion efforts*, The Chronicle of Higher Education, Apr. 3, 2023, <https://www.chronicle.com/article/the-new-accountability> (“Today, six out of the seven major institutional accreditors are developing ways to assess how colleges serve historically underrepresented students, by examining institutions’ mission statements, the disparate outcomes between white students and students of color, the diversity of their faculties, and testimonies of community members about discrimination they face at the colleges.”)

instructional staff) and the school's outcomes measures for varying student populations. The school's President was quoted as saying the school was not taking action ". . . because [the accreditor] says we have to, . . . [W]e're doing it because it's the right thing to do and it's mission-driven."<sup>14</sup>

Absent any evidence that accreditors are denying schools accreditation based on DEI policies, the question occurs as to why are these provisions in H.R. 3724 necessary? Committee Democrats believe the litmus test provision's desired effects are two-fold.

Republicans have long sought to politicize the academy and blur the lines between academic theory, research, scientific method, political viewpoints, and belief.<sup>15</sup> H.R. 3724's first effect will be to further this effort by inserting this blurring of lines directly into the assessment of academic quality of a school's programs itself. Any academic discipline that includes a "controversial" view could be one that accreditors fear assessing, lest they run afoul of this provision. Accreditors are further refrained from assessing an institution or program of study's commitment to any ideology, belief, or viewpoint.<sup>16</sup> For example, if H.R. 3724 became law, would a program accreditor, in assessing the quality of a university environmental science program, be forced to ignore that the program banned the teaching of the consensus scientific belief that man-made climate change is real because it was seen as "political" or merely a "viewpoint"? The litmus test provision will result in a chilling effect setting in among accreditors, scaring them from taking an honest look at a school's claims as to its mission or the quality its programs, for fear they may wade into waters that could be considered "controversial".

Second, the litmus test provisions will dissuade accreditors from making any assessment of what a school purports to do in the field of DEI. This will allow schools to stand up Potemkin DEI policies that promise an institutional focus on creating a campus welcoming to all, knowing full well their accreditor will not actually hold them accountable for these policies. As the racial demographics of college students continue to diversify,<sup>17</sup> this could result in students attending schools that claim to welcome them, only to find those claims have never been verified.

### *Religious Institutions*

The second half of H.R. 3724 focuses on accreditation for religious colleges and universities. Religiously affiliated institutions of higher education have been a part of our nation since its early beginnings.<sup>18</sup> Data from Integrated Postsecondary Education Data System shows that during the 2022–2023 Academic Year, 14.5 percent of U.S. institutions of higher education were religiously affili-

<sup>14</sup>*Id.*

<sup>15</sup>*E.g.*, Luke Jones, *Ohio bill would ban colleges from discussing diversity, climate change*, WKRC, May 8, 2023, <https://dayton247now.com/news/local/ohio-bill-would-ban-colleges-discussing-diversity-climate-change-senate-bill-sb-83-controversial-topics-banned-public-private-universities-schools-inclusion-equity-illegal-topics-chinese-government-schools-cincinnati-ohio>; Columbia L. Sch., Sabin Ctr. for Climate Change L., *Silencing Science Tracker*, <https://climate.law.columbia.edu/content/silencing-science-tracker>.

<sup>16</sup>H.R. 3724, § 2(a)(3).

<sup>17</sup>*See, e.g.*, Audrey Williams June, *As America Grows More Diverse, a State's Colleges Follow Suit*, *Chron. of Higher Educ.*, Sept. 7, 2021.

<sup>18</sup>Jessica Rose Daniels & Jacqueline N. Gustafson, *Faith-Based Institutions, Institutional Mission, and the Public Good*, *High. Learn. Res. Commun.*, <https://files.eric.ed.gov/fulltext/EJ1132798.pdf> (last visited on Feb. 12, 2024).

ated.<sup>19</sup> And though the total number of higher education institutions fell by 14.4 percent from 2010 to 2020, the number of religiously affiliated institutions fell only 3.3 percent during this same time period.<sup>20</sup>

Under current law, accreditors must consistently apply and enforce standards that respect an institution's mission, including its religious mission, by basing decisions only on the standards of accreditation.<sup>21</sup> Current regulations also already provide certain safeguards for the missions of religious institutions while still maintaining the authority of accreditors to require that curricula at such institutions meet core components. Specifically, regulations state that an agency meets its obligations related to consistency in decision-making, if an accrediting agency

Bases decisions regarding accreditation and preaccreditation on the agency's published standards and does not use as a negative factor the institution's religious mission-based policies, decisions, and practices [in the following areas: (1) curricula; (2) faculty, (3) faculties, equipment, and supplies; (4) student support services; (5) recruiting and admissions practices, academic calendars, catalogs, publicans, grading, and advertising] *provided, however, that the agency may require that the institution's or program's curricula include all core components required by the agency.*<sup>22</sup>

