

NATIONAL  
ASSOCIATION  
*of* SCHOLARS

# Freedom *to* Learn

Amending the Higher Education Act

January 2021

# *Freedom*

Amending the

A policy proposal by the

NATIONAL  
ASSOCIATION  
*of* SCHOLARS

420 Madison Avenue, 7th Floor  
New York, NY 10017

# *to Learn*

## Higher Education Act

January 2021

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# About the National Association of Scholars

## Mission

The National Association of Scholars is an independent membership association of academics and others working to sustain the tradition of reasoned scholarship and civil debate in America's colleges and universities. We uphold the standards of a liberal arts education that fosters intellectual freedom, searches for the truth, and promotes virtuous citizenship.

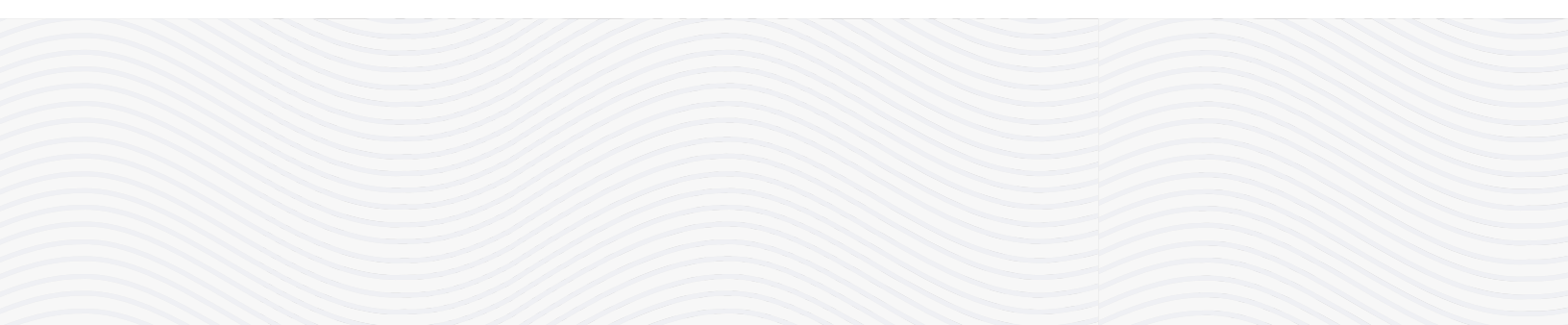
## What We Do

We publish a quarterly journal, *Academic Questions*, which examines the intellectual controversies and the institutional challenges of contemporary higher education.

We publish studies of current higher education policy and practice with the aim of drawing attention to weaknesses and stimulating improvements.

Our website presents educated opinion and commentary on higher education, and archives our research reports for public access.

NAS engages in public advocacy to pass legislation to advance the cause of higher education reform. We file friend-of-the-court briefs in legal cases defending freedom of speech and conscience and the civil rights of educators and students. We give testimony before congressional and legislative committees and engage public support for worthy reforms.



NAS holds national and regional meetings that focus on important issues and public policy debates in higher education today.

## Membership

NAS membership is open to all who share a commitment to its core principles of fostering intellectual freedom and academic excellence in American higher education. A large majority of our members are current and former faculty members. We also welcome graduate and undergraduate students, teachers, college administrators, and independent scholars, as well as non-academic citizens who care about the future of higher education.

NAS members receive a subscription to our journal *Academic Questions* and access to a network of people who share a commitment to academic freedom and excellence. We offer opportunities to influence key aspects of contemporary higher education.

Visit our website, [www.nas.org](http://www.nas.org), to learn more about NAS and to become a member.

## Our Publications

*Rebalancing the Narrative: Higher Education, Border Security, and Immigration.* 2021.

*Disfigured History: How the College Board Demolishes the Past.* 2020

*Dear Colleague: The Weaponization of Title IX.* 2020.

*Critical Care.* 2020.

*The Lost History of Western Civilization.* 2020.

*Social Justice Education in America.* 2019.

*Separate but Equal, Again: Neo-Segregation in American Higher Education.* 2019.

*Beach Books 2010-2019.* [NAS's annual study of college common reading programs.]

*The Irreproducibility Crisis of Modern Science.* 2018.

*Outsourced to China.* 2017.

*Making Citizens.* 2017.

*The Disappearing Continent.* 2016.

*The Architecture of Intellectual Freedom.* 2016.

*Inside Divestment.* 2015.

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*What Does Bowdoin Teach?* 2013.

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# **Freedom to Learn Checklist**



# Freedom to Learn Checklist

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- 1.1. Require a reduction of the size of higher education administration and non-academic support staff.
- 1.2. Require a redirection of institutional resources toward lowering tuition.

### *2. Student Aid*

- 2.1. Cap federal loans per borrower, streamline aid by merging student assistance programs, and add basic requirements for aid eligibility.
- 2.2. Permit borrowers to discharge student loans in bankruptcy and require institutions of higher education to accept responsibility for 50% of loans (including accruing interest) defaulted on by students at their institution.
- 2.3. Empower students to make knowledgeable decisions about how much debt, if any, they can afford.
- 2.4. By steady, incremental change, redirect a portion of student aid disbursements from the federal government to the states.

### *3. Rigorous Standards*

- 3.1. Congress should eliminate financial aid for remedial coursework.
- 3.2. Link Title IV eligibility to academic rigor.

## II. Rights

### *4. Due Process*

- 4.1. Make the establishment of due process protection a condition of Title IV eligibility.

### *5. Freedom to Learn*

- 5.1. Congress should strengthen the Title I protections for students' intellectual freedom.
- 5.2. Require colleges to develop a detailed charter of intellectual freedom.

### *6. De-Politicizing Campuses*

- 6.1. Make intellectual diversity protection a condition of Title IV eligibility.
- 6.2. Sunset the diversity bureaucracy.
- 6.3. Defund components of higher education that have become irredeemably politicized, such as "service-learning," "community service," and "sustainability," which have become euphemisms for social justice advocacy.

### *7. Speakers*

- 7.1. Mandate speaker intellectual diversity as a condition of Title IV eligibility.
- 7.2. Require colleges to disclose their speaker fees and honoraria.

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### *8. National Interest*

- 8.1. Limit colleges' foreign dependence, including by way of tuition revenue.

- 8.2. Limit Chinese government influence, by barring funding to colleges and universities that host a Confucius Institute, employ a professor who has received money from the Thousand Talents Plan or similar program, possess a branch campus in China, or receive undisclosed funds from the Chinese government or Chinese citizens.
- 8.3. Mandate transparency about foreign gifts.
- 8.4. End international branch campuses in undemocratic countries.
- 8.5. Reform Title VI area studies grants, especially those to Middle East Studies, to require these programs to live up to their commitments to educate students capable and willing to support American foreign policy.
- 8.6. Forbid “sanctuary campuses.”

### *9. Civics Education*

- 9.1. Congress should reauthorize and fund the American History for Freedom program.
- 9.2. Ensure that students learn civics as factual knowledge in the classroom, not as “civic engagement.”

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### *10. Educational Variety*

- 10.1. Designate for-profit colleges as legal “institutions of higher education” under the Higher Education Act.
- 10.2. Make it easier for new entrants into the higher education marketplace, by mandating that accreditors facilitate their entry.

### *11. Homeschool Equality*

- 11.1. Ensure that state universities’ admissions policies cannot discriminate against homeschool students.
- 11.2. Amend Title IV to allow financial aid for dual credit courses.

## *12. Equal Opportunity*

- 12.1. Require colleges and universities to disclose transparently the effects of discriminatory policies such as *affirmative action*, *diversity*, *equity*, and *inclusion* on student admissions, faculty hiring, and administrative staffing.
- 12.2. Colleges should disclose information allowing the Department of Education to assess the consequences and costs of discriminatory policies such as *affirmative action*, *diversity*, *equity*, and *inclusion*.
- 12.3. Make dismantling neo-segregation policies a condition of Title IV eligibility.
- 12.4. Limit financial aid dedicated to “minority-serving institutions” to Historically Black Colleges and Universities and Tribal Colleges and Universities.

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- 13.1. Prohibit accrediting agencies from including any political criteria in their standards.
- 13.2. Ensure that accreditors do not trespass on the religious freedom of religious colleges and universities.

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- 14.1. Authorize the Department of Education to substitute “expert review” for “peer review.”

## **VI. Additional Proposals**

Higher education needs many additional reforms that the Higher Education Act will not address. Here we sketch further reforms Congress should undertake in separate legislation.

