

**Short and Long Term Impacts of the Higher Education Opportunity Act (“HEOA”)  
(P.L. 110-315)**

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**I. Clery Act Reporting**

A. Law Enforcement (§ 485(f)(1))

1. HEOA requires institutions to provide a statement of current policies concerning the law enforcement authority of campus security personnel, their working relationship with state and local law enforcement, including any operational memorandums of understanding for the investigation of crimes, and the institution’s policy to encourage prompt and accurate reporting of all crimes.

B. New Hate Crimes to Report (§ 485(f)(1)(F))

1. The following crimes must be reported (according to type of prejudice) if committed as “hate crimes:” larceny-theft, simple assault, intimidation, and destruction, damage or vandalism of property.

C. Emergency Response & Evacuation ( § 485(f)(1)(J))

1. Institutions must provide in their annual security report a statement of **current** campus policies regarding immediate emergency response and evacuation procedures.
  - a. Campus is defined in section 485(f)(6)(A)(i) of the Higher Education Act to mean “a building or property owned or controlled by the institution within reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to the institution’s educational purpose (includes dorms); or used by students and not within the same reasonably contiguous geographic area (excludes branch campuses).”
  - a. Must include procedures to *immediately* notify the campus community once a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or staff has been confirmed as occurring on campus (unless such notification would compromise efforts to contain the emergency).
    1. For on-campus incidents, procedures must articulate a method to promptly determine if there is an immediate threat to health or safety.

2. Must also include a method(s) to disseminate the emergency notification **immediately** (examples given include through the use of sirens, public address system, reverse 911, text alerts, posting to the institution’s web site).
  3. Delay in notification allowed only if there is a “professional determination by law enforcement (may include campus law enforcement officials as well) that issuing the notice would put the community at greater risk” and then delay must be for as short a time as possible.
- b. Must include procedures to publicize emergency response and evacuation procedures on an annual basis.
  - c. Must include procedures to test emergency response and evacuation procedures on an annual basis.
- D. Crime Victims (§ 485(a)(26))
1. It is a condition of eligibility to participate in the Title IV programs that the institution, upon written request, disclose to any alleged victim of a crime of violence or nonforcible sex act the report of the results of the institution’s disciplinary proceeding against the alleged perpetrator.
- E. Missing Students (§ 485(j))
1. Any institution that participates in a Title IV program and maintains on-campus student housing must establish a missing student notification policy and procedures for on-campus residents.
  2. The policy must require the institution to:
    - a. Inform each student that they may identify a confidential contact to be notified not more than 24 hours after the student is determined missing and provide a means for students to register those confidential contacts.
    - b. Notify students under 18 years of age that are not emancipated that the institution must notify their parents not later than 24 hours after the student is determined missing.
    - c. Advise students that it will notify law enforcement no later than 24 hours after a student is determined missing.
    - d. Require campus security to initiate the emergency contact procedures once a student, for whom a missing persons report has been filed, has been missing for 24 hours.

1. Those notification procedures must include procedures for:
  - a. Official notification of appropriate individuals at the university;
  - b. Forwarding any missing persons report to campus security as soon as it is filed;
  - c. Notification of the student's confidential contact if a missing persons report has been filed and the student has been missing for 24 hours;
  - d. Notification of the student's parent if he or she is under 18 and not emancipated, a missing persons report has been filed, and the student has been missing for 24 hours; and
  - e. Notification of the appropriate law enforcement authorities if a missing persons report is filed, the student has been missing for more than 24 hours, and the student neither has a confidential contact on file nor is under 18 years of age.
  
3. Section 485 does not create a private right of action or create a cause of action against any institution or employee for civil liability.

F. Fire Safety Disclosures (§ 485(i))

1. Any institution that participates in a Title IV program and maintains on-campus student housing must, on an annual basis, publish a fire safety report containing information on the campus' fire safety practices and standards, including
  - a. Statistics from the most recently available years on the number of fires and causes, number of injuries from the fires that had to be treated at a medical facility, number of fire-related deaths, and value of property damaged by fire. These statistics must be provided to the Secretary in a separate annual report as well.
  - b. Description of each on-campus student housing facility fire safety system.
  - c. The number of regular mandatory supervised fire drills.
  - d. The institution's policies on portable electrical appliances, smoking and open flames

