Institutional Designations

Policy Change Adopted on Second Reading

The Higher Learning Commission’s (HLC’s) Board of Trustees adopted this policy on second reading at its meeting on August 31, 2016.

Background

The current state of dynamic change in higher education, coupled with the external pressures for accreditors to provide better mechanisms related to consumer protection, led to proposed policy changes that allow HLC to respond more quickly to developing situations at member institutions.

HLC adopted (1) new protocols for the Special Monitoring policy when HLC learns of serious issues so that there is a clear and consistent approach to investigating these situations and (2) new public designations that could be imposed quickly by HLC’s President. The designations indicate when an institution is in financial distress or under governmental investigation. Although HLC has sanctions and monitoring procedures in place to address these types of issues, a financial crisis or negative finding from an investigation can often develop suddenly and have major consequences for institutions and their students. The designations allow HLC to communicate to students and the public in a timely manner about situations that may affect an institution’s operations.

The proposed changes were circulated to the membership and other interested parties after the Board’s meeting on June 30–July 1, 2016. HLC received 11 comments, several of which were supportive of HLC’s efforts to improve its monitoring process. Some suggested changes to the proposed policies or requested clarification on certain points. In response, HLC made minor revisions to the final policy language. These include the addition of new provisions that allow institutions to request more time to respond after being notified that HLC intends to impose a designation and give institutions with a designation an opportunity to apply for substantive change if they can show a compelling reason for such change. HLC also provided a
A procedural document that describes in further detail the designations process, as well as the conditions that may lead HLC to impose a designation.

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). Changes between first and second reading, other than minor editing, are indicated in bold italics (new wording). These revisions have been made on HLC’s website at policy.hlcommission.org.

Policy Title: Special Monitoring
Number: INST.F.20.010

The Commission reserves the right to call for special monitoring when the integrity of the institution and its educational programs might be in jeopardy. The President may conduct such monitoring by calling for a special report or an advisory team visit, by imposing a designation or by calling for other activities intended to gather further information about situations at institutions that give rise to concerns about the integrity of the institution or its educational programs. The President of the Commission shall determine whether the institutional liaison or other Commission staff member will accompany the Advisory Team Visit.

A special report or advisory team report, including any specified deficiencies identified by the team at the institution, will not be reviewed through the Commission’s regular review processes; it may be used by the President to provide information, to support a recommendation by the President to the Commission’s decision-making processes for a possible sanction or monitoring, or for any other purpose supported by the policies and practices of the Commission. The President may seek external assistance from peer reviewers or individuals with appropriate expertise who do not participate as peer reviewers in the evaluation process but provide particularized advice and assistance where appropriate to Commission staff or evaluation team members.

Any action proposed by the President will be shared with the institution for response at least two weeks prior to the intended date of deliberation and decision. Among the situations that might result in such monitoring are:

1. institutional declaration of bankruptcy, financial exigency, or intent to close;
2. highly publicized and divisive controversies among the governing board, the administration, and/or the faculty or the student body;

3. significant unanticipated reduction in program offering, faculty, and/or enrollment;

4. public sanctions applied by governmental agencies or by other accrediting or licensing bodies;

5. serious legal, financial, or ethical investigations, including those involving adjudication in courts;

6. financial audit reports that raise serious concerns about financial viability or financial management practices;

7. serious misrepresentation to students and the public.

**Presidential Recommendation**

The Commission’s President shall have the authority to take a recommendation to the appropriate Commission decision-making body to require regular monitoring, a sanction, or withdrawal of accreditation for an institution, subject to Commission policy and procedures related to those actions.

**Institutional Designations**

Financial Distress. The Commission’s President, after consultation with the Board of Trustees, shall have the authority to determine that an institution undergoing a significant challenge to its fiscal capacity should receive this designation. Conditions that may contribute to a designation of in financial distress include, but are not limited to: significant diminished financial contribution from a state; significant escalation in institutional indebtedness; placement by the U.S. Department of Education on Heightened Cash Monitoring for significant reasons related to finances or financial management of the institution or any parent or superordinate entity; formal declaration by the institution of financial exigency or emergency; going concern warning by the institution’s auditors; or other similar financial situation. Typically, this designation will be accompanied by a finding by the Commission President that Core Component 5.A or 2.A is met with concerns.

