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REGULATIONS FOR THE EDUCATION  
AMENDMENTS OF 1976

GOVERNMENT

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OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON  
POSTSECONDARY EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR  
HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, D.C.,  
ON DECEMBER 16, 1976

Printed for the use of the Committee on Education and Labor  
CARL D. PERKINS, *Chairman*

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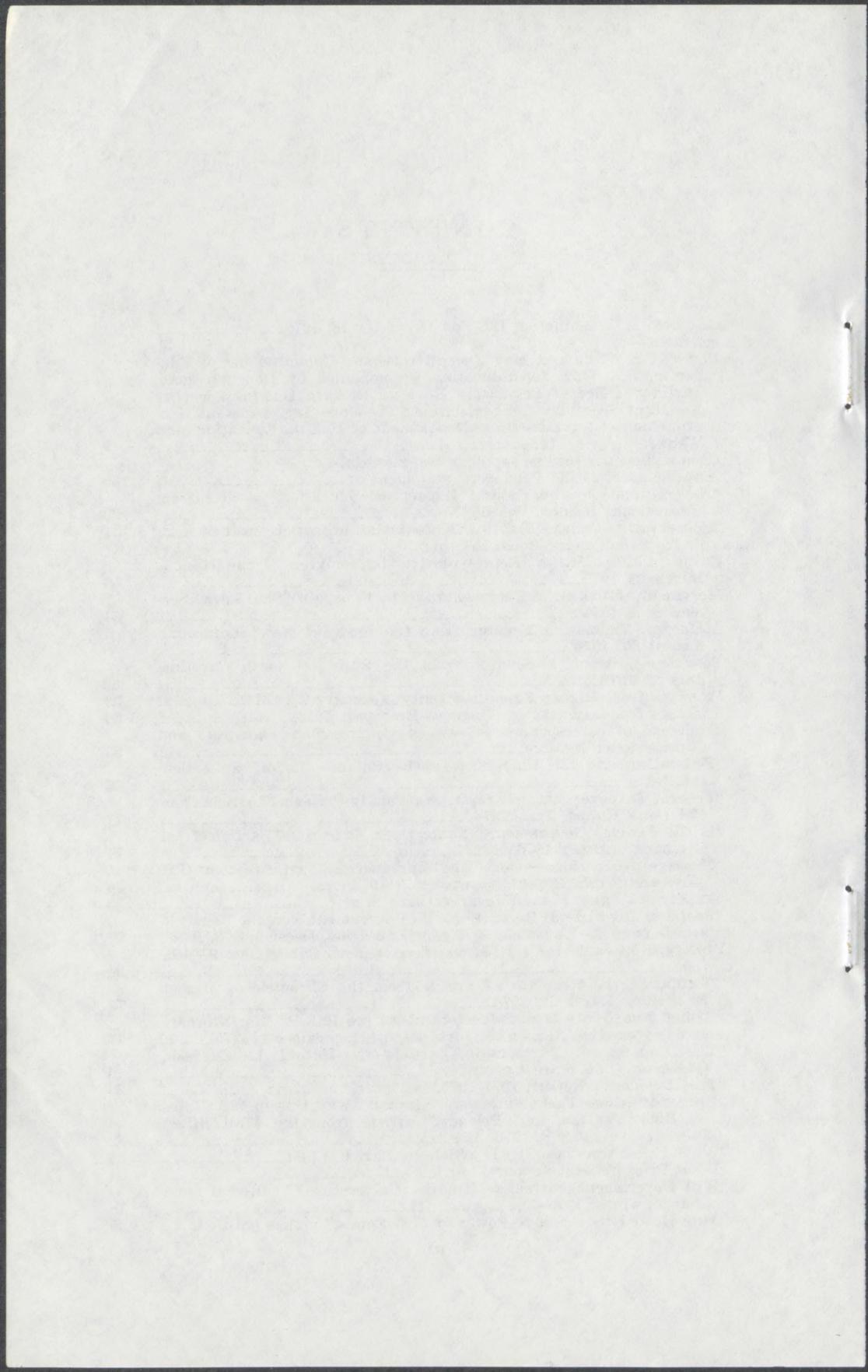
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# REGULATIONS FOR THE EDUCATION AMENDMENTS OF 1976

THURSDAY, DECEMBER 16, 1976

U.S. HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON POSTSECONDARY EDUCATION  
OF THE COMMITTEE ON EDUCATION AND LABOR,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:15 a.m. in room 2175, Rayburn House Office Building, Hon. James G. O'Hara (chairman of the subcommittee) presiding.

Members present: Representatives O'Hara and Buchanan.

Staff present: Jim Harrison, staff director; Webster Buell, counsel; Elnora Teets, clerk; and Robert Andringa, minority staff director.

Mr. O'HARA. The subcommittee will come to order.

I have been reviewing the history of my own tenure in this chair within the last few weeks. I notice the first set of hearings that we undertook after I became chairman of this subcommittee related to the development and review of regulations by the U.S. Office of Education. To be specific, there were 2 days of hearings to review the first proposed family contribution schedule under the basic grant program.

Those hearings had not been completed a week when we began 3 days of hearings on the regulations which had been proposed on the implementation of section 1202 of the Higher Education Act.

It is appropriate, I think, for my chairmanship to end on the same note as it began, that is, in the examination of rules and regulations being promulgated for carrying out those responsibilities which are imposed on the executive branch by statutory law.

My own views on the problems and dangers and temptations involved in the administrative rulemaking are, I believe, fairly well-known to most of the people in this room. I have a firm and unyielding belief that article I, section I of the Constitution, when it puts the lawmaking authority solely in the hands of the Congress, means what it says, and even in those circumstances when it is truly essential that regulations be written in order to make it possible to carry out the law, those regulations should be held to the minimum required by the law.

Unfortunately, not all laws and certainly not all regulations are written with that concept in mind. Whether the statute is a mere description of purpose and a broad grant of regulatory authority or a carefully written and detailed set of legislative directions, it seems to me that the history of the last several decades has been one of Executive inability to stop trying to improve on what the Congress has written.

Now, I am not going to assert that you cannot improve on the workings of the Congress, But I do believe that the executive branch lacks

authority to do so, and when the Congress seems to fail to do what they should have done, or what the Agency thinks they should have done, or when the Congress seems to lack the insight or professional expertise that it would have had if it had been chosen on the basis of qualifications rather than electability, and when the Congress, because of these flaws in its composition, comes up with solutions that the experts consider to be bizarre, if not absurd, then there is a remedy that does not lie in utilizing the regulation process in curing the effects of the law. The remedy, of course, lies in requesting either an explanation of or an amendment to the law.

I am very gratified (with some reservations), to hear that Secretary Mathews changed the policy of his predecessor and has decided to seek the views of the general public before freezing the proposed regulations in a phraseology that he would then feel obliged to defend against anything but the most minor modification.

That does reflect a very healthy step forward toward recognizing that the public probably knows better than either the Congress or the executive branch what is really wise and needed.

However, there remains, even in this new and more open process, another concept to which Secretary Weinberger once gave voice in this very room before this subcommittee which, I believe, lies at the root of what is really wrong with the regulatory process. Secretary Weinberger, many of you will recall, in seeking to defend some regulations that were being considered by this subcommittee, asserted that it was his function—and I quote :

First, to interpret the intent of the Congress, and second, to accommodate the concerns of a wide diversity of interest groups and individuals.

Mr. Pierce, as guidance for you in your important work, as guidance for the Office of Regulatory Review, in the hope of expressing the views of a great many of my colleagues in this House, and as a valedictory remark from my own career in the House, let me say this. Mr. Weinberger was only half right.

It was his responsibility, just as it is yours, to follow the intent of Congress. However, the "accommodation of the concerns of a wide variety of interest groups and individuals" is not the function of the agencies of the executive branch. That kind of accommodation is an excellent definition of what we are supposed to be doing in the legislative process, and the Constitution entrusts that kind of accommodation of interest and views to the hands of the Congress.

Now, with regard to specifics. The Education Amendments of 1976, which became Public Law 94-482, contained a number of changes in the law which changed existing language authorizing the Commissioner or Secretary to make regulations. They changed that from an authority to make regulations desirable for the attainment of the purposes of the programs, to language authorizing the Commissioner or the Secretary to make regulations solely to carry out what the statute mandates. Information-gathering authority in several titles is reduced from "such information as the Secretary shall see fit" to "such information as is essential for the carrying out of this title."

I have read the notice of intent, and I must confess a certain disappointment at finding nothing in that intent to indicate a decision of whether the Department will seek out regulations that go beyond what

is necessary, so that they may be eliminated in conformity with these new, clear, legal restrictions on the Department's right to give a nickel and ask for a dollar's worth of control in change.

It may, indeed, not be necessary for you to mention these issues in the notice of intent, because the new statute does not leave you any room to decide whether or not you will abolish regulations going beyond the requirements of the statute.

In any event, I would like to know what you are doing about those changes, what procedures you have set up, what your intentions are with respect to those kinds of issues which certainly are reflected by the Congress, and secondly, whether or not in your drafting of regulations for the new provisions, substitute provisions, you are trying to exercise the restraints of these changes in rulemaking authority that have been suggested to you, and how you are going to go about that.

So those are the things that we are concerned with today, and I would like to call on William Pierce, Acting Executive Deputy Commissioner of Education, to enlighten the subcommittee on what you are doing and how you are going about it.

Incidentally, this is not a hostile inquiry. I want you to know that. I think that you are going in the right direction. I just want to make sure that you are going far enough.

**STATEMENT OF DR. WILLIAM PIERCE, ACTING EXECUTIVE DEPUTY COMMISSIONER OF EDUCATION, U.S. OFFICE OF EDUCATION, ACCOMPANIED BY DON WORTMAN, DIRECTOR, OFFICE OF REGULATORY REVIEW; RICHARD HASTINGS, DEPUTY ASSISTANT SECRETARY FOR LEGISLATION; AND THEODORE SKY, ASSISTANT GENERAL COUNSEL FOR EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE**

Mr. PIERCE. Thank you, Mr. Chairman.

We appreciate the fact that we, this committee and the Office of Education and the Department of Health, Education, and Welfare, I think, are working toward the same goals. The means are perhaps at issue today; how we arrive at those goals.

