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for COMMUNITY and  
JUNIOR COLLEGES**

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**September 5, 2008**

**TO: ACCJC Member Institutions**

**FROM: Barbara Beno**

**SUBJECT: Higher Education Act Update**

The Higher Education Act has finally passed both houses of Congress and has been signed into law. The legislation is very long, over 700 pages, and has many provisions that remain of concern to the higher education community, including extensive new institutional reporting requirements.

On accreditation issues, Congress has expanded the law with regard to a few limited topics: evaluation of distance education, evaluation of institutional success with respect to student achievement, and due process proceedings provided when an accreditor takes action to terminate or withdraw accreditation from an institution. Other proposals to increase the accreditor's requirements with respect to public disclosure of information on accreditation status of institutions, the requirement that accreditor decisions set precedents that bind future decisions, and the requirement that accreditors verify the accuracy of information that institutions are required to provide the federal government were all removed from the final conference bill. In many instances, the language changes were hard fought and won; the regional accrediting community has largely been successful in ensuring its proposed language was that used in the bill. CRAC and its consultant, Van Scoyoc Associates, have been very instrumental in assuring the outcome of the HEA language on accreditation.

Congress is expected to complete the conference process before the July 4th recess. At that time, the law requires the Department of Education to begin its negotiated rulemaking process with a series of national forums (which provide opportunity for public comment on the legislation and on what should be regulated), the appointment of a negotiated rulemaking team, and the implementation of negotiated rulemaking. The entire process could take up to a year and it is unclear whether the current administration will begin the process or leave it to the next President's administration.

Below is a brief summary of changes to Part H of the HEA, which deals with most of the accreditation issues:

## Religious Mission

Congress inserted language designed to “protect the mission of religious institutions” despite the opposition of the accrediting community. We opposed the language because we believe that we currently apply standards that are fair and are based on American higher education values and practices, which may not align with some faith-based institutions. The language is vague enough to be worrisome when we contemplate regulation of this language.

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

## Distance Education

The legislation requires agencies that accredit institutions that offer distance education programs [to have processes through which the institution establishes that the student who registers in a distance education course or program is the same student who participates in and completes the program and receives the academic credit;](#)

## Standards for Student Achievement

In order to be recognized by the Department of Education, accrediting agencies must ensure that:

(5) the standards for accreditation of the agency or association assess the institution’s:

[‘\(A\) success with respect to student achievement in relation to the institution’s mission, which may include different standards for different institutions or programs, as established by the institution, including, as appropriate, consideration of State licensing examinations, consideration of course completion, and job placement rates;’<sup>1</sup>](#)

(B) curricula;

(C) faculty;

(D) facilities, equipment, and supplies;

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

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<sup>1</sup> This language is what necessitated lengthy negotiations between the Six higher education organizations and the accrediting community. All agreed to leave this language, which was seen as problematic because it used the idea of institutional “standards”, intact and to add rules of construction, which appear later in the Act, to ensure that accreditors’ authority and responsibility were not voided.

## Standards for Student Achievement (cont.)

(F) student support services;

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

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

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

(J) record of compliance with its program responsibilities under Title IV of this Act based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and any such other information as the Secretary may provide to the agency or association; except that subparagraphs (A), (H), and (J) shall not apply to agencies or associations described in paragraph (2) (A)(ii) of this subsection;

## Due Process for Institutions

Largely as a result of institutions whose accreditation was terminated by the Southern Association of Colleges and Schools (SACS), various sections of language were introduced to increase the due process given institutions during adverse actions (defined as denial, termination or withdrawal of candidacy or accreditation). Initial language that CRAC opposed would have made Probation an action subject to appeal; we were successful in getting this language removed from the bill. Congressman Wahlberg also proposed two amendments that would have created a highly problematic due process procedure; we were successful in getting those amendments removed.

The final due process language includes many revisions to language, but nearly all describe current regional accreditor shared practices and describe due process protections already provided by the ACCJC and WASC appeals processes. One exception is a new addition to the law which would allow an institution whose accreditation has been terminated for insufficient fiscal resources a one time opportunity to provide “new” information that could, if known by an accreditor, result in a different commission action. This is the clause that essentially allows an institution to report on financing/funding found rather late in the process, but before termination is “final.”

