



ANTITRUST COMPLIANCE FOR PEER REVIEWERS AND IAC MEMBERS

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 25–26, 2020.

Background

Changes in federal regulations that go into effect as of July 1, 2020 will allow for competition amongst institutional accreditors that had previously been assigned a specific geographic scope by the federal government. As a result, HLC and other members of the Council for Regional Accrediting Commissions have spent considerable time over the last several months assuring that they are aware of, and in compliance with, various legal requirements associated with antitrust laws. The proposed policy changes would articulate HLC’s commitment to antitrust compliance as related to peer reviewers and members of the Institutional Actions Council (IAC).

Comments Invited

HLC invites comments on this change before the Board takes final action at its meeting on November 5–6, 2020. Comments can be sent to policycomments@hlcommission.org. Comments are due by September 14, 2020.

Proposed Change

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: Institutional Actions Council

Number: INST.D.20.010

Composition, Selection, Term, and Activity

The Institutional Actions Council (IAC) shall consist of no fewer than forty (40) members who have been nominated by the Commission staff and who have been appointed by the Board of Trustees. IAC members who represent institutions shall be broadly representative of institutions accredited by the Commission, with attention to institutional type, control, size, and geographical distribution, and shall be current members of the Peer Review Corps. The IAC shall include representation of individuals who are academics, including faculty members, academic deans or others who have a primary responsibility in the teaching and learning process, and administrators who have a primary responsibility of providing oversight in an institution of higher education.

The IAC shall include a sufficient number of public members to allow for one public member to be appointed to each committee. IAC members who are representative of the public shall not be, or have a familial relationship with, current employees, consultants, owners, shareholders, or members of the governing board of any affiliated or member institution, organization, or applicant thereof, or higher education agency, and shall reside or have a principal place of employment within the area of the Commission's jurisdiction.

The IAC shall make use of committees, known as Institutional Actions Council Meeting Committees and Institutional Actions Council Hearing Committees, in completing its responsibilities for decision-making that may result in final actions or in making recommendations to the Board of Trustees. The Commission staff will select individuals from the IAC to compose committees to conduct reviews, as outlined in this policy.

The term of appointment to the IAC shall be renewable four-year terms, to begin at the start of the Commission's fiscal year.

The IAC shall meet as a body at least one time each year to review the decision process and engage in training.

IAC Authority to Take Action on Accreditation Decisions

The IAC, acting through its committees, is authorized to take action on accreditation decisions to:

1. reaffirm accreditation;
2. approve recommendations resulting from biennial visits in candidacy;
3. approve or deny applications for substantive change requiring review by a decision structure, but not including Change of Control, Structure, or Organization;

4. approve recommendations resulting from focused evaluations; and
5. approve recommendations from staff or financial/non-financial panels for required monitoring or changes in the Statement of Accreditation Status.

For these cases, the IAC is authorized to set the next comprehensive evaluation visit date, establish a schedule of required monitoring, and make other changes in the Statement of Accreditation Status.

IAC Authority to Make Recommendations for Accreditation Decisions That Require Board Action

The IAC, acting through its committees, is authorized to review the following recommendations arising from an evaluation process and to forward a recommendation to the Board of Trustees to:

1. grant or deny initial status, including initial candidacy and initial accreditation;
2. issue or withdraw a sanction, including 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; and
3. withdraw accredited or candidate status.

Conflict of Interest

The Commission expects that all IAC members will act with objectivity and without conflict of interest when participating in IAC activities.

The Commission will not knowingly allow any IAC member to participate in discussions, recommendations, or actions where the IAC member has a conflict of interest that may cause the IAC member to lack objectivity, that may result in the appearance of bias, or that may otherwise call into question the integrity, fairness, or credibility of IAC processes.

IAC members will periodically be required to confirm their agreement to abide by the conflict of interest and objectivity requirements for IAC members set forth by the Commission.

IAC members will also periodically be required to disclose specific circumstances that may result in a conflict of interest. IAC members are expected to promptly update these disclosures, including during an Institutional Actions Council Meeting Committee or Institutional Actions Council Hearing Committee, as needed.

Any conflicts of interest or other recusals will be noted in minutes, as applicable.

