

## Higher Education Opportunity Act

The Higher Education Opportunity Act (the “Act”) was signed into law on August 14, 2008. In the process of reauthorizing the Higher Education Act of 1965, as amended, the 431-page Act focuses largely upon very specific and technical requirements concerning financial aid for students. However, the Act also imposes a variety of notification, reporting, and disclosure on higher education institutions (“Institutions”). A sampling of those provisions, which became effective as of August 14, 2008 (except as otherwise noted below), will be discussed.

### 1. Student Protection Measures

#### a. *Drug and Alcohol Abuse*

The Act requires Institutions to determine the number of drug and alcohol-related violations and fatalities that occur on campus or as part of the Institution’s activities. In addition, they must determine the number and type of institutional sanctions imposed as a result of these violations and fatalities. This information, once assembled, must be reported in the Institution’s biennial review of its drug and alcohol abuse prevention program. That program review must be made available to the Secretary of Education and to the public. [Section 107]

#### b. *Fire Safety*

Institutions that maintain on-campus student housing are now required to publish an annual fire safety report. This report must reflect, for each student housing facility, the number and causes of each fire, the number of fire-related injuries resulting in treatment in a medical facility, the number of fire-related deaths, and the value of property damage caused by a fire. In addition to this statistical data, the report must describe the fire safety system of each on-campus student housing facility; the number of mandatory supervised fire drills; and policies or rules on portable electrical appliances, smoking, open flames, evacuation procedures, and fire safety education. Any plans for future improvements in fire safety must also be included. Finally, Institutions must maintain a log of all campus student housing fires, to include the nature, date, time, and general location of each fire. This log must be made available to the campus community annually. [Section 488]

#### c. *On Campus Crime Disclosures*

Section 488 amends the Clery Act to add some minor items to Institutions’ record-keeping and obligations under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”). Under the Clery Act, universities are to prepare and distribute to current students and employees certain crime data and information about security-related campus policies. Under the Act, universities are now to include in the report information about any agreements with state and local law enforcement authorities regarding the investigation of crimes. Four additional offenses have been added to the list of “hate crimes” (those in which the perpetrator was motivated by prejudice based on race, gender, religion, sexual orientation, ethnicity, or disability) that are to be reported. The list must now include

larceny-theft; simple assault; intimidation; and destruction, damage, or vandalism of property. [Section 488(e)]

The Act protects “whistleblowers” by prohibiting retaliatory action against any individual “with respect to the implementation of any provision” of the Clery Act. Finally, the new law requires an Institution to include in the annual report a statement of how it will respond to an emergency or dangerous situation on campus. This information should include notification and evacuation procedures, as well as a policy for the annual testing of these procedures.

#### d. *Missing On-Campus Student Policies*

Institutions that provide on-campus housing are required by the Act to establish a missing student notification *policy* for students residing in such housing. The policy must permit each such student to identify and confidentially register a contact person to be notified within 24 hours if that student is determined to be missing. Non-emancipated students under 18 are to be advised that a custodial parent or guardian *will* be notified by the Institution within 24 hours after the student is determined to be missing. Each student, regardless of age, must also be advised that appropriate law enforcement agencies will be notified within 24 hours of a student’s being determined to be missing.

Official notification *procedures* must also be established regarding a missing student who resides in on-campus housing. These procedures must insure that appropriate campus officials are informed when a student has been missing for more than 24 hours. In addition, the procedures must provide for immediate referral to campus police or campus security of any missing person report concerning a student who resides in on-campus housing. If, upon investigation of such a report, it is determined that the student has been missing for more than 24 hours, the notifications required under the student notification policy mentioned above must be made. [Section 488]

## 2. Student “Consumer” Measures

### a. *Transparency in College Tuition*

Under the new Act, effective July 1, 2011, the Education Department will publish national lists by institutional category (*i.e.*, four year public, four year private, etc.) that identify the top 5% of those institutions with the highest tuition and fees, the highest “net price” after consideration of receipt of financial aid, the largest increase in tuition and fees over the most recent three academic years, and the largest increase in net price over the most recent three academic years. Schools appearing on one of the two “highest increases” lists must explain to the Education Department the budgetary basis for the increases and the steps being taken to reduce the costs causing the increases.

The Act also requires that the national lists by institutional category mentioned above be published annually by the Education Department on its College Navigator website. In addition, by August 14, 2009, the Education Department must develop a net price calculator for use by

students and their families to enable them to compare the costs of various Institutions. Not later than August 14, 2011, Institutions must make available for public use on their website either the net price calculator developed by the Education Department or one with similar capabilities. [Section 111]

*b. Textbook Information*

Effective July 1, 2010, the Act requires publishers to provide faculty and others selecting textbooks with information regarding the price that will be charged to the campus bookstore for the textbook and the price that will be charged to the public. Publishers must provide the copyright dates for the last three previous versions of the textbook and a description of the changes for each such revision. Publishers must further inform those selecting textbooks of the latter's availability in formats other than hardbound and the prices for the alternative formats. If supplemental materials are sold as a bundle with a textbook, the Act requires that they also be sold separately.

Further, the Act requires that Institutions, to the maximum extent practicable, make available with their online course schedules the ISBN identifying information and the retail price for all required and recommended books and all supplemental materials for each course. If no ISBN is available, the author, title, publisher, and copyright date for the college textbook or supplemental material are to be provided. If that is not practicable, the price information field for the course concerned will be annotated "To Be Determined." Institutions that publish written class schedules must include a notice that textbook information is available on the Internet and provide the Internet address for that information. Finally, Institutions are encouraged to disseminate to students information regarding any institutional programs for renting textbooks or for purchasing used textbooks, available institutional guaranteed textbook buy-back programs, institutional alternative content delivery programs, and other institutional cost-saving strategies. [Section 112]

*c. Accountability for Programs that Prepare Teachers*

Each Institution that conducts teacher preparation programs leading to State certification or licensure will be required by the new Act to report certain information annually to the State and to the general public. This information must include student results on the State's teacher licensing examination, admission criteria for the Institution's teacher training program, an explanation as to whether the Institution's program has been designated as low-performing by the State, and a description of the steps that have been taken to assist teachers with technology, special education, and general education instruction. [Section 205]

*d. Alumni Employment*

The new Act requires Institutions to report on employment obtained by graduates of degree and certificate programs. Such information is to be gathered from sources such as alumni surveys, student satisfaction surveys, the National Survey of Student Engagement, State data systems, or other relevant sources. [Section 488]

e. *Alumni Post-Graduate Education*

Four-year Institutions will be required by the Act to provide information regarding the types of graduate and professional education in which its degreed graduates enroll. Sources for such information are those mentioned above regarding alumni employment. [Section 488]

f. *Retention Rate*

In addition, the Act also requires Institutions to make available data on the retention rate of certificate and degree seeking, first-time, full-time, undergraduate students entering the institution. [Section 488]

3. Military-Related Measures

a. *In-State Tuition for Military Members and Dependents*

Under the Act, public Institutions may only charge in-state tuition to members of the military, their spouses, and their dependent children so long as the military member has been on active duty for more than 30 days and his domicile or permanent duty station is in the State. [Section 114]

b. *Readmission Requirements for Service Members*

The new Act also provides generally that students who have been absent from an Institution due to military service, who complete that service in good standing, and who notify the Institution of their intent to return within three years are entitled to readmission with the same academic standing and status as they previously had at the Institution.

4. Copyright Infringement Control Measures

Institutions will be required by the Act to make an annual disclosure explicitly informing students that unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject the students to civil and criminal liabilities. A summary of the penalties for violation of federal copyright laws is to be included. The disclosure must also provide a description of the Institution's policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in unauthorized distribution of copyrighted materials using the institution's information technology system.

In addition, the Act requires Institutions to certify that they have developed plans to effectively combat the unauthorized distribution of copyrighted material, including the use of a variety of technology-based deterrents. The certification must provide assurance that the institution will, to the extent practicable, offer alternatives to illegal downloading or peer-to-peer distribution of intellectual property, as determined by the Institution in consultation with the chief technology officer or other designated officer of the institution. [Section 488]

As the above discussion makes readily apparent, the Act continues the recent trend of federal legislation to impose on universities unfunded obligations requiring considerable administrative effort. Failure to meet the Act's obligations may result in various sanctions, including a university's losing the right to participate federal student loan programs. While professional organizations are no doubt providing guidance to the affected offices on campus concerning the new obligations of the Act, this office stands ready to provide advice upon request and plans to meet with selected campus officials regarding coordination of efforts to insure timely compliance.