

POLICY ON CHANGE OF OWNERSHIP AND/OR CONTROL

A change in ownership and/or control necessitates a comprehensive review of accredited status until assurances of compliance with the standards for accreditation and institutional integrity are reestablished.

Because of the legal complexities of ownership and the innumerable combinations possible, changes of ownership and control that are not included in this document could arise. In such cases, the Accrediting Commission or its representative will establish the reporting requirements and evaluation criteria on a case-by-case basis. For example, a management or investor agreement must be provided and reviewed to determine whether future events, circumstances, or contingencies give rise to rights that could change ownership and/or control. An example of such a right would be a lender or investor agreement that required the institution to maintain specified balance sheet ratios and upon the failure to do so, the lender or investor would be empowered to vote the stock or appoint the board of directors. Refer to the Definitions section of this document for additional guidance.

The phrase “change of ownership and/or control” includes changes of ownership that result in changes of control, changes of ownership that do not result in changes of control, and changes of control that do not result from changes of ownership.

Policy Requirements: When a person or entity purchases an ACCET accredited institution or obtains authority to control substantive actions of the institution, a change of ownership and/or control has occurred. In such cases, ACCET accreditation automatically ceases under the prior ownership and transfer of the institution’s accredited status awaits receipt, review, and approval of an application for a change of ownership and/or control. The institution must apply for approval of the change of ownership and/or control by providing timely written notification to ACCET of the transaction and by submitting all documentation required under this policy. **Note:** The change of ownership and/or control agreement(s) cannot include any right(s) of cancellation based upon the change(s) not being approved by ACCET or a governmental authority.

Upon review of the documentation submitted and under the authority of the Accrediting Commission, the Executive Committee of ACCET may grant interim approval for a sufficient period of time for the change of ownership and/or control to be considered by the Accrediting Commission for final action. Consistent with federal requirements, ACCET may designate the date of a change of ownership as the effective date of its approval of that substantive change if the approval decision is made within 30 days of the change in ownership. Institutions that participate in Title IV Federal Financial Aid are advised that they must obtain interim approval from ACCET within thirty days of the change of ownership or risk serious consequences relative to their continued financial aid eligibility. Upon review, the Accrediting Commission may: (1) grant final approval; (2) defer action pending receipt of additional information; or (3) deny approval of a change of ownership and/or control.

Additional sites are included within but not separable from the accreditation status of the main campus; therefore, the independent sale of such sites simultaneously discontinues their accredited status. Accordingly, the approval of a change of ownership or control is not possible for a branch

campus or auxiliary classroom independent of the main campus.

During the first twelve months following interim approval of a change of ownership and/or control, the institution may not make substantive changes, unless a request for special consideration is submitted to and approved by the Accrediting Commission. Such prohibited changes include, but are not limited to, new programs, major program/course modifications, and/or additional sites.

Procedures: An institution must notify ACCET, no later than ten (10) days prior to a prospective agreement for: (1) a change of ownership that affects 10 percent or more of the outstanding ownership, (2) a change of ownership that results in a change of control, or (3) a change of control that results apart from a change of ownership. The notification must be finalized in a subsequent letter and application (Document 22.1), with supporting documentation and the applicable fee submitted to ACCET within ten (10) days following the effective date of the change. If the transaction affecting ownership and/or control is cancelled or substantially modified for any reason, ACCET must be notified within ten (10) days of either event. Staff will review the Document 22.1 – Application for Approval of a Change of Ownership and/or a Change of Control and the exhibits submitted by the institution in order to determine if the application is complete. ACCET will also determine whether the change constitutes: (1) a change of ownership without a change of control, (2) a change of ownership with a change of control, or (3) a change of control apart from a change of ownership.

Change of Ownership Without a Change of Control: In the event of a change of ownership without a change of control (as defined below), the institution will be required to submit Document 22.1 – Application for Approval of a Change of Ownership and/or a Change of Control. Upon review, ACCET may waive the requirement of the management report and on-site visit and may grant final approval to the institution, if the change of ownership did not result in a change in ultimate, effective, and/or practical control of the institution.