- e. The institution's procedures on evacuations and policies on fire safety education training programs for students, faculty and staff.
  - e. The institution's plans for future improvement of fire safety.
  - 2. Institutions must keep an annual log in which they record all fires in on-campus student housing, including the nature of the fire, date, time and general location.
  - 3. The Secretary is required to coordinate with nationally recognized fire organizations and representatives of higher education institutions, representatives of associations of institutions of higher education and other organizations that represent and house a significant number of students to identify exemplary fire safety policies and to disseminate the exemplary policies to the Administrator of the United States Fire Administration and to the public.
  - 4. HEOA prohibits the Secretary from establishing a standard of care. Also, the Department's Dear Colleague letter notes that this section does not affect an institution's obligations under FERPA or HIPPA and does not create a cause of action against any institution or employee for civil liability. (GEN 08-12 at100)
- G. Penalties for Drug Violations (§ 485(k))
- 1. Any institution of higher education must provide to students, upon enrollment, a notice of the penalties for a drug conviction on the student's federal financial aid.
  - 2. If a student subsequently loses eligibility for federal financial aid as a result of a drug conviction, the institution must notify the student of his or her loss of eligibility and how he or she may regain it.

## **II. Drug and Alcohol Abuse Prevention (§ 120(a)(2)(B)).**

- A. As of 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 or as part of the institutions' activities.
  - 1. Campus is defined in the same manner as it is defined for campus safety reporting purposes. *See* 20 U.S.C. § 485(f)(6). In general, that definition includes any building or property owned or controlled by the institution within a reasonably contiguous geographic area used in direct support of the institution's educational purposes or used by students and supporting institutional purposes.

- B. Institutions also must 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.

### III. Copyright Infringement and Illegal File Sharing (§ 485(a), 487(a))

- A. Institutions must 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.
- B. Institutions must also provide students a summary of the penalties for violating federal copyright laws. It does not appear that this summary must be published, just made available to students that inquire.
- C. Institutions must provide a description of their 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. It does not appear that this description must be published, just made available to students that inquire.
- D. Institutions must, as a condition of their eligibility to participate in the Title IV programs, 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.”
  - 1. HEOA does not endorse any specific type of technology-based deterrent.
  - 2. 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.”
- E. Institutions must “*to the extent practicable*” provide alternatives to illegal downloading or peer-to-peer sharing of copyrighted material.
  - 1. Practicality is to be determined in consultation with the institution’s chief technology officer and other university officials.

### IV. Textbooks (§133)

- A. By July 1, 2010, institutions that receive Title IV funds must, “to the maximum extent practicable” disclose on their Internet course schedule used for pre-registration the International Standard Book Number (“ISBN”) and retail price information of required and recommended textbooks and supplemental materials for each course listed on the institution’s course schedule.
- B. If the ISBN number is not available, the institution must disclose the author, title, publisher and copyright date instead.

- C. If the institution determines it is not practicable to disclose either the ISBN number or the alternative information, it must place “To Be Determined” on its Internet course schedule.
- D. Disclose on any written course schedules that textbook information is available on their internet course schedules and provide the web address.
- E. As soon as practical and at the bookstore’s request (for a bookstore that is operated by, or in a contractual relationship or affiliated with the institution), the institution must provide the most current information regarding course schedule for the subsequent academic period, the number of students enrolled in each course, the maximum student enrollment in each course, and the ISBN numbers and retail price information of all required or recommended textbooks and supplemental materials.
- F. This information may be provided in a manner of the institution’s choosing. Thus, the institution may wish to provide a link in the internet course schedule to another website
- G. Institutions are encouraged to provide students information on institutional programs for renting textbooks or buying used textbooks, institutional guaranteed textbook buy-back programs, institutional alternative content delivery programs, and other cost-saving strategies.
- H. Publishers must provide faculty and staff of an institution the net price of a book to the campus bookstore and, if available, the price to the public; the copyright dates of the three previous editions; a review of the content revisions of a new edition; alternative formats that might be available and the net price to the bookstore and, if available, to the public; unbundled textbooks and supplemental materials separately priced unless part of an “integrated textbook.”
- I. General Accounting Office (“GAO”) will review implementation of these provisions in five years as well as their costs and benefits to students and institutions.
- J. The Act also establishes an advisory committee and a competitive grant program to make course materials more accessible to students with disabilities as well as grants for pilot bookstore rental projects.
- K. The Secretary is prohibited from regulating on these provisions of the HEOA. However, the DOE’s Dear Colleague letter notes that the Department will “monitor institutions and review student complaints relating to these provisions.”

