Compliance with the Higher Education Opportunity Act: A Low Cost Model That Works (Part 1– AM)

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The Higher Education Opportunity Act was approved by Congress in 2008 and signed into law by President George W. Bush in August of that year.

In this workshop we will discuss...

- Historical Perspective of the HEOA
- Institutional Accountability
- A Practical, Low Cost Model for Your Institution

The HEOA is the latest reauthorization of the original Higher Education Act of 1965.

This act named accreditors as 'gatekeepers' for institutional access to federal funds.

Historical Perspective

Today, accreditors focus primarily on quality improvement and compliance with accreditation standards.

The USDE sees the primary purpose as one of safeguarding federal funds. Many in Congress agree.
Many of the newer provisions in the HEOA are the result of the federal government's concerns about the increasing amount of Title IV aid that has been awarded to students.

It is estimated that MSHE-accredited institutions receive $14 billion annually in Title IV funds.

Many similar concerns have been raised by state governments, though the states do not have a direct impact on the HEOA.

Members of Congress and the staff of the U.S. Department of Education are seeking...

☐ Greater institutional accountability
☐ Evidence that investments in higher education are worth it (ROI)
☐ Better consumer protections against fraud

Among the major areas addressed by the HEOA were:

☐ Textbook information
☐ Net Price Calculator
☐ Student Consumer Information on Institutions' Websites
☐ Distance and Correspondence Education
  - Student Verification
  - State Authorization
☐ Transfer of Credit Policies
☐ Student Achievement
☐ Misrepresentation
☐ Gainful Employment

Concerns about institutional accountability resulted in..

☐ Highly publicized Senate hearings on for-profit educators
☐ GAO Secret Shoppers
☐ Regulations pertaining to student debt vs. potential earnings (Gainful Employment)
☐ Articles by sometimes ill-informed reporters

Regulations pertaining to each of these areas were to be developed through a series of 'Negotiated Rulemaking' sessions.
As the elements of certain proposed regulations became evident, a groundswell of opposition developed.

Although colleges, universities, and accreditors are only now adjusting to many of the new regulations, the next Congressional reauthorization of the HEA is (theoretically) approximately one year away.

A coalition of accreditors and other national higher education associations, under the umbrella of the American Council on Education, expressed their opposition to:

- State Authorization
- Gainful Employment
- Federal Definition of Credit Hour

Later today we will review new HEOA-related certification requirements that have been implemented by the Middle States Commission on Higher Education.

In addition, lawsuits were filed by for-profit institutions, and other sectors of higher education complained to members of Congress about the proposed regulations.

Some regulations were changed, some were placed on hold, and others were implemented. Implementation has been spread over four years, with effective dates of July 1, 2009, 2010, 2011, and 2012.

Student Consumer Information

The HEOA requires a significant amount of information to be posted on institutional websites. This may appear burdensome, but it is the law.
Clery Act and Required Reporting of Campus Crime

Student Financial Assistance
- Aid available from federal, state, local, and institutional sources
- Federal financial aid penalties for drug law violations
- Student loan information
- Most of this information had been provided by institutions long before the HEOA.

Net Price Calculator
The HEOA specifically defines how an institution's net price is calculated
- Effective October 29, 2011
- The institution must determine the cost of attendance, defined as the average annual cost of tuition and fees, room and board, books, supplies, and transportation for first-time, full-time students.

Title IV Cohort Default Rate
- Percentage of students in a given fiscal year who cannot repay their federal loans
- The USDE annually calculates and publishes data on the average default rate
- Your institution must document where it stands in relation to the averages (typically the responsibility of the CFO or the Financial Aid Officer)

Institutional Transparency is Key to the HEOA
- The USDE is now required to create College Affordability and Transparency Lists. These lists highlight...
  - Public and private institutions with the highest and lowest tuition and fees
  - The institutions with the largest increases in tuition, fees, and net prices.
Institutional Transparency is Key to the HEOA

- Make your online Net Price Calculator easy to find! You won’t find the Net Price Calculator in the same place on every website.
- Be truthful. Estimated costs included in the Net Price Calculator are for the first year of college only and apply to a specific academic year. Not all financial aid grants or scholarships are available for all years of college.

