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CHEA Letter to Congress on HR 4283

May 26, 2004

Honorable John Boehner and Honorable Howard "Buck" McKeon
Committee on Education and the Workforce
Room 2181 Rayburn House Office Building
U S House of Representatives
Washington, DC 20515

Dear Congressmen Boehner and McKeon:

We write to express our views on HR 4283, the College Access and Opportunity Act of 2004, to reauthorize the Higher Education Act (HEA). Your bill contains many important proposals, but our focus is on the accreditation and accountability provisions. CHEA has provided its views, analysis and suggestions to the Committee throughout the development of the bill, and we hope to continue to do so.

We appreciate that HR 4283 has embraced a number of our proposals regarding accreditation, because the cornerstone of our reauthorization position has been to strengthen accountability. HR 4283 reaffirms accreditation as the basis of federal quality assurance and has elements of our policies and recommendations in student achievement, in distance education, and in transfer of credit.

However, the bill also contains other provisions on these issues and others relating to accountability that we find objectionable. In our view, the bill goes far beyond the proper balance of the federal role and the self-regulation of higher education through voluntary, private accreditation. This letter summarizes our views on the major accreditation proposals, and the attached document details our suggestions regarding the specific provisions in your bill. As our objections are substantial and widespread, CHEA is unable to support the bill in its present form. In addition, we would like to associate ourselves with the views on these same issues expressed by the American Council on Education in their May 26 letter to you. We are a co-signer of this letter, along with several other higher education associations.

On student achievement, we support the idea that institutions should determine the proper measurement of learning outcomes, based on their own missions and needs of their student bodies. Thus, we support several of the student achievement changes in your bill, and further suggest clarifying changes. We oppose the specific HEA provision that schools publish their learning objectives for each program, and that accreditors measure them, because this approach would federalize a central academic issue.

On distance education, we believe that accreditation organizations have demonstrated their ability to assess its quality. Accreditor review of distance education can be helpful to institutions, to students and to the public interest, especially if Title IV programs are expanded to reach more distance learners. Thus, we support the basis of several of the distance education amendments in HR 4283, but propose modifications to assure that accreditors and institutions determine the best ways to measure and evaluate distance education without establishing new and separate federal standards.

Regarding transfer of credit, we find the multiple provisions of new requirements for institutions and accreditation organizations highly objectionable because they mandate federal rules over an important academic decision. Although you begin your approach with a sound principle: that a receiving institution should not deny transfer of credit solely because of the accrediting organization of the sending institution, we do not agree that institutions should have a federal mandate on this subject.

We believe that institutions, accreditors and the public can benefit from useful information about accreditation. It could expand public awareness on the value of accreditation and its contribution to quality assurance and improvement. However, the public information requirements of HR 4283 are excessive and burdensome. They are offered without adequate evidence that the public would understand or benefit from this material. We believe there are better ways to provide the public with information about the accreditation actions regarding institutions. In accreditation, as in other parts of the bill, we suggest that reporting requirements be reduced and coordinated so that the public can receive needed and useful information and that institutional cost and compliance burdens be kept to a minimum.

HR 4283 also amends the HEA by making institutional "governance" a new recognition criterion, by allowing states once again to become recognized accreditors and by adding a myriad of new reporting requirements for institutions and accreditors. We believe that these three provisions head in the wrong direction of greater government control and are unnecessary.

We thank you for your attention to our views. We are available to discuss them further, and to advise the Committee on any accreditation matter as it continues to develop its HEA legislation.

With best wishes.

Sincerely,

Judith Eaton
President

Attachment

cc: Honorable George Miller
Honorable Dale Kildee

"Academic Bill of Rights" - Bill Section 103, Page 18, line 23, et seq.
Student Speech and Association Rights.

This new material, also known as the "Academic Bill of Rights", addresses issues better left to campus decisions. We recommend deletion.

NACIQI - Bill Section 104, Page 20, line 20, et seq.
Extension of NACIQI.

The NACIQI is extended through 2011. We support this provision.

Distance Education, description - Bill Section 482, Page 131, lines 1 – 19
Distance Education, Eligible Program.

