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 HEA 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.

In the 109th Congress, 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 have altered accreditation requirements. Most notably, both bills would have added 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.

HEA reauthorization may also be considered by the 110th Congress. This report will be updated as warranted by legislative action.

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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 110th 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, a discussion of the findings and recommendations regarding accreditation from the Secretary of Education's Commission on the Future of Higher Education's final report, and a brief overview of relevant legislation from the 109th Congress that addressed accreditation issues.[3]

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

[1] The provisions that govern the recognition of accrediting agencies may be found in §§ 102 and 496 of the HEA (20 U.S.C. §§ 1002, 1099b, 1099c). 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. (Hereafter referred to as CRS Report RL31926, *Institutional Eligibility*.)

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.

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.

[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.

[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*.

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. The Deficit Reduction Act (P.L. 109-171) added a new requirement that distance education programs must be evaluated by an accrediting agency recognized by the Secretary of Education as having the evaluation of distance education programs within its scope of recognition.

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.[7] 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.[8] The study also found that many institutions that are accredited by regional accrediting agencies would not accept credits earned at nationally accredited institutions.[9]

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.[10] 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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[7] 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.

[8] 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.

[9] 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.

[10] For more information about federal student aid limits, see CRS Report RL30656, *The Administration of Federal Student Loan Programs: Background and Provisions*, by (name redacted).

Supporters of efforts to establish 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.[11]

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.

[11] 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.

[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.

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, 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

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

[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 (continued...)

the litigant is not necessarily entitled to a trial-type hearing similar to those used in judicial trials or formal administrative trial-type 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 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

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repossession of property); *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970) (hearing required before termination of welfare benefits).

[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*, 376 F. Supp. 2d. 758, 766 (D. Mich. 2005).

[27] 20 U.S.C. § 1099b(f).

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

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 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

[29] Thomas M. Cooley, 376 F. Supp. 2d. at 765 (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, 376 F. Supp. 2d. at 766, 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.

[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, (continued...)

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]

Secretary of Education's Commission on the Future of Higher Education

In September 2006, the Secretary of Education's Commission on the Future of Higher Education (the Commission) released its final report examining the current state of higher education.[40] The report included recommendations for improving access to higher education and making higher education more affordable for students. Included in its examination of higher education and related recommendations were several findings and recommendations specifically related to accreditation.

The Commission found that accreditors play a gate-keeping function with respect to federal student aid programs. Despite this public function and increased attention to outcome measures, much of the information collected by accreditors is kept private. The information that is made public tends to focus more on the results of process reviews, rather than providing information about learning outcomes and costs. To meet the needs for increased accountability, quality, and transparency, accreditation must change. They also argued that accreditation and federal and state regulations impede innovation in higher education, which diminishes the ability of IHEs to address national workforce needs and compete globally. In addition, the Commission noted that it needs to be easier for students to transfer between different kinds of institutions. Current institutional policies with respect to the transfer of credit are often not clear and result in lost time and money for students and create the need for additional federal student aid. The Commission also noted that while accreditation once represented a private relationship between an accreditor and an institution, it is now a public policy issue and the process needs to be made more transparent to the public.

The Commission made several recommendations regarding changes to the accreditation process. For example, the Commission recommended that accreditation agencies move more quickly to accredit new institutions and new programs at already accredited institutions, and increase their focus on results and quality, rather than prescribing requirements for process, inputs, and governance that perpetuate the current models of evaluation and impede innovation in higher education. The Commission also recommended that accrediting agencies make performance outcomes the priority over measures of inputs or process. Accrediting agencies need to create a framework to align and expand existing standards to permit comparisons across institutions on performance and outcome measures, to encourage innovation and continuous improvement, and to require institutions, based on their specific missions, to move toward world class quality and

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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.

[40] Commission on the Future of Higher Education. (2006). *A Test of Leadership: Charting the Future of U.S. Higher Education.* Available online at http://www.ed.gov/about/bdscomm/list/hiedfuture/index.html.

demonstrate progress in relation to national and international peers. Finally, the overall accreditation process must become more transparent and the final findings of the accreditation process must be made publicly available.

Since the release of the Commission's report, the Secretary has continued to focus national dialogue on issues related to accreditation. In November 2006, the Secretary convened representatives from accrediting organizations and other key stakeholders to address the Commission's recommendations. She has also scheduled a Higher Education Summit for March 2007; accreditation will be a key topic considered at the summit.[41]

Brief Overview of Relevant Legislation from the 109th Congress

This section provides a brief 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 in the 109th Congress. H.R. 609 was passed by the House on March 30, 2006, by a vote of 221-199 (H.Rept. 109-231).[42] 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 was not considered on the Senate Floor during the 109th Congress.

Both the House and Senate bills would have made several changes related to accreditation issues. For example, both bills would have altered accountability requirements that accrediting agencies must use in evaluating institutions, adding a new requirement that accrediting agencies consider the stated mission of the institution, including religious missions, when applying and enforcing standards to ensure the courses and programs offered by an institution are of sufficient quality to achieve their stated objective. Both bills would have added new requirements related to distance education, including requiring accrediting agencies to have standards that adequately evaluate distance education programs in the same areas as regular classroom-based programs[43] and requiring accrediting agencies to ensure that IHEs had implemented a process whereby the institution could determine that the student who registered for a distance education course or program was the same student who participated in, completed, and received credit for the course. H.R. 609 and S. 1614 would also have prohibited IHEs from denying the transfer of credit based solely on the accreditation held by the sending institution and would have required IHEs to publicly disclose their transfer of credit policies. Finally, both bills would have modified existing due process requirements. For example, both bills would have prohibited the appeals panel from including current members of the accrediting agency's decision-making body that made the adverse decision, and the appeals panel would have been subject to a conflict of interest policy.

[41] Inside Higher Ed, "Quick Takes," Dec. 28, 2007, available online at http://insidehighered.com/news/2006/12/28/qt.

[42] For more information, see House Roll Call Vote Number 81, available online at http://clerk.house.gov/evs/2006/roll081.xml.

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

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