



## **New Disclosure or Reporting Provisions of Higher Education Opportunity Act** (by Effective Date)

Effective August 14, 2008:

1. Section 205(a)(1) of the HEOA requires institutions with teacher preparation programs to develop annual reports to the State and the general public containing specific information about the quality of their teacher education programs. Existing law (20 USC Section 1027[f]) already requires preparation of institutional report cards on the quality of teacher preparation, however the 2008 HEOA will require inclusion of additional information, including institutional activities to achieve the goals and assurances in Section 206 of the HEOA on pass rates and scaled scores in teacher licensing examinations; criteria for admission into teacher preparation programs as well as the number of students in the programs disaggregated by race, ethnicity and gender; number of students who have been certified or licensed by subject area; use of technology; teacher training on participation in individualized education program teams and on teaching students with limited English proficiency.

2. The Higher Education Act has had a long-standing requirement that institutions receiving federal financial aid funds provide certain student consumer information to current and prospective students. This information dissemination requirement was the subject of several Memos to Presidents and is contained in SUNY Policy Manual Document 6606. HEOA adds a number of additional disclosure requirements to the general institutional information that must be made available to students annually in campus publications, mailings or electronic media. Campuses must disclose such information in a readable and comprehensible manner. The new disclosures include-

a. Campuses must annually disclose to students information regarding copyright infringement and illegal filesharing. More specifically, colleges must "explicitly inform[] students that unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject the students to civil and criminal liabilities," list a summary of the penalties for Federal copyright law violations, and describe the campus policy regarding unauthorized filesharing, and what disciplinary steps the campus takes when it discovers illegal filesharing.

Additionally, campuses must certify on their Program Participation Agreement that they have developed plans to combat unauthorized filesharing. Those plans may include the use of "technology based deterrents." The campus must also, to the extent practicable, offer legal downloading alternatives.

Both of these sections will likely be clarified through Department of Education rulemaking.

b. Campuses must create an annual fire safety report with statistics relating to fires in on-campus student housing facilities. The report must include statistics for "the most recent years for which data are available" and cover the number of fires and cause of such fires; the number of injuries related to a fire which result in treatment in a medical facility; the number of deaths related to a fire and the value of property damaged as a result of fire. Additionally, the report must describe on-campus student housing fire safety systems; number of fire drills; policies on electrical appliances, open flames, and smoking; procedures for evacuation; and policies regarding fire safety education and training for students and staff. The statistical part of the report must be submitted annually to the US Department of Education (DOE). Finally, campuses must begin to maintain a fire log which includes certain information on fires in on-campus student housing such as the nature, date, time and general location of each fire. The information in the logs will be included in an annual report to the campus community. This section will most likely be

the subject of rulemaking as the DOE defines terms such as “on-campus student housing” and the time periods for reporting statistics.

c. Campuses will have to provide information on their vaccinations policy. While all SUNY campuses are subject to state law on required MMR vaccinations and notification requirements with regard to meningitis vaccinations (see SUNY Policy Manual Document 3752), any campus-specific policies in this area must also be included.

d. Campuses must prepare and disseminate a statement of any established criteria the institution uses regarding the transfer of credit earned at another institution of higher education and a list of colleges and universities with which the campus has articulation agreements. It is noteworthy that the HEOA says it does not give any legally enforceable right to students to require institutions to accept a transfer of credit.

e. Campuses must include additional information in their annual Clery Act Campus Safety and Security Report. The report must include policy information on the law enforcement authority of campus security personnel; the relationship with local law enforcement including memoranda of understanding; and incident reporting methods. Campuses must also describe emergency response procedures to immediately notify the campus community of danger, and publicize and test emergency notification systems.

Campuses must also report four additional crimes, but only when they are committed in the context of a hate crime: larceny-theft; simple assault; intimidation; and destruction, damage, or vandalism of property.

f. Campuses that provide on-campus housing must update their missing student policies required by State law to reflect new requirements in the HEOA. Such campuses must establish missing student notification policies that provide such students with the ability to designate an individual for the institution to contact within 24 hours of the student being reported missing, provide such students with the means to register confidential contact information in the event they are missing longer than 24 hours, informs all such students that the campus will notify appropriate law enforcement agencies within 24 hours after they are determined to be missing, requires that if University Police has determined the student has been missing for more than 24 hours, the campus must initiate emergency contact procedures to notify those identified by the student, and advises each unemancipated student under 18 years of age that the campus is required to notify a custodial parent or guardian within 24 hours of such student being determined to be missing.