We would like to spend some time sharing with you our conception of how we can best do that.

For the record, would it be helpful, Mr. Chairman, if I introduced the people at this table?

Mr. O'HARA. Yes.

Mr. PIERCE. At my far left, Mr. Don Wortman, Director, Office of Regulatory Review in the Secretary's Office; next to him is Mr. Richard Hastings, Deputy Assistant Secretary for Legislation; on my far right, Mr. Ted Sky, Assistant General Counsel for Education for the Department of Health, Education, and Welfare.

I have behind me people from the various programs for whom you might have specific questions. I will introduce them at that time, if that is all right, Mr. Chairman.

I would like to, if I may, spend just a moment describing for you, Mr. Chairman, the approach that we have taken to try to carry out the intentions of Congress over the past 2 years since you held that first hearing.

One of the things clear to us was that Congress felt that the Office of Education and Department of Health, Education, and Welfare was guilty of not promulgating rules and regulations in those programs where they had no intent of asking for funds. It was Congress feeling that that was an inappropriate behavior for the Office of Education and HEW to engage in.

I think the Congressional Record makes it quite clear that you felt that way, and we therefore have embarked upon a policy, and have a procedure in place, where there will be regulations for every program authorized by Congress, irrespective of the intent of the administration to request those funds.

Mr. O'HARA. If I may interrupt at this point, I want to commend you for that. That is a point I should have made in my opening remarks. I am very pleased about it.

Obviously, the way that government is working nowadays, the fact that you had not promulgated regs made it difficult for the Congress to arrive at an appropriations decision. In effect, you say we will not promulgate the regs; therefore, Congress cannot appropriate funds, which is fine with us, because we do not want to. Maybe it was not fine with the Congress. I really think that your new position is a definite step forward and I want to commend you for having made that decision. I hope that those regulations will be handled expeditiously, although I understand that there is quite a bit of work to be done.

Mr. PIERCE. There is a lot of work for us, Mr. Chairman; in fact, we have analyzed the different regulation packages within Public Law 94-482 and find that there are 44 separate regulation packages required in that legislation.

The Congress, also, in the last few years has spoken to the issue of expediency that you mentioned and has said to us in legislative language that we must provide final rules and regulations within 240 days. That is good news, certainly, for the people in the field. For us who have to do that, maybe sometimes it is bad news, in the sense that it puts us under a very, very tight timeframe.

As we listen and talk with the Secretary we sensed and understand his concern with the regs writing process—which is that the regs are too complex, too complicated, not clear; they are written in far too legalistic language, they are not open to the public. The public has not had, at least in the view of the public, in their perception, an opportunity to have appropriate input into the rules and regulations process.

On the 25th of July, the Secretary provided us with a directive that suggested that there would be a new procedure to be put in place, which required the publishing of the NOI you mentioned, which never has been done; extended the public comment period from 30 days to 45 days for both the draft regs and the NOI; and it also required public hearings with one exception that I will mention in a moment.

We were then faced with what was, for us, somewhat of a dilemma: that is, providing those final regs in 240 days and at the same time opening up that process and writing more simplified regs, rules and regulations. We put together a series of task forces in the Office of Education, trained them, including lawyers, in how to write language

that was easily read and understood. Our program people hopefully have a better perception of what that means.

We drafted the NOI's and got them out. They are now in the field, as you know. People are responding to them. We have not yet started to write the draft regulations for any of these 45 programs and will not until the final date of comment on the NOI is upon us.

Another thing that I think, Mr. Chairman, that we have dealt with since you started holding these hearings and, in a sense, has exacerbated the whole problem that we both face, is that Congress was very concerned, and rightly so, over the fact that we had guidelines that were unpublished; we had program memoranda that were unpublished and had never seen the light of day, in a sense. Congress said to us: we want you to publish in the Federal Register all of the criteria, anything that you use to make decisions for funding programs. We want them to become a part of the rulemaking process.

So over the past few years, we have done away with informal documents, informal criteria. All of that has now been put into the rules and regulations process and is published in the Federal Register and says to the people who apply for the funds that Congress makes available to the Office of Education: these are the criteria upon which you will be judged, nothing hidden under the table. You know what it is that you can expect; you know what it is, in terms of funding criteria, for example; you know what you will be judged on.

We think that is a positive move forward; Congress feels that it is a positive move forward. That, in itself, makes it appear that the rules and regulations and the process has become more cumbersome, because we have flushed out a lot of things, and put them out in public.

Incidentally, Mr. Chairman, all of those regulations are being looked at insofar as we can, and as we can, for their complexity and whether or not they even need to exist.

Mr. O'HARA. I was just going to make that point. I hope before you go through the rulemaking process on these guidelines, informal office memoranda and so forth, that you really try to come to a decision on whether or not you need them.

Mr. PIERCE. I would mention on the NOI, the three NOI's that are now out, we may not have had one it in as precise a way as the Chairman would have liked. We went through—and I have the record, if you would like it—an underlined NOI that shows that in over 40 places in those NOI's that we either directly or by inference asked the question, do we need regs, do we need any specific things said about this by the public who is reading this?

We believe that was an attempt to do what Congress wanted us to do in Public Law 94-482 and in all of our regs process.

Our dilemma at the moment is that we have Public Law 94-482 and the 44 packages that we must get out within 240 days. We have a finite number of resources in which to do that. We do not, and have not yet, embarked upon a massive review of those other regs that are in place and are already out on the street. We plan to do that, insofar as we possibly can, as we get through this 240 day time period.

In addition to those 44 rules and regulation packages in Public Law 94-482, we have an additional 49 rules packages that pertain to other pieces of legislation, or pertain to discretionary programs where funding criteria has to be put before the public so that they can make

application for those programs, so the total amount of work in terms of rules and regulations that have to be put through the Office of Education and the Department of Health, Education, and Welfare number 93 different packages.

Those are ongoing activities in addition to the requirements under Public Law 94-482.

The one point that I want to make sure that you know we agree with, is that where you have limited the Commissioner's or Secretary's regulatory authority in Public Law 94-482, that will be done immediately in the 240 day process. The new rules and regs in those areas where there are substantive rules and regs that must be written for programs, title I and others, where that limitation is in the law, will be immediately accommodated.

When you see the final regs coming from the Secretary's office on June 9—no later than June 9, or any of those time periods—then you will see that we have accommodated in every place the law requires, or the Congressional language in the hearings indicates to us that that is what you had in mind.

Mr. O'HARA. That is very good. You are making a conscious recognition of the impact of these kinds of changes. In those particular packages where that impact is designed to be felt, you have tried taking that into account.

Mr. PIERCE. Yes, sir, we are.

The problem the chairman faces, and the problem we face at the moment is that we cannot prove that to you. Because we do not have the draft rules out yet we cannot say to you, here, sir, is where we did that. However, I can say to you, when those are written they will be there, and we will have indeed taken that into consideration. We have made a special effort and the process is in place which we hope will see to it that we have done that in every place Congress intended.

Mr. O'HARA. I am very much encouraged by that. The only memo that I have read—well, the only notice of intent that I have really read—I have been aware of, but the only one that I really read was November 29, and in here—before we get into that specific, let me say this.

The philosophy of regulation writing—and I know I am talking to a number of lawyers here—the philosophy of regulation writing I think is one that sort of sets you on the wrong foot at the beginning. In effect, what you do is you sit down and try to anticipate a question that is going to arise; then you try to answer it with a regulation or rule, and I think that every lawyer understands the problems associated in trying to answer hypothetical questions without really knowing what the exact facts are, leaving no room for judgment or experience teaching you anything. So you end up trying to anticipate every situation.

I recognize that a lot of the time it is the very ones who are complaining about the complexity of the regulations make a major contribution toward making them complex. They contact you and say, "Say, under title I, continuing education, could we run a course in, let us say, modern urban history, or something? Can you assure me that I will not get in any trouble if we do it this particular way?" You answer: "Well, you know you can read the law as well as I can."

"Listen, I have to be able to be absolutely certain that I will not have any difficulty, so you go ahead and write a regulation that spells

out yes, we can, or no, we cannot. If we can, under what particular circumstances we can." I recognize that you are being egged on to do more by some of the very people that are complaining that you are already doing too much.

I really think that you can be pioneers and say, look, we are not going to write a regulation to cover every possible situation. We are just going to sort of see how things develop and trust that educators can read and that the law is more or less understandable as it is.

I would like to call your attention to some of those things, in the November 29 memo.

For example. In the community services and continuing education, in the first place, at the top of the third column, page 52411, you are asking, what types of programs can be offered under the rubric of continuing education as defined by the law?

When you say, "by what standards should resource materials be evaluated at State and local levels"; (3) "should there be a requirement that resource materials sharing be incorporated in every community service continuing ed program," I have a couple of objections in there.

I am not sure that we really need a tight definition, in response to your question, No. 1; and I think that when you start putting in tight definitions you include and exclude. Maybe we should be a little more flexible in there, and sort of leave the statute, and see what kinds of things develop.

You know, I am not telling you what to do. I am saying that there is another approach.

Second, this question, "should there be a requirement that a resource material sharing plan be incorporated in every community service continuing ed program?" I recall the statute, and it seems to me if the Congress had meant that there be a requirement, that the Congress would have said that there was a requirement, and that you should not really be asking that question now. You should be asking about how we should encourage it, not should we require it. Could I direct your attention to that?

Mr. PIERCE. Yes, sir. The word "requirement" was an obviously bad choice of words.

Our dilemma in this process, Mr. Chairman, is that this is the first time we have experienced writing NOI's in response to the Secretary's mandate and part of the process in writing NOI's and part of what the Secretary asked us to do was to raise issues with people in the field and let them respond to those.

He also mandated and directed us to raise those issues in a neutral way, and we went very painfully and painstakingly through the NOI and tried to expunge from them any questions, or rephrase any questions, that were obviously biased in the way that they were stated and not, indeed, a neutral question, or one that suggested that there ought to be a requirement.

By reading the question, it was clear that the Office of Education had already made a decision that there should be a requirement. We did not do too well in some cases.

Our experience was limited, and the experience of the program people is limited. We will get better at this process as we go along, and you will find some of those questions, some of those issues raised,

in every one of these NOI's. If we had sufficient time, we would not have put them in there.

