

# Comparison of Current Law, H.R. 4795, H.R. 609 and S. 1614

## *Due Process in Accreditation*



March 8, 2006

| Topic   | Higher Education Act  | H.R. 4795  | H.R. 609   | S. 1614                             |
|---|---|--|--|-------------------------------------|
| General due process requirement                           | Current law provides that an accreditor must apply procedures “throughout the accrediting process, including evaluation and withdrawal proceedings” that comply with due process. | H.R. 4795 would add the following specific circumstances under which accreditors would be required to apply due process procedures: interim sanction and termination of accreditation proceedings.   | H.R. 609 would specify that accreditors must “establish” as well as “apply” due process procedures, but it would not specify additional illustrative circumstances under which such procedures are required. | S. 1614 is comparable to H.R. 609.  |
| Accreditor specification of requirements and deficiencies | Current law requires accreditors to provide adequate specification of requirements and deficiencies at an institution or program being examined.                                  | H.R. 4795 would maintain current law in terms of adequate specification of the accreditor’s requirements. The bill would expand the provision related to deficiencies to require written notice of deficiencies at the institution or program being examined and a reasonable time period, expressly set forth in the notice, to correct the deficiencies. | H.R. 609 would maintain current law.   | S. 1614 would maintain current law. |

**Comparison of Current Law, H.R. 4795, H.R. 609 and S. 1614** *(continued)*

| <b>Topic</b>                       | <b>Higher Education Act</b>   | <b>H.R. 4795</b>  | <b>H.R. 609</b>  | <b>S. 1614</b>   |
|------------------------------------|---|---|--|--|
| Opportunity for written response   | Current law is silent as to whether the accreditor must provide an opportunity for a written response in evaluation and withdrawal proceedings. | Like current law, H.R. 4795 is silent as to whether the accreditor must provide an opportunity for a written response in evaluation and withdrawal proceedings.   | H.R. 609 would require accreditors to provide an opportunity for a written response in evaluation and withdrawal proceedings.  | S. 1614 is comparable to H.R. 609, except that it would specify that the institution must have the opportunity to provide the written response prior to final action.                              |
| Notice and opportunity for hearing | Current law requires accreditors to provide to an institution notice of an opportunity for a hearing.   | H.R. 4795 would maintain current law and would also specify that the hearing must be before the accreditor's decision-making body prior to the accreditor's final consideration of imposition of adverse action.  | H.R. 609 would require the accreditor to provide, upon the written request of an institution, an opportunity for the institution to appeal an adverse action at a hearing prior to such action becoming final. Under H.R. 609, the appeals panel must not include current members of the accreditor's underlying decision-making body that made the adverse decision and must be subject to a conflict of interest policy. | S. 1614 is comparable to H.R. 609, except that S. 1614 would specify that an adverse action includes "denial, withdrawal, suspension, or termination of accreditation, or placement on probation." |
| Right to appeal                    | Current law requires accreditors to provide a right to appeal any adverse action against an institution.  | Like current law, H.R. 4795 would require the right to appeal an adverse action, but the bill also would specify that such appeal must be to an "independent and impartial" arbitration panel appointed jointly by the accreditor and the institution and conducted at the institution. | As noted above, H.R. 609 also would require a right to appeal an adverse action, but such appeal would be required to occur prior to the action becoming final.  | S. 1614 is comparable to H.R. 609.   |

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|---------------------------|--|--|--------------------------------------|--|
| Appealable matters        | Current law does not specify the matters that an institution may appeal.   | H.R. 4795 would require the right to appeal, at a minimum, the adequacy of the evidence supporting the adverse decision, the adequacy of the accreditor's compliance with its own policies and procedures, and the extent to which the decision of the accreditor was tainted by bias or prejudice of any agent or official of the accreditor. | H.R. 609 would maintain current law. | S. 1614 would maintain current law.  |
| Representation by counsel | Current law requires accreditors to provide institutions a right to representation by counsel as part of due process procedures. | H.R. 4795 would maintain current law.  | H.R. 609 would maintain current law. | S. 1614 would clarify that accreditors must provide institutions the right to representation by counsel during an appeal of an adverse action. |
| Appellate panel decision  | Current law does not specify the scope of the appellate panel's decision.  | Under H.R. 4795, institutions would have the right to an arbitration panel decision that may affirm or reverse but not modify the accreditor's final decision.   | H.R. 609 would maintain current law. | S. 1614 would maintain current law.  |

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|--------------|---|---|--------------------------------------|-------------------------------------|
| Appeal costs | Current law does not allocate costs associated with an appeal.  | H.R. 4795 would provide that the accreditor and the institution would each bear its own attorney, witness and other costs associated with the arbitration proceeding and would shift the cost of the arbitration panel and any court reporter to the losing party.                                | H.R. 609 would maintain current law. | S. 1614 would maintain current law. |
| Regulations  | Current law generally authorizes the U.S. Secretary of Education (“Secretary”) to promulgate procedures for the recognition of accreditors. | H.R. 4795 would authorize the Secretary to issue regulations to define further due process requirements “as needed to protect accredited institutions,” provided such regulations do not “reduce” due process requirements available to institutions under the Higher Education Act or other law. | H.R. 609 would maintain current law. | S. 1614 would maintain current law. |

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| Governance   | Current law does not require accreditors to have accreditation standards or procedures that address governance matters. | H.R. 4795 would provide that if an accreditor conducts an assessment of an institution’s governing board, such assessment must apply consistently the accreditation standard, “to the greatest extent possible” to any State-appointed receiver, special trustee, or similar interim governing authority, until such time as governing authority is returned to the regular governing body. In addition, the bill would require an accreditor not to terminate accreditation solely on the grounds that the institution is under management by an interim government body, unless the accreditor determines that there are other deficiencies that provide grounds for termination and that, after providing required due process, the interim governing authority has not corrected those deficiencies within a reasonable time. | The bill would require institutional accreditors to evaluate board governance “within the context of the institution’s mission.” | The bill would maintain current law. |

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| Public meetings   | Current law does not require accreditors to hold public meetings.   | The bill would require the accreditor and any officer or subdivision of such accreditor that makes accreditation recommendations to its decision-making board to conduct public meetings at which the public may comment. The bill would require at least seven days prior notice to the public regarding the meeting. "Meeting" would include all meetings, hearings, appeals, deliberations and votes on accreditation matters regarding any institution or accrediting standards, policies, or procedures. | H.R. 609 would maintain current law.  | S. 1614 would maintain current law. |
| State accreditors | Under current law, a state may serve as a federally recognized accreditor only if it was recognized by the Secretary for that purpose on or before October 1, 1991, and has been continuously recognized since that date. | H.R. 4795 would remove the date restriction and allow states to become federally recognized accreditors even if they were not recognized on or before October 1, 1991.  | H.R. 609 would remove the date restriction and allow states to become federally recognized accreditors even if they were not recognized on or before October 1, 1991. | S. 1614 would maintain current law. |