### *15. Adjuncts*

- 15.1. Congress should mandate that higher education institutions reveal transparently the extent of their dependence on part-time instructors.

## *16. College Board*

- 16.1. Encourage alternative assessment providers.
- 16.2. Require the College Board to cut ties with the Chinese Government.

## *17. Due Process: Title IX Responsible Employees*

- 17.1. Require Title IX Responsible Employees to have five years' experience in criminal defense.

## *18. Sex*

- 18.1. Define sex as biological.

## *19. Student Aid*

- 19.1. Provide a legal framework for income-share agreements offered to students to finance student loans.

# Introduction

# Introduction

## General Principles

The Higher Education Act (HEA), first passed in 1965 and last reauthorized in 2008, lists the conditions that American colleges and universities must satisfy to be considered eligible to receive federal student grants and loans. By 2020, federal dollars accounted for about one half the revenue of American higher education—and colleges and universities generally obey HEA regulations, for fear of swift bankruptcy if the Department of Education cuts off the flow of federal dollars. The HEA has reshaped almost every aspect of American higher education. It bans some actions by colleges and universities and gives “incentives” to others that are almost impossible to refuse. It sets forth the conditions by which colleges seeking federal funding must abide. Some of these regulations can be complied with easily. Compliance for far more is onerous and costly. All mold how our nation’s colleges and universities educate American students.

The National Association of Scholars believes that higher education should gather scholars and students to cultivate excellence and pursue the truth, transmit our heritage of Western civilization to a new generation, prepare cultured and virtuous citizens, and train students for vocational success. American colleges and universities should embody academic excellence and foster it in their students. Our institutions of higher education should strive to make their classes affordable, so as to make higher education accessible for any qualified student.

Because colleges and universities specialize in the subjects they teach and the students they serve, they ought to differ from one another in many ways. Cornell University and Cornell College have different missions; so too do Westminster College and Westminster Choir College. But we expect all colleges and universities to hold their students to rigorous standards, to protect intellectual freedom, to strive for modest tuition, and to prioritize teaching and scholarship over administration.

The Higher Education Act can and should encourage colleges to live up to these ideals. Our policy guide, *Freedom to Learn*, shows how it can do so. *Freedom to Learn* sets forth policies by which Congress can promote intellectual freedom, academic rigor, equal opportunity, affordability—and limit foreign interference, politicization, and administrative bloat.

## Public vs. Private

Our recommendations recognize that colleges and universities are not islands to themselves. They are part of the larger American social order and have public responsibilities. This is especially true if they receive public funding or enjoy tax-exempt status. The common distinction between “public” and “private”

colleges and universities can be misleading: both public and private institutions usually receive large amounts of public funding to subsidize student tuition and sponsor research. Public and private colleges and universities do differ in their status under the law, and the distinction is important, but most of our policy prescriptions apply to both.

## State vs. Federal

Because all colleges and universities serve important public functions, they are appropriately subject to some forms of regulation. On the whole, the NAS favors state and local regulation of higher education over regulation by the federal government. State and local regulation is better suited to maintaining institutional autonomy and the diversity of educational approaches that is one of the great strengths of American higher education. Federal regulation is a homogenizing force that has often contributed to educational mediocrity.

Nonetheless NAS recognizes that since the passage of the Servicemen's Readjustment Act (the GI Bill) in 1944, and more particularly since the passage of the Higher Education Act in 1965, the federal government has played an outsized role in regulating American colleges and universities. The regulation will likely continue into the foreseeable future.

The immediate question for those who would reform American higher education according to the principles NAS sets forth is, "How best can we steer federal regulatory authority over American higher education towards more productive goals?"

## Language

Those who would divert higher education from its true purposes have long since learned to obfuscate their agendas with misleading labels and diversionary explanations. For example, when a college sets up a "free speech zone," it is in fact declaring that free speech is prohibited at most times and places on campus. "Bias Response Teams" are presented as a way for campuses to weed out prejudice, but in fact they give political activists a weapon to ensure that their beliefs dominate campus discourse and marginalize views with which they disagree.

Even seemingly simple terms such as "access" and "affordability" sometimes don't mean what they look like they are saying. "Access" to higher education is often the on-ramp to policies that mismatch students to educational opportunities, which exacerbate drop-out rates, the student debt crisis, and academic failure. "Affordability" is often hyped in support of policies that drive up college costs and promote wasteful spending.



As a matter of policy, NAS supports clear and unambiguous language in all laws and regulations in higher education.

## The Political Landscape

Our policy guide differs radically from what leaders in both parties have promoted.

Democrats have made much of the promise of “free” college, if not to all students then at least to some significant number. They have pitched generous student loan terms or even full student loan forgiveness. They regularly urge all students to enroll in college, and all colleges to provide whatever “wrap-around services” and remedial coursework is required for those students to graduate. They promote social justice, “service learning,” identity politics, “sustainability,” and many other agendas that politicize higher education.

Republicans, on the other hand, have generally seen higher education as workforce development. They wish to improve federal student aid by streamlining the Free Application for Federal Student Aid (FAFSA) and reforming loan repayment programs. They promote vocational learning, science and math (STEM) courses, and programs related to national security—and largely write off the rest of higher education.

Intent on making the government a content-neutral body and afraid to challenge the billions of dollars that Democrats routinely funnel to academic programs that are either politically biased or explicitly dedicated to progressive activism, Republicans have by their negligence abetted the very politicization they criticize. They may decry campus “free speech zones” and call foul every time a student is arrested for distributing copies of the U.S. Constitution. But Republicans have failed time and again to propose meaningful policies that would actually reform higher education.

This proposal is different. It tackles the big problems of politicization and contempt for intellectual freedom. It demands severe cuts in higher education’s top-heavy administration. It takes on the irredeemably politicized programs that are the hotspots of political correctness. It redesigns federal student aid into a program that benefits students—not colleges. It holds colleges accountable for luring ill-prepared students who take on large amounts of debt for programs they will never complete.

Our proposal would restore higher education to its foundational principles of intellectual freedom and academic rigor. To achieve such a transformation will take courage—courage from elected leaders, from leaders of colleges and universities, from parents paying hard-earned tuition money, and from students who must choose whether and where to enroll in college. But it will be worth it. Therefore, we offer the following proposals.

## Critical Care

In May 2020, NAS published another set of policy recommendations in *Critical Care: Policy Recommendations to Restore American Higher Education after the 2020 Coronavirus Shutdown* (<https://www.nas.org/reports/critical-care>), which suggested guidelines for how federal and state governments should respond to the coronavirus pandemic. We wrote our recommendations in *Critical Care* to govern how federal and state governments should conduct a bailout of higher education, not as long-term recommendations for higher education policy. While some of our recommendations in *Critical Care* overlap with our recommendations here in *Freedom to Learn*, many more do not—partly because these recommendations focus on emendations to the Higher Education Act, and partly because these recommendations focus on a longer time-frame than those of *Critical Care*. We encourage policymakers to draw more heavily on *Critical Care* for short-term solutions to the crisis in higher education, and more heavily on *Freedom to Learn* for long-term solutions.



# I.

# Finances

# I. Finances

## *I. Administrative Bloat*

### **Background**

Federal policies have vastly increased the size of higher education administration in the last fifty years. Higher education administration spends huge sums on administrative expenses, student services, and academic support—much of which is really expenditures on diversity deans and other social justice activists. Such spending is often camouflaged as it is distributed into innocuous-sounding offices and expense categories. The federal government has directed a gusher of federal money to colleges and universities, especially by means of student loans and grants. Students are responsible for repaying these loans; colleges and universities are not. The financial model of most of American higher education is to pay most of their operational costs from tuition revenue—with most of that revenue, in turn, coming in the form of receipts from students' federal loans. As the ceiling on loans rises, colleges and universities simply increase their tuition to capture the extra dollars—and increase their staff. Colleges and universities, under the pretense that federal student aid enhances college “accessibility” and “affordability,” will continue to divert federal money to support administrative bloat unless Congress takes active steps to prevent that diversion.

### **Recommendation 1.1: Link Title IV Eligibility to Administrative Reduction**

Congress should require, as a condition for an institution to be eligible for Title IV funds, a reduction of the size of higher education administration and non-academic support staff.

*Legislative Language:* Add to 20 USC §1087c. (Selection of institutions for participation and origination) a subsection specifying that

- i. an institution of higher education will be deemed ineligible if it fails to reduce its non-instructional expenditures at least 50% from the amount it spent on September 1, 2019.