Distance and Correspondence Education

- Student Verification
  - Secure Password/Log-in
  - Proctored Exams
  - Technology
- Notification of Special Fees at Time of Registration
- State Authorization
  - Highly controversial
  - Strong opposition
  - Distance Education component struck down by federal courts, but state laws are still in effect.
- Protect student privacy at all times

Institutional Transparency is Key to the HEOA

- Not all institutions call their tool the Net Price Calculator. Some use words such as cost, financial aid, estimator, etc. Use wording that makes sense to your students.
- After you have your Net Price Calculator in place for several months, don’t be afraid to use focus groups to obtain feedback and make improvements.
- Embed your NPC and Student Right to Know information in Your Search Engine

Distance & Correspondence Education

- Accreditation visiting teams now must include a distance education expert if your institution offers online or correspondence courses
- If your institution is planning to offer distance education for the first time, approval of your accreditor is required*. 

Textbook Information

- One of the earliest HEOA requirements
- Textbook names and ISBN numbers should be published with class schedules
- Institutional efforts to reduce textbook costs, including book rentals. Transparency is the key.

*Distance Education’ approval by MSCHE is required if students can complete 50 percent or more of a program’s credits via electronic delivery.

Approval is obtained via the Substantive Change process.
**Student Achievement/Outcomes**
- Retention rate
- Graduation rates (Student Right to Know Act)
- Transfer Out rates
- Graduation and Transfer Out rates for students receiving athletically related financial aid
- Job placement for graduates*
- Graduate and professional education placement

**MSCHE’s Position on Student Achievement is Reflected in Several Accreditation Standards:**
- Standard 8: Student Admissions and Retention
- Standard 11: Educational Offerings
- Standard 14: Student Learning Outcomes

**Student Achievement**
- Graduation rates
- Retention rates
- Job placement rates*

*Institutions are not required by the USDE (yet) to calculate job placement rates, but an institution must disclose any placement rates it already calculates, whether for individual programs or the entire institution. Some specialized accreditors have placement rate standards for professional programs (law school controversy)

**Misrepresentation**
Not a new regulation, but one that has a renewed focus by the U.S. Department of Education. USDE attention will be on patterns of (mis)behavior.

**Job Placement Rate for Graduates**
- As noted in the Fundamental Elements of MSCHE Standard 6 (page 23 of *Characteristics of Excellence*), an accredited institution is expected to possess or demonstrate:
  - Information on institution-wide assessments available to prospective students, including graduation, retention, certification, and licensing pass rates, and other outcomes as appropriate to the programs offered.

**Misrepresentation**
- Any false, erroneous, or misleading statement made by an institution, directly or indirectly to:
  - A student or prospective student
  - A member of the public
  - An accrediting agency, state agency, or the USDE
**Substantial Misrepresentation**

- Any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied to that person's detriment.

**Includes Statements by...**

- The institution
- One of the institution's representatives
- Those involved under contract to the institution for providing
  - Educational Programs
  - Marketing, advertising, recruitment, or admissions activities
  - Colleges can now be held accountable for any false or misleading claims made by a third-party vendor

**Some Potential Locations for False or Misleading Claims**

- Viewbooks and Catalogs
- Student Handbook
- Institutional Website
- Paid Advertising
  - Print
  - Broadcast (television, cable, radio)
  - Transit
  - Outdoor
  - Online

**Some Potential Locations for False or Misleading Claims**

- Written correspondence with current and prospective students or parents (print or electronic)
- Social media postings by an institutional official, acting in an official capacity

**Does Not Include Statements by...**

- Students via social media
- Vendors from other contractual agreements

**When making any claims in print, broadcast, or electronic advertising or promotions, be certain the claims are substantiated by facts.**

Where possible, cite the source of your information.
Possible USDE Actions for Substantial Misrepresentation

- Revocation of program participation agreements
- Limitations on participation in Title IV programs (Pell Grants, student loans)
- Denial of participation applications for federal programs
- Fine, limitation, suspension, or termination proceedings against your institution