**V. Costs and Consumer Information Disclosures**

- A. High Cost Institutions (§ 132(c)-(f))
  - 1. Beginning July 1, 2011, the Secretary will publish six lists of institutions

- a. 5% of institutions with the highest tuition and fees.
  - b. 5% of institutions with the highest net price.
  - c. 5% of institutions with the largest increase in tuition and fees over the three most recent academic years.\*
  - d. 5% of institutions with the largest increase in net price over the three most recent academic years.\*
  - e. 10% of institutions with the lowest tuition and fees, and the 10% of institutions with the lowest net price.
2. Net price for all but public institutions is defined as the average yearly price actually charged to full-time, first-year undergraduate students receiving student aid at an institution of higher education and is calculated by subtracting the average need-based and merit-based grant aid from the institution's cost of attendance. For public institutions, the calculations are determined for students who are in-state residents. (GEN 08-12.)
  3. Each of the above lists of "high cost" institutions must be broken down by categories as follows:
    - a. 4-year public, private nonprofit, and proprietary institutions.
    - b. 2-year public, private nonprofit, and proprietary institutions.
    - c. Less than 2-year public, private nonprofit, and proprietary institutions.
  4. Institutions included on either the list of largest net increase in tuition and fees or the largest increase in net price must report to the Secretary on the following:
    - a. The areas in their budget with the greatest cost increases.
    - b. An explanation of those cost increases.
    - c. The steps the institution will take to reduce those cost increases.
    - d. For schools included on one of the two lists for two or more consecutive years, the progress made on the steps reported in the prior year.

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\* Does not apply to institutions with increases equal to or less than \$600 a year. Beginning in 2014 and every three years thereafter, this amount will be increased based on the Consumer Price Index.

- e. The agency or agencies within the State government responsible for cost increases and an explanation of how the institution participates in determining those increases (if it does not have the sole ability to increase costs).

B. Price Calculator (§ 132(h))

- 1. The Secretary has one year from August 14, 2008 to develop a net price (same definition as above) calculator that can be used to compare the cost of attending various institutions.
- 2. Institutions that receive Title IV funds will be required to make a net price calculator – either that developed by the Secretary or one developed by the institution with at least the same elements as the Secretary’s calculator – available on their website within two years of the calculator’s development by the Secretary.
- 3. Calculator must be accompanied on the website by a disclaimer that indicates that the price derived from the calculator is not final, is not binding and may change. Also, the disclaimer must note that the student must complete a FAFSA to be eligible to receive federal student aid and a link to the Department’s FAFSA website must be included.

C. Consumer Information (§ 132(i)-(j))

- 1. By August 14, 2008, the Secretary is required to make the following information, collected through IPEDS (see below), publicly available on the College Navigator website:
  - a. Statement of the institution’s mission.
  - b. Total number of undergraduate students that applied, were admitted, and enrolled in the institution.
  - c. Reading, writing, mathematics, and combined scores on the SAT and ACT for the middle 50% range of institution’s freshman class.
  - d. Number of first-time, full-time, and part-time students enrolled at the undergraduate and graduate levels.
  - e. Number of degree- or certificate-seeking undergraduate students who have transferred from another institution.
  - f. Percentages of male and female undergraduate students at the institution.



- g. Percentage of first-time, full-time, degree- or certificate-seeking undergraduate students who are from the state in which the institution is located.
- h. Percentage of first-time, full-time, degree- or certificate-seeking undergraduate students who are from other states.
- i. Percentage of first-time, full-time, degree- or certificate-seeking undergraduate students who are international students.
- j. Percentages of first-time, full-time, degree- or certificate-seeking students disaggregated by race and ethnic background.
- k. Percentage of undergraduate students who are formally registered with as students with disabilities if more than 3%.
- l. Percentage of first-time, full-time, degree- or certificate-seeking undergraduate students who obtain a degree or certificate within the normal time for completion or graduation, 150% of the normal time, and 200% of the normal time.
- m. Number of certificates, associate degrees, baccalaureate degrees, master's degrees, professional degrees and doctoral degrees awarded.
- n. Undergraduate major areas of study with the highest number of degrees awarded.
- o. Student-faculty ratio, the number of full-time and part-time faculty, and the number of graduate assistants with primarily instructional responsibilities.
- p. Cost of attendance for first-time, full-time undergraduate students who live on campus and who live off-campus (and for public institutions, those costs further broken out for in-state and out-of-state residents).
- q. Average annual grant amount awarded to a first-time, full-time undergraduate student.
- r. Average annual amount of federal student loans provided to undergraduate students.
- s. Total annual grant aid awarded to undergraduate students from federal, state, institutional, and other known sources.
- t. Percentage of first-time, full-time, undergraduate students receiving federal, state, and institutional grants, student loans, and any other type of financial assistance the institution knows of that are provided publicly or through the institution (e.g., work study funds).