### **Recommendation 1.2: Link Title IV Eligibility to Tuition Reduction**

Congress should require, as a condition for an institution to be eligible for Title IV, a redirection of institutional resources toward lowering tuition.

*Legislative Language:* Add to 20 USC §1087c. (Selection of institutions for participation and origination) a subsection specifying that

- i. an institution of higher education will be deemed ineligible if it fails to spend at least 2.5% of its endowment each year to lower tuition.

## *2. Student Aid*

### **Background**

The federal government’s policies are the single biggest factor in the ruinous increase in college costs, including both tuition and student fees, in the last thirty years. The federal government has encouraged students to borrow more than they can afford to repay by making large student loans easy to obtain.

Federal student aid has fed an enduringly high rate of inflation in college tuition; created incentives for colleges and universities to compete with each other on the basis of student amenities more than the quality of academic programs; plunged many students into deep and sometimes insurmountable debt; and created perverse opportunities for federal bureaucrats to exert undue influence or control over colleges and universities that have grown dependent on the federally-approved flow of student loan dollars.

Inadvertently, Title IV of the Higher Education Act has turned American higher education into a special interest more devoted to protecting its access to public funds than to advancing the education of students or America’s international competitiveness.

### **Recommendation 2.1: Student Aid Program Reform**

Congress should reform Title IV regulations governing disbursement of student aid to cap federal loans per borrower, streamline aid by merging student assistance programs, and add basic requirements for aid eligibility.

*Legislative Language:* Congress should:

- i. Add to 20 U.S.C. §1078–2. (Federal PLUS loans) a subsection stating that “total loans made to a student or parent, including Federal Stafford Loans, may not exceed \$75,000 per borrower.”
- ii. Add to 20 U.S.C. §1091. (Student eligibility) subsections specifying that to be eligible for Title IV federal student aid, students must
  1. have family incomes below 150% of the poverty level;
  2. maintain a 2.5 grade point average; and
  3. have received federal loans and/or grants for no more than four previous years.
- iii. Amend 20 U.S.C. §28 (Higher education resources and student assistance) to streamline student aid into just two programs, a grant program and a loan program.

## **Recommendation 2.2: Discharge in Bankruptcy and University Co-Responsibility**

Congress should reform Title IV regulations to require that colleges and universities assume partial responsibility for student loans.

*Legislative Language:* Add to 20 U.S. Code § 28 (Higher education resources and student assistance) subsections that

- i. permit students to discharge their debts into bankruptcy and require institutions of higher education to accept responsibility for 50% of loans (including accruing interest) defaulted on by students at their institution, to be repaid to lending institutions over a 20-year period.

## **Recommendation 2.3: Empower Students with Knowledge about Loans**

Congress should empower students to make knowledgeable decisions about how much debt, if any, they can afford.

*Legislative language:* Add to 20 U.S.C. §1087cc-1. (Student loan information by eligible institutions (a) Disclosure required prior to disbursement) subsections that:

- i. require colleges and universities to inform students of the expected total cost burden of attending the institution as a precondition of any student submitting an application for federal student loans;
- ii. require students to specify their preferred loan amount (up to the federally mandated annual limits), and update and reauthorize their preferred amount every year prior to loan disbursements, with the proviso that
  1. students may not be given loans in excess of the amount requested; and
- iii. require loan applicants to take and pass a short examination demonstrating knowledge about compound interest, interest accrual, their responsibilities to repay their loans, and the various loan repayment plans available.

## **Recommendation 2.4: State Disbursements**

Congress, by steady, incremental change, should redirect a portion of student aid disbursements from the federal government to the states.

*Legislative Language:* Add to 20 U.S. Code § 28 (Higher education resources and student assistance) subsections that:

- i. transfer 50% of the current Title IV allotment to the states over the next ten years, at a rate of 5% a year, the transfer to begin two years after the passage of the law;
- ii. grant each state the right to establish its own procedures and qualifications for disbursing student aid; and
- iii. require each state to report annually to the Department of Education the procedures and qualifications it has used to disburse student assistance, along with a complete accounting of its student aid disbursements.

### *3. Rigorous Standards*

#### **Background**

Colleges and universities should be expected to make sure that students do rigorous, college-level work. Title IV unfortunately allows students to receive financial aid for up to 900 clock hours (30 semester or 45 quarter hours) of remedial coursework—approximately one year of remedial course work. Moreover, regulatory and accreditor mandates for retention and “student success” encourage colleges and universities to lower their educational standards, until even “college-level” courses reach remedial levels. Congress should strengthen standards, to encourage colleges to adopt and maintain rigor.

#### **Recommendation 3.1: Eliminate Financial Aid for Remedial Courses**

Congress should eliminate financial aid for remedial coursework.

*Legislative Language:* Congress should:

- i. Add to 20 U.S.C. §1091. (Student eligibility) a subsection stating: “No remedial coursework, defined as ‘below-college-level courses and training in reading, writing, and math that provide the competencies necessary for a student to succeed in college-level coursework,’ is eligible for Title IV funding, or for determining a student’s enrollment status or cost of attendance.”
- ii. Delete from 20 U.S.C. §1070a.(c) (Period of eligibility for grants) the following sections:



1. (1) “except that any period during which the student is enrolled in a noncredit or remedial course of study as defined in paragraph (2) shall not be counted for the purpose of this paragraph.”
2. (2) “Nothing in this section shall exclude from eligibility courses of study which are noncredit or remedial in nature (including courses in English language instruction) which are determined by the institution to be necessary to help the student be prepared for the pursuit of a first undergraduate baccalaureate degree or certificate or, in the case of courses in English language instruction, to be necessary to enable the student to utilize already existing knowledge, training, or skills. Nothing in this section shall exclude from eligibility programs of study abroad that are approved for credit by the home institution at which the student is enrolled.”

### **Recommendation 3.2: Mandate Academic Rigor**

Congress should link Title IV eligibility to academic rigor.

*Legislative Language:* Add to 20 USC §1087c. (Selection of institutions for participation and origination) a subsection mandating that colleges and universities:

- i. give absolute priority to establishing academic rigor, and preventing the decay of standards that allows remedial work to be given college credit, above any institutional, accreditory, or regulatory mandate for ideals such as diversity, equity, inclusion, retention, or student success;
- ii. mandate rigorous standards, consisting exclusively of core knowledge conveyed in the classroom, for all courses that qualify for a “core transfer curriculum”;
- iii. define “core transfer curriculum” as “a recommended lower-division core curriculum intended to facilitate student transfer among institutions of higher education”; and
- iv. draft procedures to ensure that all college courses retain rigorous standards.

**II.**

**Rights**

## II. Rights

### 4. Due Process

#### Background

Title IX of the Higher Education Amendments of 1972 bars federally funded colleges and universities from discriminating on the basis of sex. But over the years, the Department of Education (ED) adopted an expansive view of “discrimination” that made colleges responsible for regulating every sexually charged remark by students or professors. The Obama administration ED forced colleges to take on investigations better handled by trained law enforcement, and in the course of these investigations, colleges have abrogated due process rights of accused students and faculty members.

Under the Trump administration, the ED formally rescinded the Obama-era regulations and issued new regulations in their place. These reforms are only the beginning of needed legislation to ensure that Title IX protects due process rights for both the accuser and accused.

Title IX itself is distinct from the Higher Education Act, but there are still measures Congress can take to protect due process. (See also “Additional Proposals” below.)

#### Recommendation 4.1: Link Federal Student Loan Eligibility to Due Process Protection

Congress should make due process protection a condition of Title IV eligibility.

*Legislative Language:* Add to 20 USC §1087d.(a) (Participation agreements) and to 20 USC §1087cc. (Agreements with institutions of higher education) a subsection mandating that, on penalty of losing eligibility for Title IV federal student aid, colleges and universities must:

- i. establish adjudication procedures for students and faculty with strict adherence to due process protections, including but not limited to: the presumption of innocence, the clear and convincing evidence standard, the right to counsel, the right to know what one is charged with, the right to know of all existing allegations received by college administrators, the right to access all evidence including exculpatory evidence, the right to clearly and precisely worded definitions of misconduct that follow those used in our judicial system, the right to clearly defined statutes of limitations, the right to live hearings where both accusers and witnesses can be questioned (cross-examined), and the right to speak publicly about any case;
- ii. refer all reported felonies immediately to the local police;

- iii. establish “double jeopardy” protections in all adjudication procedures;
- iv. draft and circulate a written charter of enumerated due process rights guaranteed by the college or university to all students and faculty;
- v. inform all students and employees of their due process rights; and
- vi. require the Board of Trustees to certify annually either 1) that the college or university has respected all faculty and student due process rights; or 2) that the college or university has violated faculty and/or student due process rights, and that it has begun work to provide restitution for that violation, and to ensure that no such violation recurs.

