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Accreditation and the Reauthorization of the Higher Education Act

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Summary

Under the Higher Education Act (HEA), institutions of higher education (IHEs) must be accredited by an agency or association recognized by the Secretary of the U.S. Department of Education (ED) to participate in HEA Title IV federal student aid programs. While this process is voluntary, failure to obtain accreditation could have a dramatic effect on an institution's student enrollment, as only students attending accredited institutions are eligible to receive federal student aid (e.g., Pell grants and student loans). Accrediting agencies are private organizations set up to review the qualifications of member institutions based on self-initiated quality guidelines and self-improvement efforts.

This report provides an overview of some of the possible accreditation issues that Congress may address during the reauthorization process. For example, as Congress considers reauthorizing the HEA, it may consider making changes to the role accreditation plays with respect to federal student aid or to the accreditation process itself, such as the factors accrediting agencies must consider when evaluating an institution. More specifically, potential issues for consideration include, but are not limited to, the use of accreditation as a gauge of institutional quality, the elimination of accreditation as a prerequisite for participation in HEA Title IV programs, accreditation and distance education, accreditation and transfer of credit, and due process requirements that apply to accrediting agencies.

Both H.R. 609, the College Access and Opportunity Act of 2005, and S. 1614, the Higher Education Amendments of 2005, the primary vehicles for HEA reauthorization, would alter accreditation requirements. Most notably, both bills would add new requirements related to considering the mission of an institution when performing evaluations, outcome measures, distance education, transfer of credit, due process, and accrediting agency operations. The House bill would also permit state agencies not currently recognized by the Secretary of Education as accrediting agencies to seek this recognition. This report summarizes key legislative action with respect to accreditation issues.

This report will be updated as warranted by legislative action.

Contents

Reauthorization Issues 2
- Accreditation as an Indicator of Institutional Quality 2
- Elimination of Accreditation as a Prerequisite for Title IV Eligibility 3
- Distance Education and Accreditation 3
- Transfer of Credit 4
- Due Process 5

Relevant Legislation 9
- State Accrediting Agencies 10
- Mission of the Institution 10
- Outcome Measures 10
- Distance Education 10
- Transfer of Credit 11
- Due Process 11
- Accrediting Agency Operations 12

Accreditation and the Reauthorization of the Higher Education Act

Under the Higher Education Act (HEA), institutions of higher education (IHEs) must be accredited by an agency or association recognized by the Secretary of the U.S. Department of Education (ED) to participate in HEA Title IV federal student aid programs.[1] While this process is voluntary, failure to obtain accreditation could have a dramatic effect on an institution's student enrollment, as only students attending accredited institutions are eligible to receive federal student aid (e.g., Pell grants and student loans). Accrediting agencies are private organizations set up to review the qualifications of member institutions based on self-initiated quality guidelines and self-improvement efforts.

This process and its critical role in determining institutional eligibility to participate in Title IV has sometimes been controversial.[2] As the 109th Congress considers reauthorizing the HEA, it may consider making changes to the role accreditation plays with respect to federal student aid or to the accreditation process itself, such as the factors accrediting agencies must consider when evaluating an institution. This report provides an overview of some of the possible accreditation issues that Congress may address during the reauthorization process, and summarizes key legislative action with respect to accreditation.[3]

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[1] 20 U.S.C. §§ 1002, 1099c. The provisions that govern the recognition of accrediting agencies may be found at 20 U.S.C. § 1099b. See also HEA §§ 102 and 496. For the purposes of this report, the term "accrediting agency" encompasses both accrediting agencies and associations.

[2] See U.S. Congress, House Committee on Education and the Workforce, Subcommittee on 21st Century Competitiveness, *H.R. 4283, the College Access and Opportunity Act: Does Accreditation Provide Student and Parents with Accountability and Quality?*, hearings, 108th Cong., 2004. (Hereafter cited as House Subcommittee on 21st Century Competitiveness, *Accreditation*.) Also see "Opening the Door on Accreditation," (July 16, 2004); and "A Common Yardstick? The Bush Administration Wants to Standardize Accreditation; Educators Say It Is Too Complex for That," (Aug. 15, 2003), both from *The Chronicle of Higher Education*.