Governmental Investigation. The Commission’s President, after consultation with the Board of Trustees, shall have the authority to determine that an institution undergoing investigations by one or more governmental agency, law enforcement body, or court should receive this designation. Conditions that may contribute to a designation of under governmental investigation include, but are not limited to: investigation by one or more state attorneys general, the Federal Trade
Commission, the U.S. Department of Justice or other federal agency; a notice of intended limitation, suspension or termination action by the U.S. Department of Education; or other significant investigations, litigation or enforcement action by or joined by a governmental authority related to its institutional or academic operations or activities. Typically, this designation will be accompanied by a finding that Core Component 2.A is met with concerns.

Purpose and Other Details Related to Institutional Designations. The purpose of these designations shall be to inform the public that the institution is dealing with a significant financial condition(s) or being investigated by a governmental agency. Such situations have the potential to affect the institution’s operations, and the public should be aware of this information in making a decision to attend or continue to attend the institution under the designation. Any designation issued by the Commission President shall be public.

Typically, the designation will not extend more than two years. During this period the Commission shall require that the institution shall submit quarterly regular reports about its financial or legal situation and may or undergo other regular or special monitoring, including Advisory Visits, as determined by the Commission President. An institution in financial distress or under governmental investigation shall not be considered for a substantive change unless it can demonstrate that the change is necessary to remedy its issues and that it has sufficient resources to support the change. An institution that has one of the above designations is not precluded from also being placed by the Commission on a sanction if appropriate. During the monitoring or evaluation process, the institution may request removal of the designation, although final determination of the appropriateness of removing the designation shall remain with the Commission President or the Board if the case is otherwise subject to the Board’s review.

Substantive Change While an Institution Has a Designation. An institution in financial distress or under governmental investigation shall not be considered for a substantive change unless it can demonstrate that there is a compelling reason for the change and that the institution has sufficient resources to support the change. Any substantive change application from an institution with a current designation will be subject to strict scrutiny and may be deferred by staff or by the Institutional Actions Council for consideration by HLC after it has removed the designation, or the application may be denied.

Process for Imposing or Removing a Designation
The Commission’s President will issue the designation after a special monitoring process or after an evaluation team visit conducted through the Commission’s other evaluation processes. The Commission’s President will notify the institution of the intent to designate the institution in one of the above categories and will allow the institution at least a minimum of two weeks to respond before making the designation public before acting with regard to the proposed designation. (Note that the institution may request up to an additional two weeks to respond if it has good cause for such an extension.) The President will take into account the institution’s response in making the decision whether to impose the designation. All designations are public. The President or the Board will also determine when to remove a designation from an institution. The President will re-evaluate the designation at the end of the two-year timeframe, and during the two-year timeframe as new or additional information of significance becomes available to the Commission, to determine whether the designation shall be removed. The President or the Board will remove the designation when in the President’s or Board’s sole judgment the designation is no longer required because the institution has resolved the issues that led to the designation. Any decision of the President or the Board related to imposing or removing a designation is final.

Policy Number Key
Section INST: Institutional Policies
Chapter F: Maintenance and Monitoring
Part 20: Intermittent Monitoring

Last Revised: August 2016
First Adopted: November 1999
Notes: Former policy number 3.6(b), 3.6(c)
Related Policies: COMM.B.10.010 Staff Role and Responsibility
Policy Title: Commission Public Notices and Statements  
Number: COMM.A.10.010

Public Information About Regional Accreditation

The Commission will provide on its web site and in print publications information about the purposes of regional institutional accreditation, the processes used in it, and the appropriate interpretation and use of it by institutions, students, and the public.

Commission Public Notices and Statements

The Commission shall have the authority to make specific disclosures to the public regarding affiliated or applying institutions as outlined below. The Commission shall provide notification to the affected institution about the disclosure at or before, as determined by the Commission, it releases the information to the public.