## *5. Freedom to Learn*

### **Background**

Higher education is the special place in society set apart to seek the truth—which requires colleges and universities to protect intellectual freedom. Too often colleges and universities place other priorities above intellectual freedom, particularly the cultivation of “safe spaces,” the pervasive surveillance of “implicit bias” and “unconscious bias,” and the suppression of speech deemed “biased” or “hateful.”

Unfortunately, many college administrators have adopted the language of academic freedom and free speech to suppress intellectual freedom. They bar vaguely and elastically defined concepts such as “racism” and “homophobia,” which permits administrators to punish students and faculty selectively, by the exercise of arbitrary power. Often they do so in the name of enhancing the free speech of “minority” voices, which they consider to be at a disadvantage. Many colleges also sponsor “free speech zones” that actually limit speech to a small area of campus, and enforce their speech and association policies selectively, enabling them to single out certain types of speech for promotion or suppression.

The federal government can and should support intellectual freedom by maximizing First Amendment rights on, to protect the exercise of freedom of speech, freedom of expression, freedom of association, and freedom of religion. The government should do this, however, while respecting private colleges’ right to remain exempt from the First Amendment and to retain greater freedom to set their own policies. Religious institutions, in particular, should retain the right to govern themselves according to their religion.

### **Recommendation 5.1: Protect Intellectual Freedom**

Congress should strengthen the Title I protections for students’ intellectual freedom.

*Legislative Language:* Add to 20 U.S. Code § 1011a (Protection of student speech and association rights) subsections stating that it is the sense of Congress that:

- i. invited speakers have the right to speak and to be heard;
- ii. colleges should defend free speech against intimidation, threats of violence, actual violence, and reprisals;
- iii. First Amendment rights cannot be limited, infringed, or abrogated in any way by university policies to promote concepts or institutions such as “removing bias,” “preferred pronouns,” “safety,” “health,” or “safe spaces”;
- iv. “safety” and “health” involve exclusively physical matters, not emotional or mental ones;
- v. students and faculty have the freedom to discuss any problem that presents itself, as the First Amendment permits and within the limits of narrowly tailored viewpoint- and content-neutral restrictions on time, place, and manner of expression that are necessary to achieve a significant institutional interest, provided that these restrictions are clear, published, and provide ample alternative means of expression;
- vi. students and faculty have the freedom to assemble and engage in spontaneous expressive activity as long as such activity is lawful and does not materially and substantially disrupt the functioning of the constituent institution;
- vii. access to campus for purposes of free speech and expression should be consistent with First Amendment jurisprudence regarding traditional public forums, designated public forums, and nonpublic forums, subject to reasonable time, place, and manner restrictions;
- viii. students have the right to study in an environment free of disruption and intimidation;
- ix. “intimidation” is defined as “the causing of a reasonable apprehension of injury to a person or to the person’s spouse, de facto partner, child or dependent, or of violence or damage to any person or property”;
- x. student associations (especially religious ones) have the right to determine eligibility for membership and qualification for positions of leadership, immune from abridgement by institutional mandates for diversity, inclusion, equity concerning race, religion, class, sex, gender, gender preference, or gender identity;
- xi. colleges should protect the right of free exercise of religion; and

- xii. colleges should develop a written charter of enumerated intellectual freedom rights guaranteed by the college or university to all students and faculty.

### **Recommendation 5.2: Require an Intellectual Freedom Charter**

Colleges and universities' persistent abrogation of their faculty and students' intellectual freedom has been a growing scandal for a decade and more. No public college or university that restricts intellectual freedom deserves taxpayer money.

*Legislative Language:* Amend 20 U.S.C. §1085. Definitions for student loan insurance program (a) (Eligible Institution) to

- i. require, as a condition of Title IV eligibility, that colleges and universities must develop a charter of the principles of intellectual freedom. The charter should include at least:
  - 1. the right of invited speakers to speak and to be heard;
  - 2. rigorous and effective defense of free speech against intimidation, threats of violence, actual violence, and reprisals;
  - 3. the priority of intellectual freedom above concepts such as "removing bias," "preferred pronouns," "safety," "health," or "safe spaces";
  - 4. the definition of "safety" and "health" exclusively in physical terms, not as emotional or mental ones; and
  - 5. the requirement that the Board of Trustees certify annually either 1) that the college or university has respected intellectual freedom; or 2) that the college or university has violated intellectual freedom, and that it has begun work to provide restitution for that violation, and ensure that no such violation recurs.
- ii. Allow colleges and universities to determine the appropriate investigatory procedures and penalties to deal with infractions of intellectual freedom.
- iii. Ensure that this Charter will not infringe on the right of private secular and religious colleges and universities to enforce speech and association policies that uphold their mission statements, institutional religious affiliations, and statements of faith. Private colleges should be required to submit to the Department of Education, and make publicly accessible, a catalogue of their mission statements, institutional religious affiliations, and statements of faith that take priority over their commitments to intellectual freedom.

## *6. De-Politicizing Campuses*

### **Background**

In recent decades American higher education has come under the sway of ideologically driven activists who seek to replace traditional liberal arts education with progressive political activism. They have eviscerated the core curriculum, through which students once took systematic survey courses in history, philosophy, English, mathematics, the sciences, and foreign languages, and have imposed on colleges a new core curriculum centered around social justice, diversity, sustainability, multiculturalism, and “civic engagement.”

This new core curriculum seeks to impose a comprehensive, one-dimensional political ideology on students, which leaves little room for debate and forecloses the open-ended search for truth. It is antithetical to intellectual freedom and contrary to the fundamental purposes of higher education.

Congress should work to reverse the politicization of higher education.

### **Recommendation 6.1: Mandate Intellectual Diversity**

Congress should make intellectual diversity protection a condition of Title IV eligibility.

*Legislative Language:* Add to 20 USC §1087c. (Selection of institutions for participation and origination) a subsection mandating that public colleges and universities:

- i. establish procedures and institutions to encourage intellectual diversity, within and without the classroom, in hiring procedures, course requirements, administrative procedures, extra-curricular events, debates, and lectures;
- ii. define “intellectual diversity” as “multiple, divergent, and opposing perspectives on an extensive range of public policy issues widely-discussed and debated in society at large, with particular attention to ensuring that institutions provide students and faculty the opportunity to hear perspectives on widely debated public policy issues that reflect the range of American opinion, but which are otherwise poorly represented or unheard on campus”;
- iii. not redefine concepts such as “diversity,” “equity,” and “inclusion” as “intellectual diversity,” or engage in any action which presumes that “diverse” membership in different identity or ethnic groups in any way satisfies the requirements for “intellectual diversity”;
- iv. not restrict intellectual diversity in hiring or admissions, by:

1. using job advertisements, promotion policies, or tenure policies that require, give priority to, or condition eligibility on belief in, advocacy of, consent to, or experience in “social justice,” “diversity,” or any other such concept, which may tend to restrict the intellectual diversity of the applicant, promotion, or tenuring pools; or
  2. using or asking for “diversity statements,” or any similar material, in the documents required for, requested, suggested, or considered to judge a job application, promotion, or tenure;
- v. not charge student organizations security fees on the basis of the content of speech, including for events whose content the university deems “controversial” or otherwise might require extra security;
  - vi. not endorse, oppose, or comment on policy positions concerning issues such as climate change, electoral politics, foreign policy, federal or state diversity programs, immigration policy, or marriage policy, although it may endorse Congress’ actions when it declares war or establishes another state of armed hostility against a foreign power;
  - vii. not engage in or abet activities such as boycotts, divestments, or sanctions;
  - viii. not define “bias” to include any expressed judgment on any policy position, or any expressed judgment on the characteristics of any individual or community based upon actual or perceived background or identity including: age, color, disability, gender identity or expression, marital status, national origin, race, religion, sex, sexual orientation, or veteran status;
  - ix. not take any action to record, sanction, provide care, educate, mediate, conduct proactive outreach, assess, plan, provide “accountability,” or any other action to respond to any expression or incident of “bias,” which consists of any expressed judgment on any policy position, or any expressed judgment on the characteristics of any individual or community based upon actual or perceived background or identity including: age, color, disability, gender identity or expression, marital status, national origin, race, religion, sex, sexual orientation, or veteran status;
  - x. inform all students and employees of the institution’s mandate to provide intellectual diversity; and
  - xi. require the Board of Trustees to certify annually either 1) that the university has respected all faculty and student intellectual diversity rights; or 2) that the university has violated faculty and/or student intellectual diversity rights, and that it has begun work to provide restitution for that violation, and ensure that no such violation recurs.



