



Middle States Commission on Higher Education, 3624 Market Street, Philadelphia, PA 19104-2680

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Update on New Federal Regulations

The Commission staff is working hard to keep member institutions up-to-date on the latest developments involving new federal regulations that were scheduled to take effect on July 1, 2011. Most of these regulations took effect, several are the subject of intense debate in Washington, and one was recently struck down by a federal judge. All of the new regulations are the result of the Higher Education Opportunity Act of 2008 and subsequent Negotiated Rulemaking sessions conducted by the United States Department of Education. As of late July, the following is the status of the new regulations:

State Authorization

This regulation required institutions that offer distance education programs to obtain authorization from every state in which online students reside. Potentially, this meant that institutions might have to obtain authorization from all 50 states and a number of territories, a time-consuming, labor-intensive, and expensive process. However, **on July 12, the U.S. District Court for the District of Columbia struck down the portion of the state authorization rule pertaining to distance education students.** Judge Rosemary M. Collyer held that the U.S. Department of Education failed to comply with the U.S. Administrative Procedures Act, which governs the way in which federal agencies propose and establish regulations. She noted that colleges and universities were not given adequate notice or opportunity to comment on the distance education regulation before it was finalized. Judge Collyer also said that the Department introduced the online provision of the State Authorization regulation after it had published the final rule, thereby denying affected parties the opportunity to object before that part of the rule was adopted. The options facing the Department of Education are to (1) accept Judge Collyer's ruling, (2) appeal her ruling, or (3) schedule new Negotiated Rulemaking sessions to develop a regulation that would survive a court challenge. It should be noted that prior to the judge's ruling, the American Council on Education, in cooperation with more than 70 accrediting organizations and other higher education associations, raised strenuous objections to this regulation. Earlier this year, the Association of Private Sector Colleges and Universities filed suit against the U.S. Department of Education, challenging the new regulation.

Gainful Employment

Among the new regulations, Gainful Employment has likely generated the most comments. After nearly a year, more than 100 meetings with institutional stakeholders and others, Congressional hearings, and an estimated 90,000 written comments, in early June the U.S. Department of Education issued a revised Gainful Employment rule. On July 8, the House Subcommittee on Higher Education and Workforce Training, chaired by Representative Virginia Foxx of North Carolina, held a joint hearing with the House

Subcommittee on Regulatory Affairs, Stimulus Oversight, and Government Spending, to address concerns about the Gainful Employment regulation.

Critics claim the new regulation will limit job growth and student choice by enabling the Department of Education to determine whether students will earn enough money in their careers to justify the use of federal student financial aid in select vocationally-oriented programs at colleges and universities. The Department counters that the regulation is needed because of high student loan default rates in many vocational programs. On July 20, the Association of Private Sector Colleges and Universities sued the Department, claiming that the new regulation is unconstitutional. Nevertheless, the new regulation did take effect on July 1, and institutions must soon have disclosures in place regarding specific certificate and diploma programs. These required disclosures include information on the normal time for program completion; students' completion rate; the cost of tuition, fees, books, and supplies; median debt of students who enrolled in the specified programs; and occupational information. In the future, the Department of Education plans to require the posting of each institution's job placement rates for each designated program, but the Department is currently working on instructions regarding the computation of the rates.

Under the new version of the regulation, institutions have more time to fix problems. The first year that programs could lose eligibility is now 2015, three years later than originally proposed. Data collection will not begin until July 2012. The new rules require that programs at for-profit institutions and certificate and vocational programs at non-profit institutions must be able to show that at least 35 percent of their former students are repaying their loans or that the former students' annual loan payments do not exceed 30 percent of a typical graduate's discretionary income or 12 percent of their total income. Institutions would need only to meet one of the three requirements to remain eligible for federal student financial aid. While still controversial, the revised regulation includes changes that were requested by various stakeholders.

The Department of Education recently issued two announcements to provide institutions with additional guidance on the new regulation.

Gainful Employment Announcement #11, issued June 24, 2011, provides details on which educational programs at higher education institutions are considered to be Gainful Employment programs under the Higher Education Opportunity Act, and thus subject to the new regulation. It can be viewed at <http://www.ifap.ed.gov/eannouncements/062411WhatisGainfulEmploymentGEAnnounceNumber11.html>

Gainful Employment Announcement #12, issued July 8, 2011, provides guidance on the Gainful Employment status and reporting requirements for degree programs in which a student may earn a certificate as well as a degree. It can be viewed at <http://www.ifap.ed.gov/eannouncements/070811DeterminWhetherAnEduProgIsGE.html>

In addition, the Department of Education has developed a website that has specific information on Gainful Employment. It can be accessed at <http://ifap.ed.gov/GainfulEmploymentInfo/index.html>.