- u. Number of students receiving Pell Grants.
  - v. Institution's cohort default rate.
  - w. Information on campus safety required to be collected under Section 485(i) of HEOA.
  - x. Link to the institution's website providing further information on student activities, services for disabled students, career and placement services, and transfer of credit policies.
  - y. Link to the appropriate section of the Bureau of Labor Statistic's website with regional data on starting salaries in all major occupations.
  - z. Link to any report on cost increases the institution was required to prepare as a result of being placed on one of the Secretary's lists related to costs.
  - aa. Availability of alternative tuition plans.
2. Completion and Graduation Rates (§ 485(a)(4))
- a. Institution's are already required to provide information on completion rates and graduation rate rates for students, but the HEOA now allows institutions to exclude the period that students who leave school to serve in the Armed Forces, to go on official church missions, or to serve with a foreign aid service of the federal government are away from the institution from its calculations, if this subset of students encompasses 20 or more percent of the institution's full-time certificate or degree seeking undergraduate student body.
  - b. Institutions must now provide their completion and graduation rate information to students and their student athlete reporting to the Department disaggregated by gender, racial and ethnic subgroup, recipients of Pell Grants, recipients of FFEL or Direct loans who did not receive Pell Grants, students who received neither Pell Grants nor FFEL or Direct loans.
    - 1. If the number of students in any group is not large enough to be statistically reliable or to protect the privacy of the members of the group, the institution shall note that it enrolled too few students in the group to report.
    - 2. Two-year institutions do not become subject to this requirement until the 2011-2012 academic year.
3. Commissioner of Education is given the authority to "update and improve [IPEDS], including the reporting of information by institutions" to gather this additional data.

- a. Much of the information required above is already collected through the IPEDS database.
- b. However, the Commissioner of Education has issued several Federal Register notices (September 24 and December 2) requesting non-substantive changes to IPEDS collection items as well as some new collection items to ensure that the all the information HEOA requires to be collected is collected.
  1. Public comments were due by November 24, 2008 and January 2, 2009, respectively. Amendments to the Spring 2009 collection should be forthcoming.

## **VI. Teachers**

### **A. Teacher Preparation Programs (§ 205(a)(1))**

1. Every institution that offers teacher preparation programs or alternative certification programs must report annually to the state and general public, in a uniform and comprehensible manner that conforms with the definitions and methods established by the Secretary, the following:
  - a. Whether it satisfied its annual goal for increasing the number of teachers in areas designated by the Secretary as ones of shortage, the steps it is taking to achieve those goals, and steps it is taking to improve its performance in meeting those goals.
  - b. A description of the activities undertaken to assure the Secretary that the institution is providing prospective teachers training that responds to identified local needs, the instructional decisions teachers will have to make in the classroom, diverse populations, urban and rural environments, and for special education teachers to core academic subjects.
  - c. The percentage of students who have finished all nonclinical coursework and taken and passed the state teacher licensing examination in the previous year.
  - d. The percentage of all students who have passed the state teacher licensing examination during the previous year.
  - e. The percentage of students who completed the traditional teacher preparation program versus an alternative certification process that took and passed the licensing examination during the previous year.
  - f. The average scaled score for all students who took the state teacher licensing examination during the previous year.