## Recommendation 6.2: Sunset the Diversity Bureaucracy

Congress should require recipient colleges and universities to draft plans to close diversity, equity, and inclusion offices upon meeting specific goals.

*Legislative Language:* Add a subsection to 20 USC §1087c. (Selection of institutions for participation and origination) requiring colleges and universities, as a condition of Title IV eligibility,

- i. to draft set, quantifiable targets for diversity, equity, and inclusion in quantifiable terms. Colleges and universities must define the mission of any offices and staff positions devoted to diversity, equity, and inclusion in quantifiable terms, so that the office and positions are automatically discontinued when those targets are achieved.

## Recommendation 6.3: Defund Irredeemably Politicized Components of Higher Education

Congress should defund components of higher education that have become irredeemably politicized, such as “service-learning,” “community service,” and “sustainability,” which have become euphemisms for social justice advocacy.

*Legislative Language:* Congress should

- i. add a subsection to 20 U.S.C. § 1011m. (Certification regarding the use of certain Federal funds) stating: “No funds disbursed by the Department of Education may fund, facilitate, or in any way support any “Service-learning,” “Service-learning Coordinator,” or “Service Sponsor,” as defined in 42 U.S.C. § 12511 (40, 41, 42) (Definitions: Service-learning, Service-learning Coordinator, Service Sponsor).
- ii. delete 20 U.S.C. § 1087–53(b)(2)(A) (Grants for Federal work-study programs, Community service): “for fiscal year 2000 and succeeding fiscal years, an institution shall use at least 7 percent of the total amount of funds granted to such institution under this section for such fiscal year to compensate students employed in community service, and shall ensure that not less than 1 tutoring or family literacy project (as described in subsection (d) of this section) is included in meeting the requirement of this subparagraph, except that the Secretary may waive this subparagraph if the Secretary determines that enforcing this subparagraph would cause hardship for students at the institution; and”;
- iii. Delete 20 U.S. Code § 1161u (Sustainability planning grants authorized), which authorizes “grants to eligible entities to establish sustainability programs to design and implement sustainability practices, including in the areas of energy management, greenhouse gas

emissions reductions, green building, waste management, purchasing, transportation, and toxics management, and other aspects of sustainability that integrate campus operations with multidisciplinary academic programs and are applicable to the private and government sectors.”

## 7. *Speakers*

### **Background**

Colleges and universities now invite a large number of invited speakers from outside their campuses. These invited speakers do not have the formal protections currently extended to students and faculty, but academic freedom depends on the extension of these rights to speakers. It also depends on measures to ensure that colleges and universities invite an intellectually diverse array of speakers so as to maximize intellectual freedom.

Speaker fees and honoraria are also vulnerable to corrupt abuse. Ideologically homogenous administrators and faculties direct considerable sums of money to like-minded politicians and activists as speakers, and thus convert higher education budgets into a patronage machine. The federal government should take all practical steps to inhibit the use of speaker fees and honoraria as political patronage.

### **Recommendation 7.1: Mandate for Speaker Intellectual Diversity**

Congress should make speaker intellectual diversity a condition of Title IV eligibility.

*Legislative Language:* Add to 20 USC §1087c. (Selection of institutions for participation and origination) a subsection mandating that colleges and universities:

- i. seek out intellectual diversity in invited speakers;
- ii. provide evidence that they have integrated the intellectual diversity mandate into their programmatic structure.

### **Recommendation 7.2: Disclosure of Speaker Fees and Honoraria**

Congress should require colleges to disclose their speaker fees and honoraria.

*Legislative Language:* Add to 20 U.S.C. § 1015 (Improvements in market information and public accountability in higher education) a subsection mandating that colleges and universities:

- i. disclose and distribute annually, both to the Department of Education and to all enrolled students, on a reasonably accessible Internet website, a complete list of all speaker fees, honoraria, and other emoluments in excess of \$5,000.

**III.**

**America**

## III. America

### *8. National Interest*

#### **Background**

American higher education should serve the American national interest and American citizens. Colleges should abide by all federal and state laws. Congress should ensure that programs such as area studies grants continue to serve the American government as it carries out its foreign policies. It should also ensure that colleges are not allowed to flout immigration law by declaring themselves “sanctuary campuses,” which refuse to cooperate with federal immigration law and enforcement officials.

Many colleges and universities have become financially dependent on foreign nations, by way of grants, and especially on foreign students, whose tuition payments constitute a financial lifeline for many struggling institutions. Some universities, such as those with Chinese government-funded Confucius Institutes, have allowed themselves to host centers of foreign influence campaigns in exchange for financial assistance.

Colleges should welcome international students, but also hold them to the same academic standards as other students—including proficiency in English. Congress should encourage colleges to focus on the undergraduate and graduate education of American citizens and reduce their dependence upon foreign sources for tuition and staffing. Congress should also encourage colleges to protect intellectual property and national security and ensure that they do not inadvertently send sensitive technology and research to rival nations by welcoming foreign students and researchers.

#### **Recommendation 8.1: Limit Foreign Dependence**

American higher education should focus on providing educational opportunities to American citizens. When too large a proportion of the student body consists of foreigners, departments and colleges cater to foreign interests rather than serve American ones.

*Legislative language:* Add to 20 USC §1087c. (Selection of institutions for participation and origination) a subsection specifying that an institution of higher education will be deemed ineligible

- i. if it receives more than 20% of its tuition revenues from international students;
- ii. if it receives more than 5% of its tuition revenues from students from any one foreign country;

- iii. if more than 5% of its undergraduate students are foreigners; and
- iv. if fewer than 35% of graduate students in any department are American citizens.

### **Recommendation 8.2: Limit Chinese Government Influence**

The Chinese government has operated a targeted, highly effective campaign to steal American research and intellectual property, build soft power in strategic American institutions, and compromise key figures in American higher education.

*Legislative language:* Add to 20 USC §1087c. (Selection of institutions for participation and origination) a subsection specifying that

- i. no funding may go to an institution that hosts a Confucius Institute or any similar program funded directly or indirectly by the People's Republic of China; knowingly employs a professor who has received money from the Thousand Talents Program or any similar program; does not require employees to affirm annually as a condition of their employment that they have received no money from the Thousand Talents Program or any similar program; possess a branch campus in China or Hong Kong; or receives any undisclosed funds from the Chinese government or Chinese citizens.

### **Recommendation 8.3: Mandate Transparency About Foreign Gifts**

Congress should require colleges and universities to disclose transparently the foreign gifts they receive.

*Legislative Language:* Amend 20 U.S.C. § 1011f (Disclosures of foreign gifts), to

- i. lower the disclosure threshold from \$250,000 to \$50,000;
- ii. require institutions to disclose the name of the foreign donor (including the name of a foreign government agency);
- iii. require institutions to disclose gifts made by registered foreign agents;
- iv. specify that in-kind gifts count toward the disclosure threshold;
- v. require institutions to disclose the purpose of the gift and any conditions attached to it; and
- vi. require the Department of Education to maintain an electronic, publicly accessible database of all foreign gift disclosures.

### **Recommendation 8.4: End International Branch Campuses in Undemocratic Countries**

American colleges and universities operate 84 international branch campuses. These international branch campuses include 15 in China and Hong Kong, 7 in Qatar, and 6 in the United Arab Emirates. Such programs have historically functioned as sources of net income to universities. Universities' desire to preserve this profit source consequently gives foreign governments a means to exert influence on them. American universities also must compromise their championship of American liberties when they allow themselves to operate on the soil of foreign tyrannies.

*Legislative language:* Add to 20 USC §1087c. (Selection of institutions for participation and origination) a subsection specifying that

- i. an institution of higher education will be deemed ineligible if it does not sever all institutional and financial ties with international branch campuses in undemocratic countries by December 31, 2021;
- ii. international branch campuses will only be authorized in countries that the Department of State certifies to the Department of Education are ruled by a democratically elected government; and
- iii. authorization for international branch campuses in a country will lapse one year after the Department of Education last receives a certification from the Department of State that the country is ruled by a democratically elected government.

