

PROCEDURE RELATED TO CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION

Introduction

POLICY BACKGROUND

The Higher Learning Commission Board of Trustees adopted new and amended policies to better define the range of its oversight of transactions* related to change of ownership at institutions. The new policy makes clear that the Commission’s oversight extends not merely to certain categories of transactions (e.g. merger, sale, etc.) but to transactions that change, or have the potential to change, the control of an institution or its fundamental structure and organization. See “Change of Control, Structure, or Organization” in Section 3.3 of *Commission Policies*, available under HLC Policy Information on the Commission website, www.ncahlc.org, (adopted June, 2009) for the complete policy, including a more comprehensive list of transactions that this policy affects.

PROCESS TIMELINE

An institution should initiate this process as soon as it becomes aware of a proposed change under this policy but no later than 120 days before the Board of Trustees will review the proposed transaction. Commission staff expect that all materials related to the transaction will be submitted 90 days before the Board meeting; any requested revisions to these documents must be submitted no later than 70 days before the Board meeting. (The Board meeting schedule is available on the Commission website under “Events and Meetings.”) After the staff writes a recommendation to the Board, the institution will have 14 days to submit a response for Board review. The following timeline provides sample dates and deadlines for each event in the Change of Control process:

Event	Days Before Board Meeting	Sample Calendar Dates
Initial Interaction	120 days	February 24
Materials Submitted	90 days	March 26
Final Materials Submission (due)	70 days	April 5
Staff Recommendation (due)	55 days	April 30
Institutional Response (due)	40 days	May 15
Board Materials Preparation	35 days	May 20
Board Meeting	0 days	June 24 – 25

FEE SCHEDULE

The Commission assesses a fee at each major point in the review process for an institutional Change of Control. The allocation of this fee between the parties involved in the transaction is at the discretion of those parties. The total fee is \$10,000 split between the Initial Interaction and the Final Materials Submission, as well as any outside legal fees, expenses for associated evaluation visits, and a Commission processing surcharge for these additional costs. The Initial Interaction fee is nonrefundable, even if the transaction does not proceed or the Commission determines that it does not need to approve

* “Transaction” here refers to any agreement or process in which the control or structure of the institution changes. It does not necessitate that such an agreement has a financial component.



the transaction. All fees must be paid before the Board will review the proposed transactions. See the Dues and Fees schedule on the Commission website for more information.

Process Overview

STEP ONE: INITIAL INTERACTION REVIEW BY STAFF

Institutions should begin the process by requesting an Initial Interaction Review by staff. Commission staff will review a sampling of relevant documents, such as Contract of Sale or Letter of Intent, to determine if the change being contemplated constitutes a change requiring formal approval under this policy. The required timeframe for submission of these initial documents approximately 120 days before the Board of Trustees Meeting at which the proposed transaction will be reviewed. Institutions that are certain they will need formal approval may elect to bypass this step. However, bypassing the Initial Interaction Review does not change Commission expectations for document submission deadlines or processing fees.

STEP TWO: MATERIAL SUBMISSION AND REVIEW

The Commission expects that all documentation relevant to the transaction will be received 90 days prior to the Board of Trustees Meeting at which the proposed transaction will be reviewed. These materials should contain all required information as well as any other documents necessary for staff to understand the nature of the transaction. These documents should be in final form and signed by the appropriate parties. Commission staff will review these materials and, as needed, may request revisions or additional information to better assess the projected impact of the change. All materials, including such revised documents, must be submitted to the Commission no later than 70 days before the Board meeting. A change of ownership transaction with materials that arrive fewer than 70 days before the Board meeting will be scheduled for review at the next regular Board meeting. Institutions should expect that all materials will be submitted electronically in a portable document format.

STEP THREE: FACT-FINDING VISIT

Based on the complexity of the transaction, Commission staff may determine that their review of the proposed change requires an on-ground visit. In such a case, staff visits the institution, possibly with a small group of peer reviewers. The staff and the reviewers (if applicable) conduct interviews and review available documentation. At the end of the visit, the reviewers submit a descriptive report to staff to supplement information towards a final recommendation to the Board.

STEP FOUR: STAFF RECOMMENDATION

Based on the evidence available from the institution, staff will prepare a recommendation to approve or deny the institution's proposed change. This recommendation will address whether the institution will remain an accreditable entity after the change using the approval factors outlined in the policy and later in this document.

STEP FIVE: INSTITUTIONAL RESPONSE

Commission staff will inform the institution of the recommendation and allow the institution 14 calendar days to respond to the recommendation. In this response, the institution should address any concerns that the staff recommendation cites. The recommendation and its response will be shared with the Board prior to the meeting at which it will review the proposed change.



STEP SIX: BOARD DECISION

The Board will consider the following factors in determining whether to approve the transaction: 1) continuation 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) 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; 3) sufficiency of financial support for the transaction; and 4) previous experience in higher education, 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.

STEP SEVEN: SUBSEQUENT EVALUATION

If the Board approves the change, it thereby authorizes 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 close of the transaction. Additionally, the next comprehensive evaluation will take place no more than five years after the close of the transaction. These visits will verify that the institution subsequent to the change continues to meet the Commission's Criteria for Accreditation and Eligibility Requirements and that it met commitments it made to the Commission as part of the recommendation and approval process.