This new provision adds to Section 481(b) a description of a distance education program that is eligible for Title IV. It appears to be based on a suggestion made by CHEA with regard to HR 3039. It would assure that accreditor reviews of distance education already made before enactment of any new statutory provisions for distance education would not need to be repeated. Prospectively, it would mean that accreditors would need to evaluate capacity of distance accreditation programs. It clarifies the current practice that only accreditors recognized by the Secretary with distance education in their recognition scope can make this review. We support this provision.

Amendments to Section 485 – Student Information

Information Available - Page 137, line 19 through Page 138, line 5
Institutional and Financial Assistance Information for Students

This is a new reporting requirement for institutions in HEA Section 485(a)(1) that specifies how the information is to be made available. It would be linked to a new accreditor requirement on Pages 163 – 64 and 166. Regarding the institutional reporting requirement, we suggest that they can be streamlined and reduced throughout HR 4283. Specifically, we suggest that the information requirements be reviewed and consolidated, under the criteria that eliminates any new information requirement that is not clearly useful to the public, not coordinated with existing and other new information requirements, and not minimally burdensome to institutions. Regarding the accreditor requirement, please see our comment below regarding accreditor reporting under revised Section 496(a)(8), where we recommend a modification.

Stated Learning Objectives - Page 138, lines 6 through 18
Institutional and Financial Assistance Information for Students

This is a new reporting requirement for institutions in HEA Section 485(a)(1)(G) that would add to their description of their academic programs by requiring "the institution's learning objectives for those programs" [lines 12 and 13]. This works in

connection with the proposed HR 4283 revision to the student achievement recognition criterion in Section 496(a)(5)(A) on Page 162, line 19. In effect, the institution must state its learning objectives here, so that accreditors can review it under their requirements spelled out elsewhere. We believe that this proposed provision in 485 brings federal interference into the academic affairs of institutions. While we support certain changes to the accreditation recognition criterion for student achievement (see below), we suggest that this proposal for Section 485 be deleted.

Transfer Out and Other Outcome Data - Page 138, line 19 through Page 139, line 10
Institutional and Financial Assistance Information for Students

This is a new reporting requirement for institutions in HEA Section 485(a)(1)(L) that adds new provisions to the existing law requirement to report graduation and completion rates. The two new provisions address data on students transferring out and other student outcome data. Regarding the institutional requirement, we suggest that they can be streamlined and reduced throughout HR 4283. The transfer out data is likely not available (as inferred by the unclear proviso "when readily available"). We do not see the value of such reporting, which will be uneven at best. We suggest deleting the transfer out data provision.

The outcome provision, in our view, takes notice of the proper roles of institutional missions and goals, and encourages qualitative and quantitative student outcome data that the institutions deems appropriate. In principle, this mission-based approach is the correct one regarding student learning outcomes. We suggest that this approach be maintained in a streamlined set of institutional data requirements.

Student Complaints - Page 138, line 19 through Page 139, line 10
Institutional and Financial Assistance Information for Students

This is a new reporting requirement for institutions in HEA Section 485(a)(1)(J) that adds a new provision to the existing law requirement that institutions inform students about their accreditation. The new provision would add specifically a requirement to inform students about making complaints to accreditors. It is also cross referenced on Page 163, lines 9 – 14. See our comment below on that provision, which may need a clarification. We have no objection to this proposed 485 provision, provided that it be placed in a streamlined set of institutional data requirements.

Institutional Transfer of Credit Policy - Page 140, lines 4 through 7
Institutional and Financial Assistance Information for Students

This is a new reporting requirement for institutions in HEA Section 485(a)(1), adding a new paragraph (Q). It requires institutions to state and explain their transfer of credit policy. We are concerned with federal controls over the important decisions on credit transfer, and believe this requirement would lead to such control. We suggest deleting this transfer policy reporting provision.

Optional Reporting - Page 140, line 8 through Page 141, line 5
Institutional and Financial Assistance Information for Students

This material is several new and OPTIONAL reporting requirements for institutions in HEA Section 485(a), regarding graduation rates, data reporting and the manner in which it is reported, including reports to accreditors. As it is optional, it appears that an institution need not report it. We suggest that these provisions be considered in a streamlined set of institutional data requirements, where only important new requirements be added.

Transfer of Credit - Page 142, line 8 through Page 144, line 13
Institutional and Financial Assistance Information for Students

This new subsection (h) for Section 485 deals with transfer of credit. It contains several new requirements on institutional policy and practice that, in our view, bring federal control over academic decisions. Institutions must state their transfer policy, which must conform to stated requirements. While the first requirement (credit transfer not denied solely on the basis of the accreditor of the sending institution) is presently a policy espoused by CHEA and others, we do not agree that it should be fixed in federal law. The second requirement goes further to define a basic academic policy of an institution, including "objective criteria." This strikes at the heart of academic judgment, in which the subjective decisions by academic officials define the standards of an institution. We suggest deleting these transfer policy provisions.

Statistical reporting in paragraph (B) [Page 143, line 12] demands information that institutions do not have nor could readily collect. We suggest deleting this transfer reporting provision.

The "rule of construction" material [Page 144, line 3] appears to be an attempt to protect against federal control and lawsuits. Regarding federal control, we believe the provision is ineffectual and unenforceable. We welcome the intention, but want a more effective provision. Protection against legal actions is useful and should be explored and clarified. Should other transfer provisions in HR 4283 be enacted, it will be important to add legal protections.

Amendments to Part H - Accreditation

States as Accreditors Page 160, line 19

This provision would reinstate the possibility that a state agency could become recognized by the Secretary, which has been banned since 1991 under an amendment that allows "grandfathered" states to continue. Presently, the "grandfathered" states are recognized only for very limited scope, such as certain vocational schools. We believe that state agencies should not be allowed to (again) become recognized accreditors, because they have an inherent conflict in judging their own public institutions and should

not be given expanded powers over private institutions. We suggest deleting this provision.

Distance Education and Accreditation Page 161, line 6

This provision sets a new standard for accreditor evaluation of distance education, which requires it be "comparable" to classroom and on-campus in instruction and student support services. We believe that "comparable" may not be the correct standard for instruction, as distance learners have different needs. We are certain that student services for distance learners can not be comparable, because services such as campus health care, parking and extra curricular activities do not reach distance students. We fear that the further definition in regulation of "comparable" can be a major opportunity for federal intrusion into the work of campuses and accreditors in distance education. We suggest that report language needs to be added to avoid that possibility. Accreditation organizations and institutions providing distance educations must have discretion in their determinations on how distance and classroom education are to be comparable.

This said, we want to support the concept that all forms of education delivery, (distance, classroom, mixed and other) should be reviewed in the same way. We suggest a modification to the language in HR 4283 as follows:

"the agency or association determines that the quality of instruction of distance or site-based education meets the same accreditation standards and that appropriate support services are available for distance and site-based education; and…"

Integrity in Distance Education Page 162, line 1

This provision has accreditors evaluating the "integrity" of student participation in distance programs. While everyone is for integrity, it needs further definition and clarification. If the goal of this provision is to assure that the distance learner demonstrates adequately to the institution that he or she is the registered student, and that they did the work attributed to them, we support the concept that accreditors evaluate the institutional practices and safeguards to assure this "integrity." We note, however, that such assurances can not be foolproof in either campus or distance education delivery modes.

We suggest clarifying legislative language and accompanying report language to explain the meaning in a confined way. Perhaps the following suggestion might prove workable: at the end of the proposed new language, on Page 162, line 4, replace the semicolon with a comma and add "by a review to assure that institutional procedures are in place to identify the students and their academic work;".

Distance Education Comparability (face-to-face) Pages 161, line 6 (see above) and 162, line 5

The provision on Page 162, line 5 amends Section 496(a)(4), which deals with accreditor standards for instruction. The new material would say that such standards for distance education would be "comparable" to "face-to-face classroom instruction." We believe that whatever standard might be added here needs to be the same as used in the material cited above for Page 161, line 6. The addition of the "face-to-face" standard is awkward and confusing. More important, it would set two different standards in the same subsection for instruction via distance education. As accreditors are already given the new distance education standard above, this provision is contradictory and unneeded. Therefore, we suggest its deletion.

Student Achievement and Accreditation Page 162, line 10 through Page 163, line 4

This provision addresses student achievement, perhaps the most contentious debate in quality assurance practice. Institutions and accreditors have made great strides in their attention and their measurement of student learning outcomes, and we believe that the current law may be adequate to allow such progress to continue. However, the change proposed in HR 4283 largely follows the principle that institutions need to determine the proper student learning outcome measures based on their own missions and student bodies served.

As noted above, we are concerned that the requirement for institutions to state the learning objectives of their programs may interfere with their academic decisions, and we above suggest deletion of that provision in HEA Section 485(a)(1)(G) [Bill Page 138, lines 6 through 18]. Likewise, we suggest deleting "each institution's articulation of" on Bill Page 162, line 19. With this modest change, we support the revised student achievement recognition criterion.

Governance and Accreditation Page 163, line 5

This provision would amend one of the ten recognition criteria in current law to require that accreditors examine the "governance" of institutions. We believe that adding governance as a federal recognition criterion is unwise because institutions and their boards are responsible to a variety of other accountability mechanisms for this activity. In many cases of public institutions, governance is directed by elected officials. In private institutions, there is no need for accreditation associations to add another level of review. Experience with accreditation over the last several years suggests that accreditors should stay out of these issues rather than do more in this area. The provision is ill-defined and pushes accreditation in the wrong direction. We suggest its deletion.

Student Complaints and Accreditation Page 163, line 9

This provision revises slightly the existing recognition criterion in Section 496 (a)(5)(I) that accreditors must look at student complaints. It cross references a proposed new provision in Section 485(a)(1)(J) [Bill Page 138, line 19 through Page 139, line 10], which requires institutions to provide contact information to students on procedures for making complaints with accreditors. This 496 amendment appears to be a clarification

that accreditors need only look at the complaints that are made directly to them, and not the students complaints made to institutions. If so, we suggest that report language explain this provision to avoid misinterpretation. On this basis, we support the revised student complaint requirement. However, it might be better placed as an addition to the accreditation procedures in Section 496(c), rather than as an accreditation recognition criterion in Section 496 (a)(5)(I).

Public Information and Accreditation Page 163, line 17 through Page 164, line 18

This provision replaces the current law requirements in Section 496(a)(8) for accreditors to make public on request and to inform the Secretary and state licensing officials about adverse actions taken on their institutions. The new provision is broader in scope, requires more information, includes the interim action of probation (not in current law) and deletes the current law requirement for comments by the affected institution. We believe it is seriously flawed. As written, it could be highly destructive to voluntary accreditation and to institutions.

Because the purposes and the institutional outcomes of accreditation are often misunderstood by the public, we support better public information. We support the provision that state and federal officials need to be informed about final adverse actions in accreditation, as an important protection against fraud and abuse. We urge the authors of HR 4283 to construct a new public information requirement that balances the public need for information about quality assurance activities with the institutional interests in self improvement and prevention of misinformation regarding its quality.

The new six-part requirement proposed for paragraph (8) requires in Section 496(a)(8)(A) an accreditor summary of its positive accreditation actions, along with its findings. We have three concerns with this provision regarding positive actions. First, it deletes the current law requirement (covering adverse actions) that the accreditor action must be provided "together with the comments of the affected institution." Surely the institution needs a role in expressing its views on the action. A unilateral statement by the accreditor can be perceived as unfair and adverse to an institution, even when the overall accreditor action is favorable. Second, submission to the Secretary and his dissemination of the information federalizes the accreditation activity without public benefit. The reason for notice of adverse actions to the government, as noted above, has a clear public purpose of fraud prevention. The case for federal involvement on positive actions and a summary of the findings is less clear. Third, public disclosure discourages candor throughout the accreditation process. The kind of internal examination of strengths and weaknesses of a program or an institution that lie at the heart of useful quality assurance will be discouraged. CHEA could support a provision that accreditors make public a brief summary of their findings in their positive accreditation or reaccreditation actions, together with the comments of the institutions. Such summary and comments are to be developed by the two parties before their release, with each party retaining the right to determine its final public statement.

Subparagraphs (B) and (C) deal with specified and other adverse actions. We suggest that probation, which is always an interim action, be deleted from this group. We further suggest that the comments of the affected institution be restored, as in current law. Such comments by the institution would have the same character as the process suggested above for positive actions, with a proviso that the accreditor could set a reasonable time deadline for the institutional comments.

Subparagraph (D) requires publication of the names and other information about the accreditor review teams. [We have been advised that the Committee is considering a clarification that these lists would NOT be specific to which institution the individual visited.] This requirement would make public, on a nationwide basis, approximately 25,000 persons now serving as reviewers in the more than sixty accreditation organizations recognized by the Secretary. These persons are educators and experts serving on an uncompensated basis. Large accreditors have several thousand such volunteers on their roster, and all such persons serve as volunteers to advance the quality assurance interests of peer institutions. We do not believe that public identification of such persons is a sound idea and we object to a federal mandate to do so. It would subject these volunteers to possible harassment or lawsuits. Accreditation is voluntary peer-review process of an internal and confidential assessment of strengths and weaknesses based on professional judgment of experts. It could become subject to external pressures, pro and con, for certain conclusions. We suggest deletion of this subparagraph (D), regardless of any revision clarifying that it need not be institutions specific.

Subparagraphs (E) and (F) require disclosure of accreditors selection, training and evaluation of reviewers, as well as the "code of conduct" for reviewers and commissioners. While this may be more than needed or useful, such disclosure might advance public understanding and confidence of accreditation. Accreditors might list a summary of this information on their websites, but we are concerned with the requirement of reporting it to the federal government. Mandatory reporting to the Secretary means that he could accept or reject it, thus making federal and uniform rules as to how accreditors carry out these activities. We suggest deleting the federal reporting. Any such federal requirement is better placed in the accreditor operating procedures part of the section, 496(c). The code of conduct requirement should be clarified that it means conflict of interest policy. It should not make a new demand that accreditors must have a "code of conduct" that could become subject to a federal regulation defining its contents. With these provisos, we support the inclusion, in another place in the statute, of the contents of subparagraphs (E) and (F) on disclosures and conflict of interest

Accreditor Onsite Review of Transfer Page 164, line 19 through Page 165, line 12

This provision amends the Section 496(a) recognition subsection by adding a new paragraph on credit transfers. It directs accreditors to make onsite reviews of institutional transfer policies. It also prohibits specified accreditors policies regarding transfers, which parallel the prohibitions discussed above in proposed new Section 485(h). [Bill Page 142, line 8 through Page 144, line 13] Both the proposed Section 485 and 496

changes on transfer of credit have the same difficulty of interfering with academic decisions. For the reasons discussed above, we suggest deleting these accreditor transfer review and policy provisions.

Accreditor Reviews of Institutional information Page 165, line 13 through Page 166, line 5

These provisions further direct accreditors to certain additional tasks in their required procedures. First, they amend Section 496(c)(1) that deals with characteristics of campus review teams to include "distance education" and "several years related experience." We support this provision.

Newly proposed paragraph (7), on Page 166, line 1, addresses a new requirement that accreditors evaluate a new provision that requires an institutional statement of program learning objectives. This is added to subparagraph (G) of Section 485(a)(1), the student information section. (G) appears on Bill Page 138, lines 6 through 18. As we objected to this provision above, we likewise object for the same reasons to accreditor examination of it. We suggest deletion.

The same new paragraph (7) also requires accreditor evaluation of the existing law subparagraph (H), which deals with institutions providing students with the contact persons on student information. While we are concerned that too many federal tasks regarding institutional information requirements are being mandated for accreditors, this student information activity could be helpful. Thus, we have no other objection to this provision.

Accreditor Review of Transfer Disclosure and Application Page 166, line 6

This provision amends the accreditor operating procedures in subsection (c) of Section 496 to add a new requirement that accreditation reviews include assurance that institutions disclose and consistently apply their transfer of credit policies. For the reasons discussed above, we also suggest deleting these accreditor review provisions.

Accreditor Review of Significant Findings Page 166, line 10

This provision is a new requirement under the accreditor operating procedures. It regards public information on accreditor actions and significant findings that cross references the revised requirements in Section 496(a)(8)(A) for an accreditor summary of its positive accreditation actions, beginning on Bill Page 163, line 17. However, this operating procedures requirement specifies "significant findings" on Bill Page 166, line 12, rather than "any findings" in the previously cited provision. Two different phrases are problematical and confusion. More importantly, this second reference is redundant and unnecessary. Whatever is done for public information in Section 496(a)(8)(A) need not be repeated here under operation procedures. Given the difficulty of establishing a sound requirement for public information on findings, as discussed above, the confusion of two different phrases, and the redundancy, we suggest deleting this provision.

Accreditor Assurance on Transfer Policy Page 166, line 14

This provision amends the accreditor operating procedures in subsection (c) of Section 496 to add a new requirement that accreditation reviews include assurance that institutional policies on transfers of credit conform to the newly proposed requirement added to Section 485(h). Please see above at Bill Page 142, line 8. For the reasons discussed above, we also suggest deleting this accreditor review provision.

Accreditor Review of Distance Education Growth Page 167, line 1

This provision is another new operating procedures in subsection (c) of Section 496 to add a new requirement that accreditation reviews include monitoring of the growth of distance education and evaluation of their growth and development if the growth is substantial. We agree that accreditors should look at distance education, and they already do so under strengthened procedures developed in recent years. But this provision is vaguely worded, too prescriptive and another example of the federalization of accreditation. In light of the several other new provisions for accreditors in distance education, we suggest that this provision is unnecessary and should be deleted.

College Consumer Profile Page 167, line 13 through Page 169, line 7

This provision adds a new ten-part reporting requirement on consumer information, which must be submitted to the Secretary for dissemination. It is written as a new requirement for accreditors; but institutions are the only source for most of the contents. We agree that improved sources of college consumer information are valuable. Unfortunately, this provision as written takes consumers in the wrong direction. Much of this information is available elsewhere, and this new and uncoordinated set of information requirement would be costly to produce. We believe that such consumer information as may be needed should be better coordinated in HR 4283, both to make dissemination useful to consumers and to ease institutional burdens.

On the contents of the proposed new profile, we object to the transfer of credit reporting in paragraph (H), for the reasons expressed above. And we have concerns over paragraph (J) on placement rates and other measures of success because these are not appropriate or useful for some educational programs. If they are to be included, the requirement should be narrowed to only those programs where they are appropriate.

We suggest again a comprehensive look at HR 4283 to combine, streamline and reduce reporting requirements. We suggest that whatever the disposition of the consumer reporting that it be removed from the accreditation requirement. Should the federal government add institutional information requirements, it should review the institutional compliance. It should not use accreditation to conduct this federal task. In sum, we suggest deleting this whole new Consumer Profile, and picking up some of the elements

in other parts of the HEA as an improved means of the Secretary and institutions providing useful information to consumers.

Other Accreditation-Related Provisions

Transfer of Credit Study (reinstated) Page 196, line 7

This provision reinstates a study to be conducted by the Secretary on accreditor practices on credit transfer. It was authorized by the HEA Amendments of 1998, but was never conducted, as the Department of Education had no appropriation for the purpose. The reinstatement expands the scope to institutional practices. The 1998 design of the study was seriously flawed, and built upon presumptions that represent one side of a complex and controversial issue. While it may be possible to construct a study that would be useful and address the difficulties in expanding legitimate transfer of credits, the old design should be discarded and a new balanced approach be constructed. We suggest deletion of the study reinstatement provision.

Study of Student Learning Outcomes Pages 201 through 203

As noted above, student learning outcomes issues are important and controversial. Institutions should be the primary determinant of the appropriate measurement of learning outcomes, based on their unique missions and student bodies served. The new study proposes in Bill Section 1025 focuses solely on best practices of states. We think that this is a flawed approach. There is deep concern in large parts of the higher education community over states exerting undue control over academic issues best left to the campus. This is why SPRE legislation was strongly opposed and promptly repealed. This concern is heightened in HR 4283 by its proposal to allow states to become federally recognized accreditors (which we oppose above).

Should the federal Secretary of Education, or another convener, need to bring together a study of learning outcomes and accountability, we believe that all relevant parties should “come to the table”. This would include institutions, researchers, accreditors, national education associations and organizations (including those with a mission in quality assurance) as well as state officials. If a broadly constructed study can be developed, it may advance important deliberations on student learning outcomes and accountability.