[3] For detailed information about institutional eligibility to participate in Title IV programs, the accreditation process, or federal requirements for accreditation, see CRS Report RL31926, *Institutional Eligibility for Participation in Title IV Student Aid Programs Under the Higher Education Act: Background and Issues*, by Rebecca Skinner.

Reauthorization Issues

There are several key issues related to accreditation that may arise during the reauthorization of the HEA. These issues include, but are not limited to, the use of accreditation as a gauge of institutional quality, the elimination of accreditation as a prerequisite for participation in HEA Title IV programs, accreditation and distance education, accreditation and transfer of credit, and due process requirements that apply to accrediting agencies.

Accreditation as an Indicator of Institutional Quality

One question that may be raised during the reauthorization process focuses on whether accreditation can be equated with the provision of a quality education. Accreditation is used as an indicator that an institution or program has met at least minimal standards and as evidence of fiscal stability. Nearly all institutions that have lost their accreditation or have been put on probation by their accrediting agency have been cited for fiscal mismanagement or lack of fiscal integrity. Based on testimony provided before the Senate Health, Education, Labor, and Pensions Committee, few institutions have lost their accreditation due to poor educational performance.[4]

The accreditation process, while required to assess institutions with respect to student achievement, primarily bases accreditation decisions on the inputs (e.g., curricula and faculty) rather than the outcomes (e.g., graduation rates and job placement rates) of higher education. In light of the increased congressional emphasis on accountability for outcomes in education programs, Congress may revisit the extent to which accrediting agencies focus on student outcomes in making accreditation decisions in order to better gauge the educational quality of institutions granted accreditation.

If Congress does decide to require accrediting agencies to increase their focus on outcome measures, there may be a debate about what outcome measures to use and how they should be measured. For example, would student grades be a valid indicator of the quality of an institution? Would students' standardized test scores (e.g., Graduate Record Exam, Graduate Management Admission Test) be a useful indicator of institutional quality? Would graduation rates or job placement rates be valuable measures? Outcomes such as these have various measurement problems, such as grade inflation, possible biases on standardized tests, differences in how graduation rates might be calculated, or which jobs should constitute a successful placement.

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[4] U.S. Congress, Senate Committee on Health, Education, Labor, and Pensions, *Higher Education Accreditation: How Can the System Better Ensure Quality and Accountability?*, hearings, 108th Cong., 2004.

Elimination of Accreditation as a Prerequisite for Title IV Eligibility

Another possible issue is the elimination of accreditation as a prerequisite for Title IV institutional eligibility. Some argue that the current accreditation system is a poor indicator of educational quality and, therefore, should have no bearing on institutional eligibility decisions.[5] Others argue that if the accreditation system were eliminated, the federal government would have to develop its own measures of educational quality, a potentially costly and controversial action; or the burden would fall on states, leading to 50 different sets of standards for accreditation.

Currently, ED plays an integral role in determining institutional eligibility to participate in Title IV programs through the eligibility and certification process.[6] Some have suggested that it would be appropriate and possible for ED to extend this role to specify student outcome data that institutions must provide and ED would collect. Accrediting agencies and organizations would continue to play a role in evaluating or assisting institutions if the institutions wanted their input. Others have suggested that accrediting agencies continue in their current role, but another organization, such as ED, be responsible for evaluating student outcomes. Detractors of this proposal question whether increased ED involvement or the involvement of any organization trying to impose specific student outcome criteria on institutions would undermine the autonomy of postsecondary institutions. They argue that this autonomy is a critical component to providing high quality education.

Distance Education and Accreditation

Another possible issue that may be debated during HEA reauthorization focuses on accreditation and distance education. Key issues center on whether accrediting agencies that accredit distance education programs should meet additional requirements and whether accrediting agencies that evaluate institutions offering distance education programs should be required to examine specific measures related to distance education, such as student achievement for students enrolled in distance education programs.[7]

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[5] See for example H.R. 838 introduced by Rep. Petri during the 108th Congress on Feb. 13, 2003. The bill proposed eliminating accreditation and preaccreditation requirements for participation in Title IV programs.

[6] For more information, see CRS Report RL31926, *Institutional Eligibility for Participation in Title IV Student Aid Programs Under the Higher Education Act: Background and Issues*, by Rebecca Skinner..

