

118TH CONGRESS  
2D SESSION

# H. R. 7144

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

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 30, 2024

Mr. OWENS introduced the following bill; which was referred to the Committee on Education and the Workforce

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## 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)”; and

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

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

25 “(ii) In reviewing applications submitted under clause  
26 (i), the Secretary shall only provide a comprehensive re-

1 view of each such application, and may not provide an ab-  
2 breviated or partial review.

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

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

12 “(II) the transaction resulting in a change of  
13 control does not differ materially in its terms from  
14 the transaction proposed in the pretransaction re-  
15 view application.”;

16 (3) in paragraph (2)—

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

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

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

22 “(G) in the case of a proprietary institution of  
23 higher education, a conversion to a public or other  
24 nonprofit institution of higher education.”;

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

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

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

12                   “(ii) be used exclusively for expenses related to  
13                   the processing of such application, and be available  
14                   to the Secretary without further appropriation, ex-  
15                   clusively for expenses related to the processing of  
16                   such approval or application.

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

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

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

3                   “(I) 50 percent shall be available to the  
4           Secretary without further appropriation, exclu-  
5           sively for expenses related to the processing of  
6           such application; and

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

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

22          “(D) In no case may any fee remitted under subpara-  
23          graph (A) or (B) exceed \$120,000 for any transaction (or  
24          pretransaction) application, nor may the Secretary require



1 an institution that has paid a fee under subparagraph (B)  
2 to pay an additional fee under subparagraph (A).

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

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

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

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

1           “(i) all relevant documentation; or

2           “(ii) a materially complete application.

3           “(E)(i) Upon approving or denying an application  
4 under this paragraph, the Secretary shall publish in the  
5 Federal Register the reasoning for such approval or de-  
6 nial, including—

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

9           “(II) any analysis regarding how the Secretary  
10 determined under paragraph 7(A)(iii) that a director  
11 of the institution was an interested or disinterested  
12 party to the transaction.

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

19          “(7)(A) In the case of a proprietary institution that  
20 subsequent to the transaction would be owned and oper-  
21 ated by an entity (in this paragraph referred to as the  
22 ‘buyer’) seeking to be recognized as a public or other non-  
23 profit institution, the buyer shall meet the definition of  
24 a nonprofit institution under section 103(13) if—

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

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

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

20           “(B) For the purposes of this paragraph, parties to  
21 the transaction are entitled to a rebuttable presumption  
22 that the assets, lease contracts, and service contracts that  
23 are part of the transaction are purchased at fair market  
24 value if—

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

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

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

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

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

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

24           “(i) in an amount equal to 0.15 percent of the  
25 total revenue derived from this title by such institu-

1       tion for the most recent fiscal year for which data  
2       is available; and

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

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

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

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

20               “(D) If the Secretary determines that an institution  
21       should be subject to the monitoring under this paragraph  
22       beyond the 5-year period described in subparagraph (A),  
23       the Secretary shall provide the reasons justifying an exten-  
24       sion in writing to the institution (and in the Federal Reg-  
25       ister) at least 30 days before the expiration of such period.

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

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

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

23               “(B) an accrediting agency or association recog-  
24 nized by the Secretary pursuant to section 496 has

1 approved such public or nonprofit status of the insti-  
2 tution;

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

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

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

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

23 “(B) after at least a 30-day notice and com-  
24 ment period, responses to any public comments re-

1       ceived with respect to such descriptions or updates  
2       to such descriptions.

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

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

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

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

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



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

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

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

17           “(v) Any legislative suggestions the Secretary  
18 may have to improve the application or monitoring  
19 process under this section.

20           “(B) If the Secretary fails to submit a report under  
21 this paragraph by not later than 90 days after the dead-  
22 line for such submission under subparagraph (A), the Sec-  
23 retary may not, for the 12-month period following such  
24 failure, spend the fees remitted by institutions under this

1 section or remit such fees to the Commissioner unless  
2 Congress provides for such use by further appropriation.

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

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

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

13 (b) APPLICATION.—The amendments made by this  
14 section shall be apply with respect to applications sub-  
15 mitted for change of control or conversion submitted on  
16 or after January 1, 2025.

17 **SEC. 4. GOVERNMENT ACCOUNTABILITY OFFICE.**

18 Not later than 5 years after the date of enactment  
19 of this Act, the Comptroller General shall submit to the  
20 Committee on Education and the Workforce of the House  
21 of Representatives and the Committee on Health, Edu-  
22 cation, Labor, and Pensions of the Senate, a report on  
23 the implementation of the amendments made by this Act,  
24 including recommendations to improve—

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

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

○