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## **PROGRAM OF SPECIAL MONITORING FOLLOWING THE SALE OF AN INSTITUTION (OR OTHER CHANGE OF CONTROL)**

In recent years, the Commission has reviewed an increasing number of substantive changes involving the change of control for an institution, including the sale of an institution. Particularly in the case of a sale, the Commission has found it useful not only to work with the institution and prospective buyers in advance of the sale, but also to have frequent and structured interaction with the institution after the sale to ensure that changes are carefully monitored and approved and that the institution and its new owners understand the expectations of the Commission. Also, in its role of providing assurance to the public that an institution meets and can be expected to continue to meet the Commission's *Standards for Accreditation*, the Commission understands that transparency in how the Commission monitors institutions serves the public, the institution, and the Commission.

Therefore, in approving the sale of an institution, the Commission will establish a Program of Special Monitoring for the institution, as described below. The Program may include additional elements that are designed to promote frequent interaction with the Commission to help ensure that the institution continues to meet the *Standards for Accreditation*. For other instances of change of control for an institution, including the merger of two or more institutions, the Commission may, at its discretion, also establish a Program of Special Monitoring, drawing on the elements listed below.

In addition to a merger, a change of control also includes the following: a) sale of more than 50% of a proprietorship, partnership, limited liability company, or corporate entity holding the majority interest in the shares or assets of an institution; b) change of the primary operating or legal entity above the institution that exercises primary operating, legal and financial control over the institution; or c) change of more than 50% of the board seats of the primary legal entity exercising operating, legal and financial control over the institution. In the case of a for-profit company selling shares to the public through an initial public offering (IPO), the above criteria will be considered in determining whether a Change of Control has occurred.

The Commission's determination that the institution is subject to a Program of Special Monitoring will be made public by the Commission and, under terms specified by the Commission, by the institution.

In the case of a sale, in its action following the next comprehensive evaluation, the Commission may continue, modify, or lift the Program of Special Monitoring. In other cases of a change of control, the Commission will specify the monitoring occasion at which time it will decide to continue, modify, or lift the Program of Special Monitoring.

### **Elements of a Program of Special Monitoring**

The Program of Special Monitoring consists of a structured array of monitoring mechanisms, most of which are already used by the Commission, and some of which are required of the Commission because of its recognition by the Secretary of Education. While an institution is under a Program of Special Monitoring, it is subject to the following requirements:

- A. Prior approval of the changes listed below is required:
  - 1. Any change in the institution's name, principal location, or mission;
  - 2. Establishing any new instructional locations or branch campuses;
  - 3. The addition of any programs to be delivered through distance education;
  - 4. The involvement of any non-Title IV-eligible entities, including the institution's parent organization, in any program development or programming, including the recruitment and admission of students, recruitment and selection of faculty, design and development of curriculum, approval of curriculum, provision of student services, and delivery of instruction;
  - 5. The addition of any new programs outside the existing scope of mission of the institution;
  - 6. The addition of any new programs at any degree level (e.g., associate's degree, bachelor's degree) that at the time of the sale (or change of control) enrolled less than 20% of the FTE students;
  - 7. Making any other change that is enumerated in the Commission's Policy on Substantive Change;
  - 8. Any proposed or cumulative elimination or suspension of, or new limitation on, enrollment in any majors or degree programs enrolling 20% or more of the student body at the time of the sale (or change of control);
  - 9. Any change in the internal governance structures of the institution that may be inconsistent with the Commission's Standards for Accreditation.
  
- B. At the time of the sale (or change of control) and at any subsequent time, disclosure to the Commission is required for any involvement of any parent or controlling organization in:
  - 1. Recruitment
  - 2. Admissions
  - 3. Financial aid
  - 4. Employment of full- or part-time employees
  - 5. Design, limitation, approval, or modification of curriculum
  - 6. Offering of student services, including the functions of registrar, institutional research, library, technology, budgeting, planning, and program review.

Visits and reports. The following will be required during the period during which a Program of Special Monitoring is in place:

- 1. A report and visit as soon as practicable, but no later than six months following the change in ownership (completion of the sale).
- 2. Annual reports to the Commission including completed Data First and E and S forms, along with a copy of the audit and management letters, and other information as the Commission may request.
- 3. Comprehensive evaluation no later than three years after a sale. The Commission may also change the date of the institution's next comprehensive evaluation following a change of control, with the date to be established when the substantive change is approved by the Commission.
- 4. Report (and visit, per Commission Policy on Substantive Change) after each substantive change is implemented.

5. Other reports and visits as the Commission may from time to time in its discretion determine.
6. Submission of any filings, including subpoenas and information requests resulting from investigative inquiries, and filings with the SEC, US DOE, state education departments or commissions, or other regulatory, prosecutorial or accrediting bodies, including any notifications of failure to comply with laws or regulations, whether publicly disclosed or otherwise.

#### Other Requirements

The Commission may require that the institution undergoing a change of control must provide a bond or other third-party guarantee, in a form and manner acceptable to the Commission, that guarantees all students at the institution, including those enrolled at the time of the change and those subsequently enrolled, will be able to finish their degrees without substantial disruption to their studies, delay in their studies or graduation, or significantly increased costs. Generally, this guarantee can come in the form of a bonded guarantee equal to the instructional costs for six months of instruction, with the assurance that the institution will participate in a teach-out or transfer agreement should it suspend or discontinue instruction in any of its locations.

Subsequent to a change control, the Commission may require the submission of any additional information that it deems necessary to review the institution's operations with respect to the Commission's *Standards for Accreditation* and its policies and may determine other changes made at the institution to be of a substantive nature, requiring Commission approval.

In all cases, the Commission and its staff are committed to working closely with institutions to provide clarity in the expectations of the Commission, support for institutions in preparing for Commission reviews, and the opportunity to understand and consider the special circumstances of the institution.

Finally, the Commission's decision to establish a Program of Special Monitoring is supervisory not punitive. The Commission may lift, amend or modify the program, at its discretion. Additionally, the Commission will consider individual changes or giving its consent to particular actions, notwithstanding the Program of Special Monitoring, for good cause shown.

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