A Word About Complaints to the Commission

It should also be noted that false or misleading claims by an institution could lead to MSCHE sanctions for being non-compliant with Standard 6: Integrity

Honesty and truthfulness in public relations announcements, advertisements, and recruiting and admissions materials and practices

...A Fundamental Element within Standard 6

General Institutional Information

- Privacy of student records (FERPA)
- Facilities and services for disabled students
- Price of Attendance (Net Price Calculator)
- Refund policy, including requirements for withdrawal and return of federal financial aid
- Textbook Information

During Summer 2011, the U.S. Department of Education clarified its focus on Substantial Misrepresentation:

- The Department will not evaluate nor potentially sanction, institutions for their substantial misrepresentations that do not fall within one of these three categories:
  - Educational Programs
  - Financial Charges
  - Employability of Graduates

General Institutional Information

- Educational programs
- Instructional Facilities
- Faculty
- Transfer of Credit Policies and Articulation Agreements
- Copyright Infringement Policies and Possible Sanctions
General Institutional Information

- Computer Use and Illegal File Sharing
- Student Activities
- Career and Job Placement Services

General Institutional Information:
Each Institution Must...

- Make a good-faith effort to distribute a mail voter registration form (for federal elections plus state elections for Governor) to each student enrolled in a degree or certificate program and physically in attendance at the institution

Health and Safety

- Drug and Alcohol Abuse Prevention Program and Policies
- Vaccination Policies
- Campus Security Policies, Crime Statistics (Clergy Act), and Crime Log
- Fire Safety Policies, Statistics, and Fire Log

General Institutional Information:
Each Institution Must...

- Make the voter registration form widely available to students at the institution
- Request the forms from the state at least 120 days prior to the deadline for registering to vote within the state

Intercollegiate Athletic Program Participation Rates and Financial Support Data

The HEOA indicates that an institution will be in compliance if the institution electronically distributes the voter registration form or provides an Internet address where such a form can be downloaded.

Your college/university does not need to comply with these requirements if your state does not have a voter registration requirement or if it allows voters to register at the time of voting.
Use Common Sense in Posting HEOA-Mandated Information!

Develop a single web page on your website to provide hyperlinks to the HEOA disclosure information.

- Develop a portal page and position it to maximize accessibility.
- The portal page provides a distinct entrance point on the website to all HEOA disclosure information.

The National Postsecondary Education Cooperative Suggests Several Approaches to Posting the Information

- Focus both on Compliance and Communication.
- Develop a single web page on your institution's website that provides hyperlinks to the HEOA disclosure information.
- Adopt a "3-click" approach.
- Use consumer-friendly labels and language whenever possible, and avoid institutional/technical jargon.
- Use a common set of content titles.

Adopt a '3-Click' Approach

- Position HEOA-required information so it can be accessed with a minimum amount of searching, with no more than 3 clicks from the main web page.
- Position the access to the HEOA information in a college-wide "About Us" link as opposed to a particular department/unit link where it may be difficult to find (Registrar, General Counsel, Financial Aid, etc.).
- The information will need to be accessed by current and prospective students alike.

Focus Both on Compliance and Communication

- Students will be more likely to seek information if the headings and titles reflect content rather than federal mandates.
  - Student Consumer Information rather than Federal Mandates.
  - Graduation Rates rather than Student Right to Know Act.


- The goal is to inform, not confuse.
- Define unusual terms, spell out commonly used acronyms, and use simple, short sentences. Do not assume that users will know what specific terms or acronyms mean.
- Where appropriate, label the timeframe for the information, such as the years/months covered by a crime report or graduation rate calculations.
Use a Common Set of Content Titles

- Label your disclosures by content, rather than the source of the information (Refund Policy rather than Business Office)
- Adopt simple, yet common content titles. This will help consumers compare information from various institutions.

These might include:

- Admissions recruiters and other admissions staff
- Financial Aid staff
- Alumni and Foundation staff
- Counseling staff
- Coordinator of student ambassadors/tour guides
- Others as appropriate

Although the information will be provided by multiple sources, assign an administrator the responsibility to review information for accuracy, consistency, clarity, and readability.

