



CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION

Policy Change Approved on First Reading

The Higher Learning Commission (HLC) Board of Trustees (“the Board”) approved this policy on first reading at its meeting on June 27–28, 2019.

Background

The proposed policy changes would strengthen the evaluative framework related to Change of Control, Structure or Organization applications. The policy currently identifies five factors that the Board of Trustees reviews in determining whether to approve an application. The proposed changes would emphasize that the Board may consider many additional factors in its review of an application and may deny an application for reasons unrelated to the five “key factors.” The proposal would also clarify the relationship between findings related to the Criteria for Accreditation and Eligibility Requirements and Key Factor 3 and add the parties’ record of integrity as one of the items to be considered under Key Factor 5. Finally, the policy revisions would eliminate the option for moving an institution from accredited to candidate status based on guidance received from the U.S. Department of Education related to the appropriateness of this option given current federal regulations and potential implications for an institution’s participation in Title IV financial aid. Corresponding references to “accredited to candidate status” or other references throughout HLC policies which contemplate this Board action would be eliminated.

Comments Invited

HLC invites comments on this change before the Board takes final action at its meeting on November 7–8, 2019. Comments can be sent to policycomments@hlcommission.org. Comments are due by September 23, 2019.

Proposed Changes

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**).

Policy Title: Processes for Seeking Approval of Change of Control

Number: INST.F.20.070

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

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

The Board may approve the change, thereby authorizing accreditation for the institution subsequent to the close of the transaction, or it may deny approval for the change. The Board may defer its consideration of the proposed Change of Control, Structure or Organization to the next public Board meeting date pending receipt of additional information or action by a third party such as the state or another recognized accreditor. The Board may make use of other options identified in this section.

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

The parties to the Change of Control, Structure or Organization may not act to close the transaction until accepting in writing the Board's conditions, if any.

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

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

Approval Factors Evaluative Framework for Change of Control, Structure or Organization

~~The Board will consider the following~~ **Among multiple factors considered** in determining whether to approve ~~the transaction~~ **a particular application, the Board shall weigh the following five key factors:**

- 1) **Whether the proposed change represents** the extension of the mission, educational programs, student body and faculty that were in place when the Commission last conducted an on-site evaluation of the affiliated institution;
- 2) The on-going continuation and maintenance of the institution historically affiliated with the Commission with regard to its ~~mission~~ objectives, outreach, scope, structure, and related factors;
- 3) Substantial likelihood that the institution, including the revised governance and management structure of the institution, will continue to meet the Commission's Eligibility Requirements, and **will continue to meet, or meet with concerns, the** Criteria for Accreditation;
- 4) Sufficiency of financial support for the transaction; and

- 5) Previous experience in higher education and accreditation, qualifications, and resources of new owners, Board members or other individuals who play a key role in the institution or related entities subsequent to the transaction, **as well as such parties' record of integrity in dealing with students, the business community, agencies of government or other accreditors.**

If the Board determines in its sole discretion that the ~~institution or the transaction~~ **application** fails to meet ~~any one or more of the approval~~ **five key factors**, the Board will not approve the proposed Change of Control, Structure or Organization.

The Board reserves the right to deny an application based on other evidence unrelated to the five key factors, provided the Board signals its intent to the institution submitting the application, articulates its rationale and makes such evidence available to the institution for response. An institution shall have 30 days to respond to notice of the Board's intended action.

The Board may also renew the institution's eligibility for its existing pathways assignment or place the institution on a different pathway.

Other Board Options

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

In cases in which the Board decides, in its sole discretion, that the proposed transaction builds a new institution bypassing the Eligibility Process and initial status review by means of a comprehensive evaluation, the Commission Board shall not approve the Change of Control, Structure or Organization.