### **Recommendation 8.5: Reform Title VI Area Studies Grants**

Congress should reform Title VI area studies grants, especially those to Middle East Studies, to require these programs to live up to their commitments to educate students capable and willing to support American foreign policy.

*Legislative Language:* Congress should

- i. Add to 20 U.S.C. § 1127 (International and foreign language studies, Selection of certain grant recipients) a subsection stating that "the Secretary shall award no grants to an institution that boycotts or abets in a boycott, or any of whose faculty or administrators boycott or abet in a boycott, of national security related scholarships."

- ii. Add to 20 U.S.C. §1124. (Undergraduate international studies and foreign language programs) a subsection stating that “none of the consortia or partnership between nonprofit educational organizations and institutions of higher education may include a partnership, cooperation, sharing of staff, or any other arrangement with a Confucius Institute.”
- iii. Amend 20 U.S.C. § 1132–6 (Science and technology advanced foreign language education grant program) as follows:
  - 1. Add to (c) (Regulations and requirements) a stipulation that “no funds may be used for courses, workshops, events, or any other programs that deal primarily with American social or cultural issues, including multicultural experiences in America, unless they directly promote foreign language learning and advance the national security interests and economic stability of the United States.”
  - 2. Add to (d) (Grant distribution) a subsection stating that “the Secretary shall award no grants to an institution that boycotts or abets in a boycott, or any of whose faculty or administrators boycott or abet in a boycott, of national security related scholarships.”

### **Recommendation 8.6: Forbid Sanctuary Campuses**

Congress should enact legal penalties for colleges and universities that declare themselves “sanctuary campuses,” or provide admission, employment, or financial support for illegal aliens.

*Legislative Language:* Add to 20 U.S.C. §1085. Definitions for student loan insurance program (a) (Eligible Institution) a subsection mandating that

- i. “By entering into a program participation agreement, an institution agrees that it will admit or hire no illegal alien, that it will operate neither formally nor informally any “sanctuary campus” policies, that it will cooperate fully and promptly with all requests by the Department of Immigration and Nationalization, and that its Board of Trustees or Regents will certify annually both that the college has complied fully with these requirement and that it has procedures in place to ensure continuing full compliance with these requirements.”



## *9. Civics Education*

### **Background**

College students should learn American history, American government, and the history of Western civilization, to know how the ideals of liberty underpin the structure of our republic and American civilization as a whole. These subjects have disappeared from many schools or have been inverted. Western civilization is most often taught as a chronicle of villainy, shorn of its virtues and triumphs. U.S. history is similarly taught as a litany of social injustice, bad law, and evil men exploiting the weak and vulnerable. These lessons tend only to be amplified in colleges and universities, which aim to turn their students into “global citizens” who embrace multiculturalism.

The Federal government, working in combination with the states and with private philanthropy, should provide targeted support for proper instruction in American history, American government, and the history of Western civilization. This education should be imparted through classroom instruction, dedicated to increasing American students’ factual knowledge.

### **Recommendation 9.1: Fund American History for Freedom**

In 2008 Congress authorized the American History for Freedom Program (AHF). AHF authorized the Department of Education to begin making grants to university and college programs geared to the study of liberty, the American Founding, and Western Civilization. Congress should renew the authorization and fund AHF.

*Legislative Language:* Congress should

- i. enact S. 2024 / H. R. 5810 of the 116<sup>th</sup> Congress (“USA Civics Act of 2019”), or equivalent later legislation, and then authorize funding.
- ii. amend 20 U.S.C. §1161e. (American history for freedom) to delete from (f) (Authorization of appropriations) the words “fiscal year 2009 and each of the five succeeding fiscal years” and replace with “fiscal year 2020 and each of the five succeeding fiscal years.”

### **Recommendation 9.2: Dedicate Civics Funding to Classroom Instruction**

Congress should ensure that students learn civics as factual knowledge in the classroom, not as “civic engagement,” which is pedagogically ineffective and all too often replaces genuine civic education with political activism.

*Legislative Language:* Congress should

- i. add to 20 U.S.C. §1003 (Additional definitions) the following definition for “Civics Education”:  
“Classroom instruction in American history, American government, or the history of Western civilization, which includes no ‘Service-learning,’ as defined by 20 U.S. Code §1003(18).”
- ii. delete 20 U.S.C. §1087-57. (Additional funds to conduct community service work-study programs), which authorizes the use of federal work-study funds for community service-learning.



**IV.**

**Equality**

## IV. Equality

### 10. Educational Variety

#### Background

America is a large nation with room for vocational programs, the liberal arts, science and technology, and religious schools. We support increasing educational variety, so that higher education can properly serve American society's varied population.

We want to remove artificial barriers to entry for qualified programs, and we seek to level the regulatory field, which currently discriminates against for-profit institutions. For-profit institutions play an important innovative role as they quickly open and adapt programs to meet market demand. Even if for-profit colleges possessed no advantages over their non-profit competitors, the government should not discriminate between schools on the basis of their tax status. Supposedly non-profit institutions are no less driven by profit motives than are their for-profit counterparts, and no less likely to engage in predatory misconduct toward their students. Non-profit and for-profit institutions should be punished individually for predatory misconduct, to the fullest extent that current law allows; for-profit institutions should not suffer collective punishment.

#### Recommendation 10.1: Equal Treatment for For-Profit Colleges

Congress should make it easier for new entrants into the higher education marketplace, by preventing status quo institutions from creating barriers to entry.

*Legislative Language:* Make the following emendations to 20 U.S. Code Part A—Definitions:

- i. in 20 U.S.C. § 1001 (General definition of institution of higher education), emend the definition of “institution of higher education” at 20 U.S.C. § 1001(a)(4) from “a public or other nonprofit institution” to “a public or private (for profit or nonprofit) educational institution”; and
- ii. in 20 U.S.C. § 1001 (General definition of institution of higher education), emend the definition of “institution of higher education” at 20 U.S.C. § 1001(b)(2) from “a public or nonprofit private educational institution” to “a public or private (for profit or nonprofit) educational institution.”

The Higher Education Act should be emended throughout, to eliminate all language that mandates disparate treatment for public, nonprofit, and proprietary educational institutions.

#### Recommendation 10.2: Accreditor Mandate to Expedite Entrance of New Institutions

Congress should make it easier for new entrants into the higher education marketplace, by mandating that accreditors facilitate their entry.

*Legislative Language:* Add the following subsections to 20 U.S.C. § 1099b. Recognition of accrediting agency or association:

- i. “The accrediting agency must establish policies to facilitate the timely, fair, and equitable accreditation of new educational institutions.”
- ii. “The accrediting agency must submit to the Department of Education an annual report of its policies to facilitate the timely, fair, and equitable accreditation of new educational institutions, and a comprehensive list of all new educational institutions it has accredited.”

### **Distance Education: A Note**

We provide no specific recommendation for *distance education* in this edition of our *Freedom to Learn* proposals. In 2017-2020, the Department of Education altered its regulations to eliminate most lingering disparities in its administrative treatment of distance education, and it has proposed further regulations to extend and clarify the regulatory equality of distance and in-person education. It has wisely complemented these reforms with parallel reforms to ensure that distance education provides substantive demonstrated learning. NAS endorses these reforms.

NAS’s endorsement should not be taken as a blanket endorsement of distance education, regardless of circumstances. Humanities seminars and science laboratory classes, among other forms of instruction, will remain better in-person than conducted at a distance. Nor can the most rigorous regulation to require substantive demonstrated learning prevent an entirely human tendency for instructors or students to slack when distance education provides them the opportunity—or for administrators to seek an excuse to provide less education at lower cost (though not necessarily at a lower price). We believe that higher education institutions and individual students should have the *right* to use distance learning, without penalty—but we believe they should use their judgment to determine when they *should* use it.

## *11. Homeschool Equality*

### **Background**

American parents now homeschool approximately 2.5 million American students. These students perform well on standardized tests and in college, but some states discriminate against homeschooled students who apply to public universities. Indeed, some educators have recently suggested that home-schooling should be illegal. Congress should guarantee homeschoolers’ right to receive equal treatment when applying to college.

Home school students frequently take dual credit courses—college courses that also count for high school credit. Students cannot now receive financial aid for dual credit courses. Congress should extend financial aid to include dual credit courses—for the benefit of all American students, but especially to allow homeschool students to take full advantage of their chosen educational track.

### **Recommendation 11.1: Homeschool Equality**

Congress should amend the Higher Education Act to ensure that state universities' admissions policies cannot discriminate against homeschool students.