This is an excellent assignment for someone in your institution’s Communications, Marketing, or Public Relations operation.

Some Final Thoughts on Substantial Misrepresentation

- Misrepresentation can irreparably damage your institution’s image
- It can result in USDE sanctions
- It can result in adverse accreditation actions by Middle States
- It can lead to lawsuits by students and others
- It can cost senior leaders and others their jobs and/or their careers

To ensure that all bases are covered and a ‘rogue’ player in your midst does not create problems for the institution, bring all appropriate departments into the mix on HEOA information disclosure requirements.

The U.S. Department of Education now requires that institutions have published policies regarding emergency response and evacuation procedures.
Emergency Response and Evacuation Procedures

- You must be able to notify students and employees in a timely manner during dangerous situations on campus.
  - Shootings, bombings, abductions, and other violent crimes or threats
  - Severe weather emergencies (tornadoes, hurricanes, blizzards)
  - The USDE has sanctioned institutions for failing to do so, usually via hefty fines

Gainful Employment

- Highly controversial
- Originally intended to reign in several for-profit institutions, but later expanded to include selected certificate programs at community and technical colleges.
- Results from intense Congressional and USDE concerns regarding excessive student debt vs. potential earnings after graduation.
- Fought vigorously by trade associations representing for-profit institutions.
- Became effective July 1, 2011, but later struck down by the courts.

Emergency Response and Evacuation Procedures

- These regulations are a direct result of political pressures following the shootings at Virginia Tech, Northern Illinois, and elsewhere.

Gainful Employment

- Under the regulations, “Gainful Employment” programs were required to meet minimum standards for loan repayment rates and debt to earnings ratios.
- The regulations differed slightly for non-profit and for-profit institutions.

Emergency Response and Evacuation Procedures

- If you don’t already have one, develop a Crisis Communication Plan that makes use of social media, campus telephone systems, cellular networks, local television and radio broadcasters, members of the print media, and the institution’s website.
- Excellent software packages are now available for emergency communication with students and employees.
- Make certain that your chief public relations/media relations officer is a leading part of the crisis communications team.

The LIM College Model for Compliance
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The Commission will focus on the verification of compliance in four areas:

- Student identity verification in distance and correspondence education
- Transfer of Credit
- Title IV Cohort Default Rate
- Assignment of Credit Hours

Verification of Compliance with Accreditation-Relevant Federal Regulations

Initial Implementation for Spring 2013

Middle States will utilize a new process, assigning compliance reviewers who will function apart from the peer evaluation team and PRR readers.

These compliance reviewers will share their findings with the chair of the visiting team or the PRR readers.

As a federally recognized accreditor, MSCHE is obligated to ensure that its member and candidate institutions comply with accreditation-relevant federal regulations (CFR 600.2, 602.16, 602.17, 602.24, and the HEOA).

Distance or Correspondence Education

The Commission must verify that institutions have effective procedures in place to ensure that the students who register in a distance or correspondence education course are the same students who participate in and complete the course and receive the academic credit (34CFR 602.17(g)).
Institutions must provide the following documentation:

☐ Written procedure regarding the protection of student privacy in the implementation of such methods.

Institutions must provide the following documentation:

☐ Written description of the method(s) used to ensure student identity verification in distance or correspondence education courses.

Transfer of Credit

In accordance with 34 CFR 602.24 (e), the Commission must confirm that an "institution has transfer of credit policies that are publicly disclosed and include a statement of criteria established by the institution regarding the transfer of credit earned at another institution of higher education.”

Institutions must provide the following documentation:

☐ Written procedure for notifying students about projected additional charges associated with such verification.

Transfer Credit

Your institution must disclose any established criteria it uses regarding the transfer of credit earned at another institution, and a list of any institutions with which the institution has established an articulation agreement.
Transfer of Credit Policies

- The HEA requires that you publish your institution's Transfer of Credit policy.
- MSCH requires that you follow your Transfer of Credit policy. However, the Commission does not dictate what the policy should be.
- Note: Regional accreditation cannot be the sole determining factor for transfer of credit.