~~Any candidacy required by the Board under this section shall be known as a Change of Control Candidacy. The effective date of the Change of Control Candidacy shall be the closing date of the transaction. The Board shall establish the minimum and maximum length of the candidacy but not to~~

~~exceed the maximum length of time for candidacy as identified in these policies, as well as the schedule of evaluations during the candidacy period.~~

Evaluation Visits Related to Change of Control, Structure, or Organization

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

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

Policy History

Last Revised: November 2018

First Adopted: June 2009

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

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

Related Policies: INST.B.10.030 Related Entities, INST.B.20.040 Change of Control, Structure, or Organization, INST.E.50.010 Accredited to Candidate Status, INST.E.50.010 Accredited to Candidate Status, INST.F.20.080 Monitoring Related to Change of Control, Structure or Organization

Policy Title: Monitoring Related to Change of Control, Structure or Organization
Number: INST.F.20.080

Focused or Other Evaluation After the Transaction (Post-Transaction Visit)

The focused or other evaluation subsequent to the consummation of the transaction will be conducted according to the Commission's procedure for focused or other evaluations. The evaluation will review the appropriateness of the approval of the change as well as whether the institution met any commitments made to the Commission prior to that approval. The evaluation team will also document that the institution continues to meet the Eligibility Requirements and Criteria for Accreditation or ~~candidacy~~ **other requirements, as applicable specifically articulated by the Board.**

The team may recommend further Commission monitoring, rescheduling of the next comprehensive evaluation, or Commission sanctions or withdrawal of ~~status-accreditation~~. If the institution had been accredited by the Commission prior to the transaction, and the team determines that the institution continues to meet the Eligibility Requirements **and other requirements articulated by the Board**, but not the Criteria for Accreditation ~~and otherwise meets the requirements of the candidacy program~~, the team ~~may~~ **must** recommend ~~that the institution be continued in status only as a candidate for accreditation~~ **a sanction or withdrawal, as applicable under these policies.** Recommendations for ~~withdrawal, sanction or withdrawal or candidate status~~ will be reviewed by an ~~Review Institutional Actions Council Hearing~~ Committee and decided by the Commission's Board of Trustees in keeping with Commission policy.

Comprehensive Evaluation After the Post-Transaction Visit.

The next comprehensive evaluation shall take place no later than five years after the Post-Transaction Visit and shall assess whether the institution under new control continues to meet the Criteria for Accreditation and bears a substantial relationship to the institution accredited by the Commission prior to the transaction.

Policy History

Last Revised: June 2012

First Adopted: June 2009

Revision History: February 2010, February 2012, June 2012

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

Related Policies: INST.B.10.030 Related Entities, INST.B.20.040 Change of Control, Structure or Organization, INST.F.20.070 Processes for Seeking Approval of Change of Control

~~Policy Title: Accredited to Candidate Status~~

~~Number: INST.E.50.010~~

~~The Board of Trustees may determine that an institution be moved from accredited to candidate status subsequent to the close of a Change of Control, Structure or Organization transaction as a result of the findings of an on-site team, including either a Fact Finding or other team, visiting the institution or the findings in a summary report. The Board must find that the institution, as a result of or related to the Change of Control, Structure or Organization, meets the Eligibility Requirements and demonstrates conformity with the Assumed Practices but no longer meets all of the Criteria for Accreditation and Federal Compliance Requirements. It must also find that the institution meets the requirements of the candidacy program. Moving an institution from accredited to candidate status is an adverse action and thus is not a final action and is subject to appeal.~~

~~Process for Moving an Institution From Accredited to Candidate Status~~

~~The Board of Trustees may take an action to move an institution from accredited to candidate status in conjunction with a Change of Control, Structure or Organization, as outlined in Commission policy INST.B.20.040. In addition, a team recommendation arising out of a comprehensive or focused evaluation within six (6) months of the close of a transaction approved under INST.B.20.040 to move the institution from accredited to candidate status, will automatically be referred to an Institutional Actions Council Hearing Committee. The Board will consider both the team recommendation and the~~

~~Institutional Actions Council Hearing Committee recommendations in its deliberations. In all cases, the Board of Trustees will act on a recommendation to move an institution from accredited to candidate status only if the institution's chief executive officer has been given at least two weeks to place before the Board of Trustees a written response to the recommendation of the team or Institutional Actions Council Hearing Committee.~~