Campuses must also establish official notification procedures for missing resident students and, if necessary, rewrite memoranda of understanding with local law enforcement to insure compliance with the new Federal law. Such campus policies must include procedures for notification within 24 hours of determining that a student is missing, require immediate referral of missing persons reports to University Police, and, for all resident students, if the student is determined to be missing for more than 24 hours, requires notification of the contacts listed by the student while for students under 18 years old requires additionally that the campus contact the custodial parent or guardian.

g. Campuses must inform students upon enrollment in a separate, clear and conspicuous written notice, of the financial aid penalties for drug related offenses. Campuses must issue a separate, clear, and conspicuous written notice to inform each student who loses eligibility for financial aid due to drug-related offenses in a timely manner that they have lost such eligibility and advise them of ways to regain such eligibility

3. The HEOA also adds a new reporting requirement for institutions that receive funding for a center or program under Title VI of the Higher Education Act for International Education Programs. Such institutions must have to make reports to the US DOE if they receive gifts or contributions from any foreign government, foreign corporation or foundation exceeding \$250,000 in any one fiscal year. There are already reporting requirements under Section 117 of the Higher Education Act for foreign gifts

received by an institution of higher education from a foreign source within one calendar year in the amount of \$250,000 or more.

4. The Higher Education Act includes a “sense of the Congress” on protecting student free speech and association rights. This nonbinding statement praises the diversity of institutions and educational missions and encourages the free and open exchange of ideas and the equal and fair treatment of all, while discouraging intimidation, discrimination against or harassment of students, or actions that discourage students from speaking out on issues.

Effective July 1, 2010:

1. Section 133 of the HEOA requires institutions that receive federal financial aid funds to disclose “to the maximum extent practicable” certain information relating to textbooks on any internet course schedules. Institutions that maintain internet course schedules (there is no requirement to have an internet course schedule however) will have to post the International Standards Book Number (ISBN) and retail price information for required and recommended textbooks and supplemental materials for each listed course. If the ISBN number is not available, the campus must disclose the author, title, publisher and copyright date of the textbook instead. If that is not “practicable,” the schedule must state “To be determined.” Written course schedules must advise students that textbook information is available on the campus’s Internet course schedule along with its URL. Additionally, campuses must provide their affiliated bookstore, at its request and “as soon as practicable”, the institution’s course schedule for the subsequent “academic period” the number of students enrolled in each course, the maximum student enrollment in each course and the ISBN numbers and retail price information of all required or recommended textbooks and supplemental materials. There will be no rulemaking on this requirement.

#### **New Requirements Relating to Veterans and Active Duty Military Personnel**

The HEOA also contains some new requirements relating to the treatment of veterans and active duty military personnel for tuition and admission purposes. SUNY campuses already meet some of these requirements due to state law and SUNY residency policy (see Policy Document 7810: in-state tuition for full-time active duty service member stationed in New York, spouse or dependent). There are several new requirements, however, that will be changes in policy.

Effective for periods of enrollment on or after July 1, 2009, the in-state tuition rate must be continued to be provided to the service member, spouse or dependent even after the member’s permanent duty station changes to a location outside New York, if they were granted in-state tuition previously under the provision for those in active duty in the state and they are continuously enrolled at their campus.

Effective August 14, 2008, campuses are prohibited from having readmission policies that discriminate on the basis of a student’s active duty service in the Armed Forces (includes Reserves and National Guard). As long as the following conditions are met, campuses that receive federal financial aid funds must readmit a student who has been on active duty service with the same academic status as when the student last attended:

- the student gave advance notice (written or verbal) of the call to active duty or submitted a written attestation upon seeking readmission that such service was performed necessitating their absence;
- the absence from school for active duty does not exceed five years;
- the student submits a notification of intent to reenroll within three years after the completion of service or within two years after recovery from an illness or injury incurred during the service;
- the separation from service was not dishonorable.

While documentation of the period of service and the discharge status can be required by the campus, the HEOA states that the school “may not delay or attempt to avoid a readmission of a student under this

[provision] by demanding documentation that does not exist, or is not readily available, at the time of readmission.”

### **Student Loan/Preferred Lender Requirements**

The HEOA contains multiple provisions affecting student financial aid programs under Title IV of the Higher Education Act and the relationship between institutions of higher education and the student loan industry. These provisions are applicable as of August 14, 2008, with one exception noted below.

