

117TH CONGRESS
2D SESSION

H. R. 7031

To amend the Higher Education Act of 1965 to modify the application and review process for changes of control, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2022

Mr. KELLER (for himself, Mrs. MILLER-MEEKS, and Mr. OWENS) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend the Higher Education Act of 1965 to modify the application and review process for changes of control, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Change of Ownership
5 and Conversion Improvement Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Institutions of higher education in the
9 United States frequently merge with, consolidate,

1 and acquire other institutions that result in a
2 change in ownership.

3 (2) These transactions are generally good for
4 students, as they promote innovation, drive competi-
5 tion, and prevent stagnation.

6 (3) Changing demographics and evolving higher
7 education enrollment patterns may lead to more
8 mergers and acquisitions in the future.

9 (4) Proprietary institutions that voluntarily
10 convert to nonprofit status or are acquired by non-
11 profit and public entities can have a positive impact
12 on students and society.

13 (5) The Department of Education has an inter-
14 est in safeguarding Federal student aid funds and
15 therefore should conduct thorough and comprehen-
16 sive reviews of all changes in ownership involving in-
17 stitutions of higher education.

18 (6) These reviews are necessary to ensure that
19 the acquiring entity has the financial and adminis-
20 trative capacity to manage the target institutions.

21 (7) The Department of Education should con-
22 duct these reviews in a thorough and comprehensive
23 manner but should do so as quickly as possible to
24 promote the execution of these transactions.

1 (8) As of May 2021, the Department of Edu-
2 cation had “very few staff” assigned to evaluate
3 pretransaction, change of control, and conversion ap-
4 plications on a full-time basis.

5 (9) Consequently, these transactions are proc-
6 essed by the Department of Education at an ex-
7 traordinary slow rate of speed, with some institu-
8 tions waiting up to 5 years before receiving a final
9 determination.

10 (10) One of the primary challenges in proc-
11 essing these applications quickly is the lack of fund-
12 ing to hire enough qualified staff.

13 (11) Currently, general taxpayers are bearing
14 the cost of reviewing these transactions.

15 (12) It is in the interest of institutions and the
16 United States to charge a fee for applications involv-
17 ing changes in ownership at institutions of higher
18 education that are submitted to the Department of
19 Education.

20 (13) In consideration for the fee, the Depart-
21 ment of Education will be required to guarantee an
22 expedited review process for all applicants, absent
23 compelling circumstances where good cause exists
24 for delay.

1 (14) The Government Accountability Office has
2 identified weaknesses in the Department of Edu-
3 cation's post-transaction monitoring process, which
4 will likewise require additional staff to be hired to
5 conduct monitoring.

6 (15) Institutions that have converted from pro-
7 prietary status to nonprofit status and have an on-
8 going financial relationship with the former owners
9 of the institution are at highest risk of entering into
10 financial arrangements that result in improper pri-
11 vate inurement.

12 (16) These institutions should be closely mon-
13 itored for a period after these transactions occur and
14 should be required to pay a fee to support the hiring
15 of staff to conduct this monitoring.

16 (17) The Government Accountability Office has
17 likewise found weaknesses in the Internal Revenue
18 Service review process for conversion requests and
19 the post-transaction monitoring process.

20 (18) In order to support a more thorough re-
21 view of these applications and to conduct moni-
22 toring, the Department of Education will remit part
23 of the fee paid by institutions to the Internal Rev-
24 enue Service for these purposes.

1 **SEC. 3. MODIFYING THE APPROVAL PROCESS FOR**
2 **CHANGES OF CONTROL.**

3 (a) AMENDMENTS.—Section 498(i) of the Higher
4 Education Act of 1965 (20 U.S.C. 1099c(i)) is amended—

5 (1) in the subsection heading, by inserting
6 “AND PROPOSED CHANGES OF OWNERSHIP” after
7 “OWNERSHIP”;

8 (2) in paragraph (1)—

9 (A) by striking “(1) An eligible institu-
10 tion”, and inserting the following: “(1)(A) An
11 eligible institution”;

12 (B) by striking “the requirements of sec-
13 tion 102 (other than the requirements in sub-
14 sections (b)(5) and (c)(3))” and inserting “the
15 applicable requirements of section 102 or
16 103(13)”

17 (C) by adding at the end the following:

18 “(B)(i) Prior to a change in ownership re-
19 sulting in a change of control, an institution
20 may seek a pretransaction determination about
21 whether the institution will meet the applicable
22 requirements of section 102 or 103(13) and
23 this section after such proposed change in own-
24 ership by submitting to the Secretary a materi-
25 ally complete pretransaction review application.

“(ii) In reviewing applications submitted under clause (i), the Secretary shall only provide a comprehensive review of each such application, and may not provide an abbreviated or partial review.

“(iii) If an institution submits a materially complete pretransaction review application at least 90 days prior to the transaction and the Secretary approves the application, the subsequent change in ownership application shall also be approved and the institution shall be certified as meeting the requirements for such transaction, provided that the institution—

“(I) complies with the applicable terms of this section; and

“(II) the transaction resulting in a change of control does not differ materially in its terms from the transaction proposed in the pretransaction review application.”;

(3) in paragraph (2)—

(A) in subparagraph (E), by striking “or” at the end;

(B) in subparagraph (F), by striking the period at the end and inserting “; or”; and

(C) by adding the following at the end:

1 “(G) in the case of a proprietary institution of
2 higher education, a conversion to a public or other
3 nonprofit institution of higher education.”;

4 (4) by adding at the end the following:

5 “(5)(A) Subject to subparagraph (B), when any insti-
6 tution submits an application for a change in ownership
7 resulting in a change in control under this section or sub-
8 mits a pretransaction review application under paragraph
9 (1)(B) (other than in the case of a conversion trans-
10 action), the institution shall be required to pay to the Sec-
11 retary an administrative fee that shall—

12 “(i) be in an amount equal to 0.15 percent of
13 the total institutional revenue derived from this title
14 by such institution for the most fiscal year for which
15 data is available; and

16 “(ii) be used exclusively for expenses related to
17 the processing of such application, and be available
18 to the Secretary without further appropriation, ex-
19 clusively for expenses related to the processing of
20 such approval or application.

21 “(B) In the case of a proprietary institution submit-
22 ting an application for conversion, or a pretransaction re-
23 view application for conversion, the institution shall be re-
24 quired to pay to the Secretary an administrative fee that
25 shall—

1 “(i) be in an amount equal to 0.30 percent of
2 the total institutional revenue derived from this title
3 by such institution for the most fiscal year for which
4 data is available; and

5 “(ii) be used exclusively for expenses related to
6 the processing of such application, and of which—

7 “(I) 50 percent shall be available to the
8 Secretary without further appropriation, exclu-
9 sively for expenses related to the processing of
10 such application; and

11 “(II) 50 percent shall be remitted by the
12 Secretary to the Commissioner of the Internal
13 Revenue, and shall be available, without further
14 appropriation, to the Commissioner of Internal
15 Revenue exclusively for purposes of determining
16 whether the institution seeking such conversion
17 or pretransaction review is an institution ex-
18 empt from tax and is otherwise in compliance
19 with applicable requirements of the Internal
20 Revenue Code of 1986.

21 “(C) An institution that pays a fee under subpara-
22 graph (A) or (B) for a pretransaction application with re-
23 spect to a proposed transaction shall not be required to
24 pay another fee under such subparagraph for a change
25 in ownership application with respect to such transaction.

1 “(D) In no case may any fee remitted under subpara-
2 graph (A) or (B) exceed \$120,000 for any transaction (or
3 pretransaction) application, nor may the Secretary require
4 an institution that has paid a fee under subparagraph (B)
5 to pay an additional fee under subparagraph (A).

6 “(6)(A) The Secretary shall approve or deny a mate-
7 rially complete application (including pretransaction re-
8 views and conversion applications) submitted under this
9 section as soon as practicable and not later than the 90-
10 day period beginning on the date of receipt of such an
11 application, except that in a case in which the Secretary
12 determines, on a nondelegable basis, that good cause exists
13 to not make the determination during such 90-day period,
14 the Secretary shall notify the institution in writing detail-
15 ing the reasons for a good cause extension.

16 “(B) If the Secretary fails to approve or deny a mate-
17 rially complete application during the period described in
18 subparagraph (A) and does not find good cause for exten-
19 sion, the materially complete application shall be deemed
20 approved.

21 “(C) In no case may the Secretary grant a good cause
22 extension under this section to an institution for more
23 than one month at a time, or for a total of more than
24 more than 12 months.

1 “(D) To ensure timely submission of all relevant doc-
2 umentation, the Secretary may deny an application if an
3 institution does not make a good faith effort to submit
4 to the Secretary, in a timely manner—

5 “(i) all relevant documentation; or

6 “(ii) a materially complete application.

7 “(E)(i) Upon approving or denying an application
8 under this paragraph, the Secretary shall publish in the
9 Federal Register the reasoning for such approval or de-
10 nial, including—

11 “(I) a copy of the approval or denial letter sent
12 to the institution; and

13 “(II) any analysis regarding how the Secretary
14 determined under paragraph 7(A)(iii) that a director
15 of the institution was an interested or disinterested
16 party to the transaction.

