Change of Control, Structure and Organization

Institutions contemplating a Change of Control, Structure or Organization should consult HLC Policy INST.B.20.040: Change of Control, Structure or Organization and should contact HLC as early in the process as possible. Candid and timely communication between HLC and the institution will facilitate the review process.

POLICY BACKGROUND

HLC policies on Change of Control, Structure or Organization, last revised in February 2010, makes clear that HLC oversight extends beyond transactions such as merger or sale to transactions that change, or have the potential to change, the control of an institution or its fundamental structure and organization.

INSTITUTIONAL ELIGIBILITY

Only institutions that are currently accredited by HLC are eligible to apply for a Change of Control, Structure or Organization. Institutions in candidate status will need to file a new Eligibility Filing and seek a new candidacy status if they must undergo a Change of Control, Structure or Organization. Applying institutions are encouraged to complete any changes in their structure, governance or ownership prior to submitting an Eligibility Filing.

Approval of any proposed Change of Control, Structure or Organization is at the discretion of the Board of Trustees. An institution must file an appropriate application. The Board will determine whether the proposed Change of Control, Structure or Organization meets the requirements of HLC.

The Board may consider a Change of Control, Structure or Organization for an HLC-accredited institution under sanction or Show-Cause only when there is substantial evidence that the proposed transaction will help the institution resolve all the issues that led...
to the sanction or the Show-Cause order. The Board will not consider a Change of Control, Structure or Organization for an institution that has had its HLC accreditation withdrawn, even if that action is not yet a final decision, or where the institution has been notified of the Board’s intent to withdraw accreditation.

An institution that is not accredited by HLC and that has had its accreditation withdrawn or that has been placed on sanction or Show-Cause by another institutional accreditor recognized by the U.S. Department of Education or by the Council for Higher Education Accreditation will not be considered for inclusion as a component of an institution accredited by HLC.

HLC also will consider any sanctions or loss of accreditation by specialized or professional accreditors in considering a proposed transaction.

APPROVAL FACTORS
The Board will review an application for Change of Control, Structure or Organization against the approval factors outlined in HLC policy:

1. Extension of the mission, educational programs, student body and faculty that were in place when HLC last conducted an on-site evaluation of the affiliated institution;
2. The ongoing continuation and maintenance of the institution historically affiliated with HLC with regard to its mission, objectives, outreach, scope, structure and related factors;
3. Substantial likelihood that the institution, including the revised governance and management structure of the institution, will continue to meet HLC’s Eligibility Requirements, Assumed Practices, and Criteria for Accreditation;
4. Sufficiency of financial support for the transaction; and
5. Previous experience in higher education, qualifications, and resources of new owners, Board members or other individuals who play a key role in the institution or related entities subsequent to the transaction.

If the Board determines in its sole discretion that the institution or the transaction fails to meet any of the approval factors, the Board will not approve the application.

PROCESS OVERVIEW

NOTIFICATION TO HLC
An accredited institution must notify HLC’s Legal and Governmental Affairs Office when it is considering a transaction that might fall under this policy. The notification should be submitted electronically via www.hightail.com/u/hlc-lga, with a copy sent to the institution’s HLC staff liaison. The notification should include a brief explanation of the proposed transaction and of the involved parties and include limited supporting documentation such as a letter of intent and a proposed timeline. For certain limited transactions, such notification satisfies the expectations of the Change of Control, Structure or Organization policy. Upon receipt of this notification, HLC will review the materials to determine whether an application for Change of Control, Structure or Organization and approval by the Board of Trustees is required. HLC will notify the institution regarding next steps following review of the materials.

PROCESS TIMELINE
Because the Change of Control, Structure or Organization policy requires that the Board of Trustees review and act on such applications, the deadline for the application is based on the Board of Trustees meeting schedule. An institution seeking a Change of Control, Structure or Organization should submit its application no later than seven to eight months prior to the Board meeting at which it wishes the Board to review the proposed change.

