

The Accreditation Reform and Enhanced Accountability Act of 2016

S.3380, Senators Warren (D-MA), Durbin (D-IL) and Schatz (D-HI)

On September 22, 2016 Senators Elizabeth Warren (D-MA), Richard Durbin (D-IL) and Brian Schatz (D-HI) introduced the Accreditation Reform and Enhanced Accountability Act of 2016, which would amend provisions related to accrediting agency recognition under Title IV of the Higher Education Act (HEA). As summarized below, the legislation would drastically expand the role of the Federal government in accreditation matters by requiring the Secretary of Education to set federal standards for what constitutes institutional success with respect to student achievement. In place of an accreditor's careful assessment of institutional success in the context of each institution's mission, the bill substitutes federally-determined "bright line" standards, and forces accreditors to require institutions to meet them. Among its key provisions, the bill:

- 1. Reverses current limitations on Secretary of Education related to accreditation standards**
- 2. Establishes federal standards for student achievement**
- 3. Expands list of accreditation standards and mandates use of federal criteria for making accreditation decisions**
- 4. Requires establishment of specific federal thresholds related to student achievement, which must be met by institutions to remain accredited**
- 5. Requires accreditors to establish a new system of standard and enhanced reviews**
- 6. Specifies when accreditors must take action against an institution**
- 7. Requires credit transfer agreements for all institutions**
- 8. Clarifies law regarding differentiated accreditation**
- 9. Vastly increases institutional and accreditor disclosure requirements**
- 10. Subjects accreditors to new system of accountability which includes fines**
- 11. Establishes sweeping new conflict of interest provisions for accreditors**
- 12. Expands institutional "teach out" requirements**
- 13. Limits the ability of institutions to change accreditors**
- 14. Restates current law on principles of academic freedom**

A more detailed summary of each of these key provisions is below:

1. Reverses current limitations on Secretary of Education related to accreditation standards

- Current law prohibits the Secretary from establishing criteria related to the standards used by accreditors to assess an institution's success with respect to student achievement, and from regulating with respect to the standards of an accreditor.
 - The bill would add new language stating that the Secretary may not be prohibited from establishing regulations regarding any criteria for accreditors, including standards with respect to student achievement.

2. Establishes federal standards for student achievement

- Current law requires accreditors to assess an institution's success with respect to student achievement in relation to the institution's mission, which "may include different standards for different institutions or programs as established by the institution."
 - Under the proposal, the concept of having different standards is removed. Instead, accreditation determinations would be made based on "outcomes" and success with respect to student achievement in relation to the institution's mission "according to standards determined by the Secretary."
 - Current law specifies that student achievement standards include "consideration of State licensing examinations, consideration of course completion, and job placement rates."
 - Under the proposal, student achievement standards would be expanded to include: retention rates, graduation rates, cohort default rates, repayment rates, transfer rates, student earnings after graduation, and professional and vocational certification and licensing examination pass rates, as applicable, as well as "additional measures of student achievement, as determined by the Secretary."

3. Expands list of accreditation standards and mandates use of federal criteria for making accreditation decisions

- Federal law lists ten specific standards accreditors must include in their reviews (e.g., faculty, curricula, facilities, equipment and supplies).
- The bill expands the current list of standards to include:
 - outcomes and success with respect to student achievement in relation to the institution's mission, according to standards determined by the Secretary;
 - affordability, such as average net prices and changes in tuition and fees;
 - any actions taken by any state or the Federal government, including on-going investigations, lawsuits that have survived motions to dismiss, settlements, or any judgments against the institution in a State or Federal court; and
 - enrollment levels of Pell grant students
- The bill would require the Secretary to set the specific criteria for meeting each of these standards, which must then be used by accreditors to make accreditation decisions.

4. Requires establishment of specific federal thresholds related to student achievement, which must be met by institutions to remain accredited

- In order to be recognized by the Secretary, accreditors would have to require that each institution under its jurisdiction meet or exceed baseline thresholds established by the Secretary on student achievement measures for not less than 2 out of 3 consecutive years.
- These thresholds include:
 - The graduation rate for all students attending the institution;

- The 3-year cohort default rates (CDR) for the most recent available period;
- The 5-year cohort repayment rate; and,
- Any other measure determined by the Secretary in consultation with the Commissioner of the National Center for Education Statistics (NCES).
- The bill indicates that the Secretary will set the baseline threshold for each measure “in relation to the institution’s mission” but does not detail how this would be done.

5. Requires accreditors to establish a new system of standard and enhanced reviews

- Requires accreditors to conduct “standard reviews” at regular intervals and before an institution becomes accredited. Also requires “enhanced reviews” –
 - Immediately after learning the institution is the subject of an “investigation, settlement, or adverse judgment by a Federal authority (other than the Department) or a State for a violation relating to fraud or abuse, deceptive practices, or material harm to students enrolled, or previously enrolled,” or after any other situation or factor required by the Secretary through regulation, related to the minimum thresholds of student achievement
 - If the accreditor “has reason to believe” the institution is failing to meet its program responsibilities or is engaged in fraud or abuse, deceptive practices, or material harm to students enrolled, or previously enrolled; or
 - At any other time the accreditor determines necessary and as outlined in their standards.
- As part of any enhanced review, the accreditor must investigate the issue that triggered the review and make a determination if accreditation should be withdrawn, suspended, or if any other action should be taken.
- An institution subject to an enhanced review would be required to make additional disclosures, as determined by the Secretary, to students attending the institution. In addition, accreditors would be required to notify the public, the Secretary, appropriate state licensing agencies, and the state attorney general that it has initiated an enhanced review, the basis for the review, the information obtained through the review, including the institution’s performance on the student achievement measures, the outcome of the review, and an explanation for any action taken.