Let me remind you that we have 240 days in which to get out the NOI, the draft regulations and the final regulations. and we were under some very, very severe time limitations.

That is one response. Another response is that insofar as an issue is neutral, the response to the first question that you read, for example: what types of programs can be offered to the public under the rubric of continuing education, we expect the public to respond to that. The public may, indeed, respond the same way that you did. If they do, then we will be guided by that, so that the NOI must be viewed as our effort in getting an early reaction from the people.

How much do you want us to regulate? Would you prefer that we keep things open and flexible, as open as they can possibly be? If you say no, we know that we have a dilemma, and we knew that we had a dilemma going into this whole process. The more you invite people to respond, the more certain they are to respond to protect their interests. That is the problem built into this whole process that we recognized in the very beginning.

In the event that a great many people say that they want us to be much more specific than we are inclined to be, and we are now being directed by the Secretary to be, we at least know when the NPRM goes out and is not specific, we can expect a great deal of anger and righteous indignation. Without malice aforethought, we decided to ignore the public's will from the standpoint that we wanted to keep it simple and not address the issue that they asked us to address.

I do not know if that is an answer to your question, Mr. Chairman. We face in a way the same dilemma you faced when you read these. We think we are going to get better; we know we are going to get better; our people are going to get better about writing a nondirective statement or an issue.

The other thing I would like to point out is that the issues raised here in the NOI will not necessarily reflect the way the draft regulations will be written. They are simply questions, in a sense, thrown out to the public, and people have an opportunity to respond. If we get clear directions from the public, then that will guide us in writing the regulations.

If we do not get clear directions, obviously we are going to have to follow our own predilections, which is now to keep it simple, and certainly we have heard the admonition of Congress over the years not to legislate through regulation.

Mr. O'HARA. What worries me, first about the definition. I accept your answer about that. I personally do not think that you need much definition. I think it would be a better decision on your part to sort of go easy on the definition.

By the same token, I do not see anything wrong with your asking the public what they think about that. I do not see anything wrong with your asking the public by what standards should resource materials sharing proposals be evaluated. That is OK.

I do really object to your asking the public and suggesting that it is within your province to establish a requirement that resource material sharing plans be incorporated. The Congress amended section 105(a) (2). It reads: "Set forth comprehensive, coordinated statewide system of community service programs under which funds may go to a State"

and so forth. We just struck out "community service programs" and changed it to "community service and continuing education programs." That is consistent with a change in that title, "including resource material sharing."

I do not see the authority to require them. Even if you thought it was a good idea, I do not think you could do it.

The last thing, right down at the bottom of that column, you ask another question that I am a little concerned about. You say, how should priorities be established for technical assistance along with the three program objectives established by law, to wit, community services, continuing education, resource material sharing.

I wish you used a different word than "priorities." That sort of says you are going to make a decision that one is more important than the other or more desirable. That is, again, the kind of decision the Congress could have made and deliberately chose not to make for rather important political reasons. If we insisted on trying to make that kind of decision in the free-flow of legislative debates and consideration, we would still be in conference.

You know, one of the ways that we managed to amend the title was by not attempting to establish a set of priorities among these things. If we had done that we really would have had a donnybrook on our hands. We really do not mean for you fellows to go and lock yourself in a closet and do it for us. We just sort of left that open.

Mr. PIERCE. I would like to say two things, if I may?

I would like to ask Dr. Spearman, Acting Deputy Commissioner for Postsecondary Education to address both the questions. Also, I think he would like to add to the question of the requirement of resource materials sharing plan.

I would remind the chairman only that the public and Congress and HEW and our own people, for that matter, are going to respond to those questions. The resounding answer may well be—and probably will be—no, you do not even have the authority to do that, therefore that will guide us. That question, in a sense, will be rendered academic. People will say you cannot do that anyway. We will say that is right, we could not, we will not.

The local people are faced with a further dilemma. That dilemma is, if we do not have a regulation, do not tell them specifically what they can do in some instances, then the General Accounting Office comes in and finds that they have used their funds illegally. That, of course, would put them in a terrible position. That is one of the reasons that on the one hand they are saying, do not regulate and on the other hand saying, give us as many regulations as you possibly can to protect us from another branch of government, right or wrong, and that, I am sure you are aware of, is a part of the reason why that schizophrenic kind of behavior exists on our part, as well as on the part of the people in the field.

I would like now to ask Dr. Spearman to address himself to both of those.

Mr. SPEARMAN. Mr. Chairman, I must admit that I agree with you that the choice of the word requirement is probably inadvisable. I am very much aware of the fact that you are addressing the broader issue of writing regulations, but occasionally when we use terms that are unacceptable, that there be a requirement in every community, we

are not only addressing the regulation mechanism but are trying to anticipate the status of the State's 55 jurisdictions which will ultimately apply for this. They will be asking for us to specify in the funding criteria, what kind of criteria, what kind of priority are we going to place on this new provision. Is it primary or secondary? Because the Congress simply said you may establish a resource material sharing program, people will be asking us, what does "may" mean? How many points do I get for it?

What we are trying to do here is get some discussion of that issue. Perhaps we should have restated that in such a way as to reassure you that the NOI will not come out as a requirement.

With respect to the question that you raised in terms of how priorities be established, here, again you get the whole problem of how you divide the pot, given a certain finite appropriation, whatever the amount. Our National Advisory Council constantly raises questions with us. If you have a new provision in the law authorizing some of the community service resources and things of this sort, how will we provide for equitable distribution of the funds? Will you seek to appropriate funds along those lines, placing equal emphasis on it? Some of these questions occasionally are brought into play by that kind of influence of the National Advisory Council.

Perhaps we did choose some unfortunate words in the NOI. We need to get some of these issues out on the table.

Mr. O'HARA. If I may respond to that for a moment, it seems to me, when you have a question of priorities as between three different purposes or three different aspects of the same kind of a program which the Congress has neglected to establish priorities, maybe the answer is in considering which projects you are going to fund and which ones you are not going to fund, instead of establishing priorities between the three different types of programs perhaps the decisions on funding should be made on the basis of which of these proposals seems to meet the greatest need in that particular State or community in the best way.

Indeed, you are going to have this State plan thing under section 105, the State is called upon to make some decisions of that kind, so I think—you know, I guess what I am trying to say, the Congress, by failing to establish priorities between these three things, by neglecting to direct you to establish them, may have been saying, look, we do not want to elevate one of these purposes over the other. We just think that in connection with the States and the State plans what you ought to be doing is funding what seems to be the most promising proposals for any given area.

Do you get what I am trying to say?

Mr. SPEARMAN. Yes; I do.

Mr. O'HARA. Incidentally, I want to mention before you are permitted to step down from the witness stand, I really appreciate the help that you have given the committee and the subcommittee over the years that I have been the chairman. You have been very helpful to us in several capacities. I want to note that and get it on the record. I only have 2 weeks left.

Mr. SPEARMAN. Thank you very much.

Mr. O'HARA. Let me continue on, if I can.

These comments are illustrative. I have not attempted to pick up

everything in this proposal that concerns me, let me just pick out a few.

Here we have this whole special services question, the services learning centers. Again, it is this priority business. If you get into page—let me see—414 or 415, you asked in here somewhere—

Here we are, at the bottom of the middle of the column on page 414. "The issues to be addressed are, should a priority be given to either establishment and operation of new SLC's or the expansion activity?"

You know, without belaboring the point, the point I just made, maybe what you just ought to do is see when the proposal comes in, see if it meets a very great need, does it in an intelligent fashion, whether it is a new one or an expansion of an old one.

If we intended to set up a priority, we would have set it up, you know, and said so.

Mr. PIERCE. I wonder if I could ask a question that bothers all of us, and I am sure that Congress is troubled by it as well. The dilemma that we often face is between the authorizing level of the program and the appropriated level of the program, where the authorized funds in a program will be sufficient to do a great many things and the appropriated funds actually are very restricted and very limited.

What is the Commission of Education's role in trying to determine priorities, given the fact that there are not enough funds to do all that Congress intended, probably. Is there a responsibility with the advice of people in the field to order the priorities and say, clearly Congress said yes, you could have done a particular thing, given the needs of the field, given your concerns in the field. As you list those things that one might do with the funds, are there some things that fall lower on that priority list that we can say, given the amount of funds available, that is something that we are not going to look on with favor this year, simply because we have to make those funds go as far as we possibly can and to do with those funds as much as Congress intended, accomplish as much as we possibly can of what Congress intended?

I think that is a part of the dilemma, part of the reason why in these NOI's we sometimes ask those kinds of questions or suggested there are priorities; not because we do not understand Congress authorized a certain activity. We recognize, given the funds available, there simply will not be enough money to go around.

Mr. O'HARA. It gets back to that point that I made earlier in our discussion this morning. Everyone is looking to you for some guidance. The State agencies tell us which ones of these are going to have the highest priority. The applicants, they want to know; they do not want to waste their time writing a proposal that will be of low priority. They want to know what the high priorities are. They will want some guidance from you, but I am just suggesting that when you set up those sort of priority systems, that you are in the business of legislating.

When the Congress fails in fact to set one up, maybe you ought to say, "We are not going to set up a priority scheme. We are going to examine each application. The ones that seem to be accomplishing the most, giving the most bang for the buck, whatever, the ones that seem to be best designed, the ones with the best chance of success, we are going to try to make some suggestive judgments."

I recognize that the executive branch goes through great travail in

your desire to avoid arbitrariness. You try to remove the judgment factor as much as you can. That gets back to an old fight my staff director remembers very well over the whole direction of the manpower program when we wrote that act.

I tried to develop a system, and tried again last year in this committee, to develop a system where in awarding manpower program training grants and manpower program employment, public service employment contracts, that you had to have somebody in the region, or whoever, responsible, who said, I have looked these things over. This one here seems to be the one that is best designed; therefore. I am going to fund that one.

Somewhere, there has to be some of that, rather than always trying to do things by the book and writing a book that covers every possible situation.

Would you like to comment on that?

Mr. SKY. Mr. Chairman, I very much appreciate the comments you are making. I would like to emphasize the counterpressures that we get from the client, the recipients of assistance, encouraging us to be more specific in providing guidance. Indeed, when we prepare a regulation, we go and discuss that regulation with recipient groups. Frequently, the kind of reaction we get is not that it is too much, not that you are overregulating, but give us guidance on this point and provide a requirement with respect to this situation.

