

Accreditation and Student Learning Outcomes
Brief History of Recent Legislative and Regulatory Activity
Prepared by the National Association of Independent Colleges and Universities
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Background

Current discussions of accreditation and student learning outcomes have their roots in the efforts of former Secretary of Education Margaret Spellings to use the accreditation process to force colleges and universities to adopt rigid measures of student achievement. The Secretary of Education's authority to take such steps is indirect, but powerful. Institutions of higher education must be accredited by an agency that is formally "recognized" by the Department of Education, in order for students at the institutions to be eligible for federal student aid.

Recognition decisions are made with the advice of the National Advisory Committee on Institutional Quality and Integrity (NACIQI). In the early 2000's, that group began trying to force agencies to develop "bright-line" standards for assessing student learning at institutions. An accreditation agency generally comes before NACIQI once every 5 years.

The Department attempted a more comprehensive approach by initiating a "negotiated rulemaking" process on accreditation in February 2007—even though at that time the accreditation provisions of the law had not been changed since 1998. The primary purpose was to change the accreditation regulations so that rigid measures of student achievement would be required. Discussion of this topic dominated the rulemaking sessions—which ended with no consensus on the issue. The Department then suspended its efforts to write new accreditation regulations.

Higher Education Community Response

In the midst of the 2007 negotiated rulemaking process, the leadership of six major educational associations¹ concluded that the efforts of the Department would fundamentally change the relationship among accreditors, institutions, and the federal government. In a May 4 white paper distributed to all their member institutions, they outlined four central concerns about the regulatory proposals under discussion—the chief of which was that higher education was being driven towards a "one-size fits all model of academic quality."

Congressional Response

Concerned that the Secretary was overstepping her authority, the Senate included protective language in the Higher Education Act reauthorization bill (S. 1642) that was approved in July 2007. In particular, S. 1642 revised the language (Section 496(a)(5)(A))

¹ The American Council on Education (ACE), the Association of American Universities (AAU), the American Association of Community Colleges (AACC), the American Association of State Colleges and Universities (AASCU), the National Association of Independent Colleges and Universities (NAICU), and the National Association of State Universities and Land Grant Colleges (NASULGC). [NASULGC is now the Association of Public and Land-Grant Universities (APLU).]

that dealt with an accreditation agency's review of an institution's success with respect to student achievement, to make it clear that the current mission-based review of institutions was not to be replaced by uniform measures of student learning. (It also replaced NACIQI and provided for congressional as well as Secretarial appointments to it.)

Institutions of higher education strongly supported this and related protective provisions and were pleased that nearly identical provisions were included in the original House reauthorization bill (H.R. 4137). Consequently, colleges were alarmed when the committee adopted an amendment striking the protective language described above—thereby re-opening the entire issue.

Following the House committee action in November 2007, representatives of institutions of higher education and accrediting agencies engaged in a series of discussions. These discussions were designed to develop language that would provide an appropriate balance between accreditors and institutions with respect to assessment of student achievement. All parties agreed to the addition of two construction clauses intended to clarify the respective roles of accreditors and institutions. These clauses were seen by all involved as preventing either accreditors or institutions from exercising control over the other—in the same way that the language in both reauthorization bills was intended to keep the Secretary from doing so. The intent behind the language was to uphold the cooperative efforts between accreditors and institutions as they had existed for decades. This proposal was included in the final version of the Higher Education Opportunity Act (HEOA), signed into law on August 14, 2008.

Regulatory Process

HEOA prohibited the Department from regulating on the student achievement standard—so the regulation on that standard restates the law. Initially, the two construction clauses related to that standard were not included in the proposed regulatory language. After the negotiators requested they be added, the Department proposed language that altered the statutory language. Non-federal negotiators protested, and the language was revised to be consistent with the language of the statute.

The Department then made another attempt to regulate on student achievement, by including language in the accreditation monitoring section of the regulations requiring the periodic collection of student achievement measures. Non-federal negotiators agreed to this additional provision after modifying it to include a specific cross-reference to the two construction clauses. Final regulations were published on October 27, 2009.

Sub-regulatory Process

On January 11, 2010, the Department sent a letter to the executive directors of accreditation agencies describing the provisions of the final regulations and offering “compliance guidance.”

In February 2010, the Department completed a draft guide for accreditation agencies seeking federal recognition (“Guide to Criteria for Recognition”)—including detailed instructions regarding “compliance factors” and “suggested documentation.” The Department is currently soliciting comments from accreditors on the draft guide.