*Legislative Language:* Amend 20 U.S.C. § 1091 (Student eligibility):

- i. Add to 20 U.S.C. § 1091 (b)(3) (Eligibility for student loans) a subsection stating: “A student who has completed a secondary school education in a home school setting that is treated as a home school or private school under State law.”
- ii. Delete 20 U.S.C. § 1091 (1)(B) (Students who are not high school graduates): “The student has completed a secondary school education in a home school setting that is treated as a home school or private school under State law.”

### **Recommendation 11.2: Financial Aid for Dual Credit Courses**

Congress should amend Title IV to allow financial aid for dual credit courses.

*Legislative Language:* Amend 20 U.S.C. § 1091 (Student eligibility) to add:

- i. a subsection defining “dual credit courses”; and
- ii. a subsection in 20 U.S.C. § 1091 (1)(B) (Students who are not high school graduates): “The student is enrolled in a dual-credit course.”

## *12. Equal Opportunity*

### **Background**

Higher education institutions should evaluate individuals on the basis of their academic merit, with no regard for race, ethnicity, sex, or membership in any other identity group. Unfortunately, colleges and universities have resorted to discrimination in affirmative-action admissions and hiring decisions, now

usually justified as measures to achieve *diversity, equity, or inclusion*. Entire subunits of higher academic administration, especially Title IX offices and offices of diversity, appear to suffer from extreme discrimination in their staffing.

Colleges have also established a growing system of informal “neosegregation,” buttressed by effectively segregated events and academic subunits such as orientations, majors, financial awards, residential housing, administrative employment, faculty employment, student training, extracurricular activities, and graduations.

Such discrimination is wrong. It hurts America as a whole by damaging the efficient matching of qualified individuals to appropriate jobs, and by demoralizing and embittering qualified students denied admission solely because they fail to provide “diversity.” It also harms the supposed beneficiaries, by in some cases mismatching minority students to programs for which they are underqualified, and in which they therefore struggle and fail to graduate in disproportionate numbers.

Such discrimination is antithetical to the life of the mind, which higher education must foster. The life of the mind focuses on ideas, not on race, sex, or other physical traits. The federal government should encourage colleges and universities to cease to offer preferences for representatives of physical categories.

### **Recommendation 12.1: Mandate Transparency About Discrimination**

Congress should require colleges and universities to disclose transparently the effects of discriminatory policies such as *affirmative action, diversity, equity, and inclusion* on student admissions, faculty hiring, and administrative staffing.

*Legislative Language:* Add to 20 U.S.C. § 1011. (Antidiscrimination) a subsection requiring that

- i. an institution must disclose and distribute annually, both to the Department of Education and to all enrolled students, on a reasonably accessible Internet website, statistics on the academic qualifications of accepted and matriculating students, differentiated by race and sex. These statistics should include information correlating students’ academic qualifications, quantity of Federal education loans and grants, and retention rates, differentiated by race and sex.

### **Recommendation 12.2: Mandate Assessable Discriminatory Policies**

Congress should require colleges and universities to provide the Department of Education information so that it may assess the consequences and costs of their discriminatory policies.



*Legislative Language:* Add to 20 U.S.C. § 1011. (Antidiscrimination) a subsection stating that an institution must disclose and distribute annually, both to the Department of Education and to all enrolled students, on a reasonably accessible Internet website:

- i. quantifiable measures of the benefits and costs of programs such as *affirmative action*, *diversity*, *equity*, and *inclusion*, which may be used to assess their effectiveness. These assessments should include quantification of the effects on applicants denied admission to a program as a consequence of these programs.
- ii. detailed summaries of their nonquantifiable admissions and hiring standards, defined by words including *holistic*, *character-based*, *social justice*, and *diversity*, along with assessments of the disparate impact by race and sex of each nonquantifiable admissions and hiring standard.

### **Recommendation 12.3: Mandate Dismantling Neo-segregation**

Congress should make dismantling neo-segregation policies a condition of Title IV eligibility.

*Legislative Language:* Add to 20 USC §1087c. (Selection of institutions for participation and origination) a subsection mandating that

- i. colleges and universities work to end neo-segregationist policies, and policies whose impact produces neo-segregationist results, in all events and academic subunits, including orientations, majors, financial awards, residential housing, administrative employment, faculty employment, student training, extracurricular activities, and graduations.

*In addition, we urge regulatory reform by the Department of Education:* Amend 34 CFR §100.5 (Nondiscrimination under programs receiving Federal assistance through the Department of Education, Effectuation of Title VI of the Civil Rights Act of 1964, Illustrative application) a subsection stating: “In an administrative subunit of an institution of higher education, such as a Title IX office, an office of diversity, a student life office, a first-year experience office, a community engagement office, or a sustainability office, discrimination is prohibited in hiring, selection of student trainees, financial aid, grants, awards and disbursements, and any educational activity.”

### **Recommendation 12.4: Reframe Support for “Minority-Serving Institutions”**

The Higher Education Act’s original support for Historically Black Colleges has since been expanded into a broad range of financial support for “Minority-Serving Institutions.” These expansions transform a limited set-aside for existing institutions into a system of race preferences in the allocation of Department of Education funds. While the National Association of Scholars generally opposes all race preferences in higher education, we are willing to accept carefully delimited support for institutions rooted in American

history—Historically Black Colleges and Universities and Tribal Colleges and Universities. Should Alaskan Natives or Native Hawaiians establish their own equivalent of a Tribal College or University, we would also be willing to accept dedicated support for such an institution. The Department of Education, however, should not dedicate support to “minority-serving institutions.”

*Legislative Language:* The Department of Education catalogues support for different minority-serving institutions in different sections of the Higher Education Act. (E.g., 34 CFR § 607.2). While each stream of financial support should be amended individually, we support the following general reforms:

- i. The Department of Education may condition eligibility for funds based upon qualifying as a Historically Black College or University (HBCU), as defined in 34 CFR § 608.2.
- ii. The Department of Education may condition eligibility for funds based upon qualifying as a Tribally Controlled College or University, as defined in 20 USC § 1059c(b)(3)(a).
- iii. The Department of Education may not condition eligibility for funds based upon qualifying as a Hispanic-serving institution, as defined in 20 USC § 1101a(a)(5).
- iv. The Department of Education may not condition eligibility for funds based upon qualifying as an Alaska Native-serving institution, as defined in 20 USC § 1059d(b)(2).
- v. The Department of Education may not condition eligibility for funds based upon qualifying as a Native Hawaiian-serving institution, as defined in 20 USC § 1059d(b)(4).
- vi. The Department of Education may not condition eligibility for funds based upon qualifying as an Asian American and Native American Pacific Islander-serving institution, as defined in 20 USC § 1067q(c)(2).
- vii. The Department of Education may not condition eligibility for funds based upon qualifying as Native American-serving nontribal institution, as defined in 20 USC § 1067q(c)(8).
- viii. The Department of Education may not condition eligibility for funds based upon qualifying as a Predominantly Black Institution, as defined in 20 USC § 1067q(c)(9).
- ix. The Department of Education may not condition eligibility for funds based upon the racial composition of an institution’s student body.



# V. Regulatory Reform

## V. Regulatory Reform

### 13. Accreditation

#### Background

The complex American accreditation system involves general and specialized accrediting bodies, and regional as well as state bodies. Accreditors ascertain whether higher education institutions possess financial integrity and stability, educational quality, and sufficient career preparation for their graduates. Whatever commitment to the public good they still uphold now generally is phrased in terms of progressive ideological goals. The regional accreditors play the largest role: they dominate the federal process by which a college or university is deemed eligible to receive federal disbursements, the most important of which are funds distributed through the Title IV student loan program.

The regional accreditors' "gatekeeper" role undermines their ability to provide accurate assessments of the quality of colleges and universities. If they suspend or withdraw accreditation, that could mean the quick bankruptcy of a college or university—virtually all of which derive large portions of their revenues from federal funding. Accreditation has acquired such high stakes that accreditors typically shrink from their duty to evaluate rigorously the quality of colleges' and universities' academic programs.

While the regional accreditors shy from upholding meaningful academic standards, they are often eager to impose an ideological agenda in the guise of education criteria. These ideological standards have forced or given cover to colleges and universities to change general education requirements, create activist bureaucracies, and inhibit intellectual freedom and intellectual diversity.

#### Recommendation #13.1: Depoliticize Accreditation

Congress should prohibit accrediting agencies from including any implicitly or explicitly political criterion in their standards.