Required Documents in the Change Request

A. GENERAL INTRODUCTION

The introduction provides a narrative description of the change, including the nature of the transaction, names and addresses of all relevant parties, the name of the institution, parent corporation or subsidiary entities that have a controlling relationship with the institution, any other institutions that are a part of the transaction and relationship to recognized accrediting agencies, if any, any required internal or external approvals and anticipated dates of those approvals, and the projected closing date of the transaction. This document should provide readers with a sense of what change is proposed and how the controlling party intends to transform the institution subsequent to the transaction. This section should be at least two pages but no more than ten pages in length.

B. TRANSACTIONAL DOCUMENTS

Institutions should include the documents listed below that are appropriate for the nature of the transaction and that provide information relevant to understanding the effect of the transaction on the institution. If the transaction will occur at the level of a parent corporation or a subsidiary of a parent corporation holding a controlling relationship to the institution, include documents relevant to the outcome for the affiliated entity as well as documents that explain the changes in the parent or other entity. Begin this section with a short introduction that describes what documents are included and what documents from this list are not relevant to the transaction and therefore are not included in the packet.

1. Contract of sale or transfer, or purchase agreement, including all attachments, exhibits and related agreements.
2. Revised or new Articles of Incorporation, Articles of Merger, etc., arising out of the transaction.
3. Revised corporate documents including Corporate Bylaws, Operating Agreement (LLC), Partnership Agreement, etc. arising out of the transaction.



4. For stock-related transactions, relevant filings completed with the Securities and Exchange Commission (SEC) including the S-1 and the 8-K as applicable.
5. Pre-acquisition packet filed with the U.S. Department of Education (ED) and information filed with the state higher education agency. Pre-acquisition review letter issued by the U.S. Department of Education and letter of approval from state higher education agency or a letter from such agency indicating why approval is not required.
6. Financial information to include the most recent external audit, current budget, and six months of cash statements for the institution and for any parent corporation or for a subsidiary holding a controlling relationship with the institution. Buyers, investors or other third-parties must provide their most recent external audit. If they do not have an audit, they must provide third-party verification from a bank or other source documenting the funds to support the transaction and other funds to support any investment to be in the institution within the first year subsequent to the closing of the transaction.
7. Organizational chart showing the institution, any parent or holding companies, governing boards, and key administrators at all levels, currently in place and as anticipated by the transaction.
8. Lists of key administrators and governing board members, including qualifications, at the institution and at each corporate level senior to the institution subsequent to the transaction. Identify any hiring or recruiting that must be done at these levels as a result of the transaction.

C. Institutional Statement

The institution should provide a brief narrative response to each of these questions. Include any additional exhibits not provided as Transactional Documents that substantiate and help explain your response. The Commission will review the patterns of evidence elicited from these responses and documents to determine whether the institution remains an accreditable entity after the change. The on-site team visiting the institution after the approval will confirm the institution's responses and the ongoing accreditation of the institution. The institution should respond to each question with specific information about the institution as anticipated subsequent to the transaction and compare the current characteristics of the institution to those anticipated subsequent to the close of the transaction.

1. Explain the mission of the institution before the transaction. How will the mission change subsequent to the transaction? If the current mission will continue, how will the institution support the mission under new control or structure?
2. Outline the educational programs that the institution offers and explain how those programs will be continued and supported subsequent to the transaction. Identify any new programs the parties intend to initiate within the next 12 months and any programs that will be terminated.
3. Explain the current delivery mode(s) (on-ground, on-line, etc.) of the institution's programs. Outline plans to change or expand any of the delivery modes within the next 12 months.
4. Describe the current faculty including the number of faculty members in each department, a summary of their qualifications, the nature of their employment relationship (tenured, union, etc.) at the institution, and plans in progress to terminate,



retain, or supplement those faculty members after the completion of the transaction. Provide numbers of full- and part-time faculty before the transaction and numbers anticipated within one year of the transaction.

5. Provide the current student enrollment by department at the institution. Outline plans in progress to support students through the transition and to assist students who may need to be transferred and taught-out if existing programs will be terminated in the next 12 months. Describe the anticipated student body subsequent to the transaction, the plans and targets for recruitment, and the basis on which these plans are deemed attainable.
6. Explain the institution's current efforts to assess student learning and what immediate efforts will be undertaken subsequent to the transaction to ensure continuity or improvement of these efforts.
7. Describe immediate and long-range plans for the institution and at the parent or corporate level as contemplated by the transaction and how it will affect the institution.
8. Explain the governance and management structure at the institution and at the parent or corporate level as contemplated by the transaction and how it will affect the institution.
9. Explain how the institution will continue to meet each of the Eligibility Requirements and each of the Criteria for Accreditation, including each Core Component, subsequent to the completion of the transaction. (If the transaction intends to consolidate another institutional entity into the structure of an institution affiliated with the Commission, the narrative must establish that the accredited institution will have sufficient academic and corporate control of the other component as outlined in the Commission's Eligibility Requirements.)
10. Explain the knowledge of and experience in higher education of any of the buyers, investors or other key parties in the transaction. Include key administrators in place or being hired.
11. Outline how the institution has been working to address any challenges identified by the last comprehensive evaluation team and any issues to have been addressed in upcoming Commission monitoring. How will the transaction assist the institution in resolving the issues identified by the Commission?
12. Provide any other information important to understanding the transaction or the effect of the transaction on the institution.

Contact Legal and Governmental Affairs for questions:

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