Notification of Accrediting Actions. The Commission shall ensure that it properly notifies the public, state higher education agencies, the U.S. Department of Education, and accrediting agencies recognized by the U.S. Department of Education regarding the Commission’s accrediting actions according to the following timetable:

1. with regard to an action to reaffirm or grant accreditation or initial candidacy or approve a substantive change or the results of monitoring, the Commission will provide notification of the action to all constituencies identified above within thirty days of the action;

2. with regard to an action to place an institution on notice or probation or to issue a show-cause order to an institution, the Commission will provide notification of the action to state higher education agencies, the U.S. Department of Education, and recognized accrediting agencies simultaneously with the action being communicated to the institution not later than thirty days after the action, and notification to the public within 24 hours of notice being provided to the institution;

3. with regard to an action to deny or withdraw accreditation or candidacy, the Commission will provide notification of the action to state higher education agencies, the U.S. Department of Education, and recognized accrediting agencies simultaneously with the action being communicated to the institution not later than thirty days after the action, and notification to the public within 24 hours of notice being provided to the institution;
4. with regard to a decision by an institution to resign voluntarily from accreditation or candidacy, the Commission will provide notification of the action all constituencies identified above within thirty days of notice of the resignation being provided to the Commission through a formal letter from the president of the institution conveyed to the Commission with the approval of the institution’s governing board, as required by Commission policy on Termination of the Accreditation Relationship; and

5. with regard to an action to approve a teach-out plan, the Commission will provide notification to appropriate specialized and professional accrediting agencies of approval of the plan not later than thirty days after the action if the teach-out includes a program accredited by such agency.

Such notification shall take place for the public through the Commission’s website and for the U.S. Department of Education, state higher education agencies, and accrediting agencies recognized by the U.S. Department of Education through electronic or other communication.

**Adverse Actions, Sanctions, and Related Actions.** The Commission will issue a Public Disclosure Notice (PDN) regarding the following actions:

1. Adverse action including denial or withdrawal of affiliation;
2. Sanction;
3. Show-cause;
4. Denial of change of control application.

5. **Designation as In Financial Distress or Under Governmental Investigation.** In such cases the PDN may be about an institution or group of institutions.

The PDN shall contain information about the action, the findings of the Board associated with the action, or, for an institutional designation pursuant to the Special Monitoring policy, the findings of the Commission’s President when the designation was imposed, and the availability of appeal. In the case of adverse actions of denial or withdrawal of affiliation or moving an institution from accredited to candidate status, the PDN also shall contain within sixty days of the action official comments of the affected institution, if any, or evidence that the affected institution was given an opportunity to provide official comment.

**Other Situations.** The Commission may issue a Public Disclosure Notice (PDN) in other circumstances including but not limited to the following:
1. High-profile controversy(ies) at affiliated or applying institution;
2. Lawsuit against, or other investigation by another entity of, an affiliated institution;
3. Scheduled Commission advisory visit to an affiliated institution;
4. Other situation at or concerning an institution that is related to the Commission’s accrediting role.

The PDN shall contain information about the institution’s history and relationship with the Commission and other appropriate information.

Public Statements. The Commission may issue a public statement in writing or orally to correct or confirm a media report, to respond to frequent inquiries from the public, or to address other matters.

Policy Number Key

Section COMM: Commission Policies
Chapter A: Commission Obligations to Institutions and the Public
Part 10: General

Last Revised: August 2016
Notes: Policies combined in November 2012 – 12.4, 2.3(c), 2.3(c)1, 2.3(c)2, 2.3(c)3
Related Policies:

Policy Title: Staff Actions and Recommendations
Number: INST.D.30.010

As defined in Commission policy, the staff may act to change an institution’s Statement of Affiliation Status or recommend directly to the Institutional Actions Council that a change in the Statement of Affiliation Status be approved. The Commission’s President also has additional authority as defined in the policy on Special Monitoring.
Staff may act to approve the following: editing of the Statement of Affiliation with non-substantive amendments; changing the date of upcoming evaluations or filing of reports by no more than one year and not to exceed the maximum timeframe for evaluation visits provided in Commission policy; approving progress and monitoring reports or requiring follow-up reports on the same or related topics; and removing an institution from notification for approval of additional locations.