Submission of an application by the deadline for a particular meeting does not guarantee that the application will be reviewed at that meeting. The Board of Trustees retains the discretion to determine the final review and approval schedule for any institution that files an application under this policy. HLC will notify the institution of the review process and timeline.
DEADLINE FOR CHANGE OF CONTROL, STRUCTURE, OR ORGANIZATION APPLICATIONS

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<td>August 1 (of the previous year)</td>
<td>February</td>
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<tr>
<td>November 1 (of the previous year)</td>
<td>June</td>
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<td>March 1</td>
<td>November</td>
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(Note the earlier deadline for November approval given the summer recess at many institutions.)

**Step One: Initial Interaction with Staff**

The Initial Interaction provides an opportunity for HLC staff, after having reviewed the materials in the Notice, to meet all the parties to the transaction and learn more about the intent of the parties. The Initial Interaction is conducted in person at the HLC office or at the campus, it may be done by conference call upon request. HLC reserves the authority to determine the appropriate mechanism to conduct an Initial Interaction. The Initial Interaction may also be used to determine if an institution will be required to submit an application for Change of Control, Structure or Organization.

**Step Two: Application Submission**

An application for Change of Control, Structure or Organization consists of a series of documents that explain the transaction, any potential change to the institution, the institution’s ability to continue meeting the Criteria for Accreditation following the transaction, as well as any information that is pertinent to the transaction. More information about the contents of the application is available under Documents Required for a Change of Control, Structure or Organization on page 5.

Applications must be received by the above deadlines provided for Board review (again, note that submission by the stated deadline does not guarantee review at the next Board meeting).

All documents included in an application should be in executable form and signed by the appropriate parties. The buyer or other parties should contribute to those portions of the documentation that discuss the institution after the closing. (For example, the projections for enrollment or the business plan should be provided by the buyer or at least should have been clearly reviewed and endorsed by the buyer.)

In preparing those sections that address the institution’s ongoing compliance after the transaction with the Eligibility Requirements and Criteria for Accreditation, the institution and the buyers must remember that they should be addressing the institution’s compliance after the transaction, not its compliance at the time the application was completed or at its last comprehensive evaluation.

HLC staff members will review these materials and, as needed, may request revisions or additional information to better assess the projected impact of the change. All institutional materials must be submitted electronically at Hightail. Materials are not to be emailed unless specifically instructed to do so.

The burden is on the institution to prepare and submit the application in accordance with HLC guidelines and requirements. The institution is also responsible for ensuring that its application is thorough and contains all documents necessary to explain the transaction and the effect on the accredited institution. HLC provides a list of materials that should normally be submitted as part of an application, yet the list is not exhaustive. In some cases, the institution may need to submit documents not listed herein to establish that the proposed Change of Control, Structure or Organization meets HLC’s approval factors.

Submissions that do not conform to guidelines, or that lack required information, may be rejected and the institution will be required to resubmit its application. **HLC will not initiate the review process for any change of control, structure or organization until it**
Step Three: Fact-Finding Review
HLC may determine that the complexity of the transaction necessitates additional review. A Fact-Finding Review can take a variety of forms, and some transactions may require a combination of these forms:

- A two- to three-day campus visit that includes HLC staff and peer reviewers;
- A meeting in HLC’s office with institutional leadership and proposed buyers, investors or other relevant parties;
- A desk review of the application by an external expert, such as a transactional attorney, or staff liaison consulting with appropriate external experts or peer reviewers.

Reviewers will provide a report to staff and the Board, but will not make a formal recommendation to staff or the Board. The Fact-Finding Report, if applicable, will be embedded in the Summary Report.

Step Four: Summary Report
HLC staff members, seeking assistance from peer reviewers or external experts where appropriate, will prepare a summary report that analyzes the transaction against the five Change of Control, Structure or Organization Factors. The report does not provide a recommendation. The Fact-Finding Report will be appended to the Summary Report.

Step Five: Institutional Response
The institution will receive the final summary report and will have 14 calendar days to respond. In this response, the institution should address any concerns raised in the report as well as provide any corrections of errors of fact. The response will be provided to the Board prior to the meeting at which it will review the institution’s application.