Confidentiality

An IAC member agrees to keep confidential any information provided by the institution under review and information gained as a result of participating in an action or hearing. Keeping information confidential requires that the IAC member not discuss or disclose institutional information except as needed to further the purpose of the Commission's decision-making processes. It also requires that the IAC member not make use of the information to benefit any person or organization. This obligation to maintain confidentiality continues after the process has concluded. (See PEER.A.10.040, Standards of Conduct, for a list of examples of confidential information available to IAC members.)

Antitrust Compliance

IAC members will be familiar with the Commission's expectations regarding antitrust compliance and conduct themselves in accordance with these expectations when engaging in Commission business or otherwise representing the Commission. In general, the Commission prohibits IAC members from engaging in conduct (including activities and communications) with the intent or effect of limiting competition amongst accreditors, as prohibited by antitrust laws. When IAC members have questions regarding particular activities or communications, they will consult with the Commission's Antitrust Compliance Team.

Policy Number Key

Section INST: Institutional Processes

Chapter D: Decision-Making Bodies and Process

Part 20: Institutional Actions Council

Last Revised: November 2019

First Adopted: June 2011

Revision History: April 2013, June 2014, November 2019

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 Institutional Actions Council Processes

Policy Title: Standards of Conduct

Number: PEER.A.10.040

The Commission expects Peer Reviewers to behave with the highest level of ethics and integrity while conducting any activity for the Commission. Peer reviewers must abide by appropriate and ethical standards of conduct to assure the public and the higher education community that evaluations have been carried out objectively and with the goal of assuring the public good.

While participating as Peer Reviewers in any institutional evaluation, hearing or other Commission activity as a Peer Reviewer, Peer Reviewers shall agree to abide by the following Standards of Conduct:

Peer Reviewers:

1. Conduct themselves with appropriate dignity and professionalism while representing the Commission.
2. Treat all institutional representatives, members of the public, fellow peer reviewers and Commission staff with courtesy and respect.
3. Adhere to the Commission's Policy on Objectivity and Conflict of Interest and disclose any actual or apparent conflicts to the Commission staff in advance of accepting any assignment.
4. Avoid representing interests that conflict or compete, or provide the appearance of conflict, competition or bias, with the fair and objective review of every institution.
5. Act with competence in all Commission activities by reading assigned materials in advance, reviewing Commission requirements, attending required training, and participating in all evaluation activities as outlined by Commission staff.
6. Follow the Commission policy for Peer Reviewers on Independent Consulting and guidelines on independent consulting and mock visits.
7. Decline any offer of gifts, incentives, or other compensation from any institution under review unless those gifts are nominal in nature (less than \$50 fair market value per individual gift) or of significance in a particular cultural context and notify the Commission staff of an offer of such gift that exceeds this threshold. *(Note that the institution may provide a meal or social function for an evaluation team or other Commission group provided that the function is conducted simply and at reasonable cost.)*
8. Act with appropriate fiscal moderation while conducting an institutional evaluation or other Commission activity and provide an accurate and honest reporting of all expenses incurred during that activity.

9. During an evaluation visit to an institution and for a period of one year after Commission action in the evaluation, refrain from seeking employment from or accepting employment, or any future relationship, with the institution under review.
10. During an evaluation visit to an institution and for a period of one year after Commission action in the evaluation, refrain from seeking to employ or otherwise hire or retain any employee of the institution under review.
11. Protect confidential information received through the Commission's processes and observe the Commission Policy on Confidentiality.
- 12. Be familiar with the Commission's expectations regarding antitrust compliance and conduct themselves in accordance with these expectations when engaging in Commission business or otherwise representing the Commission. In general, the Commission prohibits peer reviewers from engaging in conduct (including activities and communications) that with intent or effect of limiting competition amongst accreditors, as prohibited by antitrust laws. When peer reviewers have questions regarding particular activities or communications, they will consult with the Commission's Antitrust Compliance Team.**
- ~~12.~~ 13. Refrain from commenting on the details of any institutional review in which they have been engaged unless compelled by legal process.
- ~~13.~~ 14. Cooperate in any legal process in which the Commission or its Board of Trustees or staff have become engaged, refrain from responding to any inquiries related to legal action made by institutions or their counsel, and direct such inquiries to Commission staff.