Title IV Cohort Default Rate

In accordance with 34 CFR 602.16 (a)(1)(x), the Commission must verify that the institution's three-year cohort default rate is within the federal limit.

All Relevant Policies Must Be Readily Available to Students and Employees

- Print or electronic (web) versions are acceptable
- Be certain that your institution has approved, "published," and widely disseminated student and employee grievance policies. From the MSCH perspective it is vital that the institution follows these published policies (Complaints Involving Member and Candidate Institutions)

Institutions must provide:

- Formal documentation from the US Department of Education regarding the institution's cohort default rate for the past three years;
- External audits of federal programs (A-133) for the past three years;
- Reports on compliance from the US Department of Education in regard to the cohort default rate.

Transfer of Credit Processes

- Evidence of written policies and procedures for making decisions about the transfer of credits, including all modes of delivery;
- Procedures that indicate the office(s) responsible for the final determination of the acceptance or denial of transfer credit.

Credit Hour

In accordance with 34 CFR 602.24 (f) the Commission "must conduct an effective review and evaluation of the reliability and accuracy of the institution's assignment of credit hours."
Credit Hour

- The Commission must review the institution's policies and procedures for determining the credit hours awarded as well as the application of the institution's policies and procedures to its programs and coursework.
- The Commission must make a "reasonable determination of whether the institution's assignment of credit hours conforms to commonly accepted practice in higher education."

Other evidence could include:

- Documentation from recent academic program reviews;
- New course or program approvals;
- Documentation for registration and catalog software or systems;
- Calendars, schedules, and course matrices;
- Course syllabi;
- Documentation of adherence to credit hour requirements, consistent with federal regulations, from a system or a disciplinary organization.

Institutions must provide the following:

- Written policies and procedures for credit hour assignment covering all types of courses, disciplines, programs, degree levels, formats, and modalities of instruction.

Institutions must provide the following:

- A description and evidence of the processes used by the institution to review periodically the application of its policies and procedures for credit hour assignment;
- A list of the courses and programs that do not adhere to the federal definition of "credit hour" or its equivalent as specified in the MSCHE Credit Hour Policy (online, hybrid, laboratory, studio, clinical, internship, independent study, and accelerated format, and evidence that such variations in credit hour assignment conform to commonly accepted practice in higher education.

Institutions must provide the following:

- Evidence that the institution's credit hour policies and procedures are applied consistently across the full range of institutional offerings.
- If the state in which your institution is licensed has credit hour regulations that are consistent with the federal credit hour definition, documentation of compliance with those state regulations may be sufficient evidence of compliance with the federal requirements.

Definition of Credit Hour

- Controversial because of "one size fits all" approach
- Federal definition is consistent with Carnegie Unit
- "Reasonable equivalencies" with verifiable student outcomes
- Peer reviewers will evaluate compliance
- Accreditors are required to address deficiencies and report non-compliance to USDE
Important Steps for Institutions

☐ Pay more attention to federal disclosure requirements
☐ Train admissions, financial aid, public relations/marketing, and other staffs on the requirements
☐ Assign someone at the institution to monitor compliance just as your ALO monitors MSCHE accreditation issues

Some Sources of Additional Information

☐ Information Required to be Disclosed Under the HEOA (report from the National Postsecondary Education Cooperative) http://nces.ed.gov/npec

Always remember, accreditors and federal regulators take compliance very seriously.

Signed certification statements are required with the self-study and PPR, indicating that the institution is in compliance with MSCHE’s Requirements of Affiliation, federal Title IV requirements, and the provisions of the HEOA.

Some Sources of Additional Information

☐ Most of the current regulations implementing the HEOA disclosure requirements are found in Chapter VI of Title 34 of the U.S. Code of Federal Regulations: http://gpoaccess.gov/e/ecfr/ecfrbrowse/Title34/34cfrv3_02.tpi

Some Sources of Additional Information


☐ Middle States Commission on Higher Education: http://www.msche.org