Staff may recommend to the Institutional Actions Council for review and action the following: substantive amendments to the Statement of Affiliation Status including modifications to the Stipulations section; changing the date of upcoming evaluations or filing of reports by more than one year or beyond the maximum ten years required for a comprehensive evaluation; and new requirements for monitoring.

Policy Number Key

Section INST: Institutional Policies
Chapter D: Decision-Making Bodies and Processes
Part 30: Staff Actions and Recommendations

Last Revised: August 2016
Notes: Policies combined November 2012 – 2.2(f), 2.2(f)1, 2.2(h)
Related Policies: INST.F.10.010 Routine Monitoring, INST.E.00.000 Chapter E: Sanctions, Adverse Actions, and Appeals

Policy Title: Commission Approval of Institutional Teach-Out Arrangements
Number: FDCR.B.10.010

Commission approval shall be required when an institution must teach-out one or more students.

Institutional Situations Requiring Submission of Teach-Out Arrangements

The institution shall be required to submit a written teach-out plan in any of the following circumstances: (a) the U.S. Department of Education notifies the Commission of an emergency action, or a limitation, suspension or termination or similar action against the institution; (b) the
Commission acts to withdraw, terminate or suspend the status of an institution; (c) the institution notifies the Commission that it intends to cease or suspend operations or permanently close a site where it offers at least 100% of either a Certificate or degree program before all students have completed their program of study; or (d) a state licensing or authorizing agency notifies the Commission that an institution’s license or legal authorization to provide an educational program in that state has been or will be revoked; or (e) Commission staff determines that the institution is at risk for a sudden closure or suspension of its operations because it is in financial distress, under governmental investigation or facing other significant challenges.

Commission Approval of Teach-Out Plans

The institution shall submit the teach-out plan to the Commission; the Commission will provide its approval if the following are met:

1. The teach-out plan provides for equitable treatment of students by ensuring that they are able to complete the educational program in which they were enrolled immediately prior to the notification in Institutional Situations Requiring Submission of Teach-Out Arrangements within a reasonable period of time; and

2. The teach-out plan provides for prompt notification of additional charges to students, if any.

If the Commission approves a teach-out plan that includes a program accredited by a specialized or professional accreditor, the Commission shall notify that accreditor.

Commission Requirement for Teach-Out Agreement

The Commission may require that an institution in the situations identified in Institutional Situations Requiring Submission of Teach-Out Arrangements submit a teach-out agreement for the Commission’s review and approval in conjunction with its teach-out plan. In addition, any affiliated institution that enters into a teach-out agreement with, or on behalf of, another institution, regardless of whether that institution has presented a teach-out plan to the Commission or is accredited by the Commission, shall submit the teach-out agreement to the Commission for approval prior to its implementation.

The Commission will provide its approval if the following are met:

1. The teach-out agreement is with another institution that is accredited by or holding candidacy with an agency recognized by the U.S. Department of Education and, where appropriate, that it is an eligible institution for Title IV financial aid;

2. The teach-out agreement is consistent with all applicable state and federal regulations;
3. The teach-out institution has the necessary experience, resources, and support services to provide an educational program that is of acceptable quality and reasonably similar in content, structure and scheduling to that provided by the institution closing or ceasing operations; demonstrates that it can provide students access to such programs and services without requiring them to move or travel substantial distances; and is stable, carrying out its mission and meeting all obligations to existing students; and

The teach-out agreement is fair and equitable to students and provides students with reasonable opportunities to complete their education without additional charges and includes a notification provision to ensure that students have complete information about the tuition and fees of the institution conducting the teach-out.

**Institutional Closure Without Approved Teach-Out Plan or Agreement**

The Commission shall work with the U.S. Department of Education and the appropriate state agency, if any, in the event an institution the Commission accredits or has awarded candidacy for accreditation status closes without a teach-out plan or agreement, to assist students in finding reasonable opportunities to complete their education without additional charges.