Definition of a Credit Hour

As with State Authorization and Gainful Employment, the regulation concerning the federal definition of a credit hour has been controversial and the subject of Congressional hearings, letter writing campaigns, and lawsuits. Yet, effective July 1, 2011, this regulation has taken effect. As noted in the April MSCHE Newsletter, on March 18, 2011 the Department issued a "Dear Colleague" letter that sought to clarify its stance on the new credit hour definition. The letter provided some clarification on the enforcement of the regulation. The paragraph on implementation read as follows:

“Institutions and accrediting agencies are responsible for properly implementing the credit hour regulatory requirements that are effective July 1, 2011. The Secretary understands that institutions and accrediting agencies face challenges in implementing these new requirements. For the 2011-2012 award year, as long as an institution or accrediting agency is in the process of complying with these provisions, we will consider the institution or accrediting agency to be making a good-faith effort to comply, and Department staff will take this effort into consideration when reviewing an institution’s or accrediting agency’s implementation of the regulations. Accrediting agencies and State approval agencies whose written policies, procedures, criteria, and materials are not finalized prior to July 1, 2011, may make reasonable allowances in their review of institutions during the 2011-2012 award year.”

The complete “Dear Colleague” letter can be viewed at <http://ifap.ed.gov/dpccletters/attachments/GEN1106.pdf>

Commission staff will continue to provide updates to member institutions regarding the status of the new federal regulations. These updates will be provided via e-mail, the Commission Newsletter, and postings on www.msche.org. To view the Commission’s current degree and credit guidelines, [click here](#) or visit [http://www.msche.org/documents/Degree-and-Credit-Guidelines-062209-FINAL\[1\].pdf](http://www.msche.org/documents/Degree-and-Credit-Guidelines-062209-FINAL[1].pdf).

Substantive Change

The Commission requires the periodic reevaluation of all accredited institutions, because institutions continually change. While the decision to modify its structure or operations is an institutional prerogative, MSCHE is obligated by federal regulations to determine the effect of any change that is considered to be “substantive” on the quality, integrity, and effectiveness of the total institution.

In alignment with the accreditation provisions of the Higher Education Opportunity Act of 2008, MSCHE requires review and prior approval of the following types of substantive change at member institutions:

- (1) change in mission or objectives;
- (2) change in legal status, form of control, or ownership;
- (3) the addition of courses or programs representing a significant departure from existing offerings or method of delivery;
- (4) the addition of programs of study at a different degree or credential level;
- (5) change from clock hours to credit hours;
- (6) substantial increase or decrease in the number of clock or credit hours for successful completion of a program;
- (7) initiation or expansion of distance education or correspondence education, when 50 percent or more of the courses/credits are provided through alternative delivery;
- (8) establishment of a branch campus;
- (9) establishment of domestic and international additional locations;
- (10) planned closure or relocation of an additional location or branch campus, or a change in category among branch campus, additional location, or other instructional sites;
- (11) institutional closure or institutional status requiring a teach-out plan; and
- (12) a contractual arrangement where 25 percent of an educational program is provided by an unaccredited institution, corporation, or other entity, or an institution not accredited by a U.S. Department of Education-recognized accreditor.

The Commission reserves the right to review any program offered by an institution, even though it accredits the entire institution rather than its individual programs. Usually, the introduction of a new program is not a Substantive Change unless it falls within one of the other areas covered by the Substantive Change policy. However, if a new program will have a substantive impact on the institution’s

resources or mission, it might be deemed a Substantive Change. For instance, a program might be deemed to be a Substantive Change if it is to be offered at an additional location or branch campus where resources might be more limited. Also, if the new program represents a departure in content, or it requires the development of new courses or the hiring of new faculty, it may be deemed to be a Substantive Change. In some cases, the U.S. Department of Education requires institutions to verify that the new program is included within the scope of the institution's accreditation. Therefore, a program in an area that is new or unusual for the institution might also be a Substantive Change even if it is not technically a change of the institution's mission. If you are unsure about a Substantive Change, contact your MSCHE staff liaison.

Over the past four years, the number of Substantive Change requests submitted to the Commission has increased by 155 percent. Aside from sheer numbers, many of these requests have been complex in their scope and have required considerable staff and Commission time to review. Under federal regulations, institutions may not receive federal Title IV student financial aid for locations, distance education, new degree or certificate levels, or other types of programs not previously approved through their accreditor's Substantive Change process. In other words, **Substantive Changes can not be approved retroactively**. It is vital that your institution allow sufficient time for Commission review of substantive change requests before implementing any changes that fall within the purview of this policy.

Please note that MSCHE now allows the electronic submission of Substantive Change requests. Such requests can be submitted to evaluationservices@msche.org. Please do not send such requests to your institution's MSCHE staff liaison.

To view the MSCHE policy on substantive change, [click here](#). To view the MSCHE processes on [Substantive Change](#), [click here](#). Please note that the Substantive Change process will be revised in Fall 2011. Watch for details.

Registration to Begin for Annual Conference



Registration will begin in early September for *Quality Assurance Through Accreditation*, the 2011 MSCHE Annual Conference, scheduled for Sunday through Tuesday, December 11-13, at the Washington Marriott Wardman Park Hotel in Washington, DC.

This year's conference will feature an outstanding variety of plenary speakers, concurrent sessions, and networking opportunities. Five pre-conference workshops will offer special professional development opportunities.

The conference will begin with the opening plenary session on Sunday, December 11, 5:00-6:00 pm. Molly Corbett Broad, President of the American Council on Education, will speak on the topic, *No Tinkering Allowed: A Time for Bold Action on Accreditation*. She will describe how a series of national and international forces have placed accreditation under greater pressure than at any previous time in its history, and will outline reform ideas circulating in Washington and the higher education community's attempt to craft a credible and comprehensive response.

On Monday morning, December 12, the plenary session will feature Dr. Michael F. Middaugh, MSCHE Chair, and Dr. Elizabeth Sibolski, MSCHE President, discussing *The Evolving Nature of MSCHE and Accreditation*. The closing plenary session on Tuesday, December 13, will feature Dr. John Cavanaugh,

MSCHE Commissioner and Chancellor of the Pennsylvania State System of Higher Education, who will address *The Future of Accreditation When Learners Do It Themselves*. The dozens of concurrent sessions throughout the conference will address such topics as Substantive Change, self-study, periodic review reports, student learning assessment, student authentication in online learning, institutional effectiveness, assessing academic programs, strategic planning, collaboration between higher education institutions on assessment issues, reforming general education requirements, implementing the accreditation provisions of the Higher Education Opportunity Act, assessment of developmental education programs, MSCHE expectations for governance, institutional assessment in colleges with multiple accreditations, the selected topics self-study model, higher education in a changing political and economic environment, and more.

The pre-conference workshops will include *Understanding and Using Student Learning Assessment Results, Evidence of Compliance: What is the Commission Really Looking For?*, *Self-Study: Writing the Report and Preparing the Team*, and *Compliance with the Communications Provisions of the Higher Education Opportunity Act*. In addition, the Association of Institutional Research will conduct a pre-conference workshop.

Throughout the conference, the Exhibit Hall will feature more than 30 vendors who will be available to discuss their latest products and services; the MSCHE Bookstore will have for sale a variety of books on assessment, institutional effectiveness, and related accreditation topics; and the MSCHE Hospitality Booth will have available an extensive collection of free brochures on Washington-area attractions, transportation guides, and the 2011 Conference Restaurant Guide.

The registration fee for the conference is \$495 per person if the paid registration is received no later than November 1, 2011. After November 1, the fee is \$545 per person. All registrations must be completed online and paid via credit card. As noted above, registration will begin in early September.

The hotel room rate is \$195 per night, single or double occupancy, plus applicable taxes. The Washington Marriott Wardman Park will hold the MSCHE room block until November 14. After that date, rooms will be provided on a space and rate-available basis only.

Watch your mailbox for the preliminary conference program brochure and your e-mail for announcements about the opening of registration.

MSCHE Position Vacancy Announcements and Recent Staff Changes

The Commission is actively recruiting candidates for several position vacancies.

There are two vacancies for Vice Presidents following the July departures of Luis Pedraja and Barbara Samuel Loftus. Dr. Pedraja accepted a position as Provost of Antioch University Los Angeles, and Dr. Loftus accepted a position as Vice President of Planning at Misericordia University. They provided distinguished service to the Commission and its member institutions during their years at MSCHE. Their former colleagues and the members of the Commission wish Dr. Pedraja and Dr. Loftus great success in their new endeavors. The Commission is working with the search firm Lansing & Whitfield on the vice presidential search. [Click here to view the position announcement](#). The review of candidates began August 10 and will continue until the positions are filled. As noted in the position announcement, all inquiries, cover letters, and resumes should be directed to Lansing & Whitfield, not to the Commission offices.

The Commission is also seeking to fill a newly created position, Senior Policy Analyst/Researcher, and is working with Lansing & Whitfield on that search as well. Again, the review of candidates began on August 10 and continue until the position is filled. [To view the position announcement, click here](#).

In other recent MSCHE staff news, Dr. Robert A. Schneider has been promoted to the position of Senior Vice President. Dr. Schneider has been a Commission Vice President for the past seven years.

Updated Policies on Conflict of Interest and Third-party Comment

During its June 23, 2011 meeting, the Commission approved revisions to its policy, *Conflict of Interest: Peer Evaluators and Commissioners*. The revised policy contains updated language and a revised Conflict of Interest Disclosure Statement form. Individuals covered by this policy may serve in the capacity of Commissioner, Commissioner Pro Tempore, or in the volunteer peer evaluator roles of Team Chair, Team Member, Substantive Change Committee Member, Periodic Review Report Reviewer, or Finance Associate. The revised policy can be viewed at <http://www.msche.org/documents/Conflict-of-Interest-Policy-62311.pdf>.

At that same meeting, the Commission approved revisions to the policy on *Third-party Comment*. In addition to some minor wording changes, the revised policy contains new sections on Third-party Comment for a PRR or Monitoring Report and Third-party Comment at Other Times. This policy can be viewed at <http://www.msche.org/documents/P7.2-3rdPartyComment-62311.pdf>.

Key Contacts at Member Institutions

MSCHE member institutions are reminded that changes in the institution's "key contacts" should be reported to the Commission in a prompt manner. This would include changes of the individuals in the following positions: President/Chief Executive Officer, Chief Academic Officer, Chief Financial Officer, Accreditation Liaison Officer, Coordinator of Assessment, Coordinator of Planning, Coordinator of Institutional Research, Director of the Library, Director of the Study Abroad program, System/District Chief Executive Officer, Governing Board Chair, and Coordinator of Distance Education. This information is especially important when individuals leave an institution and are succeeded by others. Such changes should be reported to Tze Joe (tjoe@msche.org) by your institution's Accreditation Liaison Officer (ALO) or another designated individual if the ALO has recently departed the institution.

Updated Version of *Characteristics of Excellence* Now Available

The Commission recently updated *Characteristics of Excellence in Higher Education* to reflect the new distance education and correspondence education requirements of the Higher Education Opportunity Act. The updated language appears under Standard 13: Related Educational Activities. To download a copy of the updated edition, [click here](#).

Upcoming Workshops

MSCHE has scheduled several professional development workshops for September and October.

Becoming an Assessment Facilitator, scheduled for September 15 in Philadelphia, is sold out.

A Basic Toolbox for Assessing Institutional Effectiveness will be offered September 19 at Pace University in New York City. This will mark the only time this year that the *Basic Toolbox* workshop will be offered. Understanding the many aspects of student life, faculty and other employee productivity, cost containment, and other facets of institutional operations is essential to assessing institutional effectiveness. This workshop will focus on ways to measure the extent to which an institution is making the most effective and efficient use of its human and fiscal resources in support of the teaching/learning process. Features include presentations and interactive discussions on strategies to identify those dimensions of institutional effectiveness that are appropriate for your institution, an overview of data collection tools that have been found to be demonstrably successful in assessing institutional effectiveness, a review of student learning outcomes as a component of overall institutional effectiveness,

and analytical approaches that foster the use of information on institutional effectiveness to support institutional decision making.

The workshop facilitator will be Dr. Michael F. Middaugh, Chair of the Middle States Commission on Higher Education, and the retired Associate Provost for Institutional Effectiveness at the University of Delaware. Dr. Middaugh is currently a higher education consultant.

The early registration fee (received on or before August 26, 2011) is \$295 per person. The regular registration fee (received August 27-September 9) is \$375 per person. To register, or for further information, visit www.msche.org and click on *Events*. Participants are responsible for their own accommodations. MSCHE has not reserved a block of rooms.

Also this fall, the Commission will offer its annual Chairs and Evaluators Workshop, October 4 at the DoubleTree Hotel in Center City Philadelphia, and the annual Self-Study Institute, November 9 and 10 at the Hilton Philadelphia City Avenue. Participation in the Chairs and Evaluators Workshop and Self-Study Institute is by invitation only. Anyone who has received an invitation should register immediately; space is limited.

Recent Commission Actions

The Commission took action involving 85 institutions during its June 23 meeting. Forty-one institutions had their accreditation reaffirmed, three were awarded their initial accreditation, three applicant institutions were invited to initiate self-study, and one was granted Candidate for Accreditation status. In addition, 10 institutions were placed on Warning, four were placed on Probation, three had their Warning status continued, and three had their Probation status continued. Seven institutions were removed from Probation and had their accreditation reaffirmed, while another seven were removed from Warning and were reaffirmed. Two institutions were reaffirmed following an earlier postponement. The Commission voted unanimously to remove the accreditation from one institution, effective August 31, 2011. To view the complete list of the Commission's June 23, 2011 actions, [click here](#).