[7] This issue is addressed in detail in CRS Report RL32490, *Distance Education and Title IV of the Higher Education Act: Policy, Practice, and Reauthorization*, by Jeffrey Kuenzi, Rebecca Skinner, and David Smole.

Transfer of Credit

Congressional debate during reauthorization may also focus on the issue of transfer of credit and how to encourage institutions to accept transfer credits, while still recognizing that not all institutions offer the same level of quality education and not all courses may merit recognition of credit. Based on a study of bachelor's degree recipients in 1999-2000, 59% of students attended more than one institution in their pursuit of an undergraduate degree.[8] Currently, when a student transfers from one institution to another, the receiving institution determines which courses taken at another institution will be accepted as credit toward a degree at the new institution. A recent GAO study found that receiving institutions base their decisions on which credits to accept on the type of accreditation held by the sending institution, whether academic transfer agreements have been established with the sending institution, and the comparability of coursework.[9] The study also found that institutions that are accredited by regional accrediting agencies would not accept credits earned at nationally accredited institutions.[10]

The credit review process can be labor intensive and costly, as institutions must evaluate the quality of education received by the student at previous institutions. In addition, for each course that the receiving institution awards transfer credit, students may take one less course at the new institution, translating into a loss of tuition for the new institution. Thus, institutions may not have incentives to recognize transfer credits and may even have disincentives to recognize them. For students, this may result in additional time and money required to complete a degree. Some students may also reach limits on their federal student aid eligibility (i.e., available federal student loans) prior to completing their program of study if credits are not accepted or not accepted in the student's major.[11] For the federal government, this could translate into wasted tax dollars if students using federal student aid to pursue a postsecondary education have to retake courses.

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[8] U.S. Department of Education, National Center for Education Statistics (2005), *The Road Less Traveled? Students Who Enroll in Multiple Institutions*, NCES 2005-157. Available at [http://nces.ed.gov/pubs2005/2005157.pdf].

[9] Government Accountability Office, October 2005, *Transfer Students: Postsecondary Institutions Could Promote More Consistent Consideration of Coursework by Not Basing Determinations on Accreditation*, GAO-06-22. Available online at [http://www.gao.gov/cgi-bin/getrpt?GAO-06-22].

[10] It should be noted that most proprietary (for-profit) institutions are nationally accredited institutions. Examples of regionally accredited institutions include the University of Maryland, a four-year public institution; Williams College, a four-year private non-profit institution; and Montgomery College, a two-year public college.

[11] For more information about federal student aid limits, see CRS Report RL30656, *The Administration of Federal Student Loan Programs: Background and Provisions*, by Adam Stoll.

Due Process

Another issue that may arise during HEA reauthorization is whether to make changes to the statute's due process requirements. Under Section 496(a)(6) of the HEA,[12] accrediting agencies recognized by ED must meet certain requirements with respect to due process. That is, an accrediting agency is required to implement specific procedures to resolve disputes between the accrediting agency and any institution that is subject to the accreditation process. Under current law, accrediting agencies are required to provide an IHE with, at a minimum, the following:

- adequate specification of requirements and deficiencies at the institution of higher education or program being examined;
- the opportunity to have a hearing;
- the right to appeal any adverse action against it; and
- the right to be represented by counsel.[13]

During the reauthorization process, Congress may consider revisiting statutory language relevant to due process. Some proponents of altering the current due process requirements have, for example, proposed changes that include requiring that hearing records be kept and that IHE appeals be heard by a panel of three outside arbitrators.[14] When considering such proposals, Congress may wish to weigh the benefits that would result from additional protections for IHEs against the administrative burdens for accrediting agencies that would result from additional procedural requirements.

Although the due process requirements that apply to accrediting agencies are statutory in nature, the concept of procedural due process has its origins in the U.S. Constitution. Both the Fifth Amendment, applicable to federal agencies, and the Fourteenth Amendment, which incorporates certain guarantees in the Bill of Rights and is applicable to the states, prohibit government action that would deprive any person of "life, liberty, or property, without due process of law."[15] The premise behind due process is that the government, for reasons of basic fairness, must provide certain procedures before taking any of these important interests away from protected parties.

