



## CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION

### Policy Change Approved on First Reading

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The Higher Learning Commission (HLC) Board of Trustees (“the Board”) approved this policy on first reading at its meeting on February 28–March 1, 2019.

#### Background

Under HLC’s Change of Control, Structure or Organization policy, an institution must receive HLC approval prior to undergoing transactions that affect, or may affect, how corporate control, structure or governance occurs at the institution. If an institution completes such a transaction without HLC’s review and approval, the current policy indicates that the Board “shall” withdraw the institution’s accreditation (or candidacy). The proposed policy change would provide HLC flexibility to pursue a variety of actions in response to such situations, as circumstances demand and while remaining consistent with its own policies and federal regulations.

#### Comments Invited

HLC invites comments on this change before the Board takes final action at its meeting on June 27–28, 2019. Comments can be sent to [policycomments@hlcommission.org](mailto:policycomments@hlcommission.org). Comments are due by May 28, 2019.

#### 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: Change of Control, Structure or Organization

Number: INST.B.20.040

An institution shall receive Commission approval prior to undergoing a transaction that affects, or may affect, how corporate control\*, structure or governance occurs at the accredited or candidate

institution (hereinafter the “affiliated institution”). Approval of the transaction resulting in the CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION shall be necessary prior to its consummation to effectuate the continued accreditation of the institution subsequent to the closing of the proposed transaction.

*\*Control shall be understood to mean the possession, direct or indirect, of the power to direct or cause the direction of, the management and policies of an institution, corporation, partnership or other entity, whether through the ownership of voting securities, by contract or otherwise. (See related definition at 34 CFR § 600.31(b).)*

### **Eligibility for Change of Control**

No institution shall be deemed eligible for CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION merely by virtue of having accredited or candidate status with the Commission. Approval shall be at the sole discretion of the Commission’s Board of Trustees (“the Board” or “the Commission’s Board”). An institution shall apply for Commission approval of a proposed CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION transaction through processes outlined in this policy and must demonstrate to the satisfaction of the Commission’s Board that the transaction and the institution affiliated with the Commission that will result from the transaction meet the requirements identified in this policy and that approval of the proposed CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION is in the best interest of the Commission.

In those cases in which the Commission’s Board decides to approve a proposed CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION, it may decide so subject to conditions on the institution or its accreditation. In those cases in which the Commission’s 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.

The Board will not consider for approval any proposed CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION involving an institution that is under sanction, Show-Cause or loss of status or authorization from any other recognized accrediting agency or state entity or is under investigation by any state entity, or involving a buyer or investor who owns such an institution except as described in this policy. The Board will also not consider for approval any proposed CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION for an institution the Board has determined within the previous twelve months to merit withdrawal of accreditation, even if a formal action to withdraw accreditation has not yet taken place.

The Board will consider a CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION for a Commission-affiliated institution on sanction or under Show-Cause only if there is substantial

evidence that the proposed transaction resolves the issues the institution must address during the sanction or Show-Cause period and the transaction otherwise meets each of the Approval Factors identified in this policy.

## **Types of Transactions**

The transactions that require prior Commission approval<sup>1</sup> include, but are not limited to, the following:

1. Sale or transfer to, or acquisition by, a new owner of all, or a substantial portion, of the institution's assets, or the assets of a branch campus or site (not including any transfer that constitutes only the granting of a security interest);
2. Merger or consolidation of an institution with one or more institutions or entities. This includes the consolidation of an institution not accredited or in candidate status with the Commission into the structure of an institution holding status with the Commission;
3. The division of the affiliated institution into one or more institutions or entities;
4. Stock transactions including Initial Public Offerings of stock as well as those transactions wherein an individual, entity or group<sup>2</sup> acquires and controls 25% of the total outstanding shares of stock of the affiliated institution, or an individual, entity or group increases or decreases its control of shares to greater or less than 25%, through individual or cumulative transactions, of the total outstanding shares of the stock of the institution;
5. Change of corporate form, governance structure, or conversion, including, but not limited to, change from Limited Partnership to Corporation, from Limited Liability Corporation to a Corporation, from a Not-for Profit Corporation to a For-Profit Corporation, a Private to Public, a Not-for Profit Corporation controlled by members to one controlled by its Board of Directors, significant change in the size of the institution's governing board;
6. Any of the transactions in items 1 through 5 above involving a parent corporation that owns or controls the affiliated institution or in any intermediate subsidiary of a parent corporation where that subsidiary has a controlling relationship to the institution and where the transaction may reasonably affect the control of the accredited institution as determined by the Commission or by the U.S. Department of Education;

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<sup>1</sup> Such transactions may or may not also require approval from the U.S. Department of Education.

<sup>2</sup> For a definition of a "group" see Section 13(d)(3) of the Securities and Exchange Act of 1934.

7. Sale, transfer, or release of an interest in the affiliated institution such that there is change in the management or governance of the institution; and
8. Transfer of substantial academic or operational control of the affiliated institution to a third-party entity.

### **Change of Control, Structure, or Organization Without Prior Commission Approval**

~~The Board shall withdraw the accreditation or candidacy of an institution that completes a CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION without receiving prior Commission approval from the Board of Trustees. The Higher Learning Commission President will take a recommendation for withdrawal to the Board upon learning of the change that took place without prior Commission approval.~~ Should an institution undertake a Change of Control transaction without prior approval, 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.

Prior to ~~the Board's~~ any decision-making body's review, the institution will be informed about the President's recommendation and will have at least 14 calendar days to prepare and submit a response that the Board or Institutional Actions Council, as applicable, will have available when it considers the President's recommendation ~~for withdrawal~~. **The Board has the authority to withdraw the accreditation or candidacy of an institution that completes a CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION without receiving prior Commission approval, when required, from the Board of Trustees.**

### **Notification to the Commission Regarding Other Transactions**

An institution affiliated with the Commission must notify Commission staff of any other CHANGE OF CONTROL, STRUCTURE OR ORGANIZATION that is not separately identified in this policy or that may be separately identified in the policy but may not be reasonably known by, or under the control of, the accredited institution, a parent entity or intermediate subsidiary prior to the transaction (e.g., disposal of stock by an investor). These changes include, but are not limited to, changes in the Chief Executive Officer of the affiliated institution, changes in the structure and composition of the Board of Trustees of the institution, other than those due to normal or mid-term completion of Board members' terms or removal or replacement of Board members or revision of corporate bylaws through regular review processes, and sale or transfer of a block of stock that constitutes less than 25% but more than 10% of the total outstanding voting shares of the affiliated

institution, its corporate parent or other entity in a controlling relationship with the institution. These changes must be reported to the Commission as soon as they are reasonably known to the institution. While such changes are to be reported for information, staff may determine in certain cases that they do constitute a Transaction that must be approved under this policy or that require Commission follow-up under Commission policies related to monitoring.

### **Policy History**

*Last Revised: February 2010*

*First Adopted: June 2009 and February 2010*

*Revision History:*

*Notes: Policies combined November 2012 – 3.3, 3.3(a), 3.3(b), 3.3(e), 3.3(f).*

*Related Policies: INST.F.20.070 Processes for Seeking Approval of Change of Control, INST.F.20.080*

*Monitoring Related to Change of Control, Structure or Organization*