



Number 42, November 20, 2007

HOUSE COMMITTEE PASSES REAUTHORIZATION BILL

Introduction

On Thursday, November 15, 2007, the Committee on Education and Labor in the U.S. House of Representatives passed the "College Opportunity and Affordability Act" (H.R. 4137) reauthorizing the Higher Education Act (HEA). The House committee bill now accompanies the reauthorization bill passed by the Senate (S. 1642) in July 2007.

While dates have not yet been established, staffers are indicating that the committee bill may go to the full House sometime in December, with a House-Senate conference on both bills, perhaps in January 2008.

The House bill addresses all the accreditation-related topics contained in the Senate bill and adds new provisions in a number of areas. It also includes provisions that are not directly related to accreditation, but impact this area, nonetheless. All are addressed below. The [attached chart \(PDF\)](#) compares current law, the Senate bill and the House committee bill as these relate to accreditation and related issues.

Topics Addressed in Both the House and Senate Bills

Student Achievement

The House committee bill retains current law on student achievement. It no longer contains the language on institutional discretion to set student achievement standards and outcomes that is in the Senate bill. This language had assured that institutions retain their leadership role in setting their own standards for student achievement. This is a significant loss for all institutions. The ambiguity in current law, favored by the accreditors, has been a key factor enabling the Secretary of Education to press forward to set federal academic standards for institutions.

Transfer of Credit

The transfer of credit language in the House committee bill mirrors the language in the Senate bill, requiring accreditors to confirm that institutions have a transfer of credit policy, that the policy is published and that the policy includes the criteria used in considering transfer of credit from another institution.

Public Information

The House committee bill contains all the disclosure requirements that are in the Senate bill, with the exception of requiring disclosure of probation status. These provisions call for accreditors to make public the award of accreditation, reaffirmation of accreditation and adverse actions (e.g., final denial, withdrawal, suspension or termination of accreditation). Both bills require, in contrast to current law, that accreditors make public the official comments of an affected institution. In addition, the obligation on accreditors goes beyond making these disclosures "upon request," as in current law, to making them public, whether or not there are any requests.

Due Process

The House committee bill is identical to the Senate bill with one exception. The House bill does not include an appeal for placement on probation. The remaining language in both bills requires accreditors to establish and apply review procedures throughout the accrediting process, including evaluation and withdrawal proceedings which comply with due process procedures that provide for (1) adequate specification of requirements and deficiencies at the institution or program examined, (2) an opportunity for a written response to be included prior to final action, (3) upon the written request, an opportunity to appeal any adverse action, at a hearing prior to such action becoming final. In the event of an appeal, an appeals panel shall not include anyone who was on the underlying decision-making body that made an adverse decision; and that panel members are subject to a conflict of interest policy. The institution has the right to representation by counsel during an appeal.

Distance Learning

The House committee bill is identical to the Senate bill. The language would permit accreditors to address the quality of an institution's distance education offerings without a requirement to establish separate standards, procedures or policies for the evaluation of distance education. Accreditors must require institutions to establish that the student who registers for a distance education course or program is the same student who participates in and completes the program and receives the academic credit. In another part of the bill, institutions are required to report on distance learning offerings and enrollments.

Religious Mission

The House committee bill requires accreditors to "consistently apply and enforce standards that respect the stated mission of the institution of higher education, including religious missions." This is consistent with but not identical to the Senate language which calls on accreditors to consider student achievement in relation to institutional mission and adds "including religious missions."

Federally Required Disclosures

The House committee bill does not obligate accrediting organizations to review all federally required information that an institution must provide as part of an on-site evaluation. The Senate bill does have this obligation.

National Advisory Committee on Institutional Quality and Integrity

The House committee bill revises the National Advisory Committee on Institutional Quality and Integrity (NACIQI) that advises the Secretary of Education on the recognition of accrediting organizations – as does the Senate bill, but in a different manner.

The House bill retains the advisory committee but it calls for 17 rather than the current 15 members. The House bill calls for five members to be appointed by the Secretary, six to be appointed by the House of Representatives (three by the majority leader and three by the minority leader) and six to be appointed by the Senate (three by the majority leader and three by the minority leader). The House change would be effective January 1, 2009.