- g. A comparison of the program's pass rate on the teacher licensing examination with the average pass rate for other programs in the state.
- h. A comparison of the program's average scaled scores on the teacher licensing examination with the average scaled scores for programs in the state.
- i. A description of the criteria for admission into the institution's teacher preparation program, the number of students in the program disaggregated by race, ethnicity and gender, the average number of hours of supervised clinical experience required, the number of full-time equivalent faculty and students in the clinical experience, and the total number of students from the program that have been certified as teachers disaggregated by subject and area of certification.
- j. If state approval or accreditation of the teacher preparation program is required, a statement that the program is appropriately approved or accredited.
- k. Whether the program has been designated low-performing by the state based on criteria such as the program's ability to increase the percentage of highly qualified teachers in the state, the academic achievement of elementary and secondary students, and the standards for entry into the teaching profession.
- l. A description of the activities undertaken to assist teachers with integrating technology into their curricula and instruction.
- m. A description of the activities aimed at preparing general education and special education teachers to teach students with disabilities effectively.

**B. Teacher Quality Partnership Grant Reporting (§ 205(a)(2))**

- 1. Any institution receiving a Teacher Quality Partnership Grant will also be required to report annually on the progress of the partnership toward meeting the objectives of its evaluation plan (as described in Section 204 of the HEOA).

**VII. Transfer of Credit (§ 485(h))**

- A. Any institution that participates in a Title IV program must publicly disclose, in a readable, comprehensible format, its transfer of credit policy, including at a minimum, the criteria the institution uses to determine whether to transfer credits from another institution and a list of the schools with which the institution has articulation agreements.

- B. Nothing in the HEOA authorizes the Secretary or the National Advisory Committee on Institutional Quality and Integrity to require any particular transfer of credit policy of an institution, nor any particular procedures or practices that relate to transfer of credit. No Department employee is to exercise discretion, supervision, or control over the curriculum, program of instruction, administration or personnel of any institution of higher education.
- C. HEOA also notes that it does not create a legally enforceable right for a student to require an institution to accept credits from another institution.

### **VIII. Lender Disclosures**

- A. Sections 152, 153, 433, 485 and 487 of the HEOA contain a number of provisions on disclosures institutions that maintain a preferred lender list must make. These provisions also address conflicts of interest, codes of conduct, and prohibited transactions.
- B. Title X of the HEOA subjects private student loans to the Truth in Lending Act and adds a number of disclosures that lenders of private student loans must make to borrowers at the time of the application or solicitation of the loan, approval of the loan, or consummation of the loan. Title X also prohibits certain transactions that lead to conflicts of interests.

### **IX. Implementation of the HEOA**

- A. Effective Dates of Changes Required Under HEOA.
  - 1. Date of enactment - August 14, 2008 - unless otherwise indicated in the Act.
  - 2. The Secretary must begin publishing required lists of “high cost” institutions by July 1, 2011.
  - 3. The U.S. Department of Education (the “Department” or “DOE”) must make all consumer disclosures available on the College Navigator website by August 14, 2009.
  - 4. The Secretary of DOE must develop a net price calculator by August 14, 2009 and institutions must post a calculator on their websites by August 14, 2011.
  - 5. Most of the provisions of Title X, the Private Student Loan Transparency and Improvement Act, become effective no later than February 14, 2010.
- B. Department of Education Rulemaking
  - 1. The provisions of most Titles of the HEOA will be implemented through regular notice and comment rulemaking.

2. Title IV of the HEOA, however, must be implemented through negotiated rulemaking.
  - a. DOE published a list of five negotiating committees to address topics related to student loans, accreditation, the Clery Act amendments, and general issues of concern.
  - b. Nominations were due at the end of January 2009, after which the Secretary will appoint people to fill the five negotiating committees.
  - c. Committees will meet, on average, three times during the Spring of 2009 to develop proposed regulations that will be submitted to the public for comment.
  - d. DOE's Master Calendar regulations require that the final regulations be issued by November 1, 2009 to go into effect with the new award year on July 1, 2010.

C. Department of Education Guidance

1. Dear Colleague Letter GEN-08-12 (available at <http://ifap.ed.gov/dpclatters/GEN0812FP0810.html>) provides some further guidance on implementing the provisions of the HEOA until regulations are finalized.
2. That guidance notes that "The summaries are provided to assist institutions to understand the changes to the HEA, and do not change any requirements in the law. Affected parties are responsible for taking the steps necessary to comply by the effective dates established by the HEOA, unless the HEOA specifies that regulations are necessary to implement certain provisions or, if so indicated by the Department, operational steps must be taken by the Department before parties may comply. Because this will require program participants to implement a large number of new provisions before receiving guidance from the department, during subsequent reviews of compliance with the HEOA, we will take into account any written guidance that had been provided by the Department during the period under review or, as applicable, the absence of such guidance."