



CHANGE OF CONTROL REVIEW PROCEDURES

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

The proposed policy changes would provide HLC staff the flexibility to update procedure documentation as needed and simplify the nomenclature used for Change of Control procedures. The proposed revisions also would relocate language related more closely to monitoring after approval of a Change of Control to the [appropriate policy](#).

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: 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~~ **applications reviewed** under this policy taking into consideration ~~the summary report made by Commission staff~~ **a Change of Control report developed as a result of the evaluation of any such application. For such Change of Control evaluations,** Commission staff may seek external assistance from peer reviewers or individuals with appropriate expertise **in conducting a review of the institution’s documentation,** or may require an ~~immediate~~ on-site ~~Fact-Finding Review~~ **visit to gather information evidence** 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~~ **in a Change of Control report (if one is made)** 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 **the Board develops** before the Board takes final action.

The Board may approve the ~~change application~~, thereby authorizing accreditation for the institution subsequent to the close of the transaction, or it may deny ~~approval for the change application~~. The Board may defer its consideration of the ~~proposed Change of Control, Structure or Organization application~~ 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 application~~ 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. **Under such circumstances, ~~the parties to the Change of Control, Structure or Organization may not act to close the transaction~~ consummate the Change of Control contemplated by the Change of Control application** until accepting in writing the Board's conditions, if any. **A Change of Control consummated after failing to accept the Board's conditions shall be treated as not having received prior Commission approval under these policies and the resulting institution's accreditation may be withdrawn.**

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

~~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 **application** 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~~ **consummate the Change of Control** 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.

Evaluative Framework for Change of Control, Structure or Organization

Among multiple factors considered in determining whether to approve 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 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 application fails to meet one or more of the 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, 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. 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.

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

~~Fact-Finding Review~~ **Change of Control Evaluation.** ~~Commission staff may call for a Fact-Finding Review prior to making a summary report to the~~ Evaluations conducted under this policy, which may involve an on-site visit in addition to a documentary review, shall be conducted in accordance with HLC's published Change of Control Procedures prior to any Board decision regarding a proposed Change of Control, Structure or Organization. The role of ~~the Fact-Finding Review~~ such evaluations will be to gather information and advise staff regarding the summary report to the Board determine the extent to which the Change of Control application meets the Key Factors for approval articulated in this policy. ~~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.~~

Policy Number Key

Section INST: Institutional Processes

Chapter F: Maintenance and Monitoring

Part 20: Intermittent Monitoring

Last Revised: November 2019

First Adopted: June 2009

Revision History: February 2010, February 2012, June 2012, June 2015, February 2017, November 2018, November 2019

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.F.20.080 Monitoring Related to Change of Control, Structure or Organization