The Senate bill terminates the current advisory committee and creates a new "Accreditation and Institutional Quality and Integrity Advisory Committee." The Senate retains the current number of committee members (15) but calls for a shift from the Secretary appointing all committee members to sharing appointments with the Speaker of the House and the President *pro tempore* of the Senate. The effective date of the proposed Senate bill is 30 days after enactment of the bill.

Monitoring Enrollment Growth

The House committee contains language identical to the Senate bill with regard to accreditors monitoring growth in institutions that are experiencing significant increases in enrollment.

Additional Accreditation Provisions in the House Committee Bill Not Contained in the Senate Bill

Accreditation Ombudsman

The House committee bill establishes the office of "Accreditation Ombudsman." The ombudsman will review and attempt to resolve complaints concerning the accreditation process from institutions, accreditation organizations and other participants in the accreditation process and within the Department of Education. In addition, the ombudsman will compile and analyze data on institutions and accrediting organization complaints.

Rule of Construction

The House committee bill applies the "rule of construction," language that places limitations on the authority of the Secretary to issue additional regulations on student achievement (as does the Senate bill), and adds the rule with regard to transfer of credit and articulation agreements (please see below).

Negotiated Rulemaking

The House committee bill adds an additional requirement with regard to negotiated rulemaking (the process of consultation required

of the Secretary before issuing new regulations in a number of areas, including accreditation.) The bill calls for nonfederal participants in rulemaking to be individuals with recognized legitimacy as representatives of major constituencies in higher education.

Accreditation Process

Although we await clarification of language here, the House committee bill contains provisions that (1) require accreditors not to take an adverse action based on any undocumented or unpublished policy or practice and (2) require accreditors to put in writing a response to institutional comments on an accreditation determination.

Other Provisions in the House Committee Bill

Articulation Agreements

The House committee bill calls for a study of institutional articulation agreements by the Secretary and, by 2010, make these agreements publicly available on state and institutional Websites. The language also calls for encouraging articulation through, e.g., common course numbering or general education core curriculum. Institutions are to provide a list of the institutions with which they have such agreements.

Accrediting Standards for Students with Intellectual Disabilities

The bill calls for the creation of accreditation standards for higher education institutions that offer postsecondary programs for students with intellectual disabilities.

Degree Mills

The House bill includes parts of the "The Diploma Integrity Protection Act of 2007." The major provisions included in the bill are a definition of a "diploma mill" and a task force to determine the characteristics of a "fraudulent degree-granting institution." The task force will develop a plan to protect the federal government against the use of diploma mill credentials to gain federal employment and may present additional legislation on degree mills for Congress to consider.

CHEA Analysis and Next Steps

Both the Senate and House committee bills contain some features favorable to accreditation and the academic leadership of our colleges and universities. At the same time, both bills contain provisions that are seriously harmful and CHEA, working with other higher education associations, will seek to modify over the next several months. These major provisions include:

- *Student Achievement.* CHEA will work with other higher education associations to promote the Senate bill language that assures the academic leadership role of colleges and universities – not accreditors or government – in setting quality standards and judgments about student learning outcomes. We will work to eliminate the language in the House committee bill favored by the accreditors.
- *Federally Required Disclosures.* CHEA will attempt to remove the obligation of accrediting organizations to monitor federally required disclosures from the Senate bill. CHEA was successful in removing this provision from the House bill.
- *National Advisory Committee on Institutional Quality and Integrity.* CHEA will attempt to alter the composition and responsibilities of the advisory committee to assure balanced federal review of accrediting organizations. This may involve some combination of current House committee and Senate language.
- *Accreditation Ombudsman.* CHEA is concerned to clarify the role of this office and to assure that, if the position is authorized, it does not interfere with the decision-making authority of accrediting organizations. Based on current understanding, this office appears to result in significant additional federal intervention in the self-regulatory work of accreditation.

This Update will inform interested parties on developments in the reauthorization of the Higher Education Act (HEA). Please direct any inquiries or comments to Jan Friis at frjis@chea.org or to (202) 955-6126.