Change of Ownership with a Change of Control or a Change of Control Apart from a Change of Ownership: In the event of a change of ownership with a change of control (as defined below) or a change of control apart from a change of ownership, the institution will be required to submit Document 22.1 – Application for Approval of a Change of Ownership and/or a Change of Control. If determined to be complete and acceptable, the Executive Committee of ACCET may grant interim approval of the change of ownership and/or control. Following a change of ownership and/or control, a representative of the institution may be required to attend the next available accreditation workshop. Additionally, the institution may be required to submit a narrative management report describing any changes that have occurred as a result of the change of ownership and/or control. The primary focus of the report will be on Standards I, II, III, VII, IX-D and on the implementation of any of the short-range and long-range plans presented in the change of ownership and/or control documentation. An on-site evaluation will take place no later than six (6) months from the date of the consummation of the change of ownership and/or control, unless subject to a waiver due to unique circumstances (e.g., an avocational institution franchised/licensed by an ACCET accredited institution, which provides supervision, control, written assurances and financial protections to its franchisee/licensee); however, visits are mandatory to Title IV eligible institutions and other institutions for which accreditation is required to participate in federal programs (e.g. Intensive English Programs).

When a visit is required, ACCET Document 8 – Request for On-Site Evaluation Team Visit must be submitted along with the required fee on a schedule established by ACCET. The Accrediting Commission will subsequently review the application, the management report, the team report, and the institution's response to the team report, as applicable, in making its determination to grant final approval, defer action, or deny final approval of the change of ownership and/or control.

In addition to the requirements identified above in this section, an institution seeking approval to transition from a for-profit to a non-profit status must provide a side-by-side comparison of the ownership structure before and after the proposed change and must demonstrate that the institution: (1) has been granted both official nonprofit status by the applicable state(s) and tax-exempt status by the federal government; (2) is organized and operated exclusively for exempt purposes as set forth in section 501(c)(3); (3) is not organized or operated for the benefit of private interests, with no part of the institution's net earnings to inure to the benefit of any private shareholder, board member, or individual; and (4) is operated such that all monies made go back into the institution, with no "profit sharing" among any private shareholder, board member, or individual.

Obligations: The institution is responsible and liable for all accreditation fees, related costs, contractual and/or refund obligations in accordance with state and federal laws and regulations and ACCET policies and procedures applicable to the institution before and after the change of ownership or control. Refer to ACCET Document 10 – Fee Schedule for the fees required for processing a change of ownership/control application.

Definitions

A change of ownership with a change of control of a proprietary institution is defined as any event or transaction, voluntary (a sale, as an example) or involuntary (a foreclosure, as an example), that changes ultimate, effective, and/or practical ownership control of the institution. A change of ownership of an institution that results in a change of control may include, but is not limited to: (1) the sale of the institution; (2) transfer of the controlling interest of stock of the institution or its parent institution; (3) merger of two or more institutions; (4) division of the institution into two or more institutions; (5) transfer of the liabilities of an institution to its parent institution; (6) transfer of the assets that comprise a substantial portion of the educational business of the institution; or (7) a conversion of the institution from a for-profit to a non-profit institution. **Note:** The magnitude of the change is not the deciding factor. By way of example, even a 1% stock transfer constitutes a change of ownership with a change of control, if the institution was dually owned (50%/50%) previously.

The following are further examples of changes of control: (1) the grant of voting rights of controlling stock; (2) the grant of the right to appoint a majority of the members of the governing board or committee; (3) the grant of irrevocable executive authority; (4) the grant of veto powers over substantive actions of the institution; or (5) the activation of previously granted contingent, dormant or inchoate rights, the exercise of which would constitute a change of control, as above defined.

A change of ownership without a change of control of a proprietary institution is defined as any event or transaction that results in a change of ownership but does not result in a change in ultimate, effective, and/or practical control of the institution. The following are examples of changes of ownership without a change of control: (1) conversion of a sole proprietorship to an “S” corporation with identical ownership or (2) transfer of a non-controlling interest of the institution.

A change of ownership and/or control of a non-profit institution is defined as any event or transaction that results in a change of ultimate, effective, and/or practical control of the institution including, but not limited to: (1) a change of fifty percent (50%) or more in the board's voting membership over a thirty-six (36) month period; (2) the establishment of any management agreement that has the effect of nullifying or overriding the board's powers of control over the institution; or (3) transfer of the assets that comprise a substantial portion of the educational business of the institution.