The threshold question in a claim alleging a violation of due process rights is whether there has been a deprivation of life, liberty or property. In order to establish a due process violation, a challenger must show (a) a deprivation, (b) of a protected interest and (c) "state action," either federal or action under the color of state law,

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[12] 20 U.S.C. § 1099b(a)(6).

[13] Ibid. Accrediting agencies may provide additional procedures beyond the statutory minimum if they wish.

[14] Burton Bollag, "College's Victory in Accreditation Lawsuit Could Spur Changes in the Process," *The Chronicle of Higher Education*, July 1, 2005, p. A23.

[15] U.S. Constitution amendment V, § 1; Ibid. at amendment XIV, § 1.

whichever is applicable.[16] Additionally, the petitioner must show that the action was not a random act but one caused by established procedure.[17]

The Supreme Court has stated that due process "is a flexible concept that varies with the particular situation."[18] Thus, the degree of procedural protection afforded is determined on a case-by-case basis, with the amount of procedure due increasing as the importance of the interest at stake becomes greater. For example, in *Lassiter v. Dept. of Social Services*, the Court held that the termination of parental rights represented a sufficiently high interest such that increased procedural protections were necessary.[19]

In *Mathews v. Eldridge*, the Court established a balancing test to determine the procedural protections required in a particular case:

> [I]dentification of the specific dictates of due process generally requires consideration of three factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.[20]

In applying this test, the Court has generally held that due process requires some type of notice and "some kind of a hearing before the State deprives a person of liberty or property,"[21] although the litigant is not necessarily entitled to a trial-type hearing similar to those used in judicial trials or formal administrative trial-type

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[16] *Brotherton v. Cleveland*, 923 F.2d 477, 479 (6th Cir. 1991) (citing *Parratt v. Taylor*, 451 U.S. 527 (1981)).

[17] *Brotherton*, 923 F.2d at 479 (citing *Hudson v. Palmer*, 468 U.S. 517, 532 (1984)).

[18] *Zinermon v. Burch*, 494 U.S. 126, 127 (1989).

[19] 452 U.S. 18, 33-34 (1981).

[20] 424 U.S. 319, 335 (1976).

[21] *Zinermon*, 494 U.S. at 127. The Court cited the following cases as evidence of this proposition: *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) ("'[T]he root requirement' of the Due Process Clause" is "'that an individual be given an opportunity for a hearing *before* he is deprived of any significant protected interest'"; hearing required before termination of employment (emphasis in original)); *Parham v. J.R.*, 442 U.S. 584, 606-607 (1979) (determination by neutral physician whether statutory admission standard is met required before confinement of child in mental hospital); *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 18 (1978) (hearing required before cutting off utility service); *Goss v. Lopez*, 419 U.S. 565, 579 (1975) (at a minimum, due process requires "*some* kind of notice and ... *some* kind of hearing" (emphasis in original); informal hearing required before suspension of students from public school); *Wolff v. McDonnell*, 418 U.S. 539, 557-558 (1974) (hearing required before forfeiture of prisoner's good time credits); *Fuentes v. Shevin*, 407 U.S. 67, 80-84 (1972)(hearing required before issuance of writ allowing repossession of property); *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970) (hearing required before termination of welfare benefits).

hearings. In *Goldberg v. Kelly*,[22] the Court held that welfare recipients facing termination of their benefits were entitled to nearly all of the rights afforded in a trial-type hearing. In subsequent cases, however, the Court has made it clear that trial procedures are not essential for every governmental decision that might affect an individual and that "something less than a full evidentiary hearing is sufficient prior to adverse administrative action."[23] Other procedures that courts have at times recognized as required by due process include the presentation of evidence and witnesses, legal representation, an impartial decision-maker, a written decision, and administrative and/or judicial review of the agency's action. Ultimately, however, the Court has recognized as constitutionally sufficient many different types of procedures, depending on the nature of the individual and governmental interests at stake, and federal agencies currently provide a wide range of procedural protections.

As noted above, constitutional due process requirements apply only to governmental actors, not private entities. Since accrediting agencies are private organizations, the courts have generally held that they are not bound by the Due Process clause of the Constitution.[24] Nevertheless, most courts, reasoning that accrediting agencies serve a quasi-governmental function in their role as the gate-keepers that determine whether IHEs will be eligible to participate in Title IV student financial aid programs, have ruled that accrediting agencies are subject to common law due process principles.[25] Under these principles, courts evaluate whether the decision of an accrediting agency "was arbitrary, capricious, an abuse of discretion, or reached without observance of procedure required by law."[26]

In addition to these common law due process requirements, IHEs that wish to contest certain accrediting agency decisions may be protected by the HEA's due process statutory provisions. Under the HEA, "any civil action brought by an institution of higher education seeking accreditation from, or accredited by, an accrediting agency or association recognized by the Secretary … and involving the denial, withdrawal, or termination of accreditation of the institution of higher education, shall be brought in the appropriate United States district court.[27] It is unclear, however, whether this jurisdictional provision gives IHEs a private right of action to sue accrediting agencies,[28] and courts have split on this question. For

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[22] 397 U.S. 254 (1970).

[23] *Loudermill*, 470 U.S. at 545.

[24] See, e.g., *Chicago Sch. of Automatic Transmissions, Inc. v. Accreditation Alliance of Career Schs. & Colleges*, 44 F.3d 447, 449 (7th Cir. 1994); *Medical Inst. of Minnesota v. Nat'l Ass'n of Trade and Technical Schs.*, 817 F.2d 1310, 1314 (8th Cir. 1987).

[25] See, e.g., *Foundation for Interior Design Educ. Research v. Savannah College of Art & Design*, 244 F.3d 521, 527-28 (6th Cir. 2001). The common law is law that is based on custom and judicial opinions, rather than constitutions or statutes.

[26] *Thomas M. Cooley Law Sch. v. ABA*, No. 1:04-cv-221 2005 U.S. Dist. LEXIS 11346 at *20 (S.D. Mich. June 9, 2005).

[27] 20 U.S.C. § 1099b(f).

[28] In general, lawsuits brought by individuals who claim federal statutes are being violated,
(continued...)

example, in *Thomas M. Cooley Law School v. American Bar Association*, the court noted that "nearly every court to consider the issue in the last twenty-five years has determined that there is no express or implied private right of action to enforce any of the HEA's provisions," and thus held that the HEA's jurisdictional provision did not give the IHE in question the right to enforce the statute's due process provisions by suing its accrediting agency directly.[29] On the other hand, other courts have suggested that the HEA's jurisdictional provision could be interpreted to confer a private right of action on IHEs, but have not definitively ruled on the point.[30] Regardless of how the courts have ruled on the question of whether the statute grants a private right of action to sue accrediting agencies, they have generally noted that the lack of such a right is not significant, given that IHEs still have the ability to sue accrediting agencies under principles of common law due process.[31]

A recent court case between Auburn University and its accrediting agency, Southern Association of Colleges and Schools (SACS), provides a good illustration of how courts approach due process disputes between IHEs and their accrediting agencies. In the case, Auburn alleged that SACS violated the HEA, common law due process principles, and the Due Process clause of the Constitution by not following its own procedures for a planned investigation.[32] Although the court declined to rule that accrediting agencies were governmental actors for purposes of applying constitutional due process requirements, the court did find that accrediting agencies, in their role as quasi-governmental entities that act as the gatekeepers to Title IV student financial aid, are subject to common law due process principles.[33] Applying those principles, the court held that "Auburn is entitled to some kind of due process at this stage in the accrediting process."[34] Since the investigation was in an early phase, the court concluded that the university did not require strong due process protection at that stage. As a result, the court allowed discovery on whether the executive director had a conflict of interest under the association's policies, but denied a preliminary injunction.[35] In addition, the court rejected Auburn's HEA claim because, although the court found that the statute's jurisdictional provision

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[28] (...continued)
can only be brought against the agency that administers those laws. Thus, IHEs cannot bring statutory suits directly against accrediting agencies unless the HEA is interpreted to grant schools a private right of action.

[29] Thomas M. Cooley, 2005 U.S. Dist. LEXIS 11346 at *15 (quoting *McCulloch v. PNC Bank, Inc.*, 298 F.3d 1217, 1221 (11th Cir. 2002).

[30] See, e.g., *W. State Univ. of S. Cal. v. ABA*, 301 F. Supp. 2d 1129, 1134-35 (D. Cal. 2004); *Auburn Univ. v. S. Ass'n of Colleges & Schs., Inc.*, No. 1:01-CV-2069-JOF 2002 U.S. Dist. LEXIS 26478 at *47-48 (D. Ga., Jan. 14, 2002).

[31] See, e.g., Thomas M. Cooley, 2005 U.S. Dist. LEXIS 11346 at *18, n.2.

[32] Auburn, 2002 U.S. Dist. LEXIS 26478 at *1-2.

[33] Ibid. at *17-30.

[34] Ibid. at *30.

[35] Ibid. at *31-37.

might contain an implied private right of action, the lawsuit did not challenge the "denial, withdrawal, or termination of accreditation" as required by the statute.[36]

More recently, Edward Waters College (Jacksonville, FL) and Hiwassee College (Madisonville, TN) sued their accrediting agency, SACS, based on the denial of due process. Edward Waters College was found to have plagiarized material on a report due to the accrediting agency. The school, however, claimed that SACS did not provide it with due process when the agency took action to remove the college's accreditation based on this infraction.[37] The case was settled out of court, and Edward Waters College retained its accreditation in exchange for dropping the lawsuit.[38] Hiwassee College is also suing SACS on the grounds that due process was denied when its accreditation status became threatened by issues of fiscal mismanagement. While the case is considered, a federal court has issued an injunction requiring SACS to reinstate the accreditation of Hiwassee College.[39]

Relevant Legislation

This section provides an overview of relevant provisions contained in H.R. 609, the College Access and Opportunity Act of 2005, and S. 1614, the Higher Education Amendments of 2005 — the primary vehicles for HEA reauthorization. H.R. 609 was reported by the House Education and the Workforce Committee on September 22, 2005 (H.Rept. 109-231). It has not been considered on the House Floor. S. 1614 was reported by the Senate Health, Education, Labor, and Pensions Committee on November 17, 2005, without a report. A report (S.Rept. 109-218) was subsequently filed on February 28, 2006. It has not been considered on the Senate Floor.

Both the House and Senate bills would make several changes related to accreditation issues. For example, both bills would alter accountability requirements that accrediting agencies must use in evaluating institutions, add new requirements related to distance education, incorporate new restrictions on transfer of credit policies, and modify existing due process requirements. A brief discussion of each of these and other relevant issues appears below.

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[36] Ibid. at *47-48.

[37] It should be noted that the lawsuit did not dispute the plagiarism. Rather, the lawsuit focused on whether SACS provided Edward Waters College with due process in determining the sanction, if any, for the alleged plagiarism.

[38] Kelly Field, "Florida College Reaches Tentative Settlement," *The Chronicle of Higher Education*, June 17, 2005, p. A21. The accreditation of Edward Waters College, however, is currently on warning status. Southern Association of Colleges and Schools, *Questions Regarding the Status of Edward Waters College*, June 30, 2005, [http://www.sacscoc.org/disclosure/june2005/Edward%20Waters%20College.pdf].

[39] Burton Bollag, "Court Injunctions Against Accreditor's Decisions Arouse Fears About the Process," *The Chronicle of Higher Education*, Apr. 8, 2005, p. A25. Prior to the Edward Waters College case being settled out of court, a federal court had issued an injunction requiring the SACS to reinstate the college's accreditation until the case was resolved.

State Accrediting Agencies

Under current law, state agencies may be recognized as accrediting agencies only if they were recognized by the Secretary on or before October 1, 1991. H.R. 609 would eliminate this requirement, potentially providing numerous state agencies with the opportunity to seek recognition as accrediting agencies. S. 1614 does not include a similar provision.

Mission of the Institution

Under current law, accrediting agencies are required to consistently apply and enforce standards to ensure the courses and programs offered by an institution are of sufficient quality to achieve their stated objectives. Both the House and Senate bills would require accrediting agencies to consider the stated mission of the institution, including religious missions, in carrying out these responsibilities.[40]

Outcome Measures

Current law specifies the areas in which accrediting agencies must evaluate institutions. While current law includes some areas of student outcomes, such as course and program completion, state licensing examinations, and job placement rates, many of the areas of evaluation focus on inputs to the education process, including faculty and curricula. Both the Senate and the House bill would include new areas in which an institution must be assessed based on student outcomes. These new areas would include student academic achievement (as determined by the institution) and student retention. S. 1614 would also include student enrollment in graduate or professional programs, as appropriate. Both bills would also require, as appropriate, that accrediting agencies consider other student performance data selected by the institution, particularly information used by the institution for internal evaluation or program improvement.