The accreditor must ensure that:

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

## Due Process for Institutions (cont.)

`(A) adequate specification of -

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

(ii) ~~requirements and~~ identified deficiencies at the institution ~~of higher education~~ or program examined;

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

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

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

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

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

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

`(D) the right to representation by counsel for such an institution during an appeal of the adverse action; and

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

(F) in the case that the agency or association determines that the new financial information submitted by the institution or program under subparagraph (E) meets the criteria of significance and materially described in such subparagraph, for

## **Due Process for Institutions (cont.)**

consideration by the agency or association of the new financial information during the appeal described in such subparagraph and prior to the adverse action described in such subparagraph becoming final; and

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

## **Teach Out Requirements for Institutions**

Congress added specific information about how institutions must provide teach out plans and when they lose accreditation or elect to close. These requirements align with current ACCJC policy. Recognized accreditors must:

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

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

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

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

## **Accreditor Review of Federally Required Information to Students**

The HEA now requires that accreditors review the information that institutions are required to give to students and prospective students. This area is one we will work carefully on in negotiated rulemaking; we do not want accreditors to have to evaluate this extensive and highly specialized information because it will change significantly our work and workload.

Recognized accreditors are required to:

(2) ensures that the agency's or association's on-site evaluation for accreditation or reaccreditation includes a review, consistent with subsection (a)(5), of the Federally required information the institution or program provides its current and prospective students;

## **Accreditor Review of Institutional Transfer of Credit Policies**

The HEA now requires that accreditors review the information on transfer of credit that institutions provide students and prospective students. This topic is highly controversial in the higher education community; we can expect some rather challenging discussions during

## Accreditor Review of Institutional Transfer of Credit Policies (cont.)

negotiated rulemaking. The language is consistent with current ACCJC policy on institutional transfer of credit. It states that the accreditor will:

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

(A) that are publicly disclosed; and

“(B) that include a statement of the criteria established by the institution regarding the transfer of credit earned at another institution of higher education.”;

## Monitoring Institutional Growth

The HEA now requires accreditors to monitor significant institutional growth in students/enrollments in order to make sure quality is sustained when sudden and rapid growth occurs. This language will also be fiercely debated during negotiated rulemaking, as it leaves undefined what “monitoring” is intended to mean and because the high growth private sector will likely try to limit any interference in institutional growth. The HEA now requires that an accreditor:

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

## Accreditor’s Scope

During the last few years, the accreditors have grown concerned about the Secretary’s attempts to regulate (through the Spring 2007 negotiated rulemaking sessions that failed) and to interpret in new ways existing law in a manner that dictates what standards an accreditor adopts, or to define standards an accreditor must adopt to evaluate student achievement. Historically, while the Secretary has regulated in a manner that required accreditors to have standards, the office has NOT regulated in a manner that described what those standards should be or how they should be applied. Secretary Spellings’ many discussions of using graduation rate or time to degree as a criterion for institutional success led the accreditors and the higher education community to seek some legislative limits on the Department’s authority. We were successful in the language included in the HEA, below:

“(g) LIMITATION ON SCOPE OF CRITERIA.—Nothing in this Act shall be construed to permit the Secretary to establish criteria for accrediting agencies or associations that are not required by this section. Nothing in this Act shall be construed to prohibit or limit any accrediting agency or association from adopting additional standards not provided for in this section. Nothing in this section shall be construed to permit the Secretary to establish any criteria that specifies, defines, or prescribes the standards that accrediting agencies or associations shall use to assess any institution's success with respect to student achievement.”; and

## Accreditor's Scope (cont.)

(o) REGULATIONS.—The Secretary shall by regulation provide procedures for the recognition of accrediting agencies or associations and for the appeal of the Secretary's decisions Notwithstanding any other provision of law, the Secretary shall not promulgate any regulation with respect to subsection (a)(5)–(a)(5)(A), (a)(5)(B), (a)(5)(G), and (a)(5)H), and

## Rules of Construction for Accreditors

The Accreditors had inserted rules of construction to interpret earlier language so that institutional standards with regard to student achievement could not be understood to replace the accreditors' responsibility and authority to devise accreditation standards.

“(p) RULE OF CONSTRUCTION.—Nothing in subsection (a)(5) of this section shall restrict the authority of—

“(1) an accrediting agency or association to set, with the involvement of its members, and to apply accreditation standards **for or** to institutions or programs that seek review by the agency or association; or

“(2) an institution to develop and use institution standards to show its success with respect to student achievement, ~~which shall be considered as part of any accreditation review.~~”.

I will keep you apprised of any additional changes to language affecting accreditation as the legislation moves from conference to the final vote by Congress, as well as plans for negotiated rulemaking that will follow passage of the Higher Education Act.

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