



CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION

Policy Change Adopted on Single Reading

The Higher Learning Commission's (HLC's) Board of Trustees adopted this policy on single reading at its meeting on November 1–2, 2018.

Background

In February 2017, HLC's Board of Trustees adopted a policy change that required pre-acquisitions letters issued by the Department of Education to be made available prior to the Board taking action on an institution seeking approval for a change of control, structure or organization. The change was made to ensure that any important information that may be included in the pre-acquisition letter was available to the Board prior to making a decision regarding an institution's extension of accreditation following a change of control. However, in practice, this requirement has had the unintended consequence of placing added strain on the Department's established processes and timelines. At the Department's request, the newly adopted policy change removes the requirement for pre-acquisition letters prior to Board action. HLC still may reserve the right to examine pre-acquisition letters or final determination letters issued by the Department whenever such letters become available including during the focused evaluation following the Board's approval of a transaction within six months.

HLC Bylaws and policy allow the Board to approve in a single reading changes to policy that are required by federal regulation or other legal mandate.

Implementation

This policy is effective immediately.

Adopted Policy

Wording that was deleted or revised is shown as strikethrough (~~old wording~~); new language, whether through addition or revision, is shown in bold (**new wording**). These revisions have been made on HLC's website at hlcommission.org/policies.

Policy Title: Processes for Seeking Approval of Change of Control

Number: INST.F.20.070

The Commission's Board will make all decisions regarding approval of transactions under this policy taking into consideration the summary report made by Commission staff. Commission staff may seek external assistance from peer reviewers or individuals with appropriate expertise or may require an immediate on-site Fact-Finding Review to gather information about the proposed CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION in making a summary report to the Board. The summary report may contain a recommendation regarding approval of the transaction made by the institution's Commission staff liaison or by the Commission staff. Commission staff will provide the institution with a copy of the staff summary report, including the staff recommendation, if any, being provided to the Board and allow the institution 14 calendar days to prepare a response to that summary report; that response will be shared with the Board prior to its decision.

The Board may act in agreement with any recommendation put forward by Commission staff or the Board may develop and act on its own recommendation. The Board may elect to provide the institution with thirty days to respond to any recommendation before the Board takes final action.

The Board may approve the change, thereby authorizing accreditation for the institution subsequent to the close of the transaction, or it may deny approval for the change. The Board may defer its consideration of the proposed CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION to the next public Board meeting date pending receipt of additional information or action by a third party such as the state or another recognized accreditor. The Board may make use of OTHER OPTIONS identified in this section.

~~If the U.S. Department of Education conducted a pre-acquisition review of the proposed transaction, the Board will not act on the proposed change until it has reviewed the letter issued by the Department after it completes its pre-acquisition review, the institution's response to the Department's letter, and any additional information requested by the Department in its letter.~~

The Board may approve the change subject to certain conditions. Such conditions may include, but are not limited to, limitations on new educational programs, student enrollment growth, development of new campuses or sites, etc. Related to these conditions, the Board may require that it review and approve certain changes at the institution prior to their inception. The institution and other parties involved in the transaction have 14 calendar days after receiving the Board's action letter to indicate in writing the acceptance of these conditions. If the institution and the other parties do not respond in

writing or decline to accept the conditions, the Board may immediately act to rescind its approval. The parties to the CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION may not act to close the transaction until accepting in writing the Board's conditions, if any.

The Board reserves the right to delegate to a Board subcommittee the review, prior to the decision by the full Board, of changes proposed under this policy and that subcommittee may make a recommendation to the full Board regarding the decision on the proposed transaction.

If the Board votes to approve the change with or without conditions, thereby authorizing accreditation for the institution subsequent to the close of the transaction, the Commission will conduct a focused or other evaluation to the institution within six months of the consummation of the transaction. A previously-scheduled comprehensive or focused evaluation may fulfill this task provided that it is scheduled, or can be rescheduled, within the six-month timeframe. The Board's action to approve a Change of Control, Structure or Organization may designate an effective date of approval provided that such date will be not later than 30 days from the date of the action. If the institution does not effect the transaction within this 30 day period, the institution must notify the Commission and seek a revised effective date, which may involve providing additional information to the Commission and another action by the Board of Trustees.

Approval Factors

The Board will consider the following factors in determining whether to approve the transaction: 1) the extension of the mission, educational programs, student body and faculty that were in place when the Commission last conducted an on-site evaluation of the affiliated institution; 2) the on-going continuation and maintenance of the institution historically affiliated with the Commission with regard to its mission, objectives, outreach, scope, structure, and related factors; 3) substantial likelihood that the institution, including the revised governance and management structure of the institution, will continue to meet the Commission's Eligibility Requirements and Criteria for Accreditation; 4) sufficiency of financial support for the transaction; and 5) previous experience in higher education and accreditation, qualifications, and resources of new owners, Board members or other individuals who play a key role in the institution or related entities subsequent to the transaction. If the Board determines in its sole discretion that the institution or the transaction fails to meet any of the approval factors, the Board will not approve the proposed CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION. The Board may also renew the institution's eligibility for its existing pathways assignment or place the institution on a different pathway.

Other Board Options

The Board may act, prior to approving the proposed CHANGE OF CONTROL, to require additional review through the Eligibility Process or through a Fact-Finding Review, which may be an additional such Review, conducted by peer reviewers or by other higher education, legal or accounting professionals regarding whether the proposed CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION constitutes the creation of a new institution such that it should be required to go through a period of time in candidacy or an initial status evaluation. The review shall be conducted within sixty days of the Board's action requiring such review, and the results shall be available to the Board at its next regularly scheduled or special meeting. The institution will have seven working days to respond to the report prepared for the Board prior to the Board's meeting.

Any candidacy required by the Board under this section shall be known as a Change of Control Candidacy. The effective date of the Change of Control Candidacy shall be the closing date of the transaction. The Board shall establish the minimum and maximum length of the candidacy but not to exceed the maximum length of time for candidacy as identified in these policies, as well as the schedule of evaluations during the candidacy period.

Evaluation Visits Related to Change of Control, Structure or Organization

Fact-Finding Review. Commission staff may call for a Fact-Finding Review prior to making a summary report to the Board regarding a proposed CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION. The role of the Fact-Finding Review will be to gather information and advise staff regarding the summary report to the Board. The Fact-Finding Review Team will not prepare a formal team report but may prepare a written summary of activities and findings. A Fact-Finding Review may take place on-site at the institution or at any other location appropriate to its activities.

In addition, the Board may call for a special Fact-Finding Review to determine, in certain cases, whether a proposed CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION may constitute the creation of a new institution. This review may take place through the Commission's Eligibility Process or through other mechanism as defined by the Board. This review may result in a recommendation that the Board approve a transaction subject to the institution's acceptance of a period of time as a candidate for accreditation.

Policy History

Last Revised: November 2018

First Adopted: June 2009

Revision History: February 2010, February 2012, June 2012, June 2015, February 2017, November 2018

Notes: Policies combined November 2012 – 3.3(c), 3.3(c)1, 3.3(c)2, 3.3(c)3, 3.3(d), 3.3(d)1

Related Policies: INST.B.20.040 Change of Control, Structure or Organization, INST.F.20.080

Monitoring Related to Change of Control, Structure or Organization