Step Six: Board Decision
The Board will consider the approval factors in determining whether to approve an application for Change of Control, Structure or Organization. If the Board determines that the proposed transaction does not meet one or more of the approval factors, the Board will not approve the application.

The Board has several options available to it upon review of the proposed transaction, including, but not limited to, the following:

- Approve the proposed Change of Control, Structure or Organization with or without conditions, such as limitations on new educational programs, student enrollment growth, development of new campuses or additional locations, or imposition of a Change of Control Candidacy requirement;
- Defer consideration of the proposed transaction until the next scheduled Board meeting pending receipt of additional information or action by a third party;
- Require additional review through the Eligibility Process or a Fact-Finding Review regarding whether the proposed Change of Control, Structure or Organization constitutes the creation of a new institution such that the Board requires the institution to undergo a period of time in candidacy or an initial status evaluation;
- Deny the proposed Change of Control, Structure or Organization.

HLC will communicate the Board of Trustees decision to the institution and the U.S. Department of Education through an official action letter. The Board action will also be included in the list of Board actions available on HLC’s website. In those circumstances where the proposed transaction is highly publicized, HLC may, at its discretion, post a Public Statement on its website. As required by HLC policy, any denial of a proposed Change of Control, Structure or Organization will result in a Public Disclosure Notice being posted on the HLC website.

- In the event of approval or approval with conditions: See Steps Seven and Eight.
- In the event of additional review by the Eligibility Process or a Fact-Finding Review: The Board will set forth the purpose and timeline for this review, and the results of the additional review will be available to the Board at a subsequent meeting.
- In the event of deferral: The Board will outline the specific information it requires and will set a timeline for the submission of that information and the Board review of the Change of Control, Structure or Organization.
- In the event of denial: Denial of a Change of Control, Structure or Organization is not appealable. An institution denied a Change of
Control, Structure or Organization may resubmit its request for approval. However, it will be treated as a new request, subject to the same processes and fees as the previous review. HLC will provide a timetable for consideration of the new application at the time of submission, unless explicitly waived by the Board, the institution would not be able to resubmit until after six months from the date of the Board’s denial.

The institution can proceed with the transaction following a denial from HLC. The action from HLC denies the extension of accreditation after the closing of the transaction.

Should the transaction close without the prior approval of the Board, HLC policy allows the Board to withdraw the accreditation of the institution. The Board would do so in a separate meeting (as provided for in HLC Bylaws) and in an action, separate from the Change of Control, Structure or Organization denial. Withdrawal of accreditation is an appealable action under HLC Policy INST.D.90.010 Appeals.

**Step Seven: Institutional Acknowledgement and Transaction Closing**

If the Board approves the transaction (with or without conditions), the institution and other parties involved in the transaction have fourteen (14) calendar days after receipt of the Board action letter to indicate in writing that they accept the approval and any conditions. If the institution and other parties do not respond in writing to accept or decline the approval and any conditions, the Board may act to rescind approval. That action to rescind approval may be taken through a regularly scheduled or special meeting of the Board as provided for in HLC’s Bylaws. The Board’s action may designate an effective date of approval of a Change of Control, Structure or Organization provided that such effective date will be not later than 30 days from the date of the action.

The institution must also notify HLC in writing when the transaction is closed. HLC policy and federal regulation require that the transaction close within 30 days of the date of the Board’s approval. If the institution is not able to close the action within 30 days of the Board’s approval, the institution should contact HLC for guidance. Additionally, if the transaction involves the termination of an institution’s affiliation with HLC, the institution will need to formally resign its accreditation with HLC at the time of the transaction closing.

Institutions should consult HLC Policy INST.B.30.010: Termination of Affiliation or Accreditation and the applicable procedure for more information.

**Step Eight: Subsequent Evaluation**

HLC will conduct a focused visit or other evaluation as determined by the Board, to the institution within six months of the close of the transaction. Additionally, the next comprehensive evaluation will take place no more than five years after the close of the transaction. These visits will verify that the institution, subsequent to the change, continues to meet HLC’s Criteria for Accreditation and Eligibility Requirements and that it is meeting commitments it made to HLC as part of the recommendation and approval process.

