

The HEOA, Negotiated Rulemaking, and Accreditation Key Elements Affecting Institutions

Accrediting bodies that are recognized (i.e., approved) by the U.S. Department of Education are required to enforce portions of the Higher Education Act, which is renewed each 5 to 8 years. After legislation is passed, the Department of Education engages in negotiated rulemaking in which Department representatives and others representing accreditors, institutions, and the public, try to reach agreement on the regulations that will further define how the new law is to be implemented.

The Higher Education Opportunities Act (HEOA) was passed in September 2008. In May 2009, the Department of Education concluded negotiated rulemaking that set the new regulations that will implement the Act. There will be additional national “hearings” on the proposed regulations before they are adopted and published on or about November 1, 2009. Below is a brief summary of the regulatory issues directly affecting institutions which were developed by Negotiating Committee Three, which dealt with accreditation issues.¹ Other new regulations not summarized here affect the Department’s process and structure for recognizing accrediting bodies.

Distance Education: New regulations have now distinguished correspondence education from distance education. Key to the distinction is that correspondence education does not include regular and substantive contact between instructor and student, while distance education does include such regular and substantive interaction. Institutions offering correspondence education should know that correspondence education is likely to be subject to additional scrutiny in the future, once the definitional distinction has resulted in institutions properly classifying correspondence education. The regulations also require accreditors to ensure that institutions have the means of assuring the integrity of distance education courses and that students submitting work in distance education courses are the same individuals who are registered and receiving credit for that work.

Accreditation Team Members: New regulations require accreditors to provide training for accreditation teams, including training that may assist those team members assigned to specialized functions as part of a team such as examining the quality of distance education and correspondence education.

Standards of Achievement: New regulations, and new statutory language, allows institutions to set their own standards for performance (i.e., targets or goals, as well as “measures” that are meaningful) and in addition allows the accreditors to set standards for their member institutions, but new regulations prevent the Secretary of Education from regulating in the area of student achievement.

¹ Negotiating Committee Five, which dealt with student financial aid and institutional reporting requirements, failed to achieve consensus. The Department’s announcement that it will regulate without consensus in this area included some reference to the role accreditors will be asked to play. Therefore, there will likely some additional new regulations that pertain to accrediting agencies.

Direct Assessment: New regulations add a definition of a “direct assessment program” in which an institution assesses learning as a means of awarding credit (rather than using clock hours or seat time), and defines a role for the accreditor in approving a direct assessment program for Title IV purposes.

Teach-Out Plan: New regulations define what a teach-out “plan” is and require that an institution must have a teach-out plan approved by its accreditor when an institutional location that provides one hundred percent of at least one program ceases to operate before all students have completed their program.

Due Process: New regulations add to the due process given institutions being reviewed by the accrediting commission. In particular, the regulations require an institution whose accreditation is being denied (in the case of an applicant) or terminated solely due to issues related to financial resources to have one last opportunity, before the termination decision is final, to provide evidence that it has acquired the necessary financial resources. Other regulatory changes require an accrediting agency to have written specification of the requirements for accreditation and clear standards for accreditation, as well as to provide an institution with a detailed written report that clearly identifies any deficiencies in the institution’s compliance with standards.

Monitoring and Evaluation of Institutions: New regulations would require an accreditor to apply a set of monitoring and evaluation approaches that enables the agency to identify problems with an institution’s compliance with standards and that takes into account an institution’s strengths and stability. These approaches to monitoring would require periodic reports, collection and analysis of key data and indicators identified by the agency, including fiscal information and measures of student achievement. In addition, accreditors will be required to monitor the overall growth of the institution and to collect information on headcount enrollment at least annually. In addition, monitoring will focus on institutions at which there is significant growth, with significant growth being determined by the accreditor, particularly in distance education or correspondence education.

Substantive Change: New regulations would amend the list of substantive changes by including courses or programs that represent a significant departure from existing offerings or educational programs and to include an institution’s decision to contract out more than 25% of an educational program to entities that are not on their own eligible to participate in Title IV programs. New regulations also give the accreditors greater flexibility in approving institutions that have additional locations at which 50% of an educational program is offered, allowing the accreditor to give some institutions prior relief from the requirement of prior approval for such locations. Several other changes to regulations will affect how the accreditor evaluates additional institutional locations and how it identifies when a substantive change is great enough to trigger a comprehensive institutional review.

Transfer of Credit: New statutory language and regulations require that institutions define and publicly disclose their policy on transfer of credit, and to include a statement

of the criteria used by the institution to make its decisions on acceptance of credit transferred from other institutions. Accrediting agencies are required to confirm that institutions meet such policy and disclosure requirements.

Public Announcement and Summary of Commission Actions: New regulatory language requires accreditors to make available to the Department of Education, to state licensing agencies, and to the public a summary of actions on institutions, and to provide a summary of the reasons for, and an opportunity for institutional response to, a decision to deny or terminate accreditation.

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