In general, both State-operated and Community College campuses are treated as individual entities by the US Department of Education for purposes of Title IV program eligibility, administration and accountability. Each campus completes an individual Program Participation Agreement, is assigned an individual Office of Postsecondary Education ID number, completes an independent annual Fiscal Operations Report and Application to Participate and is assigned a campus specific Cohort Default Rate in the student loan programs. Each campus receives its own allocation of funding from the U.S. Department of Education for Title IV Campus Based programs (Perkins Loans, Federal Work Study and Supplemental Educational Opportunity Grants). Each campus is subject to individual federal program reviews and associated adjustments or costs. Campuses are individually responsible for compliance with Title IV statutory and regulatory requirements, including the requirements of the new Higher Education Opportunity Act of 2008.

For some functions or State mandated (usually budget related) issues, all State-operated campuses use a common procedure related to Title IV program administration. In these cases, efficiencies and economies of scale represent more effective use of resources. As appropriate, System Administration will provide guidance when the application or interpretation of a rule is unique to SUNY as a system.

This document does not address changes to the specifics of student aid programs such as loan limits, loan counseling requirements, eligibility, etc., which may be the subject of later advisories and can be determined via communications from national associations. Given the complexity of the requirements relating to preferred lender arrangements, however, especially given the existence of concurrent state law and SUNY policy on the subject, the following summary of the new federal requirements in this area is provided. After the description of federal requirements, a statement is made about whether current state law or SUNY policy achieves compliance with these new provisions.

1. Institutions that enter into preferred lender arrangements (which include publication of a preferred lender list) must develop, implement and publish on their web site a code of conduct that prohibits conflicts of interest with respect to education loans. Institution-affiliated organizations such as alumni associations that have preferred lender arrangements also must abide by the code of conduct. Campus employees with responsibilities related to education loans must receive annual notification of the applicability of the code. The code must contain the following provisions: a ban on revenue sharing arrangements; prohibitions on gifts from lenders or guarantors, excluding educational and training materials, assistance with entrance and exit counseling as long as it remains under the control of the institution, and philanthropic contributions from a lender that are unrelated to education loans; prohibitions on financial aid office employees consulting or contracting to provide paid services for lenders; prohibition on financial aid office employees paid service on lender advisory boards, however, reimbursement for reasonable expenses may be received. PUBLICATION ON THE WEBSITE AND ANNUAL EMPLOYEE NOTIFICATION OF A CODE OF CONDUCT IS A NEW REQUIREMENT NOT ALREADY PRESENT UNDER STATE LAW. THE PROHIBITIONS IN THE CODE ARE ALREADY COVERED BY STATE LAW. SUNY SYSTEM WILL BE PROVIDING CAMPUSES WITH A MODEL CODE FOR PUBLICATION. AFFILIATED ENTITIES SUCH AS ALUMNI ASSOCIATIONS THAT HAVE ENTERED INTO AFFINITY ARRANGEMENTS WITH LOAN PROVIDERS FOR CONSOLIDATION LOANS MUST ALSO ABIDE BY THE CODE.

2. Institutions and affiliated organizations (such as alumni associations) that have preferred lender arrangements must make certain disclosures about processing loans from any eligible lender. THIS REQUIREMENT IS ALREADY COVERED BY STATE LAW.

3. Institutions and affiliated organizations that have preferred lender arrangements for private education loans may not agree to allow use of their name or logo on loan marketing materials in such a way as to imply that the institution made the loan. Documentation relating to the loan must disclose the name of the lender. THIS IS A NEW REQUIREMENT WHICH GOES INTO EFFECT FEBRUARY 2010.

4. Institutions and affiliated organizations that have preferred lender arrangements must report annually to DOE and the public with an explanation of why they entered into a preferred lender arrangement with each lender covered, including why the terms and conditions of each type of loan are beneficial to students or their families. THIS ANNUAL REPORT TO DOE IS A NEW REQUIREMENT. CAMPUSES THAT HAVE PREFERRED LENDER LISTS MUST MAKE PUBLIC DISCLOSURES UNDER SUNY POLICY 3404 AND STATE LAW.

5. Institutions must make certain annual disclosures in print or other medium which is available to students and families when they enter into preferred lender arrangements including why they selected each lender and what the selection criteria were. There must be at least three unaffiliated lenders on any such list. SUNY POLICY AND STATE LAW ALREADY REQUIRE PUBLIC DISCLOSURES ABOUT SELECTION OF LENDERS ON A PREFERRED LENDER LIST. SUNY POLICY 3404 REQUIRES A MINIMUM OF THREE LENDERS ON ANY LIST.