Distance Education

Both the Senate and the House bills would add new requirements with respect to distance education. Under both bills, an institution would not be considered eligible to offer programs primarily through distance education unless, among other requirements, it had been accredited by an agency or association recognized by the Secretary that has the evaluation of distance education within the scope of its recognition. Both bills would also require that accrediting agencies and associations seeking the aforementioned scope of recognition would also have to have standards that adequately evaluate distance education programs in the same areas as regular classroom-based programs.[41] These agencies would also have to require any institution offering distance education to have implemented a process by which the

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[40] S. 1932 requires accrediting agencies to consider "religious missions." H.R. 609 requires accrediting agencies to consider institutions' missions "including such missions as inculcation of religious values."

[41] See HEA § 496(a)(5) for current requirements.

institution can determine that the student who registered for a distance education course or program is the same student who participated in, completed, and received credit for the course. H.R. 609 would also require accrediting agencies to monitor the enrollment growth of distance education to ensure than an institution experiencing significant growth has the capacity to serve students effectively. S. 1614 includes a similar requirement but would apply it to growth in any program, not specifically to distance education programs.

Transfer of Credit

Current law does not include any requirements related to the transfer of credit between institutions. Both H.R. 609 and S. 1614 include provisions that would require institutions to publicly disclose their transfer of credit policies and include a statement in their policy that the institution will not base transfer of credit decisions solely on the basis of the accreditation held by the sending institution provided that the sending institution is accredited by an agency or association recognized by the Secretary. S. 1614 would also require each institution to include in its policy disclosure a list of institutions with which it has established articulation agreements and data on the percentage of students who successfully transferred credits to the institution. The latter must be updated annually.

Supporters of these new transfer of credit requirements argue that any institution that is accredited by an agency or association recognized by ED should be acknowledged as providing an education of an acceptable level of quality (or presumably they would not have received accreditation). Opponents of these requirements, however, argue that the federal government should not be involved in determining whether an institution should accept credit for course work from another institution, and that federal recognition of an accrediting agency establishes only a minimum level of quality that some institutions may find unacceptable. In addition, arguments have been made that if institutions are required to analyze each transfer students' courses for course compatibility and quality, as opposed to rejecting transfer credits from institutions holding specific accreditation, it will result in a substantially more costly review process.[42]

Due Process

Both the Senate and House bills would make similar modifications to existing due process requirements for an institution opposing an adverse action taken by its accrediting agency. For example, both the House and Senate bills would provide an institution with an opportunity to submit a written response to be included in the evaluation and withdrawal proceedings.[43] Both bills would maintain that an institution has the right to appeal any adverse action but would require an institution to submit a written request for an appeal. Both bills would add new statutory

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[42] It is unclear whether potential increased costs associated with the proposed change in transfer of credit policies would ultimately result in increased tuition and fees for students.

[43] S. 1932 specifies that an institution must be provided with an opportunity to submit a written response prior to final action.

provisions focused on maintaining the impartiality of the appeals panel. Under the Senate and House bill, the appeals panel could not include current members of the accrediting agency's decision-making body that made the adverse decision. In addition, the appeals panel would be subject to a conflict of interest policy under both bills.

Accrediting Agency Operations

Both the Senate and House bills would add new requirements for how accrediting agencies must operate. For example, both bills would require accreditation team members to be knowledgeable of their responsibilities, including those regarding distance education. They would also add specific language requiring accrediting agencies to determine whether an institution provides federally required information to current and prospective students.[44] Both bills would also require accrediting agencies to publicly disclose information about final adverse actions.[45] S. 1614, but not H.R. 609, would require accrediting agencies to require institutions to submit teach-out plans under certain circumstances. H.R. 609, but not S. 1614, would add requirements for the public disclosure of information about the agency's evaluation teams, including a list of individuals who participated on an evaluation team during the prior calendar year.

[44] See HEA § 485(a)(1) for federally required information.

[45] S. 1932 would also require accrediting agencies to disclose information about the award of accreditation or reaccreditation to an institution.