The visiting team may recommend that the institution be continued in status as a Candidate for Accreditation if it appears that the institution has changed significantly such that it no longer meets the Criteria for Accreditation but does meet the Eligibility Requirements.

**TYPICAL MATERIALS FOR APPLICATION**

All applications should be submitted as a single PDF document that includes section headings and bookmarks, with titles, for navigation. All documents and exhibits should be named in a List of Exhibits/Table of Contents that is included as a page in the application immediately after the General Introduction. Each Exhibit should be numbered (e.g., Exhibit 1, 2, 3, etc.).

Applications may not contain links to external sites or documents. If the institution elects to include supporting materials as appendices, these should be labeled and bookmarked in the submission file. All applications for Change of Control, Structure or Organization must be submitted electronically to HLC via www.hightail.com/u/hlc-lga.

An institution with any questions regarding the documents for a Change of Control, Structure or Organization Application is encouraged to contact legalaffairs@hlcommission.org.
A. GENERAL INTRODUCTION

The introduction provides a narrative description of the change, including the nature of the transaction, names and addresses of all relevant parties, the name of the institution, the institution’s standing with its other recognized accreditors, the name of the parent corporation or subsidiary entities that have a controlling relationship with the institution, any other institutions that are a part of the transaction and relationship to recognized accrediting agencies, any required internal or external approvals and anticipated dates of those approvals, and the projected closing date of the transaction. This information should provide readers with a broad overview of what change is proposed and how the controlling party intends to transform the institution subsequent to the transaction. This section should be no more than 10 pages.

B. TRANSACTIONAL DOCUMENTS

An institution’s application should include the following documents and any additional documents that are appropriate for the nature of the transaction and that provide information relevant to understanding the effect of the transaction on the institution. If the transaction will occur at the level of a parent corporation or a subsidiary of a parent corporation holding a controlling relationship to the institution, include documents relevant to the outcome for the affiliated entity as well as documents that explain the changes in the parent or other entity. Begin this section with a short introduction that describes what documents are included and what documents from this list are not relevant to the transaction and therefore are not included in the application. These documents must be submitted in executable form.

1. Contract of sale or transfer, or purchase agreement, including all attachments, exhibits and related agreements or merger agreement, as applicable.

2. Revised or new Articles of Incorporation, Articles of Merger, etc., arising out of the transaction. Institutions must include the Articles of Incorporation for the buyer, all related corporations, and related investors.

3. New or revised corporate documents including Corporate Bylaws, Operating Agreement (LLC), Partnership or Joint Venture Agreement, etc. arising out of the transaction. Institutions must include the Bylaws for the buyer, all related corporations, and related investors.

4. For stock-related transactions, relevant filings completed with the Securities and Exchange Commission (SEC) including the S-1 and the 8-K as applicable.

5. Pre-acquisition packet filed with the U.S. Department of Education (if filed) and information filed with the relevant state higher education agencies must be filed with the application.

6. Pre-acquisition review letter issued by the U.S. Department of Education (if available) and letter of approval from state higher education agency or a letter from such agency explicitly indicating that approval is not required.

7. Financial information to include the most recent external audit, current budget, Form 990, and six months of cash statements for the buyer, for the institution, and for any parent corporation or for a subsidiary holding a controlling or other relationship with the accredited institution. Buyers and institutions that are for-profit entities should submit two years of federal income tax forms for their corporation and related corporations under the same parent entity. Investors or other third parties must also provide their most recent external audit and tax return. If they do not have an audit, they must provide third-party verification from a bank or other source documenting the funds to support the transaction and other funds to support any investment to be made in the institution within the first year subsequent to the closing of the transaction.

8. Organizational chart showing the institution, any parent or holding companies, governing boards, and key administrators at all levels, currently in place and as anticipated by the transaction. Such charts should outline the relationship between the accredited institution and the corporate structure after the close of the transaction.

9. Lists of key administrators and governing board members, including qualifications and disclosure statements, at the institution and at each corporate level senior to the institution subsequent to the transaction. Identify any hiring or recruiting that must be done at these levels as a result of the transaction.
10. If the buyers own other institutions of higher education not accredited by HLC in the United States or abroad, the records of those institutions with their institutional accreditors or quality assurance agency during the preceding ten years.

11. If the transaction involves including institutional assets from an institution accredited by another accreditor that is not HLC, the institution not accredited by HLC will need to provide its accreditation files with the other accreditor for the ten years preceding the proposed transaction. This institution will also need to complete a separate Eligibility Filing and submit it with the application.

12. If an institution accredited by HLC is seeking to incorporate a separately accredited (by HLC or another recognized accreditor), free-standing institution under its HLC accreditation, it may need to include a branch campus substantive change application with the application for Change of Control, Structure or Organization.

C. INSTITUTIONAL STATEMENT

The institution should provide a narrative response to each of the following points. Include any additional exhibits not provided as Transactional Documents that substantiate and help explain the response. The institution should respond to each question with specific information about the institution as anticipated subsequent to the transaction and over the course of the next five years, and compare the current characteristics of the institution to those anticipated subsequent to the close of the transaction.

1. Explain the mission of the institution before the transaction. How will the mission change subsequent to the transaction? If the current mission will continue, how will the institution with new buyers or investors support the mission under new control or structure?

2. Outline the educational programs that the institution currently offers and explain how those programs will be continued and supported subsequent to the transaction. Identify any new programs the parties intend to initiate in the next five years and how these programs will be developed and by whom. (Explain the learning and support resources for current and future programs. Include an academic plan prepared by the institution and the proposed buyers or investors that outlines planned academic programs and support services for the next five years.)

3. Explain the current delivery mode(s) (on-ground, on-line, iTV, etc.) of the institution’s programs. Outline plans to change or expand any of the delivery modes and timeframe for such changes or expansion.

4. Provide the current student enrollment by department and modality (on-ground, on-line, iTV, etc.) at the institution. Outline any plans that are in progress to support students through the transition and to assist students who may need or want to be transferred and taught-out if existing programs will be terminated or modified in the next 12 months. Describe the anticipated student body subsequent to the transaction, the plans and targets for recruitment, and the basis on which these plans are deemed attainable.

5. Identify the projected enrollment for each quarter or semester for the next five years by campus, additional location or distance modality or correspondence by department at each degree level.

6. Provide the marketing plan for the institution for the next five years after the transaction closing. How will the institution market to new or continuing students as well as to different populations of students?

7. Provide the business plan for the next five years after the closing. How will the institution assure it can meet its debt or other financial obligations? What improvements or expansions to technology or infrastructure will be necessary to sustain financial operations, support current or planned enrollment increases, new educational programming, etc., and what will be the source of the funds? If the institution intends to use funds provided by an investor(s), what is the evidence of the investors’ commitment to continue to provide funds over time to sustain operations and expansion?

8. Describe immediate and long-range strategic planning for the institution and at the parent or corporate level as contemplated by the transaction and how it will affect the institution.
9. Explain the governance and management structure at the institution and at the parent or corporate level as contemplated by the transaction and how it will affect the institution.

10. Explain the knowledge of and experience in higher education, or with accreditation, of any of the buyers, investors or other key parties in the transaction. Include key administrators in place or being hired.

11. Describe the current faculty including the number of faculty members in each department, a summary of their qualifications, the nature of their employment relationship (tenured, union, etc.) at the institution, and plans in progress to terminate, retain, or supplement those faculty members after the completion of the transaction. Provide numbers of full- and part-time faculty before the transaction and numbers anticipated within one year of the transaction. Provide drafts of all employment agreements or employment documents anticipated for update at or subsequent to closing as well as evidence that faculty have seen the draft documents and provided an acceptance or rejection of an offer of employment.

12. Explain the institution’s current efforts to assess student learning and what efforts will be undertaken subsequent to the transaction to ensure continuity or improvement of these efforts.

13. Explain how the institution will continue to meet each of the Eligibility Requirements and each of the Criteria for Accreditation, including each Core Component, subsequent to the completion of the transaction. (If the transaction intends to consolidate another institutional entity into the structure of an institution affiliated with HLC, the narrative must establish that the accredited institution will have sufficient academic and corporate control of the other component as outlined in HLC’s Eligibility Requirements.)