Or, as you describe, frequently we will be asked to interpret a regulation, interpret a statute. Even when you provide those interpretations on an informal basis, once you do that and get a written interpretation out the interpretation gets woven into the regulatory process, gets picked up under section 431, so you have an increase in the amount of regulation.

We have had the experience where we have tried to trim down regulations and rely upon the statute, that some people react that you have not said enough, you have not described enough about this particular procedure. We get it from both directions.

I agree that we have to exercise restraint.

Secondly, I would like to add, we also have the element of the courts. We read court cases where the courts not only encourage, but direct us, to establish standards. We will find cases—not necessarily involving the Office of Education—where the courts say, you are obliged, as a matter of due process, to establish standards or criteria for how you are going to allocate scarce resources, where your resources are not sufficient to satisfy the needs of all the eligible groups, all the eligible entities. You have an obligation to set out some standards for that.

Once you establish standards then, of course, you get into the regulatory process. I am not saying that we are obliged to set priorities for every program, or priorities for certain activities, but where you do have scarce resources, you get not only the request from the recipient community, you also have the court saying to you, if you do not state some type of standards, you may be in trouble.

For this purpose I will distinguish between two types of programs. What I am describing is probably more pertinent to the type of program that we call the discretionary project grant program where the Commissioner has to make some determinations with respect to which recipients will receive funds, and the amount of funds received; where

there is grant competition. Distinguish that from the State-administered program where the statute determines the distribution of funds and how they are going to be used. Especially in those discretionary programs, we are getting counterpressure from the recipient community and from the courts, and I think Congress has encouraged this, too. They have encouraged setting criteria.

Mr. O'HARA. As I say, we used to say, here in the United States, we established a government of laws, not of men. Now I think you have to modify that to say, we have established a government of laws, rules, and regulations and guidelines, not of men.

It is all very nice to say you have a government of laws and not of men, but you have to have in there some judgmental factors, some way of holding people responsible for the judgments they make whether those judgments are arrived at properly or stupidly. Somewhere in there, no matter how many regulations you write, you are never going to completely succeed.

Let me take another program, in worse shape than yours: for example, the Water Pollution Control Act, there is so much by rule, regulation, guideline, memorandum that they cannot get rid of the money that is appropriated. Not that there are not enough people applying for it, but the process has become so muscle-bound they cannot. They cannot follow their own regulations and get rid of the money.

And here, with all the problems that we have with water quality in this country, States are losing their allotments, did you know that, for failure to use them. All the States have backlogs of projects, but they cannot seem to get all the compliance done in time to get the money, you know, and that is the situation we are getting into, I think.

I think we have to strike a new balance here, a different point than we have been striking, a need for definiteness, guidance, et cetera, and the need for getting something done.

Mr. SKY. I am no authority on that act; I cannot comment on that. I would certainly agree that we need to strike a new balance. I did not mean to suggest that, in writing criteria for project grant programs, we exclude every element of discretion. Indeed, from the standpoint of my own perception, the criteria we write are generally broad, and we leave considerable room for exercise of discretion to those called upon to review the applications.

There are requirements that the law lays out, the courts lay out, that we set out some framework where an applicant knows, generally speaking, the types of criteria and standards that are going to be applied. There is a balance between completely unbridled discretion—I would say regulations sometimes serve the purposes of confining what would otherwise be unbridled discretion on the part of the regulatory agency—and trying to regulate every bit of the transaction.

Mr. O'HARA. I am going to rest for a minute and think of some new questions and turn the questioning over to the gentleman from Alabama.

Mr. BUCHANAN. Thank you, Mr. Chairman.

First of all, Mr. Chairman, I am constrained to say that I think you have rendered significant service to the country over a period of time in raising the kinds of questions that you are raising this morning. I do not know whether my neighbor from Georgia is interested in what I think or not, but he could do a good deal worse than putting the

Chairman in charge of straightening out the bureaucracy in this whole matter of regulative law.

I share your concern. Mr. Chairman. It seems to me that the NOI's, from the point of view of getting everything out on the table, the broadest kind of input inviting comment and questions well in advance may well be a commendable idea. I do wonder, from the discussion, if it is likely to be the case, or may be the case, that the posting of the NOI's would generate so many questions and ideas on so many technical points that the end result will be that regulations will be longer and more detailed than they have been before.

Would you comment on that?

Mr. PIERCE. Mr. Buchanan, we recognize that as a dilemma, and I would like Mr. Wortman to respond to that.

Mr. WORTMAN. In our view, in terms of the Department, the contrary would be our concern. Even with the NOI opportunity, there is a sufficient amount of cynicism about the credibility of the Federal Government to really take people's comments seriously and incorporate them into the regulations.

My preliminary view about NOI's and public hearings are that we probably will not get the response we would like to get, at least initially, until we once again prove to people that we are serious about this and we are going to change our thinking as a result of the comments.

I guess I come out in my experience with this with a judgment different from yours as to what might happen.

Mr. BUCHANAN. I only raise the possibility; I do like the idea of reaching out. Essentially, that is a good thing.

Mr. WORTMAN. Your judgment is as good as mine at this point. This is all new to both of us. In terms of the social side of the judgment, notice of intent has been used by the economic regulatory agencies where they put their economic analysis on the record, for example, if they are going to suggest that they undertake a new interstate transportation area. They have done it historically.

For the social agencies like DOL, HUD, or ourselves, this is rather innovative, what Secretary Mathews is doing.

Mr. PIERCE. May I add to that?

Dr. Spearman tells me that we have received two written comments on the NOI under title I to date. The closing period is, I think, the 30th of this month. The response has not yet been the kind of thing that would suggest to you or us that we are going to get a lot of suggestions about ways that we could really tighten up the regulation.

Mr. BUCHANAN. Dr. Spearman, do you have further comment?

Mr. SPEARMAN. No; I have only received one comment on the service learning centers. The closing date is the same. I brought it along with me.

Mr. BUCHANAN. Dr. Spearman, I would echo, as a relative newcomer to this committee, what the chairman has said concerning you. I do not know whether the whole nature of the bureaucracy is going to change in a month when we become the primary critics on this side of the aisle instead of the defenders, in terms of administration policy. I rather think that there are some things that, fortunately, do transcend partisan considerations. Persons like yourself are one of them.

The problem that we discussed this morning is among those. It does not change with administrations.

I wonder, on the subject of how specific you should be, if it would

be possible to give guidelines without prescription by specific concrete illustrations of what you can do without limiting what is permitted to those things. For example, you may do one, two or three and be specific in that way without being specific in terms of that being a prescription that you must follow.

Mr. SKY. We have tried, as much as we can, to establish guidelines as distinguished from regulations. We are talking about guidelines, not in the sense of prescriptive regulatory matter, but guidelines that give illustrations of what type of conduct will satisfy the requirement. I think that is the direction in which we can go to an increasing degree.

Mr. PIERCE. I think you will find that most of the regulations say something like, funds can be used for, but not limited to, the following things. We do attempt to give examples, but make it clear that we are not making that a precise and finite set of criteria.

I would like to say, too, in that regard—although it has not been mentioned up to this point, that one of the intents of the NOI was to say to the public, we do not feel that we have identified all the issues that you may want us to address. We encourage you to talk to us about things that you have a particular concern for. Quite conceivably, we will get some comments on how they are concerned about the rules and regulations.

We will have an opportunity, I think, to sense better the pulse of the people of the country than we have ever had before.

It is going to be interesting, Mr. Chairman, when we receive all of the answers through this NOI process—as I said, we made reference in over 40 places to the question “should there be regulation?” We are going to look very closely at the responses to all of those to see what the people are saying.

That will give us some more direction, some more guidance.

Mr. BUCHANAN. It would seem to me, notwithstanding what ever cynicism there may be in the situation, that people will be well-advised to respond. I would think, in those instances where this has happened, and some good material has been received, if you have demonstrated that you are taking this seriously, that something is coming of it, that would stimulate further response down the road.

To be on the safe side, if I were in a position where it made some substantial difference to an institution I might represent that. I would take the risk of commenting and make my input, rather than not.

I hope business will pick up.

Mr. WORTMAN. I hope so, too. We had a mixed show. We have had some good results. On home health, participation was very good. However, Bruce Cardwell, Commissioner for the Social Security Administration, reported back to the secretary the other morning that the three hearings he held across the Nation on the confidentiality were not well-attended. He was disappointed. He wondered whether it was his fault. He was going through a period of self-examination on that.

Mr. BUCHANAN. Mr. Chairman, there have been an increasing number of statements and articles within the academic community on the problem of the burden of regulation, Federal regulation, and the price tag. I wonder if I could have your permission—there are several such articles that I would like to include in the record.

Mr. O'HARA. Without objection, so ordered. I think they would be a useful addition.

(The articles referred to follow:)

WASHINGTON  
IN ACADEMY  
WE TRUST

**FEDERALISM AND THE UNIVERSITIES:  
THE BALANCE SHIFTS**

by Chester E. Finn, Jr.

"All democratic regimes," James Q. Wilson reminds us, "tend to shift resources from the private to the public sector and to enlarge the size of the administrative component of government." The federal nature of the United States has encouraged a further tendency to shift resources to the national government and expand its bureaucracies so as to regulate the flow of resources back to the diverse clienteles that lay claim to them.

As the nation begins its third century, higher education, a genuine if limited federal client, finds itself beset on all sides by the vexing consequences of its government entanglements. Academic self-government is increasingly hard to vouchsafe against the assaults of the modern welfare state.

But the current distempers in higher education are too easily diagnosed as Virtue defiled, an academic Adam lately tempted by the wiles of a federal Eve into a purgatory of affirmative action, Title IX, and the Buckley Amendment. What is remarkable is that higher education—intimately involved with the federal government for decades—has had much to do with setting the terms of that relationship. Indeed, if there is cause for anxiety today it is not simply the rather sudden advent of obnoxious forms of federal regulation. It is that we too easily overlook the menacing cracks that have begun to appear in three "understandings" through which higher education has, for

nearly a quarter century, enjoyed extraordinary freedom to make decisions on behalf of the government. I refer to the federal use of the accreditation system as a principal means of determining which postsecondary institutions may participate in certain federal programs; to the use of private needs analysis systems to decide which students receive financial aid and in what amounts; and to the use of peer review in its many variations as a key mechanism by which the government decides which scholars shall obtain research funds.