Public Disclosure of Accredited to Candidate Status

~~A Public Disclosure Notice for an institution whose status has shifted under this policy will be available on the Commission's website shortly after, but not more than twenty four (24) hours after, the Commission notifies the institution of the action moving the institution from accredited to candidate status. An institution moved from accredited to candidate status must notify its Board members, administrators, faculty, staff, students, prospective students, and any other constituencies about the action in a timely manner not more than fourteen (14) days after receiving the action letter from the Commission; the notification must include information on how to contact the Commission for further information; the~~

~~institution must also disclose this new status whenever it refers to its Commission affiliation.~~

Policy History

Last Revised: February 2014

First Adopted: June 2009

Revision History: February 2011, February 2014

Notes: Policies combined November 2012 — 2.5(e), 2.5(e)1, 2.5(e)2

Related Policies: INST.B.20.020 Candidacy, INST.B.20.040 Change of Control, Structure, or Organization

CORRESPONDING POLICY CHANGES

Policy Title: Accreditation

Number: INST.B.20.030

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Assumed Practices in the Evaluative Framework for Initial and Reaffirmation of Accreditation

An institution seeking initial accreditation, ~~accredited to candidate status~~, or removal of Probation or Show-Cause, must explicitly address these requirements when addressing the Criteria. The institution must demonstrate conformity with these Practices as evidence of demonstrating compliance with the Criteria. Institutions undergoing reaffirmation of accreditation will not explicitly address the Assumed Practices except as identified in section INST.A.10.030. Any exemptions from these Assumed Practices must be granted by the Board and only in exceptional circumstances.

Policy History

Last Revised: November 2015

First Adopted: August 1987

Revision History: renumbered November 2010, revised February 2012, June 2015, November 2015

Notes: Policies combined November 2012 - 1.1(a)1, 1.1(a)2, 1.1(a)3, 1.4, 2013 – 1.1(a)1.2, 1.1(a)1.3, 1.1(a)1.4. The Revised Criteria for Accreditation, Assumed Practices, and other new and revised related policies adopted February 2012 are effective for all accredited institutions on January 1, 2013.

Related Policies:

Policy Title: Board of Trustees

Number: INST.D.10.010

The composition, selection, and term of the Board of Trustees are defined in the Bylaws of the Higher Learning Commission and subject to additional expectations outlined herein.

Decision-Making Authority

The Board of Trustees shall hold final responsibility for all accreditation actions taken by the Higher Learning Commission. The Board of Trustees shall retain its authority for deliberation and actions regarding accreditation decisions to:

1. grant or deny initial status, including initial candidacy and initial accreditation;
2. issue or withdraw a sanction, including on-notice or probation;
3. withdraw status, including candidacy or accreditation;
4. issue or remove a show-cause order;
5. initiate a reconsideration process;
6. approve or deny an application for Change of Control, Structure or Organization;
7. ~~approve moving an institution from accredited to candidate status; and~~
- 8-7. approve exemptions, if any, from the Assumed Practices.

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Policy History

Last Revised: February 2019

First Adopted: June 2011

Revision History: February 2012, April 2013, February 2019

Notes: Policies combined November 2012 - 2.2(d)1.1, 2.2(d)1.1a, 2.2(d)1.1b

Related Policies: INST.E.90.010 Appeals (Conflict of Interest, Confidentiality), Trustee Policies, Chapter III. Board Authority and Responsibility, Section C, Confidentiality and D, Objectivity and Conflict of Interest.

