

9/14/09

**NAICU Rule of Construction
Amendments to Title VII of the Higher Education Act**

Purpose - Strike or revise provisions that are not necessary for achieving the goals of the title but that do raise concerns about inappropriate State control over private, nonprofit institutions.

Explanation: The intent of Section 782 to offer grant support for efforts to increase access to, persistence in, and completion of postsecondary education programs is clearly spelled out and supported in numerous provisions. The provisions listed below are not needed to assure the achievement of the goals of the program, but they do raise substantial concerns about inappropriate State control over private, nonprofit institutions of higher education. The first provision aligns current law regarding private college participation in the articulation agreements (Section 486A) authorized in the 2008 reauthorization of the Higher Education Act.

Legislative language:

[NOTE: new language in bold.]

(1) **On page 19, lines 5-10—**

Rewrite subclause (IV) to read as follows:

“(IV) improving coordination between **public** two-year and **public** four-year institutions of higher education in the State, including supporting comprehensive articulation agreements between such institutions; and”

(2) **On page 21—**

Rewrite clause (ii) to read as follows:

“(ii) encourage State ~~polieies~~ **practices** that are designed to improve rates of enrollment and persistence in, and completion of, postsecondary education ~~for all categories of institutions of higher education described in section 132(d) in the State;~~

(3) **On page 21, strike lines 14-29.** [This strikes clause (iv).]

~~“(iv) considers the resources of public and private institutions of higher education, organizations, and agencies within the State that are capable of providing access to postsecondary education opportunities within the State; and”~~

Renumber clauses accordingly.

#2 – Add provisions protecting the independence of private, nonprofit institutions of higher education.

Page 33, beginning on line 14, strike section 785

and insert the following:

SEC. 785. PARTICIPATION OF PRIVATE, NONPROFIT INSTITUTIONS OF HIGHER EDUCATION.

(a) VOLUNTARY PARTICIPATION.—A private, nonprofit institution of higher education may voluntarily elect to participate in a State’s efforts under this part to increase postsecondary enrollment, persistence, and completion. A State—

(1) shall not require any private, nonprofit institution to participate in such efforts; and

(2) may require such an institution that voluntarily elects to participate in such efforts to provide appropriate information to allow the State to assess the institution’s progress towards the goals described in subclauses (I) and (II) of section 782(c)(2)(A)(i).

(b) RULE OF CONSTRUCTION.—Nothing in this part, including voluntary participation described in subsection (a), shall be construed to—

(1) authorize the Secretary, a State, or an officer or employee of the Department or of a State to exercise any direction, supervision, or control other than that currently granted over a private, nonprofit institution of higher education, including control over curriculum, program of instruction, administration, governance, personnel, articulation, the awarding of credit, graduation or degree requirements, or admissions;

(2) authorize the Secretary, a State, or an officer or employee of the Department or of a State to require a private, nonprofit institution of higher education to participate in a longitudinal data system; or

(3) limit the application of the General Education Provisions Act.

(c) ENFORCEMENT.—If any State fails or refuses to comply with any provision of this section, the State shall no longer be eligible for assistance under this part.”.