Thus, current regulations already restrict accrediting agencies from interfering in a religious institution's religious mission and operations in several areas, while importantly affirming the continued authority of accrediting agencies to ensure institutions meet required core curricula components. It should be noted that the regulations mentioned above were promulgated by the Trump administration in 2019, and the U.S. Department of Education acknowledged, at that time, it had "not received any formal complaints about an institution's negative treatment during the accreditation process because of its adherence to a religious mission."<sup>23</sup>

In contrast, H.R. 3724 proposes to protect the religious mission and operations of religious institutions without including that second vital policy piece: ensuring that accrediting agencies maintain the authority to require institutions to meet their curriculum standards. Moreover, H.R. 3724 is the second proposal considered by this Committee in several weeks to weaken the accreditation process specifically for religious institutions. H.R. 6951, the *College Cost Reduction Act*, as passed by the Committee in January, proposed a sweeping exemption allowing religious institutions to skirt accreditation standards for core curricula requirements when those standards were not consistent with the institution's religious mis-

<sup>19</sup> U.S. Dep't of Educ., Integrated Postsecondary Education Data System (IPEDS), Data Collection 2022 for Title IV-participating IHEs with a Religious affiliation.

<sup>20</sup> Ricardo Azziz, *Are Faith-Based Colleges in Trouble? It Depends.*, Higher Ed Dive (Aug. 14, 2023), <https://www.highereddive.com/news/are-faith-based-colleges-in-trouble-it-depends/690597/>.

<sup>21</sup> 20 U.S.C. § 1099b(a)(4); 34 C.F.R. §§ 600.18(a)-(b)(3).

<sup>22</sup> 34 C.F.R. § 602.18(b)(3) (emphasis added).

<sup>23</sup> Student Assistance General Provisions, The Secretary's Recognition of Accrediting Agencies, The Secretary's Recognition of Procedures for State Agencies, 84 Fed. Reg. 58834, 58861 (Nov. 1, 2019) (codified at 34 C.F.R. Parts 600, 602, 603, 654, 668, and 674).

sion.<sup>24</sup> Taken together, these legislative proposals could undermine the accreditation process and potentially mislead students that their chosen program of study meets the stated accreditation standards without exception. As a result, students may not be aware if they are not being instructed in the core curriculum for their chosen program of study. Committee Democrats believe that students have a fundamental right to know if their program of study does not meet accreditation standards. Under H.R. 3724, building upon the already-reported H.R. 6951, students at religious institutions may not be afforded the opportunity to learn what other students in their field do, putting them at an unrealized disadvantage when entering the workforce.

In summation, H.R. 3724 fails to preserve the important function of accreditors to confirm that programs of study meet stated core curricula standards. Since religious institutions are currently able to execute the requirements of the law to meet accreditation standards while maintaining their religious identities, in addition to the fact that the current system works for schools, the provisions in H.R. 3724 are a solution in search of a problem.

#### DEMOCRATIC AMENDMENTS OFFERED DURING MARKUP OF H.R. 3724

Committee Democrats felt strongly the provisions of H.R. 3724 were antithetical to the determination of quality in higher education, so there was little that could be done to improve upon the bill. However, we recognized a need to ensure that schools that relied upon new loopholes in quality assessment had to do so in a transparent manner. To that end, Rep. Suzanne Bonamici (D-OR) offered the one Democratic amendment to H.R. 3724. That amendment would require an institution that sought exemption from core curricula components required by an accrediting agency to publicly disclose that information to students and faculty. The amendment merely required a school to tell its students and faculty that it had sought and received an exemption from required core curricula and provide a description of those affected core curricula components. The amendment failed on a party line vote.

#### CONCLUSION

If enacted into law, H.R. 3724 will do nothing to improve the quality of higher education in America, and all serious analysis suggests the result will be exactly the opposite. For this and the reasons stated above, Committee Democrats unanimously opposed H.R. 3724 when the Committee on Education and the Workforce considered it on March 21, 2024. We strongly urge the House of Representatives to do the same.

ROBERT C. “BOBBY” SCOTT,  
*Ranking Member.*  
 JOE COURTNEY,  
 GREGORIO KILILI CAMACHO  
 SABLAN,  
 SUZANNE BONAMICI,  
 MARK TAKANO,  
 ALMA S. ADAMS,

<sup>24</sup>*The College Cost Reduction Act*, H.R. 6951, 118th Congress (as reported by the Committee on Education and the Workforce, January 31, 2024).

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MARK DESAULNIER,  
*Members of Congress.*