Policy Title: Institutional Actions Council

Number: INST.D.20.010

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Authority to Make Recommendations for Cases That Require Board Action

The IAC is authorized to review the following recommendations arising from the evaluation process and to forward them to the Board of Trustees with a concurring or differing recommendation:

1. to grant or deny initial status, including initial candidacy and initial accreditation;
2. to issue or withdraw a sanction, including on-notice or probation, except where the Board of Trustees in a previous accreditation decision may have outlined specific provisions for a recommendation related to the sanction to move directly to the Board; or
3. to withdraw accredited or candidate status; or
4. ~~to move an institution from accredited to candidate status.~~

The IAC is authorized at Second Committee (Level 2) to review the following recommendations from an IAC First Committee (Level 1) Committee and to forward them to the Board of Trustees with a concurring or differing recommendation:

1. to impose a sanction; **or**
2. to withdraw accredited or candidate status; ~~or~~

~~3. to move an institution from accredited to candidate status.~~

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Policy History

Last Revised: June 2014

First Adopted: June 2011

Revision History: April 2013, June 2014

Notes: Policies combined November 2012 - 2.2(d)1.2, 2.2(d)1.2a, 2.2(d)1.2b, 2.2(d)1.2b1, 2.2(d)1.2b2

Related Policies: INST.D.40.010 Characteristics of a Decision Processes

Policy Title: Characteristics of a Decision Process

Number: INST.D.40.010

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Institutional Actions Council First Committee (Level 1) Composition

A First Committee (Level 1) shall consist of at least five (5) members drawn from the current Institutional Actions Council. In rare cases other Peer Reviewers with recent IAC experience may be included on a Committee. All Committees shall include at least one public member. A member of the Committee shall be assigned to act as chair; another member shall be assigned to record the decision of the Committee.

Review Without a Hearing. When an IAC Committee is reviewing cases for which it is authorized to take action and the institutions under review have not requested a hearing, the Committee shall conduct its business by any means that allows for synchronous or asynchronous communication among Committee members. No representatives of the institution or team shall appear at, or participate in, Committees without a hearing.

The decisions of the Committee shall become final actions, unless:

1. the Committee makes substantial changes in the recommendation involving reaffirmation of accreditation or resulting from a focused evaluation or other monitoring, in which case either the institution or the Commission staff may request a Second Committee (Level 2) Review. If

such a request is not made, the decision of the First Committee (Level 1) prevails and the action is final; or

2. the First Committee (Level 1) recommends a sanction, ~~or withdrawal, or moving the institution from accredited to candidate status,~~ and the First Committee (Level 1) Review did not include an in person hearing, in which case that recommendation will be considered by a Second Committee (Level 2) prior to action by the Board of Trustees. If such a hearing was held, the case goes directly to the Board for action.

Review with an Optional Hearing. Some cases for which the IAC is authorized to take an action have the option for the institution to request a hearing as part of the review. These are:

- a. reaffirmation of accreditation;
- b. biennial visits in candidacy;
- c. focused visits; and
- d. financial and non-financial indicator monitoring.

The Commission charges the institution a fee for a requested hearing on a recommendation that does not require Board action.

The IAC, through its committee structure, will conduct the hearing. The hearing may be held in-person or electronically through any means that allows for synchronous communication among panel members. Representatives of the institution and the evaluation process shall participate in the hearing as appropriate for the nature of the hearing.

The decision of the Committee shall become the final action unless it results in a recommendation for sanction, ~~or withdrawal of status, or moving an institution from accredited to candidate status,~~ in which case the case goes directly to the Board of Trustees for a decision.

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Institutional Actions Council Second Committee (Level 2) Composition

Composition and Assignments. The IAC Second Committee (Level 2) shall consist of at least five (5) members, drawn from a body of fifteen (15) members of the Institutional Actions Council whose terms on the Council have been extended by one additional year to complete this responsibility. A

Second Committee (Level 2) shall include at least one public member. A member of the Second Committee (Level 2) shall be assigned to act as Chair; another Second Committee (Level 2) member shall be assigned to record the decision of the Committee.

The Second Committee (Level 2) is authorized to take action on decisions made by a First Committee (Level 1) that differ substantially from the recommendation provided by the evaluation process but do not involve sanction, ~~or withdrawal of status, or moving an institution from accredited to candidate status,~~ and the institution or the Commission staff has requested the Second Committee (Level 2) review.