Each of these three major arrangements began in the fifties. Each sprang from Washington's desire to farm out onerous tasks it was ill-equipped to handle directly, and from the academy's desire to maintain the greatest possible control over decisions affecting it. And each is now threatened both by increasing federal demands on the one hand and the higher education community's failure to strengthen and modernize its management on the other. Should they continue to crumble, they are virtually certain to be replaced by mechanisms designed and run by federal officials.

Senator Claiborne Pell, arguably the federal official with the most influence over education laws, is fond of remarking, "There is a great deal of truth in the old adage, 'He who pays the piper calls the tune.'" Although Yale's Kingman Brewster may be justified in retorting, slogan for slogan, that Washington seems to have adopted a "now that I have bought the button, I have a right to design the coat" approach, the fact re-

CHESTER E. FINN, JR., is a research associate in governmental studies at The Brookings Institution. His last article for *Change* was "The National Foundation for Higher Education: Death of an Idea," March 1972.

mains that the higher education community has heretofore enjoyed a remarkable degree of autonomous influence over those procedures by which it receives federal moneys. If that autonomy seems now to be eroding, the fault may not lie exclusively along the banks of the Potomac.

### The Debate Over Accreditation

A decision by the federal government to put money into higher education carries an obvious yet weighty definitional problem: What is a college, and which institutions calling themselves colleges shall be eligible for federal largesse? Washington has never fully solved that problem, but has finessed it by relying heavily on those private and voluntary mechanisms through which the higher education community seeks to define its own membership. (For a thorough and insightful account of this subject, see Harold Orlans, *et al.*, *Private Accreditation and Public Eligibility*. Washington, D.C.: Office of Education, 1974.)

The Korean War version of the GI Bill required the U.S. Commissioner of Education to develop and maintain a list of accrediting agencies "which he determines to be reliable authority as to the quality of training offered by an educational institution." The list was not binding, but the law nonetheless marked an important event: formal recognition by Washington that accreditation by a private agency was sufficient to make an educational institution eligible for receipt of public funds.

The accrediting process received another infusion of delegated power in 1958 when the National Defense Education Act (NDEA) specified that one of the definitions of an "institution of higher education," for purposes of participation in NDEA aid programs, was that it be "accredited by a nationally recognized accrediting agency or association." The commissioner again got the task of accrediting the accreditors.

The general principle enunciated in these laws has persisted to the present. Accreditation by an approved association of neighbors or peers is one of the ways—for most institutions, the only way—of gaining access to many federal education programs and the money funneled through them.

As programs proliferated and appropriations soared, more students and more schools eyed the benefits of participation. The universe of postsecondary education expanded far beyond the traditional nonprofit colleges and universities, and associations of correspondence schools, cosmetology schools, and other newcomers began to apply to the commissioner for recognition. As the number and variety of accrediting bodies in-

creased, the Office of Education (OE), beginning in the late sixties, tried to regulate their behavior. These attempts pleased no one, but Washington did not want to enter the business of evaluating each institution, and found no clear alternative to shoring up the accrediting system.

The system's weaknesses are legion. The most acute center on the question of whether accreditation—a system devised to attest to the educational quality and comparability of a school—has also the capacity to protect students and taxpayers against irregular business practices and to see that neither is fleeced by bad operators.

Much of the current debate stems from the high rate of default on federally guaranteed student loans. When students enroll in a school that is eligible for participation in the loan programs, take out loans to pay their tuition, and then either drop out or find the school collapsing under their feet, they still have to repay that loan, or else the taxpayer is liable under the guarantee arrangements. A fair question, therefore, is whether the government's standards for institutional eligibility are adequate to filter out schools and colleges of uncertain fiscal and educational reliability.

The increase in complaints from students alleging fraud, the unconscionable default rate, and the corresponding increase in federal expenditures to cover the guarantees have given Washington officials reason to believe the system has shortcomings. Figures are elusive and controversial, but the Office of Education admits that in fiscal 1975, some 134,000 loans worth \$134 million were in default and being paid off by the government.

Several remedies have been proposed. Representative James G. O'Hara, chairman of the House Subcommittee on Postsecondary Education, has filed legislation, as has the Ford administration. Without waiting for Congress, HEW promulgated regulations for existing programs giving the commissioner sweeping authority to render individual institutions ineligible for participation in the guaranteed loan program if they violate federal standards of behavior. Every college wishing to take part in the program must now negotiate an agreement with the Office of Education. Its requirements include a broad range of consumer protection provisions, specify stringent accounting procedure, and forbid the school to have too high a dropout or default rate or to become excessively dependent on federal loans as a source of income. If the commissioner finds any of these stipulations being violated, he can initiate steps to drop the institution from the list of eligible participants.

For all the cumbersome paperwork such procedures entail, these regulations set reasonable standards for the government to employ against

the political, fiscal, and human costs of fly-by-night institutions, false advertising, overly zealous recruiting, and shoddy teaching. Indeed, one might well wonder why they were so long in coming. The explanation, of course, suggests a higher order of difficulty: Since the fifties, the government has tried to avoid evaluating individual institutions and has sought to leave initial eligibility decisions and subsequent policing to the accrediting bodies.

Perhaps it had been an unreasonable expectation all along. The accrediting organizations never embraced their delegated responsibility with much enthusiasm; and as programs have grown and proprietary and vocational schools have gained access to them, the accrediting system has failed to organize and conduct itself in ways calculated to prevent the abuses and mishaps that have become endemic. At the same time, accreditation has also come under fire—Orlans's study and the Second Newman Report are but two statements of a widespread sentiment—for monopolistic practices that discourage educational innovation and promote dull uniformity.

These twin lines of attack add up to a stinging critique of accreditation: While failing to protect the taxpayer and the consumer from being ripped off by irresponsible institutions, it has also quashed educational diversity and reform. Many will say that neither charge is fair and that certainly both could not be. But if true, one has little alternative but to conclude that Washington might as well get into the business of evaluating each postsecondary institution that wants to participate in federal programs, or else that some new system be devised to take over this responsibility. In effect, that is the message of the recent regulations and proposed legislation: If the academy cannot do it, the bureaucracy will.

Yet something of value may be lost. While one may question the wisdom of the government's initial decision to rely so heavily on the accreditation process, it is not altogether clear that we will benefit from leaving the definition of "college" to the federal government. If Washington retrieves its delegated power, and does so at a time when eligibility for federal programs has steadily more to do with the future fate of individual institutions, a decade hence we may find ourselves wishing the higher education community had tried harder to evaluate its own members in ways at once more stringent and less rigid.

### The Question of Needs Analysis

If the first decision about a student aid program is which colleges may participate, the next is which

students qualify and how much money each may receive. Needs analysis has become an incredibly intricate business, though with the trappings of uniform objectivity: The student's family fills out a form requesting its income and resources, the financial aid officer compares the bottom lines on the form with published tables and finds in the appropriate cells a statement of how much the family should contribute and how much remaining "need" the student then has for financial aid.

But the tables and calculations at the heart of this procedure, while objective and evenhanded in their application, are highly judgmental in their construction. Someone has had to decide how much a family that earns \$14,000 a year and has three children *should be able to* contribute toward one's education at an institution costing \$2,500-6,000 a year. While individual colleges may modify these tables or devise their own, the essential normative judgments that underlie most financial aid decisions made on most American campuses—including those governing the flow of hundreds of millions of federal dollars—can be traced to the calculations and convictions of the two large voluntary organizations known as the College Scholarship Service (or CSS, an offshoot of the College Board) and the newer American College Testing Program (ACT).

The NDEA student aid programs of 1958 and those enacted under the 1965 Higher Education Act gave implicit sanction to these associations when OE agreed that their tables could be used to meet the federal objectives. The government was thus able to sidestep the task of evaluating individual students, and the two private organizations flourished as a result of the broad perception that a college employing their procedures was conforming to federal requirements. Everyone, it would seem, was reasonably pleased by the arrangement.

The 1972 Education Amendments changed this in part, however, for the new Basic Educational Opportunity Grants (BEOG) authorized by that legislation was a different kind of program. National in scope, BEOG is not administered by colleges and universities but directly by OE, which devised its own needs-analysis tables based on the criteria Congress stipulated. The Senate Labor and Public Welfare Committee—a principal source of the program—had insisted that "the commissioner is not to adopt the schedule of either the College Scholarship Service or the American College Testing Student Need Analysis Service. He must develop his own schedule...."

One reason for abandoning campus-based needs analysis in the BEOG program was that, however efficient it may have been at allocating funds within a given college, it offered no satisfactory

way to divide the federal pie among competing institutions. Whatever the merit of a scholarship officer's technique for determining Johnny's and Mary's relative need for aid, the private system on which he based those judgments was of scant help to Washington in evaluating the aggregate requests from Amherst and Itasca State Junior College. Hence, pressure built for a more uniform alternative such as that mandated under the new basic grants, run directly by the government and with all its individual decisions in federal hands.

But the so-called "campus-based" programs—Supplementary Grants, National Direct Student Loans, and College Work-Study—continued much as before, with college financial aid officers handling out Washington's money on the basis of tables devised by CSS and ACT, or their own variants of them. The 1972 Amendments did not alter private control of those public programs. Indeed, some observers have argued that by enacting the basic grants program to provide low-income students with access, and by leaving the three older programs securely in the hands of the colleges for purposes of encouraging choice, Congress had actually strengthened the academy's ability to manipulate federal funds according to its own lights.

If that were so in 1972, things had changed by mid-1974 when CSS and ACT announced sweeping revisions of their tables. A product of years of competition within—and between—the two organizations, the alterations had the effect of reducing the contribution that would be expected from families at most income levels. While billed as an overdue response to the pressures of inflation and recession on the disposable income of the American family, the overall effect of these revisions was to make many middle-income families newly eligible for assistance; to hike the amounts of aid due virtually every student; to tell the individual colleges that their scholarship resources should be spread more widely (and less targeted on students from the lowest income strata); and to apply pressure on the federal government to increase its student aid outlays to meet the larger aggregate "need" the new tables generated.