*Legislative Language:* Add to 20 U.S.C. §1099b. (Recognition of accrediting agency or association) a subsection which specifies:

- i. that no accreditation standard, implicitly or explicitly, can require an institution of higher education to commit (financially, programmatically, or otherwise) to concepts such as *social justice, diversity, multiculturalism, or civic engagement*; and

- ii. that no accreditation standard, implicitly or explicitly, can require an institution of higher education to commit (financially, programmatically, or otherwise) to a concept that cannot be precisely defined, and which lacks a precise definition of how to assess progress toward that concept.

### **Recommendation 13.2: Protect Religious Freedom**

Congress should ensure that accreditors do not trespass on the religious freedom of religious colleges and universities.

*Legislative Language:* Add to 20 U.S.C. §1099b. (Recognition of accrediting agency or association) a subsection which specifies:

- i. that any institution of higher education with a religious mission whose accreditation has been withdrawn, revoked, or terminated, or that has voluntarily withdrawn from its accrediting agency, may remain certified as an institution of higher education for a period sufficient to allow such institution to obtain alternative accreditation, if the Secretary determines that 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;
- ii. that the term “religious mission” should be defined to include an institution’s religious tenets, beliefs, or teachings, and any policies or decisions related to such tenets, beliefs, or teachings (including any policies or decisions concerning housing, employment, curriculum, self-governance, or student admission, continuing enrollment, or graduation); and
- iii. that an agency or association’s standard fails to respect an institution’s religious mission when the institution determines that the standard induces, pressures, or coerces the institution to act contrary to, or to refrain from acting in support of, any aspect of its religious mission.

## *14. Review*

### **Background**

The Department of Education’s own “peer review” process has increasingly been compromised by higher education’s drift into ideological conformity and groupthink. The Secretary should be authorized to seek reviewers who possess genuinely independent minds, and who are willing to depart from the “peer review” consensus.

### **Recommendation 14.1: Replace “Peer Review” with “Expert Review”**

Congress should authorize the Department of Education to substitute “expert review” for “peer review.”

*Legislative Language:* Amend 20 U.S.C. § 1011g (Application of peer review process) to:

- i. replace “peer review” with “expert review” throughout. This change should be throughout the Higher Education Act, wherever relevant; and
- ii. define “expert review” as “Review both by professionals within a field, known as ‘peer reviewers,’ and by professionals in other fields who are intellectually equipped to provide an informed assessment and critique.”

# **VI.**

# **Additional Proposals**



## VI. Additional Proposals

Higher education needs many additional reforms that the Higher Education Act will not address. Here we sketch further reforms Congress should undertake in separate legislation.

### *15. Adjuncts*

#### **Background**

Colleges and universities assign an increasing proportion of classes to adjuncts, who receive low wages and no benefits. They thereby increase their profits by underpaying their instructors and reducing their instructional quality.

#### **Recommendation 15.1: Mandate Transparency About Dependence on Adjuncts**

Congress should mandate that higher education institutions reveal transparently the extent of their dependence on part-time instructors.

*Legislative Language:* Amend 20 U.S.C. § 1015a(i) (Transparency in college tuition for consumers, Consumer information) to include a subsection requiring that higher education institutions make available on the College Navigator website:

- i. The ratio of the number of course sections taught by part-time instructors to the number of course sections taught by full-time faculty, disaggregated by course sections intended primarily for undergraduate students and course sections intended primarily for graduate students; and
- ii. The mean and median years of employment for part-time instructors.

### *16. College Board*

#### **Background**

The College Board is an ostensibly private body that has acquired a semi-monopoly in higher education assessment. In recent years it has abused its privileged position by revising its examination system to forward progressive ideology.

The College Board’s revised Advanced Placement U.S. History course left out Benjamin Franklin and James Madison. Its revised European History course de-emphasized the history of liberty, ignored the role of religion, and bypassed Christopher Columbus and Winston Churchill.

The College Board has also revised the SAT, making the essay optional, focusing on informational texts, simplifying the math, and eliminating the penalty for guessing. In 2019, the College Board announced the creation of an “adversity score” to calculate students’ privilege or oppression. Under criticism, the College Board replaced the adversity score with “Landscape,” which ranks students on multiple indices of privilege and oppression.

The College Board, moreover, has allied itself with the communist Chinese government. The Board co-sponsors the Chinese government’s Confucius Institutes and it has cooperated with Beijing to develop its Advanced Placement Chinese Language and Culture course.

The College Board faces limited competition, and millions of Americans and thousands of school districts have little choice but to use the College Board’s assessments. The College Board’s primary competitor, the ACT, suffers from similar problems. A second competitor, the Classic Learning Test (CLT) is a start-up with limited market share. The College Board faces no real competitor at all for its Advanced Placement tests.

Congress should encourage the College Board to improve its examinations, ideally by facilitating competition from alternative assessment providers.

Congress should encourage the College Board to improve its examinations, ideally by facilitating competition from alternative assessment providers. It should also require as a condition of receiving public funding that the College Board cut its ties with Confucius Institutes and other Chinese government agencies.

### **Recommendation 16.1: Encourage Alternative Assessment Providers**

Congress should facilitate the ability of alternative assessment providers to compete with the College Board.

*Legislative Language:* Amend 20 U.S.C. 7116 (e)(2) (Title IV, Part A, Subpart 1, Sec. 4106: Student Support and Academic Enrichment Grants, Local Educational Agency Applications, Assurances) to include a subsection stating that:

- i. “Each application shall include assurances that the local educational agency, or consortium of such agencies, when seeking financial support for advanced placement assessment, has solicited bids from multiple qualified vendors.”

## **Recommendation 16.2: Require the College Board to Cut Ties with the Chinese Government**

Congress should require as a condition for receiving public funding that the College Board cease sponsoring Confucius Institutes and partnering with the Chinese government on activities such as language courses, student programs and trips, and conferences.

*Legislative Language:* Add to 20 U.S.C. § 9833. Advanced Placement and International Baccalaureate programs a subsection that reads, “The Secretary shall award no grants for Advanced Placement tests, teacher training, or any other programs that are affiliated with or aimed at preparation for College Board tests or materials, unless the College Board:

- i. Ceases to co-sponsor Confucius Institutes;
- ii. Ceases to participate in any program sponsored directly or indirectly by the Chinese government or government-backed organizations, including via the Chinese International Education Foundation; and
- iii. Ceases to accept donations, grants, payments, or any other funds, from the Chinese government, the Chinese Communist Party, or other entities acting on behalf or in cooperation with the Chinese government or Chinese Communist Party.

## *17. Due Process: Title IX Responsible Employees*

Congress should introduce new protections for due process not only via the Higher Education Act, as per our suggestions above, but also through separate legislation.

## **Recommendation 17.1: Require Title IX Responsible Employees to Have Criminal Defense Experience**

Congress should require that all Title IX Responsible Employees must have five years’ experience in criminal defense.

*Legislative Language:* Amend 20 U.S.C. § 1681.Sex to require that

- i. any employee deemed a “Title IX Responsible Employee” must have been employed for at least five years in a job where at least 50% of hours worked consisted of criminal defense, and who has substantial courtroom experience.

## 18. *Sex*

### **Background**

Title IX prohibitions against sex discrimination have been abused to promote progressive “gender” ideology. The Department of Education, individual Title IX offices, accreditors, and colleges and universities now punish those who reject invented rights to “gender preference,” “gender identity,” and “gender expression.” Congress should prevent this aggressive ideological revolution from taking control of American higher education.

### **Recommendation 18.1: Define Sex as Biological**

Congress should define “sex” exclusively in biological terms.

*Legislative Language:* Amend 20 U.S. Code § 1681 (Sex):

- i. Define “sex” as “A person’s biological status at birth, which is not mental, psychological, cultural, or emotional in nature, dependent on an individual’s affective relations with other individuals, on an individual’s self-perception, or on that individual’s perception by any other person or persons.”
- ii. Add a section stipulating that “No part of this section refers to concepts such as “gender,” “gender identity,” “gender expression,” and “gender preference,” or to any concept dependent upon mental, psychological, cultural, or emotional status, dependent on an individual’s affective relations with other individuals, on an individual’s self-perception, or on that individual’s perception by any other person or persons.”

## 19. *Student Aid*

### **Recommendation 19.1: Provide a legal framework for income share agreements offered to students to finance student loans.**

*Legislative Language:* Enact S.2114—116<sup>th</sup> Congress (“ISA Student Protection Act of 2019”).



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