The institution may request that the review involve a hearing. Such hearing may be held in-person or electronically through any means that allows for synchronous communication among committee members and other participants. Representative(s) of the institution, the evaluation process, and the First Committee (Level 1) that considered the case shall participate in the hearing as appropriate for the nature of the hearing. The decision of this body shall become the final action unless it results in a recommendation for sanction, ~~or withdrawal of status, or moving an institution from accredited to candidate status,~~ which requires Board action. However, if the Second Committee (Level 2) is considering a sanction, ~~or withdrawal of status, or moving an institution from accredited to candidate status,~~ and consideration of the case did not involve a hearing, the Second Committee (Level 2) will schedule a hearing involving representatives of the institution and the evaluation process within thirty days of the Committee's initial meeting prior to completing its consideration of the case. The hearing shall be an in-person hearing unless other arrangements have been agreed to by the institution.

The Second Committee (Level 2) will review cases arising from a First Committee (Level 1) in which the Committee has recommended a sanction, ~~or withdrawal of status, or moving an institution from accredited to candidate status,~~ all of which require action by the Board of Trustees, if the First Committee (Level 1) did-not include an in-person hearing. The Second Committee (Level 2) will hold a hearing as part of its review. The hearing shall be held in person unless alternative arrangements have been agreed to by the institution. Representative(s) of the institution, the evaluation process, and the First Committee (Level 1) that considered the case shall participate in the hearing.

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Policy History

Last Revised: November 2012

First Adopted: June 2011, November 1998

Revision History: June 2012, November 2012

Notes: Policies combined November 2012 -2.2(d)2, 2.2(d)2.1, 2.2(d)2.1a, 2.2(d)2.2, 2.2(d)2.2a, 2.2(d)2.2b, 2.2(d)2.2b.1, 2.2(d)2.2b.2, 2.2(d)2.3, 2.2(g)

Related Policies:

Policy Title: Special Protocols Related to Sanctions and Adverse Actions

Number: INST.E.70.010

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Board Committee Hearing

The Commission shall make available a Board Committee Hearing, provided the institution requests such hearing, prior to a final decision by the Board to:

- deny accreditation, except where the Commission is denying an application for early accreditation prior to the end of the four-year term of candidacy with a possible extension for a fifth year for good cause; **or**
- withdraw accreditation; ~~or~~
- ~~move an institution from accredited to candidate status.~~

The Commission shall require a Board Committee Hearing prior to a final decision by the Board concluding a show-cause order process, unless such hearing is waived by the institution. An institution may have no more than one Board Committee Hearing related to a single institutional decision.

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Policy History

Last Revised: February 2011

First Adopted: June 2006

Revision History: revised June 2008, December 2009, February 2011

Notes: Policies combined November 2012 – 2.2(i), 2.2(j), 2.2(j)1

Related Policies:

Policy Title: Appeals

Number: INST.E.90.010

An institution may appeal an adverse action of the Board of Trustees, prior to the action becoming final by filing a written request to appeal following the appeals procedures of the Commission. Adverse actions are defined as those that (1) withdraw or deny accreditation, except in denial of accreditation where the Board denies an early application for accreditation and continues candidate for accreditation status or extends it to a fifth year, **or** (2) withdraw or deny candidacy, ~~or (3) moves the institution from accredited to candidate status.~~

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Policy Number Key

Last Revised: February 2019

First Adopted: February 2001, February 2009, January 1983

Revision History: October 2003, June 2006, February 2009, June 2009, February 2010, February 2011, November 2012, April 2013, February 2019

Notes: Policies combined November 2012 - 2.6(d), 2.6(d)1, 2.6(d)2, 2.6(d)3, 2.6(d)4

Related Policies:

Policy Title: Commission Public Notices and Statements

Number: COMM.A.10.010

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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.

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Policy History

Last Revised: August 2016

First Adopted: August 1996, February 1996, June 2004

Revision History: February 1998, May 2002, October 2002, June 2008, February 2010, June 2012,

November 2012, April 2013, 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: