

TOPIC:

THE HIGHER EDUCATION OPPORTUNITY ACT I: NEW REPORTING AND DISCLOSURE REQUIREMENTS FOR COLLEGES AND UNIVERSITIES

INTRODUCTION:

On July 31, 2008, Congress passed the first full reauthorization of the Higher Education Act of 1965, as amended (P.L. 105-244), since 1998. After more than five years of consideration, Congress approved the Higher Education Opportunity Act (P.L. 110-315) (“HEOA” or the “Act”) on an overwhelmingly bipartisan basis. The President then signed the Act into law on August 14, 2008. The Act imposes a substantial number of new reporting and disclosure obligations on institutions that participate in Title IV federal student financial aid programs. Unless otherwise specified in the Act, those reporting and disclosure requirements are applicable as of the date of enactment. It is expected that the Secretary of Education (the “Secretary”) will provide guidance in the near future on compliance with some of the new requirements; nonetheless, for those requirements that are effective upon the date of enactment (August 14, 2008), the obligation to comply commences upon the date of enactment as well.

Because the reporting and disclosure requirements are linked to an institution’s participation in the Title IV federal student financial aid programs, the Secretary is authorized to take administrative action, including the imposition of fines, against institutions that do not comply. The most severe penalty the Department could impose for failure to comply, however, is a limitation or termination of the institution’s participation in the Title IV financial aid programs.

This Note addresses, in general terms, the major new reporting and disclosure requirements included in the Act organized by general topic. (A separate Note, also published today, addresses the student lending specific reporting requirements. Thus, this Note will focus only on the new reporting and disclosure obligations that do not relate to student lending). Attached to this Note is a more detailed explanation of each new reporting and disclosure requirement of the HEOA on a section-by-section basis. *The two documents are meant to be used in conjunction with one another* – with the general overview presented in this Note and the specifics of each new reporting obligation set forth in the attachment. Appropriate hyperlinks to the relevant text in the attachment are provided for each section of this Note. At the conclusion of the Note are links to additional helpful resources. Neither this Note nor the attachment constitute legal advice. Counsel are encouraged to review the HEOA for its impact on their specific institutions.

DISCUSSION:

Some of the key new reporting and disclosure requirements imposed by the HEOA include: (1) drug and alcohol abuse prevention reporting; (2) costs and consumer information; (3) textbook information; (4) teacher preparation program disclosures; and (5) general institutional information for students.

Drug and Alcohol Abuse Prevention

Beginning on the date of enactment (August 14, 2008), institutions must include in their biennial review of

drug and alcohol programs the number of drug and alcohol-related violations and fatalities that occur on the institutions' campuses [\[1\]](#) or as part of the institutions' activities. They must also report the number and type of sanctions imposed as a result of drug and alcohol-related violations and fatalities that occur on their campuses or as part of their activities. See [HEOA § 120\(a\)\(2\)\(B\)](#).

Costs and Consumer Information Disclosures

In an effort to make more information available to students and consumers of higher education regarding the cost of attending specific institutions, Congress has mandated that, beginning on July 1, 2011, the Secretary publish lists with information provided by institutions regarding their tuition costs. See [HEOA § 132\(c\)-\(f\)](#). Specifically, the Secretary will publish six lists – the 5% of institutions with the highest tuition and fees, the 5% of institutions with the highest net price [\[2\]](#), the 5% of institutions with the largest increase in tuition and fees over the three most recent academic years, the 5% of institutions with the largest increase in net price over the three most recent academic years [\[3\]](#), the 10% of institutions with the lowest tuition and fees, and the 10% of institutions with the lowest net price. *Id.* Each of these lists will be broken down according to type of institution as follows: (1) four-year public institutions; (2) four-year private nonprofit institutions; (3) four-year proprietary institutions; (4) two-year public institutions; (5) two-year private nonprofit institutions; (6) two-year proprietary institutions; (7) less than two-year public institutions; (8) less than two-year private nonprofit institutions; and (9) less than two-year proprietary institutions. *Id.*

Any institution that is included either on the list of largest net increase in tuition and fees or largest increase in net price will be required to report to the Secretary on the reasons for the increases and steps being taken to reduce them. Further, institutions that appear on these lists for two or more consecutive years also will be required to report to the Secretary on the progress they are making on the steps identified in the previous year's report. See [HEOA § 132\(f\)](#).

To accompany these lists, the Secretary is also required to develop two cost calculators – one that institutions will be required to post on their websites that allows students to calculate the cost of attending that institution and one that allows students to calculate and compare the costs of attending several institutions. The calculator that institutions will be required to post on their websites must be developed within one year of the date of enactment (August 14, 2008) and must be made available by institutions within two years of its development. See [HEOA § 132\(h\)](#).

Further, the Secretary is required to make a host of new information about institutions available on the College Navigator website within one year of the date of enactment (August 14, 2008). That information, which is likely to be added to an institution's Integrated Postsecondary Education Data System ("IPEDS") reporting requirements, includes topics such as the institution's mission; placement test scores; the number of transfer students the institution accepts; the number of in-state, out-of-state and international students; the racial, gender, ethnic and disability composition of the institution; the institution's completion rate; student-faculty ratio; cost of attendance; the types and amounts of financial aid students at the institution receive; and campus safety information. See [HEOA § 132\(i\)-\(j\)](#).

Textbook Information

During the drafting of the HEOA, student groups expressed concern that students did not have access to information that would allow them to seek out less expensive sources from which to acquire the required texts and supplemental material for their courses. In response, Congress included [Section 133](#) in the Act, which requires that institutions who receive Title IV financial aid funds disclose "to the maximum extent practicable" on their Internet course schedule the International Standards Book Number ("ISBN") and retail price for required and recommended textbooks and supplemental materials for each course listed on the schedule. [HEOA § 133\(e\)](#). If the ISBN number is unavailable, the institution must disclose the author, title, publisher and copyright date of the text or material instead. If it is not practicable to disclose either the ISBN number or the alternative information, the institution shall place "To Be Determined" on the schedule. *Id.*

If an institution also publishes a written course schedule, that schedule must note that the above information

is available on the institution's Internet schedule and must include the web address for the Internet schedule. See HEOA § 133(d)(2).

It is worth noting that the Act does not require institutions that do not have Internet course schedules to create them. But, it does "encourage" institutions to provide students information on programs that enable students to obtain their textbooks and materials at a reduced cost. HEOA § 133(f). These requirements become effective July 1, 2010.

Teacher Preparation Program Disclosures

Effective as of August 14, 2008, all institutions that offer either traditional teacher preparation programs or alternative routes to teacher certification (in short any institution that has a teacher preparation program) must provide annual reports to the Secretary. See [HEOA § 205\(a\)\(1\)](#). Those reports must include, among other things, information on the institution's ability to increase the number of teachers in shortage areas, the institution's ability to provide training that responds to local needs and classroom realities, student results on the state's teacher licensing examination (and whether the students completed a traditional or alternative means for obtaining the training necessary to take that examination); admission criteria for the institution's teacher training program disaggregated by gender, race, ethnicity and other factors; an explanation of whether the institution's teacher preparation program has been designated as low-performing by the state; and descriptions of activities the institution's teacher training program has undertaken to assist teachers with technology, special education instruction, and general education instruction. *Id.*

The HEOA also requires institutions that receive Teacher Quality Partnership Grants to provide, effective August 14, 2008, annual reports on the progress of the partnership toward meeting the objectives of the evaluation plan created by the institution when it applied for the grant. See [HEOA § 205\(a\)\(2\)](#).

Finally, the Act requires each state that receives money under any HEOA program to provide annual reports on its paths to teacher licensure, including its assessment mechanisms; whether its teacher preparation programs are successfully addressing areas of critical shortage in the state; and whether those programs align with the state's standards for challenging academic content. See HEOA § 205(b). This provision is also effective as of August 14, 2008.

General Institutional Disclosures to Students

Under Section 485 of the HEOA, any institution that receives funds under the HEOA must, as of August 14, 2008, provide a series of general institutional disclosures to students. Those disclosures include the institution's plans for improving its academic programs; its policies and sanctions concerning copyright infringement; the percentage of men, women, Pell Grant recipients and self-identified racial and ethnic minorities enrolled at the institution, retention, graduation, and placement data, graduate and professional program information for the institution's recent graduates, a fire safety report, transfer of credit policy, and the institution's policy on vaccinations. [HEOA § 485\(a\)\(1\)](#).

Copyright Infringement

Congress instituted a new requirement that institutions disclose to students their policies and sanctions related to copyright infringement. See HEOA § 485(a). That includes requiring institutions to publish an annual disclosure that "explicitly informs" students that unlawful distribution of copyrighted material, including peer-to-peer file sharing may subject them to civil or criminal penalties. *Id.* Further, institutions must provide students a summary of the penalties for violating federal copyright laws and a description of the institution's policies related to unauthorized peer-to-peer file sharing, including a description of the disciplinary actions taken against students who engage in unauthorized distribution of copyrighted material using the institution's computer system and network. *Id.* The summary and description do not appear to be required parts of the annual disclosure, but like the annual disclosure, are pieces of information that must be always available in accordance with section 485(a) of the Higher Education Act. *Id.*

Further, section 487(a) of the Act requires institutions, as a condition of their eligibility to participate in the Title IV programs, to certify that they have developed plans to “effectively combat the unauthorized distribution of copyrighted material, including through the use of a variety of technology-based deterrents.” The Act does not endorse any specific type of technology-based deterrent, but its accompanying report does identify a number of examples such as blocking student access, restricting bandwidth, and use of Audible Magic’s CopySense Network Appliance or Red Lambda’s “Integrity.” Institutions must also “to the extent practicable” provide alternatives to illegal downloading or peer-to-peer sharing of copyrighted material. HEOA § 487(a)(29). Both the section 485 and the section 487 requirements became effective on August 14, 2008.

Graduation Data

The Act makes some adjustments to the general graduation rate data that must be published, essentially allowing schools to exclude the period of non-enrollment for students serving in the Armed Forces, on official church missions, or serving with a foreign aid service of the federal government from their calculations. [HEOA § 485\(a\)\(4\)](#). These periods can only be excluded if, however, the students that fall into these categories comprise at least 20 percent of the institution’s undergraduate population. *Id.* For athletes, the Act now requires institutions to report their graduation data disaggregated by gender, race, ethnicity, Pell Grant status, and FFEL or Direct loan status. These requirements are effective as of August 14, 2008. *But, it is important to note that two-year institutions do not become subject to the athletics reporting requirement until at least the 2011-2012 academic year. See HEOA § 485(a)(7)(A).*

Campus Safety, Missing Students, and Drug Violations

The HEOA makes some adjustments to how institutions report on their campus security personnel. [HEOA § 485\(f\)\(1\)](#). It also adds several crimes to the list of crimes that must be reported as hate crimes and that must be reported according to type of prejudice. HEOA § 485(f)(1)(e). Further, the Act requires institutions to provide in their annual security report a statement of current campus policies regarding immediate emergency response and evacuation procedures. [HEOA § 485\(f\)\(1\)\(J\)](#). The Act also makes it a condition of eligibility, under the institution’s program participation agreement, that it disclose, upon written request, to any alleged victim of a crime of violence or nonforcible sex act the results of the institution’s disciplinary proceedings against the alleged perpetrator. HEOA § 487(a)(2). These requirements become effective August 14, 2008 except for the requirement related to crime victim disclosures, which takes effect with respect to any disciplinary proceeding conducted on or after August 14, 2009. HEOA § 487(a)(1)(B).

In addition to the campus crime reporting and policies institutions are already required to comply with, the HEOA requires, effective August 14, 2008, that institutions develop a missing student notification policy and procedures for on-campus residents. [HEOA § 485\(j\)](#). The policy must, among other things, allow students to designate a confidential contact to be notified if they are determined missing for more than 24 hours, notify students under 18 that their parents will be notified if they are missing for more than 24 hours, and advise students that law enforcement will be notified no later than 24 hours after a student is determined missing. *Id.*

In terms of drug violations, institutions are required to provide students upon enrollment a notice of the consequences of a drug conviction on their Title IV financial aid. If a student is subsequently convicted for a drug offense, the institution must notify him or her of the loss of his or her eligibility for federal financial assistance and how he or she may regain that eligibility. [HEOA § 485\(k\)](#). This requirement is effective August 14, 2008.

Fire Safety Information

Effective August 14, 2008, section 485 requires institutions that participate in Title IV and that maintain on-campus housing to publish an annual fire safety report and to keep a log in which they record all fires in on-campus student housing that occur throughout the year, including the nature of the fire, date, time and general location. [HEOA § 485\(i\)](#).

CONCLUSION:

The HEOA imposes a large number of new reporting obligations on colleges and universities. Although guidance is forthcoming from the Secretary on some of the new requirements, responsibility for compliance begins as of the date of enactment for the majority of new obligations, which become effective on that date. Counsel should work with their institutions to begin familiarizing themselves with the new reporting and disclosure requirements and developing systems for compliance. The possible penalties for non-compliance – limitation or loss of Title IV financial aid funds – are too great for institutions to delay.

FOOTNOTES

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RESOURCES:

- [Attachment: New Higher Education Opportunity Act Reporting and Disclosure Requirements by Section](#)

Statutes and Regulations:

- [The Higher Education Opportunity Act, P.L. 110-315](#)
- [Conference Report – H. Report 110-803 \(to accompany H.R. 4137\)](#)
- [Department of Education Federal Register Notice of Negotiated Rule-Making](#)
- [U.S. Department of Education Web Page on 2008 Higher Education Opportunity Act](#)

Other Resources:

- [The Higher Education Opportunity Act II: Student Lending-Related Reporting and Disclosure Requirements](#)
- [American Council on Education \(ACE\) Analysis of Higher Education Act Reauthorization](#)
- [Association of American Universities \(AAU\) Comparison of House and Senate Bills and Final Higher Education Opportunity Act](#)
- [National Association of Student Financial Aid Administrators \(NASFAA\) Summary of Higher Education Act](#)
- [Higher Education Act of 1965, as amended, Title IV Parts B, D, G and I with changes by Higher Education Opportunity Act of 2008 Inserted \(from National Council of Higher Education Loan Programs\)](#)

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