17 “(ii) The Secretary shall not publish under clause (i)
18 any information that is otherwise exempt from disclosure
19 under section 552 of title 5, United States Code (relating
20 to the Freedom of Information Act), including trade se-
21 crets and commercial or financial information that is privi-
22 leged or confidential.

23 “(7)(A) In the case of a proprietary institution that
24 subsequent to the transaction would be owned and oper-
25 ated by an entity (in this paragraph referred to as the

1 ‘buyer’) seeking to be recognized as a public or other non-
2 profit institution, the buyer shall meet the definition of
3 a nonprofit institution under section 103(13) if—

4 “(i) the buyer pays no more than fair market
5 value for any assets of the proprietary institution;

6 “(ii) the buyer pays no more than fair market
7 value for any service or lease contracts, including
8 such service and lease contracts provided by the en-
9 tity selling the proprietary institution; and

10 “(iii) to prevent self-dealing in the case where
11 one or more individuals with a substantial ownership
12 or controlling interests in the proprietary institution
13 will also have substantial or controlling interests in
14 the institution seeking to be recognized as a public
15 or other nonprofit institution (meaning that one or
16 more individuals are on both sides of the trans-
17 action), the change of control transaction, and any
18 substantial asset acquisition, service, or lease agree-
19 ments with the proprietary institution shall be ap-
20 proved by a disinterested committee of directors of
21 the entity that seeks to be recognized as a public or
22 other nonprofit institution.

23 “(B) For the purposes of this paragraph, parties to
24 the transaction are entitled to a rebuttable presumption
25 that the assets, lease contracts, and service contracts that

1 are part of the transaction are purchased at fair market
2 value if—

3 “(i) the acquiring entity pays no more than fair
4 market value for such assets, lease contracts, or
5 service contracts; and

6 “(ii) the value of the assets, lease contracts, or
7 service contracts are evaluated by at least one inde-
8 pendent third-party entity hired by parties on both
9 sides of the transaction.

10 “(8)(A) An institution that has been approved for
11 conversion by the Secretary shall be subject to a moni-
12 toring period for a 5-year period beginning on the day
13 after the date of such approval. In conducting the moni-
14 toring of the institution under this paragraph, the Sec-
15 retary—

16 “(i) shall only conduct monitoring to ensure
17 that the institution is in compliance with the re-
18 quirements of section 103(13) and paragraph (7) of
19 this subsection; and

20 “(ii) may require the institution to submit reg-
21 ular reports or conduct audits of such institution re-
22 lating to such compliance.

23 “(B) Each institution that is subject to the moni-
24 toring period under this paragraph shall remit an annual
25 fee to the Secretary—

1 “(i) in an amount equal to 0.15 percent of the
2 total revenue derived from this title by such institu-
3 tion for the most recent fiscal year for which data
4 is available; and

5 “(ii) that shall be exclusively for expenses re-
6 lated to monitoring of the institution for the period
7 described in subparagraph (A)—

8 “(I) of which 50 percent shall be used by
9 the Secretary, without further appropriation,
10 exclusively for expenses related to monitoring of
11 the institution during such period; and

12 “(II) of which 50 percent shall be remitted
13 by the Secretary to the Commissioner of Inter-
14 nal Revenue, to be available to such Commis-
15 sioner, without further appropriation, exclu-
16 sively for monitoring compliance with the Inter-
17 nal Revenue Code of such institution during
18 such period.

19 “(C) An institution may not be subject to an annual
20 fee under subparagraph (B) for monitoring related to a
21 conversion that exceeds \$60,000.

22 “(D) If the Secretary determines that an institution
23 should be subject to the monitoring under this paragraph
24 beyond the 5-year period described in subparagraph (A),
25 the Secretary shall provide the reasons justifying an exten-

1 sion in writing to the institution (and in the Federal Reg-
2 ister) at least 30 days before the expiration of such period.

3 “(E) Any institution that is subject to monitoring
4 under this paragraph may seek a waiver to be exempt from
5 such monitoring (including the annual fee under subpara-
6 graph (B)) on an annual basis for any year during the
7 monitoring period and the Secretary shall grant such waiv-
8 er if there is no ongoing contractual or financial relation-
9 ship between the institution and the former entity or indi-
10 viduals that previously owned the institution. The Sec-
11 retary may grant a waiver for more than 1 year in the
12 case where the entity that formerly owned the proprietary
13 institution has closed or no longer exists and the Secretary
14 determines the institution is not at risk of violating the
15 requirements of section 103(13) or paragraph (7) of this
16 subsection.

17 “(9) Any institution that submits an application for
18 conversion shall not promote or market itself, in any man-
19 ner, as a public or other nonprofit institution of higher
20 education unless—

21 “(A) the Secretary has provided final approval
22 of the conversion of the institution to a public or
23 other nonprofit institution of higher education under
24 this section;

1 “(B) an accrediting agency or association recog-
2 nized by the Secretary pursuant to section 496 has
3 approved such public or nonprofit status of the insti-
4 tution;

5 “(C) the State has given final approval to the
6 institution as a public or nonprofit institution of
7 higher education, as applicable; and

8 “(D) in the case of an institution seeking non-
9 profit status, the Commissioner of Internal Revenue
10 has approved the institution as tax exempt pursuant
11 to the Internal Revenue Code of 1986.

12 “(10) Not later than 270 days after the date of enact-
13 ment of the Change of Ownership and Conversion Im-
14 provement Act, and periodically thereafter, the Secretary
15 shall publish (and update as necessary) in the Federal
16 Register—

17 “(A) descriptions of the documents and mate-
18 rials the Secretary expects or requires institutions of
19 higher education to submit (including any standard-
20 ized forms) as part of any pretransaction application
21 or change in ownership application under this sec-
22 tion, including a description of what the Secretary
23 considers to be a materially complete application;
24 and

1 “(B) after at least a 30-day notice and com-
2 ment period, responses to any public comments re-
3 ceived with respect to such descriptions or updates
4 to such descriptions.

5 “(11) In a case in which the Secretary requests a doc-
6 ument under this section as part of a pretransaction or
7 change in ownership application that is not described in
8 the Federal Register under paragraph (10), the Secretary
9 shall—

10 “(A) substantiate, in writing to the institution,
11 the reasons why the Secretary is requesting such
12 documents; and

13 “(B) publish such reasons in the Federal Reg-
14 ister, including whether the Secretary may request
15 other institutions that submit applications under this
16 section to produce similar documentation.

17 “(12)(A) Not later than 18 months after the date of
18 enactment of the Change of Ownership and Conversion
19 Improvement Act, and annually thereafter, the Secretary
20 shall submit a report to authorizing committees, and post
21 such report on a publicly available website regarding im-
22 plementation of the amendments made to this section by
23 such Act, including the following information:

1 “(i) The mean and median length of time taken
2 by the Secretary to review applications under this
3 section during the preceding 12-month period.

4 “(ii) The number of applications approved or
5 denied during the preceding 12-month period.

6 “(iii) For any application not processed during
7 the 90-day period beginning on the date of receipt
8 of the application for which the Secretary found
9 good cause under paragraph (6)(A) to extend the
10 deadline in which the application shall be processed,
11 a copy of the letter sent to the institution explaining
12 why the Secretary believed good cause existed for
13 such extension.

14 “(iv) For any application not processed during
15 such 90-day period, which was deemed to be auto-
16 matically approved by the requirements of this sec-
17 tion under paragraph (6)(B), the name of each insti-
18 tution involved and an explanation for why the appli-
19 cation was not processed in a timely manner.

20 “(v) Any legislative suggestions the Secretary
21 may have to improve the application or monitoring
22 process under this section.

23 “(B) If the Secretary fails to submit a report under
24 this paragraph by not later than 90 days after the dead-
25 line for such submission under subparagraph (A), the Sec-

1 retary may not, for the 12-month period following such
 2 failure, spend the fees remitted by institutions under this
 3 section or remit such fees to the Commissioner unless
 4 Congress provides for such use by further appropriation.

5 “(13) For the purposes of this subsection, the term
 6 ‘conversion’ means any transaction under which—

7 “(A) a proprietary institution is reorganized
 8 and seeks recognition as a public or other nonprofit
 9 institution; or

10 “(B) the control of a proprietary institution is
 11 transferred as a result of a sale, donation, or other
 12 method to an entity that seeks certification under
 13 this section as a public or other nonprofit institu-
 14 tion.”.

15 (b) APPLICATION.—The amendments made by this
 16 section shall be apply with respect to applications sub-
 17 mitted for change of control or conversion submitted on
 18 or after January 1, 2023.

19 **SEC. 4. GOVERNMENT ACCOUNTABILITY OFFICE.**

20 Not later than 5 years after the date of enactment
 21 of this Act, the Comptroller General shall submit to the
 22 Committee on Education and Labor of the House of Rep-
 23 resentatives and the Committee on Health, Education,
 24 Labor, and Pensions of the Senate, a report on the imple-

1 mentation of the amendments made by this Act, including
2 recommendations to improve—

3 (1) the application process under section 498(i)
4 of the Higher Education Act of 1965 (20 U.S.C.
5 1099c(i)), as amended by section 3, for institutions
6 of higher education seeking a change in ownership
7 resulting in a change in control; or

8 (2) the monitoring process under such section
9 for institutions of higher education that have re-
10 cently converted from being recognized as a propri-
11 etary institution to a public or other nonprofit insti-
12 tution.

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