There may indeed have been merit in changing the "needs" criteria. Certainly the financial strain on the middle-class family facing the costs of college commands concern. But the Ford administration saw these changes as a frontal attack on its policy of targeting aid on the neediest, as well as an unwanted source of pressure to provide additional student assistance funds and revise its BEOG need schedules. Moreover, Washington officials were miffed because, they claim, these changes were sprung on them without consultation or advance warning, and at a particularly

awkward time politically.

The administration struck back in the winter of 1975 by proposing new regulations for campus-based aid programs to blunt the impact of the recent alterations in the CSS and ACT contribution schedules. The immediate effect of the HEW regulations would have been to force the private needs analysis systems to conform to federal notions of who should get the money and how much families should be expected to pay. The long-run effect, however, would be a retrieval of the power Washington had delegated to the academy two decades earlier.

A flurry of controversy led to congressional hearings on the proposed regulations and to some protracted negotiations among the Ford administration, Representative O'Hara, CSS, ACT, and the "Keppel Task Force," which was trying to impose a measure of order on the procedures of the entire chaotic student aid enterprise. The upshot was a compromise in which CSS and ACT modified their tables and HEW agreed to let them be used to determine family contributions and student aid awards for the campus-based programs for one more year. The government reserved several key variables for further scrutiny. It also imposed a cost-of-living escalator as the only modification the needs analysis services would be allowed to make in their contribution schedules in future years, if they want to remain within the commissioner's "benchmarks."

The freedom of the academy to parcel out the taxpayer's money has thus been palpably constrained, although Washington has not—yet—wholly federalized the process. It seems unlikely that what one HEW official calls "the private government" will soon recover the full prerogatives it once enjoyed in the student aid realm. A more probable sequence will see a tendency to force needs analysis into a unified national system à la the BEOG program to carry out federal policy priorities, employing private procedures only to the extent that they are geared to those priorities and behave accordingly.

### The Future of Peer Review

The third great power entrusted to the academy over the past two decades is that of helping the bureaucracy decide which scientific research projects merit federal support. The details differ among agencies, programs, and disciplines, of course, and it is extravagant to speak of a unified approach to the issue. But it is correct to say that a very substantial part of federal outlays to universities for research and development goes to support projects that have passed muster before a

jury of outside scholars called in to advise the government. In particular, most of the grants made by the National Institutes of Health (NIH) and the National Science Foundation (NSF)—agencies that account for two thirds of total federal R&D expenditures in colleges and universities—fund proposals that have survived scrutiny by teams of reviewers assembled from among the ranks of leading American researchers.

Such procedures date back to the early fifties and have since been adopted by such newer agencies as the National Endowment for the Humanities and the Fund for the Improvement of Post-secondary Education. In its various manifestations, peer review has been of enormous help to officials charged with allocating sums among eager claimants. In addition to lending timely and specialized expertise to program officers who could not be expected to have it, peer review has injected a dose of quality control into these decisions and has helped safeguard them against the intrusions of politics, favoritism, bureaucratic ennui, and Potomac whimsy. At least, so its defenders assert.

Not everyone likes peer review, or the panels of readers, advisory committees, and consultants serving the same purpose. Not surprisingly, some of those who like it least are those unhappy with its results. A common complaint is that peer review has led to scientific inbreeding and logrolling and to the concentration of federal R&D dollars in those few institutions that supply most of the reviewers. The community colleges, for example, charge that despite their vast and important role in American higher education they are excluded from the programs and agencies that rely on peer review. Even if they engage in little basic research, they do teach science and should have access to these moneys. Four-year liberal arts colleges have begun to register similar complaints.

It is an indisputable fact that federal R&D funds have been highly concentrated over the years. Despite ups and downs in budgets and appropriations, despite the emergence of new agencies and the ever-changing priorities of federal scientific support, the first 100 universities customarily absorb about 85 percent of all federal R&D money, and more than a quarter of it goes to the top 10—a short and prestigious list that seldom changes. The other 2,900 colleges and universities divide the scraps that remain.

No federal enterprise that parcels out so much money to so few beneficiaries can long remain immune to populist pressures to broaden its base and let more institutions and more parts of the country obtain their share. Since at least the Kennedy administration, the seeming monopoly

of a few institutions and a few states over “quality” graduate training and research has troubled Washington officials, and various measures, notably the National Science Foundation’s Science Development Program, have sought to diversify funding patterns and build scientific capacity at more institutions. Yet the bulk of the federal R&D money continues to flow to the same handful of universities.

Senator William Proxmire has led an attack on the concentration of R&D funds in what he terms the “academic oligarchy of large universities.” On the other side of Capitol Hill, Representative John B. Conlan describes peer review procedures as “incestuous,” “an old boys’ system,” and “monopoly grantsmanship.” The issue, of course, is whether funds are widely enough distributed, and whether the peer review process impedes such distribution. NSF has struck back with a bewildering array of charts and statistics purporting to show that the funds are reasonably parceled out across the nation and that peer review is adequately decentralized and participatory.

Simultaneously, another issue has erupted, old and familiar but still capable of generating headlines for politicians and making life miserable for bureaucrats: the accusation that research agencies, in spite or because of their review and selection procedures, are pumping tax dollars into frivolous, offensive, or absurd projects. Proxmire’s office periodically announces a Golden Fleece Award to some grant or contract it has uncovered that in its view egregiously wastes the taxpayer’s money. Senators Warren Magnuson and Joseph Biden have made much of silly-sounding titles in lists of projects funded by the National Institute of Education and the Fund for the Improvement of Post-secondary Education (see “Hard Times for Academic R&D,” page 48).

Representatives Conlan and Robert E. Bauman grew quite agitated about a grade school curriculum project known as Man: A Course of Study (MACOS), finding its content offensive and its promotion under NSF auspices a threat to local control of the schools (see “Science Policy,” *Change*, June 1975). Paradoxically, this was an instance where Conlan accused NSF of abusing its own peer review process by whitewashing one reviewer’s misgivings about the MACOS proposal. But the remedy the House adopted would have had a devastating effect on the foundation’s overall autonomy, including its ability to fund peer-approved projects. In the “Bauman amendment” to the NSF authorization bill, the House voted to require the foundation to submit to Congress lists of all its proposed grants. Congress would then have 30 days to veto individual projects.

This notion got nowhere in the Senate—even Proxmire admitted that burdening Congress with review of every NSF grant was not an optimal remedy—and died in conference. But the point has been made and, it would appear, heard “down-town.” Philip Handler, president of the National Academy of Sciences, says that Proxmire’s “seemingly capricious behavior...combined with the action taken by the House constitutes the wedge of a powerful threat to the operation of the peer-review system of decision making.” NSF Director H. Guyford Stever said that the House amendment was a “signal which all scientists should heed” and the impression has begun to spread in Washington that the NSF, in any case, is scared and will henceforth conduct itself in ways calculated to minimize this kind of congressional criticism. For starters, it may begin to publish the heretofore secret lists of names of reviewers (see “Science Policy,” September-November 1975).

Such a response is understandable. No federal agency can confidently proceed on its accustomed course after its director receives a letter from George H. Mahon, the powerful House Appropriations chairman, announcing that he is “sick and tired of responding to correspondence from citizens who are blaming Congress for some of the idiotic things done by a few unstable people in the executive branch” and warning, “If I discover ‘damn fool’ projects which have been approved by the National Science Foundation, I am going to try to cut millions of dollars out of your budget.”

Some form of peer review will doubtless survive. It is sensible and strategic, for the more recondite the research the less likely is a civil servant to trust—or be able to defend—his own judgment of the merits of competing proposals. He has little recourse but to retain some system in which knowledgeable persons share in his decision and protect him once it is made.

But the system seems destined to undergo profound changes. The times will not readily condone small fraternities dividing public money among themselves, even in the name of science. It remains to be seen how sweeping these changes will be. At the very least they seem likely to tend toward broader participation, greater intellectual caution, enhanced political watchfulness, and a larger and more diversified list of beneficiaries. This new democratization will probably also be slower, more cumbersome, and beset with appeals, reviews, and litigation. The accustomed delegation of governmental authority to the traditional academic and scientific elite will be less generous, and its processes and outcomes subject to more scrutiny and reversal.

Is this a good thing? A decade hence will we feel

that the national interest has been well-served by such procedures? Those who will conclude that the nation’s scientific and scholarly enterprise has been weakened may want to ask whether these developments were inevitable, or whether the higher education community might have forestalled them by acting differently when it enjoyed that unstated yet extraordinary delegation of authority manifested by the peer-review system.

### Speculations About the Future

It will be said, perhaps fairly, that none of these three “systems” was meant to discharge those functions it is now being taxed for having failed to carry out. Accreditation was a private club competent to pass on its own candidates for membership but scarcely equipped to police their handling of the government’s money and certainly not designed to regulate profit-seeking institutions that reject many of its norms. Needs analysis, as developed on the campuses and in their associations, was intended to help college administrators gauge the resources and needs of individual students seeking admission, not to implement the government’s policy priorities and political decisions about income distribution. Peer review was a form of scientific quality control, not a way to distribute federal funds among 3,000 postsecondary institutions or a means of tailoring project contents—and titles—to popular and congressional tastes. All three arrangements came into being at a time when the postsecondary universe was smaller and more homogeneous, when federal funds for higher education were smaller in amount and less important to the survival of colleges receiving them.

Yet one can concede all that and still believe that the academy might have realized that if it did not adapt these systems to the changing conditions in which they had to function it would one day lose the significant advantages associated with control over them. Few federal clientele have the opportunity to set the terms and conditions by which their members obtain the government’s money. When the clientele is as obsessed with the importance of its freedom from federal control—and as dependent on Washington for funds—as higher education, it might be expected to cherish that opportunity.

Such delegations of authority carried responsibilities at once basic and subtle. They amounted to a revocable public trust enduring only so long as those to whom it was granted were able and willing to accept its terms, both stated and implicit. Changing times unquestionably made those

*(Continued on page 63)*

## Federalism and the Universities

(Continued from page 29)

terms far more difficult to carry out. Washington became a more demanding taskmaster, while American postsecondary education evolved into a vast and unruly array of disparate elements. For many reasons, some of them good, the once warm climate of mutual respect between the capitol and the campus cooled to one of suspicion and formality.