6. Specifies when accreditors must take action against an institution

- Requires accreditors to take immediate action if, for example, there is a change in institutional ownership, rapid change in size of student population, any notification by the Secretary of poor financial health (including lower credit rating or heightened cash monitoring), any substantive change to programs or locations, or any other event determined appropriate by the Secretary or accreditor.
- Specifies the actions that may be taken by the accreditor in such cases, including an enhanced review, request for more information, increased monitoring, a formal accrediting action or other actions determined appropriate by the accreditor.

7. Requires credit transfer agreements for all institutions

- Requires all institutions accredited by the same accreditor to have a credit transfer agreement in place within 4 years. Agreement must allow transfer for all general education courses and for courses required as part of substantially similar programs.

8. Clarifies law regarding differentiated accreditation

- Allows accreditors to designate institutions as “accredited with distinction” or “at-risk.” The Secretary will define what these categories mean based on the student achievement standards and in relation to the institution’s mission.
- Clarifies that nothing prevents an accreditor from establishing differentiated accreditation processes for institutions, based on risk.

9. Vastly increases institutional and accreditor disclosure requirements

- Requires the Secretary to establish a standardized online accreditation disclosure system and requires institutions – as part of the Title IV Program Participation Agreement (PPA) – to use the system on their website to disclose and update, as necessary, their accreditation status and provide links to any supporting public documentation related to the institution’s status, including correspondence to and from their accreditor.
- Expands the list of entities to which accreditors must disclose final agency actions to include DOD, FTC, CFBP, etc. Must provide a summary (current law) as well as a “justification” for the final decision.
- Requires accreditors to disclose any “negative action taken,” including an order to show cause or placement on probation (current law covers “adverse actions”), and to turn over to the Secretary “all accreditation documents” when an institution closes.
- Requires the Secretary to develop common definitions for accreditation statuses and actions, and maintain a federal website for all accreditation documents, including site-visit reports, decision letters, a list of members of the review committees and all other documents the Secretary determines appropriate.

10. Subjects accreditors to new system of accountability which includes fines

- Requires the Secretary to fine an accreditor for failing to notify the Secretary of concerns about an institution. (E.g., if an accreditor fails to notify Secretary it had reason to believe an institution was failing to meet its program responsibilities or was engaged in defrauding students).
- Requires the Secretary to initiate a “performance-based review” of any accreditor when a Federal or State agency finds that an institution accredited by that agency has violated a Federal or State law related to fraud, deceptive practices, etc. The review must determine if the accreditor is in compliance and, if not, must either impose a fine; limit, suspend, or terminate recognition; and/or require the accreditor to take “appropriate action.” Any fines imposed are to be assessed equally to each institution subject to the jurisdiction of such accreditor.

11. Establishes sweeping new conflict of interest provisions for accreditors

- The bill would prohibit individuals from participating in accreditation reviews, serving in a decision making capacity, or on commission boards if they or a family member is an administrative officer or has a fiduciary responsibility for any institution accredited or seeking accreditation from such accreditor, has a financial stake in ANY institution of higher education (regardless of location), or is ineligible to participate based upon an affiliation with an institution that has a history of administrative or legal actions, per regulations
- In addition, bars individuals from participating in the review of an institution in which an individual or family member was an employee in the preceding three years.

12. Expands institutional “teach out” requirements

- Current law requires an institution to submit a teach out plan to their accreditor for approval if the accreditor acts to withdraw, terminate, or suspend accreditation or if the institution intends to cease operations. Under the proposal, institutions would also have to provide a plan if the accreditor places the institution under “show cause.” In addition, it would require a plan within 30 days if the institution:
 - Is deemed by the accreditor as a high risk institution;
 - Is required to post a letter of credit;
 - Is placed on heightened cash monitoring (HCM) 2 status;
 - Receives a failing financial responsibility composite score;
 - Is under an enhanced accreditation review; or,
 - Is “at-risk” under regulations prescribed by the Secretary.
- Such plans may not be approved if they include a plan for participation of any institution that is the subject of an investigation, etc. related to defrauding students.

13. Limits the ability of institutions to change accreditors

- Requires approval from Secretary and requires an institution to have received full reaccreditation from the prior agency during the prior 2 years.

14. Restates current law on principles of academic freedom

- Includes a Sense of Congress that nothing in the Act be construed to provide authority to the Secretary to limit academic freedom. The Secretary is already prohibited from interfering in academic matters and curricula under the Department’s organizing act.