14. Outline how the institution has been working to address any challenges identified by the last comprehensive evaluation and any issues to have been addressed in upcoming HLC monitoring. How will the transaction assist the institution in resolving the issues identified by HLC?

15. Provide any other information important to understanding the transaction or the effect of the transaction on the institution.

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**FOR APPLICATIONS INVOLVING A SHARED SERVICE ARRANGEMENT**

In November 2017, the Board approved guidelines related to reviewing certain shared service arrangements. The guidelines contain a list of the arrangements that may require review. Institutions should consult the guidelines regarding a shared service arrangement; the general types of agreements subject to the guidelines include, but are not limited to:

1. The institution forms a relationship with an entity that has no corporate or financial relationship with the institution to perform certain services. An example would be an agreement wherein an institution outsources multiple aspects of its operations to a single provider of higher education services. HLC will determine whether any approvals are required based on the documentation’s description of the services being provided by the services provider.

2. The institution works with other related accredited institutions to pool or consolidate services into another related entity that may be another corporation or may be a division of one of the institutions. An example would be a state university system with several accredited institutions that consolidates at the flagship institution certain operations that previously were provided locally at each campus. HLC will determine whether any approvals are required based on the documentation’s description of the structure of the entity and the services it provides.

3. The institution has a parent or affiliated corporation that provides various services to the institution. A variant of this situation would be when an institution purchases or merges with another accredited institution that has an existing relationship with a parent or affiliated corporation, and the relationship with the parent or affiliated entity is being maintained after the purchase through a shared services relationship with the former parent or affiliated corporation.
4. The institution forms a new related or separate corporation into which the institution transfers some of its existing operations and/or services. This new corporation would then provide services to the accredited institution. Alternatively, the institution may transfer assets related to academics and student services into the new related or separate corporation, and the institution may become the services corporation. (This new service corporation may also sell its services to other institutions with which it had no previous relationship.)

The initiation or renewal of such arrangements are subject to the notification provisions outlined in this procedure. Certain arrangements will require HLC approval through the Change of Control, Structure or Organization process. HLC will provide further instructions after reviewing the proposed Shared Services arrangement.

**TEACH OUT**

An institution that pursues a Change of Control, Structure or Organization during a period of financial exigency or other circumstances that could force the institution to close must submit a Provisional Plan (See Teach Out Procedure) for HLC approval with the application. The Provisional Plan should address what arrangements the institution would provide for students if the Change of Control, Structure or Organization were denied and the institution did not proceed with the transaction. The Plan should also address what arrangements the institution would provide for students if the Change of Control, Structure or Organization were denied and the institution did proceed with the transaction, risking withdrawal of accreditation. HLC will determine whether an institution must submit a Provisional plan with its application.

**ADDITIONAL INFORMATION**

**Fees for Change of Control, Structure or Organization**

HLC assesses fees for Change of Control, Structure or Organization requests. All fees must be paid before the Board will review the proposed transactions. The fees for a Change of Control, Structure or Organization are listed in HLC’s schedule of dues and fees. The fee schedule is revised annually; new fees are effective on September 1.

- The Initial Interaction fee is nonrefundable, even if the institution withdraws its request, the transaction does not proceed, or HLC determines that it does not need to approve the transaction, following an Initial Interaction.
- If the transaction proceeds and HLC determines that the transaction is a Change of Control, Structure or Organization requiring HLC approval, then HLC will bill the Filing Fee upon the formal application filing. The Filing Fee is nonrefundable, even if the institution withdraws its application prior to Board action. (Referred to as Standard, Complex, or Highly Complex Review)
- If HLC incurs costs through the Fact-Finding Reviews or because of additional fees charged by professionals retained by HLC to assist with the review, HLC will bill the institution for those costs plus 15 percent. (Referred to as Legal and Consultancy Expenses + 15 percent)

**QUESTIONS**

Contact HLC’s staff liaison or legalaffairs@hlcommission.org with questions or concerns.