The systems of delegated authority were always fragile, more a product of Washington's inability and unwillingness to perform these functions itself than of any conviction that the scientific and higher education communities had some right to perform them. To endure in the face of changing conditions and determined challenges, these arrange-

ments would have had to strengthen and reform themselves, at once accommodating the government's policy shifts and political needs while displaying such a high degree of efficiency, integrity, and rigor that no one could reasonably think they might be carried out better if federal officials had greater say in them.

Instead they persisted much as they had, with little apparent recognition by the leaders of American higher education—the directors, as it were, of the three systems—that, unchanged, they would inevitably collapse. That collapse would now appear to have begun, and the resultant threat of increased federal control is potentially at least as worrisome as that posed by more overt forms of campus regulation, though it is perhaps less visible to the college president or professor.

As a short-term political strategy, higher education may preserve a measure of autonomy in its management of these systems by trying to harmonize clashing melodies that happen at the moment to have eager audiences in Washington: the administration's desire to shrink the federal regulatory role, and congressional mistrust of the executive branch's ability to run things properly, especially in postsecondary education.

Over the long haul, however, the only way to arrest this deterioration will be through reforms that restore some of the confidence that must accompany delegated authority. But even then there seems little chance of returning to the status quo ante.

Reform will not come easily, for American higher education today spans so many competing elements with differing perceptions of self-interest that it is hard to pull them together on behalf of larger common goals, particularly when tough decisions and self-discipline are called for. The astute leadership of the American Council on Education (ACE) may, however, be able to mount such an effort to revamp and shore up this trio of structures. At the very least, it would include the creation of a body, perhaps linked to the new Council on Postsecondary Accreditation, to monitor and police the fiscal reliability of postsecondary institutions and on whose seal of approval federal agencies can truly rely in determining eligibility for government programs.

The needs analysis services, more-

over, must have their fiduciary responsibility impressed upon them, even to the extent of devising a two-track system capable of conforming to federal student aid priorities while giving an honest estimate of students' true needs for other purposes. As for peer review, perhaps the ACE and the National Academy of Sciences can huddle with the appropriate government officials and tailor a set of guidelines that open up and democratize the selection of reviewers, preserving essential principles of merit in those programs that depend on it, and moving toward simpler formulas in those that do not.

None of these changes will be painless, but the stakes are high enough to justify the attempt. The alternative to vigorous effort by the higher education community is to leave Washington to its own devices. And that is liable to result in arrangements that will prove far less congenial to the academy. Higher education has too large a stake in the American future to surrender itself to the mercies of a politicized and bureaucratized government that cannot—and should not be expected to—comprehend the ancient values of self-government. ■

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# The President's Report

1974 — 1975

TO THE MEMBERS OF THE BOARD OF OVERSEERS

Ladies and gentlemen, I have the honor to present my annual report for 1974-75.

In my Commencement Day address last June, I predicted that one of Harvard's greatest problems in the next generation will involve its relationship with the federal government. This statement deserves more of an explanation than I dared give to the alumni who sat through a pouring rain to listen to my remarks. All our graduates should understand the course the government has been taking toward higher education and the challenges that these policies create for Harvard and for other colleges and universities.

Forty years ago, the federal government had virtually no influence on higher education. Financial support was negligible, and even such laws as social security, workmen's compensation and unemployment insurance were specifically written to exempt educational institutions. The Second World War set the stage for a new era of federal influence by dramatizing the importance of scientific discovery to our national security. As the postwar years went on, it grew increasingly clear that research was critical to the welfare of society in ways that went far beyond military preparedness. Knowledge alone could not resolve such pressing problems as crime, inflation, urban decay, population, energy, cancer and other major diseases. But it was also apparent that problems of this kind could not be overcome *without* new knowledge. As the principal provider of research in our society, universities came to be regarded as a vital national resource. Accordingly, the government began to provide growing amounts of money not only for the physical sciences but for biomedical research and eventually for the social sciences as well.

By the late 'fifties, federal officials were paying increasing attention to the role of colleges and universities in educating the youth of the country. The government saw a national interest in helping universities train adequate numbers of new scientists, scholars, teachers, foreign language specialists and others with particular skills that were important to the nation's welfare. Washington also began to appreciate the importance of extending higher education to a larger segment of the young population. In part, this attitude reflected an awareness that an advanced society required a more highly educated citizenry. But public officials also realized that higher education had become the gateway to almost all attractive careers. In a society dedicated to equal opportunity, it was important to offer every young person the chance to attend college. Although the costs of college had traditionally been assumed by state governments and parents, the benefits of higher education served national needs as well. The sheer size of a younger generation swelled by the postwar baby boom likewise created pressures for expansion beyond the reach of traditional resources. As a result, Congress began to appropriate growing amounts of money, first, to finance the construction of new facilities and then to provide scholarships and subsidized loans to college students themselves.

Universities have traditionally played a further role in addition to educating the young and supplying knowledge to resolve national problems. Through research and scholarship, they have helped to discover our past, preserve our culture, and enlarge our understanding of ourselves and the world around us. These efforts enhance the quality and

vitality of the society, yielding benefits that eventually touch the lives and learning of students at all levels of education and, indeed, of all human beings who are interested in broadening their knowledge and perspective. By the mid-sixties, the government began to recognize these values by providing support through new agencies such as



President Derek C. Bok

the National Endowment for the Humanities.

Government funds proved immensely useful in helping higher education make more valuable contributions to society. As federal support increased, however, universities grew more and more dependent on Washington. During the early 'sixties, an occasional trustee would discover that government aid was exceeding a quarter or even a half of his university's total budget and would warn of the growing danger of federal influence. But deans and presidents understood that there could be no turning back, for distinguished medical schools and science departments simply could not exist without government support. Although universities lost some of their independence in the process, few educators were troubled so long as appropriations rose year after year with so few tangible ill effects.

#### Government Influence on Universities

Within the last eight years, however, the government has begun to exert its influence in new ways to encourage colleges and universities to conform to a variety of public policies. Some of these efforts have merely taken the form of extending familiar pieces of social legislation, such as workmen's compensation and unemployment insurance, to cover higher education. But the government has recently acted in ways that strike more directly at the central academic functions of colleges and universities.

— Rules have been issued to regulate the internal

operations of educational institutions by requiring them to grant equal admissions to women and minority groups, to institute grievance procedures in cases of alleged discrimination, and to open confidential files for student inspection.

— Tax laws have been amended in ways that affect the incentive to make charitable contributions to colleges and universities.

— The work of scientific investigators has been regulated by restrictions affecting fetal research and experimentation on human subjects.

— Rather than simply increase federal aid to universities, Congress has cut certain programs and expanded others in ways that dramatize the power of the purse to alter the shape and priorities of the university.

— Congress has demonstrated that it is even prepared to regulate the curriculum. Although never enacted into law, the House of Representatives passed a bill in 1974 to induce all medical schools to require every student to complete six weeks of training in a health facility situated in a medically underserved area.

In retrospect, it is not surprising that the government chose to play a stronger hand in influencing higher education. If universities accepted huge sums in federal aid for research and training, public officials could not fail to pay attention to the way in which the tax dollars were spent. If colleges and universities employed many hundreds of thousands of people, they could not expect to be free of federal standards for protecting workers. If higher education controlled the entry to most high-paying careers in the society, the government was bound to make sure that access was not denied unfairly to women and minorities.

Nevertheless, the rising tide of government intervention has begun to provoke serious concern from many colleges and universities. Kingman Brewster has pointed to "a growing tendency for the central government to use the spending power to prescribe educational policies." In his colorful phrase, the government has adopted a philosophy best described as "now that I have bought the button, I have a right to design the coat." Other critics have complained of the mounting costs of complying with federal regulations, especially at a time when all educational institutions are hard pressed for funds to maintain essential academic programs.

Government officials have also had some sharp comments to make about the attitudes of college and university spokesmen toward Washington. Congressman John Brademas expressed these criticisms well by calling for "a little more information and a little less admonition from the higher education community." Beneath these complaints lies a deeper concern. The quality of government regulation does not depend simply on the intelligence and judgment of public officials but on the adequacy of the information and advice that these officials receive to assist them in their work. According to many critics, higher education has done a poor job in meeting this responsibility.

It is important to examine these complaints and consider how public officials should employ their powers over our colleges and universities. Federal support has played an indispensable role in strengthening higher education. Having given its aid, the government is bound to continue exercising supervision if only because higher education has become so large and the functions it performs so critical to the society. Yet precisely because these functions are so important, it is vital that the government use its powers wisely to protect the public interest without weakening the institutions it seeks to regulate.

*The Proper Role of Federal Regulation*

When educators grumble about excessive regulation or criticize the costs of complying with federal law, their complaints must seem familiar to every businessman who has ever experienced the travails of government intervention. In many ways, the complaints are similar. But it would be unwise to dismiss the concerns of higher education as inevitable or routine. There are characteristics peculiar to colleges and universities that create special problems in their dealings with public officials. And it is essential that these characteristics be understood if we are ever to define the proper role of government in the affairs of higher education.

In an era of universal dissatisfaction, it is well to begin by pointing out that our system of higher education, for all its faults, has emerged as the best in the world in the eyes of almost every qualified observer. In terms of the quality of research, the eminence of our leading universities, the degree of access afforded to all groups and income strata, and the responsiveness of the system to widely varying student needs, higher education in this country has no equal. Preeminence of this kind is a precious asset. It is a status that cannot be claimed for the quality of our government service, the achievements of primary and secondary education, the performance of our labor unions or the record of many of our other institutions. This does not mean that our colleges and universities are perfect, or even nearly so, nor can one claim that these institutions should be immune from regulation. But the quality of higher education does suggest that public officials should take care to understand the reasons for its success before tampering with its operation.

It is clear that much of our progress in higher education has been due to the impressive resources devoted to the enterprise—the intellectual talents of a large population; the influx of foreign scholars fleeing oppression abroad; and the vast financial contributions of philanthropists, corporations, foundations, and, without doubt, the government itself. At the same time, certain qualities of structure and governance have also played a significant role.