Policy on Objectivity and Conflict of Interest. Peer Reviewers must be able to render impartial and objective decisions on behalf of the Commission. Therefore, the Commission will not knowingly allow any person whose past or present activities could affect his or her ability to be impartial and objective to participate in an institutional evaluation (Assurance Review, Focused Visit, Change Panel or Visit). Peer Reviewers will inform the staff of the Commission of any barrier to impartiality and objectivity known to them.

Confirmation of Objectivity Form. Through the Confirmation of Objectivity form a Peer Reviewer affirms a commitment to, and capacity for, impartiality. Before participating in any institutional evaluation each Peer Reviewer will sign a Confirmation of Objectivity form regarding each institution being evaluated. Before

participating in any panel review, each Peer Reviewer will sign or orally agree to a Confirmation of Objectivity for each institution under consideration.

The Confirmation of Objectivity form will identify situations involving conflict of interest as well as provide examples of other situations that raise the potential for conflict of interest. The form will require that the person disclose any such conflicts, predisposition, or affiliation that could appear to jeopardize objectivity. When appropriate, Commission staff will notify the institution of that potential and will consult with the Peer Reviewer and the institution regarding that person's suitability for the assignment. The Commission staff reserves final responsibility for determining whether the Peer Reviewer who has identified a potential bias or predisposition will participate in an institutional evaluation, or review.

Policy on Confidentiality. In all Commission accreditation processes, a Peer Reviewer must agree to keep confidential any information provided by the institution under review and information gained as a result of participating in any part of the Commission's review processes. Confidential information includes, but is not limited to:

1. Information about the institution not available to the public through the institution's own program to share information and its reporting to the Federal Government (IPEDS);
2. Information the institution identifies as "proprietary" such as recruitment strategies including pricing policies, new strategic initiatives being considered or planned for, impending but not public changes in personnel, legal activities not yet part of the public record, planned acquisitions or mergers, courseware and software created by the institution for its own use;
3. Information provided in the institutional self study report or Assurance Filing, and information made available in the resource room or electronically including such documents as personnel files, minutes of meetings, transcripts of grievances and hearings, management letters from external auditors, reports from internal and external quality assurance activities (i.e., reports from specialized accrediting agencies or program reviews);
4. Information identified explicitly by the institution as "Confidential";
5. In clinical settings, patient identity, history, and all other information related to the patient's involvement with the clinic;
6. Information shared orally during an on-site visit and any face-to-face hearing that might be part of the Commission's review processes.

Keeping information confidential requires that the Peer Reviewer not discuss or disclose institutional information except as needed to further the purpose of the Commission's evaluation processes. It also requires that the Peer Reviewer not make use of the information to benefit any person or organization. Maintenance of confidentiality survives the evaluation visit and continues after the process has concluded.

Independent Consulting

To avoid the appearance of possible conflict of interest in the accreditation process, no Peer Reviewer who evaluated an institution for the Commission may serve as an independent consultant to that institution for a period of three years following the official Commission accrediting action. In addition, no Peer Reviewer will participate in a Commission evaluation of an institution for which that Peer Reviewer served as an independent consultant in the previous ten years. (See Commission Policy PEER.A.10.050: Peer Corps Members in HLC Evaluative Activities.)

Peer Reviewers will disclose to the Commission on an annual basis all consulting activities related to an institution accredited by the Commission or related to accreditation and will agree to inform any institution or other entity with which the Peer Reviewer is developing a consulting relationship that the Peer Reviewer is acting in a personal capacity and is not representing the Commission.

Any Peer Reviewer who violates this policy will be removed automatically from the Peer Review Corps.

Violations of the Standards of Conduct. The Commission staff will investigate allegations that a Peer Reviewer has violated the Standards of Conduct and may ask the Peer Reviewer or others involved to provide information. If there is a determination that a Peer Reviewer has violated a Standard of Conduct, the President of the Commission may issue a letter of reprimand or may ask a Commission staff member to provide a verbal warning to the Peer Reviewer. The Commission may end the term of the Peer Reviewer prior to the regular completion date.

Policy Number Key

Section PEER: Commitment to Peer Review

Chapter A: Policies Applicable to All Peer Reviewers

Part 10: General

Last Revised: November 2018

First Adopted: January 1983, February 1984, August 1990, February 2001, November 2006

Revision History: October 2003, November 2012, April 2013, June 2018, November 2018

Notes: Policies combined in November 2012 – 5.1, 5.1(a), 5.2, 5.3, 8.2

Related Policies: