



February 5, 2026

The Honorable Russell Vought  
Director of Office of Management and Budget  
725 17th Street NW  
Washington, DC 20503

CC: Matt Soldner, Acting Director, Institution of Education Sciences and Acting Commissioner, National Center for Education Statistics, U.S. Department of Education; Ross Santy, Data Officer, Office of Planning Evaluation and Policy Development, U.S. Department of Education

RE: Admissions and Consumer Transparency Supplement (“ACTS”) to the Integrated Postsecondary Education Data System (“IPEDS”) 2024-25 Through 2026-27, Docket No. ED-2025-SCC-0382, OMB Control No. 1850-0582

Dear Director Vought:

The Paperwork Reduction Act (PRA) exists to protect the public from burdensome federal agency requests, particularly where, as here, they are not tethered to a proper purpose and do not adequately safeguard sensitive information.<sup>1</sup> The PRA vests OMB with authority to place guardrails on federal agencies’ collection of information. In furtherance of this goal, the Act allows “[a]ny person” to “request the Director [of OMB] to review any collection of information conducted by or for an agency to determine if ... a person shall maintain, provide, or disclose the information to or for the agency.”<sup>2</sup> This provision requires OMB to respond to non-frivolous requests within 60 days and “take appropriate remedial action, if necessary.”<sup>3</sup>

The Lawyers’ Committee for Civil Rights Under Law (“Lawyers’ Committee”) and the American Civil Liberties Union (“ACLU”) request your immediate review and reconsideration of the Admissions and Consumer Transparency Supplement (“ACTS”) to the Integrated Postsecondary Education Data System (“IPEDS”). The ACTS survey, a recently-approved data collection by the Department of Education National Center for Education Statistics (“NCES”), is a plainly unlawful action that flouts legislative, regulatory, and constitutional constraints. We write, pursuant to 44 U.S.C. § 3517(b), to request that you rescind approval and stay the collection before its March 18, 2026 deadline because it is unnecessary and fails to comply with the PRA. Specifically, the ACTS survey conflicts with the PRA’s burden-minimization requirement; lacks adequate privacy safeguards; raises data validity, reliability, and utility concerns; and lacks meaningful stakeholder input. Given the impending reporting deadline of March 18, we request that OMB stay its approval of the ACTS survey immediately.

The Lawyers’ Committee is a nonpartisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to enlist the private bar’s leadership and resources in combating racial discrimination and the resulting inequality of opportunity—work that continues

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<sup>1</sup> 5 C.F.R. § 1320.5(d)(1)(i); 44 U.S.C. § 3501(8).

<sup>2</sup> 44 U.S.C. § 3517(b).

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

to be vital today. Today, the Lawyers’ Committee uses legal advocacy to achieve racial justice, fighting inside and outside the courts to ensure that Black people and other people of color have the voice, opportunity, and power to make the promises of our democracy real. We have deep knowledge of the issues presented in this data collection due to our role in supporting and protecting diversity in our country’s universities and colleges, including by representing student-intervenors in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023) (“*SFFA*”), arguing the case in the Supreme Court, and, recently, litigating how that decision should be implemented on behalf of student-intervenors in *Students for Fair Admissions v. Univ. of Tex. at Austin*.<sup>4</sup>

For over 100 years, the ACLU has been our nation’s guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the law of the United States guarantee to everyone in the country. With more than six million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington D.C. for the principles of liberty and equality. In support of these principles, we have advocated for admissions policies that secure opportunity for all as direct counsel and amicus curiae at the local, state, and federal levels, including in *SFFA*, *Fisher v. Univ. of Tex. at Austin* (“*Fisher II*”), 579 U.S. 365 (2016), *Fisher v. Univ. of Tex. at Austin* (“*Fisher I*”), 570 U.S. 297 (2013), *Gratz v. Bollinger*, 539 U.S. 244 (2003), *Grutter v. Bollinger*, 539 U.S. 306 (2003), *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995), *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), and *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).

As we articulated in our first and second comments to the Department’s proposal, our organizations acknowledge the importance of accurate and comprehensive data to combat racial discrimination. We have long supported efforts to increase transparency to further core civil rights aims. However, the flaws in the Department’s proposals were neither remedied nor meaningfully acknowledged, and the swift approval by the Office of Management and Budget (“OMB”) made clear that the concerns raised by commenters were ignored. The approval and implementation of this collection—without regard for the many identified flaws—lays bare the Department’s goal to constrain the efforts of institutions to advance educational opportunity and to undercut equal access to higher education for Black and Brown students. The approved collection continues to rely on a misinterpretation of Title VI and *SFFA*; fails to meet core requirements of the PRA and OMB’s implementing regulations; does not adequately address significant concerns regarding student privacy; undermines, rather than furthers, compliance with civil rights laws; and runs up against various other constitutional and statutory constraints.

## **I. THE ACTS SURVEY IS PART OF THE TRUMP ADMINISTRATION’S BROADER AGENDA TO DIMINISH EDUCATIONAL OPPORTUNITY.**

The Lawyers’ Committee and the ACLU support efforts to promote transparency, as we believe it is a core tenet of a more equitable society. Throughout our organizations’ histories, we have supported earlier efforts by the Department to collect data on admissions metrics in furtherance of transparency and equity. However, transparency must be considered alongside

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<sup>4</sup> Dkt. No. 1:20-CV-763-RP (W.D. Tex.).

other important principles, including the freedom of institutions to make academic judgments and the privacy rights of students.

The ACTS survey, masquerading as a cut-and-dry data collection, is simply not a tool for transparency. Rather, it is part and parcel of the Trump Administration’s broader attack on efforts to expand educational access for historically underrepresented groups. Over the last year, the Trump Administration has taken steps to curtail educational opportunity—including by leveraging the power of the administrative state to investigate and threaten institutions of higher education (“IHEs”) with the loss of millions of dollars in federal funding.<sup>5</sup> Through the ACTS survey, the Department of Education has turned longstanding, validated, and reliable federal data collection into a political tool. As detailed below, the Department ordered the data collection without stakeholder feedback or adequate vetting, and then prematurely implemented the data collection despite design flaws—undermining the integrity of the data. Institutions are forced to comply with stringent requirements to report data that they did not previously have to preserve, rendering the historic data even less reliable.

Understood in this context, it is not surprising that the ACTS survey progressed from Presidential directive to binding requirement on an unprecedented timeline and flouted numerous regulatory and legislative constraints along the way. If the Department’s goal was to collect valid and informative data on admissions practices, the collection’s numerous deficiencies—repeatedly brought to the Department’s attention—would have warranted reconsideration and revision. Yet, the Department ignored the many stakeholder comments raising these issues, demonstrating that the Department’s true goal is not data transparency—which could be accomplished by a well-considered data collection. Instead, its true motivation seems to be chilling IHEs’ efforts to expand educational opportunity and promote more diverse student bodies.

#### **A. The ACTS Survey’s Origins Are Evidence of Its Unlawful Aims.**

On August 7, 2025, President Trump issued a Presidential Memorandum that directed changes to the IPEDS data collection.<sup>6</sup> Among these was an expansion of required reporting to “provide adequate transparency into admissions.”<sup>7</sup>

The Presidential Memorandum justified this directive by stating that it was necessary to root out alleged noncompliance with the Supreme Court’s decision in *SFFA*. That same day, U.S. Secretary of Education Linda McMahon responded to the Presidential Memorandum’s directive by calling for the NCES to collect “data disaggregated by race and sex,” including standardized test scores and GPAs, “relating to [institutions’] applicant pool, admitted cohort, and enrolled cohort at the undergraduate level and for specific graduate and professional programs.”<sup>8</sup> This directive relied on unsubstantiated allegations of “rampant racial preferencing in college

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<sup>5</sup> See, e.g., *President & Fellows of Harvard Coll. v. United States Dep’t of Health & Hum. Servs.*, No. 25-CV-10910-ADB, 2025 WL 2528380, at \*36 (D. Mass. Sept. 3, 2025) (describing the Administration’s investigations as an “ideologically-motivated assault on this country’s premier universities”).

<sup>6</sup> Donald J. Trump, *Memorandum on Ensuring Transparency in Higher Education Admissions* (Aug. 7, 2025), <https://www.whitehouse.gov/presidential-actions/2025/08/ensuring-transparency-in-higher-education-admissions/>.

<sup>7</sup> *Id.*

<sup>8</sup> Secretary of Education Linda McMahon, *Memorandum to Matthew Soldner: Ensuring Transparency in Higher Education Admissions* (August 7, 2025), <https://www.ed.gov/media/document/secretary-directive-ensuring-transparency-highereducation-admissions-august-7-2025-110497.pdf>.

admissions” to justify the unprecedented expansion of data collection.<sup>9</sup> The Secretary’s directive was paired with a rapid rollout timeline, requiring changes to be made within 120 days to capture information for the current academic year.

The following week, on August 15, the Department published its required 60-day notice (“First Notice”) of the proposed data collection—in the form of the ACTS survey in the Federal Register.<sup>10</sup> The ACTS survey would, this notice explained, collect applicant data by race-sex pair across various metrics, including far-reaching retrospective data. The First Notice solicited feedback on estimated burdens and burden-reduction strategies, as well as how the Department might “enhance the quality, utility, and clarity of the information to be collected.”<sup>11</sup> The proposal drew thousands of comments, including many from states, researchers, associations, and IHEs concerned about the anticipated burdens, as well as the data quality and utility issues the ACTS survey would present.

On November 13, one month after the close of the first comment period, the Department published its second required notice of the collection (“Second Notice”).<sup>12</sup> It was apparent from both the timeline and substance of the Second Notice that the Department had not meaningfully considered the concerns of commenters. The Department doubled down on its original proposal and stated that compliance would be required on what is, in practice, an unworkable timeline. Stakeholders submitted comments on the Second Notice, only for those comments to be disregarded a second time, as OMB approved the ACTS survey three days after the comment period closed on December 15.<sup>13</sup> Institutions are now in the untenable position of being required to respond on an unprecedented timeline to an enormously burdensome and unjustified data collection, or to face fines of up to \$71,545 per violation and potential loss of Title IV funding and eligibility.<sup>14</sup>

## **B. The ACTS Survey Relies on a Fundamental Misreading of Anti-Discrimination Law.**

The Department justifies the collection of disaggregated data on GPA and test scores by stating that it is necessary to ensure that IHEs are not discriminating on the basis of race, as prohibited by the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964. Without elaborating, it suggests that *SFFA* requires these changes. It does not.

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<sup>9</sup> *Id.*

<sup>10</sup> Agency Information Collection Activities; Comment Request; Integrated Postsecondary Education Data System (IPEDS) 2024–25 Through 2026–27, 90 Fed. Reg. 39,384 (August 15, 2025) (August 15 Comment Request).

<sup>11</sup> *Id.*

<sup>12</sup> See Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Integrated Postsecondary Education Data System (IPEDS) 2025–26 Through 2026–27, 90 Fed. Reg. 50,940 (November 13, 2025) (November 13 Comment Request).

<sup>13</sup> See Office of Management and Budget, Notice of Action approving the Department of Education/NCES IPEDS information collection (OMB Control No. 1850-0582), authorizing the new “Admissions and Consumer Transparency Supplement (ACTS)” component, approved December 18, 2025, Docket ID ED-2025-SCC-0382.

<sup>14</sup> U.S. Dep’t of Educ., Nat’l Ctr. for Educ. Statistics, *Appendix B: IPEDS 2024–25 Communication Package (including 2025–26 ACTS Communications)* (OMB No. 1850-0582 v.33) 89 (Feb. 2024) (revised May 2025; revised Oct. 2025).

The Equal Protection Clause prohibits governmental discrimination on the basis of race, and Title VI prohibits recipients of federal financial assistance from discriminating on the basis of race, color, and national origin. Accordingly, institutions subject to the Equal Protection Clause or Title VI may not discriminate against applicants in admissions decisions based on race, color, or national origin. In *SFFA*, the Supreme Court held that the Equal Protection Clause and Title VI prohibit institutions from giving weight to an applicant’s race in admissions decisions. But the Court explained that institutions could continue to consider “an applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise.”<sup>15</sup> And crucially, the Court did not prohibit the use of race-neutral measures—such as those that take account of socioeconomic factors—to promote student body diversity. On the contrary, three of the concurring opinions in *SFFA* signaled support for such measures.<sup>16</sup>

So, though *SFFA* prohibited the consideration of an applicant’s race as a factor in admissions, it neither dictated any particular method for admissions nor required monitoring of quantitative factors, as the ACTS survey’s design and related messaging suggest. In short, though we support efforts to ensure IHEs’ compliance with anti-discrimination laws, nothing about *SFFA* justifies the sweeping data collection the ACTS survey requires.

## II. THE ACTS SURVEY CONTRAVENES THE PRA’S REQUIREMENTS.

The design, development, and implementation of the ACTS survey have been rife with PRA and other statutory, regulatory, and constitutional violations. These violations should have blocked the approval of the ACTS survey and must be cured by staying this collection immediately.

### A. The ACTS Survey Imposes Excessive Burdens That Are Untethered From the Collection’s Purported Purpose To Further Civil Rights.

The core aim of the PRA is to protect the public from the burdens of federal government information collections.<sup>17</sup> Accordingly, before submitting a collection to OMB for approval, an agency must develop “[a] specific, objectively supported estimate of [the collection’s] burden.”<sup>18</sup> And OMB may only approve a collection upon the agency’s demonstration that it “has taken every reasonable step to ensure that the proposed collection . . . [i]s the least burdensome necessary for the proper performance of the agency’s functions . . . .”<sup>19</sup> The ACTS survey fails these requirements.

The Department’s prediction that completing the ACTS survey would take each institution a maximum of 200 hours in its inaugural year is a significant underestimate. The Department provided no objective support for this estimate, which is dramatically out of line with the estimates of real, experienced stakeholders who know their staffing constraints, data and IT systems, and competing demands best. Of 538 higher education professionals surveyed, more than half of respondents estimated that it would take at least 250 hours per year to complete the survey, with a

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<sup>15</sup> *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023).

<sup>16</sup> *See, e.g., id.* (Kavanaugh, J., concurring; Thomas, J., concurring; Gorsuch, J., concurring).

<sup>17</sup> 44 U.S.C. § 3501.

<sup>18</sup> 5 C.F.R. § 1320.8(a)(4).

<sup>19</sup> 5 C.F.R. § 1320.5(d)(1)(i).

quarter estimating it would take *over 500 hours*.<sup>20</sup> These estimates leave no doubt that the survey will be so burdensome that timely compliance is impracticable, if not impossible. And though we support data collections, including extensive ones, that serve genuine civil rights aims, the Department here seeks only to enforce a legally unsupported (and judicially invalidated<sup>21</sup>) reading of *SFFA*, as explained above.

In addition, collecting disaggregated data on GPAs and test scores is not only *unnecessary* for identifying violations of anti-discrimination laws, it is *unfit* for that purpose. Most significantly, GPAs are not standardized across high schools, many of which use different scales (4.0, 5.0, 100). Despite this variation, the ACTS Survey requires IHEs to report GPAs on a 4.0 scale with insufficient guidance on how to convert differently scaled GPAs, rendering intragroup comparisons based on this data unreliable. Further, GPAs on their own are rarely—if ever—a dispositive factor in competitive admissions processes, as institutions must contextualize a number of factors, including the rigor of the student’s institution, the coursework offered, whether the student attempted challenging coursework. Beyond academics, institutions take into account a vast range of additional variables, including letters of recommendation; work, jobs, extracurricular activities, and volunteering experiences; life experiences; leadership skills; academic achievements; and so on—none of which are captured by the ACTS data collection. *SFFA* did not change this. Though the Administration repeatedly attempts to reduce higher education admissions decision-making to an assessment of narrowly defined quantitative criteria,<sup>22</sup> *SFFA* explicitly permitted the use of qualitative criteria, including statements about the impact that race has had on an applicant’s lived experience.<sup>23</sup>

The Department further burdens IHEs by requiring *past* data, which is not necessary for demonstrating *present* compliance with *SFFA*. The Department insists that it is, citing the need for a baseline of pre-*SFFA* admissions practices to justify the backward-looking data requirements of the ACTS survey. But, as we and other commenters previously explained, this insistence rests on an unfounded and discriminatory assumption that Black and Brown student enrollment should have dropped following *SFFA*—discounting the qualifications of Black and Brown applicants and failing to credit the strides institutions have made toward attracting these applicants through lawful means. It also suggests that the Department intends to wield the collected data, however unreliable, to pressure IHEs whose racial demographics do not meet its expectations, and to target such IHEs for investigation. The Department’s approach foreseeably risks incentivizing and perpetuating discrimination against Black and Brown students. Indeed, the data collection is more likely to undermine compliance with civil rights laws than it is to further their enforcement.

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<sup>20</sup> Jones, D., Keller, C., and Ross, L. E. (2025). *AIR Survey Results: Feedback to the Proposed Admissions and Consumer Transparency Supplement (ACTS)*. Association for Institutional Research.

<https://www.airweb.org/publication/feedback-to-the-proposed-ACTS> (last visited Jan. 25, 2026).

<sup>21</sup> See, e.g., *Am. Fed’n of Tchrs. v. Dep’t of Educ.*, No. CV SAG-25-628, 2025 WL 2374697, \*22 (D. Md. Aug. 14, 2025); *Nat’l Educ. Assoc. v. U.S. Dep’t of Educ.*, No. 1:25-cv-00091, \*199 (D.N.H. Apr. 24, 2025).

<sup>22</sup> See, e.g., *Compact for Academic Excellence in Higher Education* (Oct. 1, 2025), <https://www.washingtonexaminer.com/wp-content/uploads/2025/10/Compact-for-Academic-Excellence-in-Higher-Education-10.1.pdf> (last visited Jan. 25, 2026).

<sup>23</sup> *Students for Fair Admissions v. Harvard*, 600 U.S. at 230.

Because the data elements ACTS seeks to collect are unnecessary for enforcing civil rights law, requiring institutions to gather and report these vast swaths of data conflicts with the PRA’s burden-minimization requirement.

## **B. The ACTS Survey Fails to Account for Applicant and Student Privacy Considerations.**

The PRA requires agencies to protect data privacy and inform respondents of “the nature and extent of confidentiality . . . if any.”<sup>24</sup> OMB cannot approve a collection requiring the provision of confidential information unless the agency has instituted confidentiality safeguards.<sup>25</sup> But the ACTS survey lacks adequate safeguards in at least two ways.

First, though the ACTS survey will nominally publicize aggregate rather than student-level data, it disaggregates the public data by race/ethnicity and sex. For small programs or small institutions, this disaggregation will inevitably produce cells so small in size that it will be possible to identify particular applicants or students using the information provided. This risk is particularly salient for applicants and students from underrepresented backgrounds, who are already part of smaller groups. As a result of the ACTS survey, their academic records, family income, and citizenship status could all be exposed. And because this data could constitute personally identifiable information, IHEs who provide the data risk running afoul of FERPA in the absence of adequate confidentiality assurances from the Department—yet the Department has offered none.<sup>26</sup>

Second, even for larger programs and institutions, the data collection and aggregation process itself poses risk. The Department has instructed IHEs to prepare de-identified applicant- and student-level files for submission and then aggregate them using a brand-new Aggregator Tool or Department-provided scripts. But the Aggregator Tool was rapidly developed and has not been tested through use in any other IPEDS data collection, and there is minimal information available on the Department’s scripts. What’s more, the individual-level data will be stored on a contractor server through the end of the submission period, raising concerns about data breaches.

Congress has long banned federal databases of student-level personally identifiable information.<sup>27</sup> For good reason: students deserve to pursue their education without fear that confidential aspects of their identities and backgrounds will become public knowledge. A data collection that produces the same harms should not be allowed to stand.

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<sup>24</sup> 5 C.F.R. § 1320.8(b)(3)(v).

<sup>25</sup> 5 C.F.R. § 1320.5(d)(2)(viii).

<sup>26</sup> See 20 U.S.C. § 1232g(b)(1)–(2) (requiring written consent before an educational institution discloses personally identifiable information (“PII”) from student records). Whether submitted data constitutes PII depends in part on what other information is available – in this case, to the public, given the public disclosure of results. See 34 C.F.R. § 99.3.

<sup>27</sup> 20 U.S.C. § 1015c(a) (prohibiting any interpretation of the HEA to authorize a federal database of student-level personally identifiable information).

### C. The ACTS Survey Raises Acute Data Validity, Reliability, and Utility Concerns.

The PRA seeks to “ensure the greatest possible public benefit from” and maximize the utility of information “collected, [] used, [] and disseminated by” the federal government.<sup>28</sup> The ACTS survey contravenes these principles.

As an initial matter, the design of the collection is ill-suited to achieving its purported aim: civil rights enforcement. Not only is the ACTS survey overbroad, collecting data *unnecessary* to this end, it is also underinclusive, failing to sufficiently capture data that would be *necessary* for this purported purpose. Most notably, and again raising concerns about the Department’s targeting of Black and Brown applicants, it excludes admissions-relevant factors such as legacy, athlete-recruit, and donor status, all of which are known to favor white and affluent applicants.<sup>29</sup> It also requires schools to report sex as either “male” or “female” for every student, even for those students who did not report their sex as such to their schools. The Department required reporting by binary sex categories without offering an “unknown” response option, despite including that option for numerous other data fields.<sup>30</sup> This decision compromises data quality at a fundamental level given that the data collected will be disaggregated by race-sex pairs. Relatedly, it makes the unnecessary and harmful decision to disallow reporting by gender rather than sex, not only impairing data accuracy but also failing to respect the gender identities of applicants and students.

In addition to these omissions, the unusual development process—or, rather, lack thereof—for this collection compromises the quality and reliability of the data it will produce. Despite this constituting the largest-ever expansion of IPEDS, the Department skipped standard vetting mechanisms (such as a Technical Review Panel, pilot year, or phased implementation) that would have helpfully informed and steered the design of the survey.

Finally, the rushed rollout timeline and lengthy lookback period will further undermine the reliability of the data. Collecting and preparing this data for submission will be a significant undertaking, particularly for institutions with limited capacity who tend to serve greater numbers of historically underserved students.<sup>31</sup> This burden and timeline will result in erroneous data. The Department is aware of this but has not addressed these issues. Moreover, the number of NCES staff was reportedly slashed from 100 to just *three*—none of whom include NCES employees

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<sup>28</sup> 44 U.S.C. § 3501(2).

<sup>29</sup> See Sarah Reber and Gabriela Goodman, *Who uses legacy admissions?*, BROOKINGS (March 12, 2024), <https://www.brookings.edu/articles/how-widespread-is-the-practice-of-giving-special-consideration-to-relatives-of-alumni-in-admissions/#:~:text=of%20affirmative%20action>; Eleanor Eckerson Peters, *Responsible Use of Admissions Data Can Expand College Opportunity. The Proposed New Federal Collection Risks the Opposite*, INSTITUTE FOR HIGHER EDUCATION POLICY (Aug. 21, 2025), <https://www.ihep.org/responsible-use-of-admissions-data-can-expand-college-opportunity-the-proposed-new-federal-collection-risks-the-opposite>.

<sup>30</sup> See generally U.S. Dep’t of Educ., Nat’l Ctr. for Educ. Statistics, *Glossary* (OMB No. 1850-0582 v.33) (Feb. 2024) (revised May 2025; revised Oct. 2025); U.S. Dep’t of Educ., Nat’l Ctr. for Educ. Statistics, *Admissions and Consumer Transparency Supplement (ACTS) Package: 2025–26 and 2026–27 Data Collections* (OMB No. 1850-0582 v.33) (Oct. 2025).

<sup>31</sup> See Jill Barshay, “Proof Points: Admissions Data Collection Strains Colleges,” *The Hechinger Report* (January 19, 2026), <https://hechingerreport.org/proof-points-admissions-data-collection-strains-colleges/> (last visited Jan. 25, 2026).

formerly involved in IPEDS data collection.<sup>32</sup> Without appropriate staffing support, NCES lacks capacity to responsibly manage the collection, provide the promised technical assistance, and properly perform data validation.<sup>33</sup>

#### **D. The Data Collection Suffers From Lack of Meaningful Stakeholder Input.**

The ACTS survey also suffers from lack of meaningful stakeholder input. Although the PRA provides for two rounds of notice-and-comment,<sup>34</sup> the Department treated these notice-and-comment periods as a mere formality, failing to provide the survey instruments and corresponding instructions in the initial 60-day notice.<sup>35</sup> Even under normal circumstances, this failure would impede the opportunity for meaningful comment. But the omission was especially prejudicial in this case given the extensive, detailed reporting requirements at issue and the imminent opening of the collection, which institutions simultaneously had to prepare for.

Further, the Department and OMB gave short shrift to those who *did* comment. The Department acknowledged the well-founded concerns from commenters but ultimately yielded very little ground. Instead, the Department persisted with its overbroad collection, rushed timeline, and unworkable lookback requirements, and made no substantive changes at all following the second comment period. OMB then ratified the proposal just days after the second comment period closed. Stakeholder consultation was treated as a procedural hoop to jump through, rather than a serious exchange and opportunity to improve the state and tribal partnerships with the federal government the PRA seeks to strengthen.<sup>36</sup>

### **III. CONCLUSION AND REQUEST TO STAY APPROVAL OF ACTS**

The PRA exists to protect the public from burdensome federal agency requests, particularly where, as here, they are not tethered to a proper purpose and do not adequately safeguard sensitive information. The ACTS survey is unnecessary and fails to comply with the PRA because it conflicts with the PRA's burden-minimization requirement; lacks adequate privacy safeguards; raises data validity, reliability, and utility concerns; and lacks meaningful stakeholder input. Given the impending reporting deadline of March 18, we request that OMB stay its approval of the ACTS survey immediately.

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<sup>32</sup> Jill Barshay, *Inaccurate, impossible: Experts knock new Trump plan to collect college admissions data*, THE HECHINGER REPORT (Aug. 18, 2025), <https://hechingerreport.org/proof-points-new-college-admissions-data-collection/>.

<sup>33</sup> See 5 C.F.R. § 1320.8(a)(7) (requiring, as appropriate, a plan for the efficient and effective management and use of the information, including necessary resources).

<sup>34</sup> 44 U.S.C. § 3506(c)(2)(A) (60-day initial comment period); 44 U.S.C. § 3507(b) (30-day comment period).

<sup>35</sup> 5 C.F.R. § 1320.8(d)(2); 44 U.S.C. 3506(c)(2) (requiring agencies to publish a 60-day Federal Register notice that includes the proposed survey and related instructions or, if not included, to explain how the public can obtain them without charge or provide more than 60 days' notice to ensure timely receipt).

<sup>36</sup> 44 U.S.C. § 3501(6).

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