Much strength has come from the diversity of our educational institutions. Unlike most other countries, authority over our colleges and uni-

versities has been widely distributed among 50 states, many municipalities, and hundreds of private boards of trustees. This dispersion has fostered a spirit of experimentation and initiative peculiarly appropriate to the process of education, which is always imperfect and constantly in need of adapting to new circumstances. In a decentralized system, our colleges and universities have likewise been able to develop in different ways and take on a variety of sizes, shapes and missions. Such variety, in turn, is ideally suited to a system that must accommodate an enormous range of students of differing abilities, interests and ambitions.

Higher education has also enjoyed a high degree of autonomy in making decisions important to the educational process. From time to time, an over-zealous board of trustees or state legislature has intervened unwisely, but the wide dispersion of authority has served to confine these aberrations to a tiny segment of the system. The importance that educators place on autonomy and academic freedom rests on more than a natural desire to avoid government interference. The critical decisions in education are almost always shrouded in uncertainty and depend much more on experience, judgment and informed intuition than on logical demonstration. On the whole, therefore, it is better to leave such decisions to those whose judgment is guided by experience. Decisions about the direction of research should be left to individual investigators rather than deans; choosing new faculty members is a task more appropriate for professors than trustees; student selection is best carried out by an experienced admissions staff without dictation from alumni groups; and changes in curriculum involve decisions more appropriate for faculty committees than presidents. The success of our most eminent institutions depends in large part on the broad acceptance of this allocation of responsibility.

1. *The Hazards of Government Rules:*

Because of the value of autonomy and diversity, there are obvious costs in attempting to infuse universities through government rules. By limiting the discretion of university personnel, rules diminish initiative and experimentation. In addition, rules involve a transfer of authority from educational institutions to public officials. Since these officials have less experience in educational matters,

they are more likely to make mistakes, and the cost of these mistakes will be magnified enormously by the power of the federal government to affect almost the entire range of educational institutions. Because regulations must be reasonably uniform in nature, they also threaten to impinge upon the diversity of the system. It is almost impossible to draft a single set of rules, however plausible, that will fit the special circumstances of all the varied institutions that exist in this country. Moreover, there are important distinctions that are simply too controversial for the government to make. For example, it is extremely awkward to offer any special treatment based on the quality of particular colleges and universities no matter how justifiable such distinctions may be. The government may act indirectly by offering scholarships to able students and allowing them to take these funds to the institution of their choice. An agency may also award research support to individual professors based on the quality of their work, particularly if it enlists outside experts to help in making its decisions. But public officials find it difficult to make rules that give preferred treatment to some institutions because they are judged to be superior to others in carrying out an important function. In this sense, federal intervention can have a leveling effect which fails to take due account of the special contribution that particular institutions should make in a diversified system.<sup>1</sup>

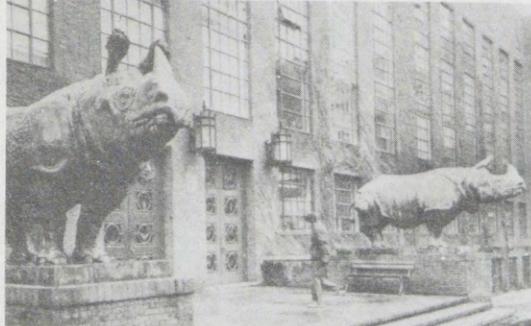
For these reasons, the government would be wise not to impose rules unless it is clear that significant problems exist which cannot be rectified by universities themselves or resolved by subsidies, incentives or other less drastic methods of intervention. This principle applies with special force to matters essential to the educational process, such as the admission of students, selection of faculty, choice of curriculum and the conduct of research.

In the early years of government intervention, federal officials tended to respect this principle. Most of the regulation took the form of applying familiar rules of accountability to the expenditure of public funds or extending protective legislation, such as workmen's compensation or unemployment insurance, which affected matters outside the central mission of the university. In recent years, however, the government has shown increasing signs of acting in questionable ways to regulate the principal academic functions of higher education.<sup>2</sup>

One illustration of this tendency occurred when Senator James Buckley introduced an amendment in 1974 to enable students to examine their confidential files, including letters of recommendation, financial aid analyses, medical records and counseling data. Although the amendment reached far into the internal affairs of universities, it was offered from the floor of the Senate and passed without hearings, committee consideration, or even much

<sup>1</sup>To a limited extent, the government can provide flexibility by legislating in broad terms so as to give greater authority to administrative officials to interpret the rules to fit the special needs of individual institutions. But subordinates are no more able than their superiors to make politically controversial decisions. Delegation of this kind also leaves much greater authority to individual officials, and invites even more detailed regulation over the affairs of each institution. As a result, flexibility will often cause more mistakes, less enlightened decision making, and more comprehensive government supervision.

<sup>2</sup>The government may regulate by prescribing mandatory rules or it may specify requirements in the form of conditions to the receipt of federal funds. Being so dependent on federal funds, educational institutions are under enormous pressure to comply with such conditions so that the conditions have substantially the same effect as mandatory rules.



The Biology Labs

discussion among the Senators.

Under the original legislation, students were permitted to see letters of recommendation previously written in confidence by faculty and acquaintances, as well as psychiatric evaluations and confidential letters from parents about their children. The law even denied to parents the right to see their children's grades without permission of the student.

After long negotiation, the amendment was eventually altered to cure some of the worst problems. Even so, the bill has had an adverse effect on colleges and universities. Admissions officers and other officials must obtain a formal waiver from students in order to solicit confidential letters of recommendation or gain access to student records. Where waivers are not received for some reason (and they are not in almost half the cases), letters of recommendation have become blander and less informative. A few school systems have even forbidden teachers to write recommendations in order to avoid any risk of controversy. The result has been to force admissions officers into placing more emphasis on tests and scores at the expense of the subtler traits of character, motivation and personality. To many experienced observers, this trend is unfortunate, especially when one takes full account of the limitations of grades and standardized tests. Conceivably, these disadvantages are outweighed by protecting the student's privacy and allowing him to examine his file to detect abuses. Most educators would disagree. Yet the costs and benefits of the amendment were never carefully considered because no hearings were ever held to receive testimony on the issue. In short, Congress saw fit to regulate the process of selecting students without making any serious effort to discover whether there were abuses sufficient to warrant government intervention.

Another example of questionable rule making occurred in the DeFunis litigation where only an evenly divided vote prevented the Supreme Court from forbidding public institutions from paying any attention to race in the admission of minority students. Many colleges and universities have chosen to award some sort of preference to minority students in admission to college and professional school. Educators may adopt this practice because they feel that these students can make a special contribution to a society where minorities have been badly underrepresented to the professions, or because they wish to compensate for the educational disadvantages experienced by many racial minorities, or because they feel that all their students will benefit from studying and working in an environment where a variety of racial backgrounds are represented in the student body. One may agree or disagree with these reasons. The essential point is that the treatment of minority applicants raises subtle issues about the purposes of education and the ways in which admissions policies can contribute to the value of the educational experience for all students. These are complicated matters that call for experimentation rather than inflexible rules. They involve judgments that are best left to the informed opinion of experienced educators. For these reasons, it would be a grave error for the judiciary to remove the subject from those most qualified to judge by subjecting all public institutions to a uniform legal requirement.

There are other cases in which federal officials have imposed rules to secure important social



Tozzer Library, Peabody Museum

objectives without considering less intrusive ways of achieving their goals. One controversial example involves the government's decision to require elaborate plans for seeking out qualified women and minority candidates for faculty positions. Higher education can certainly be criticized for its past record in these areas. When the government acted, however, strong pressures were already developing on many campuses to devote more attention to hiring women and minorities. There was also little evidence to show that minority faculty were victimized by systematic discrimination; careful studies suggest that these professors were already receiving larger salaries than white colleagues of comparable background and experience. The real difficulty lay in the acute shortage of black and Spanish surnamed Ph.D.'s who constituted (and still constitute) only two percent of all Ph.D.'s. As for women, a better case for discrimination could be made. But it was also apparent that women were handicapped because the critical years for promotion occur at the time in their lives when they are most burdened with competing family responsibilities.

Under these circumstances, the government would have done better to explore alternative ways of achieving its ends before imposing comprehensive regulations over the hiring of faculty. This decision has led to the expenditure of many millions of dollars in administrative costs while forcing government officials into such detailed investigations that only a small fraction of all colleges and universities have been carefully reviewed by HEW. The results of this effort have been insubstantial. According to a recent Carnegie study, the percentage of women employed in faculty positions across the country has risen from 22.3 percent in 1972 to 24.1 percent in 1975 with virtually no increase in the tenured ranks. Similarly, the proportion of minority faculty has grown but slightly since 1968.

Instead of making such a frontal attack, the government might have begun by making funds available for minority fellowships to produce more Ph.D.'s, by encouraging programs to enable women with families to obtain greater opportunities for research, and by developing better data to assist universities in identifying promising women and minority candidates. If these efforts proved unavailing, the government could then have intervened to impose more direct regulation. But there is a good chance that alternative measures would

have done more to encourage the hiring of women and minorities without the burdens and misunderstandings that the government has created in exchange for such meagre results.

Further examples of unwise rule making have arisen in the course of the debate over health manpower policies. Federal officials have been discussing ways of improving access to health care by encouraging the training of more primary-care physicians and by obtaining a more even geographic distribution of doctors, especially in rural and inner-city areas. To achieve these ends, Congress has considered several bills which would condition federal aid in such a way as to press medical schools to require all (or, in some proposals, 50 percent) of their medical students to take six weeks of training in an underserved area. These bills proceed on the assumption that more doctors will practice in underserved areas if they have come to such communities for a brief period during their student years. If enacted, the proposals will represent the first attempt by the government to impose uniform rules on university curricula.

A rule of this sort would place obvious burdens on students, many of whom have no intention of pursuing their profession in an underserved community or practicing the type of medicine needed in these areas. Because of these burdens, one would expect that such requirements would have a compelling justification. But there is no evidence that students will alter their career plans on the basis of a brief compulsory period of training. Indeed, any educator will attest to the risks of trying to generate enthusiasm for a program by imposing it on students and requiring faculties to provide the necessary instruction through the pressure of the public purse. In addition, once the government begins to regulate curricula to achieve social objectives, it will not be easy to stop. When a six-week training program fails to swell the ranks of physicians seeking careers in underserved areas, officials will be tempted to press for even longer periods of training. If these measures prove unavailing, Congress may direct its attention to the admissions process on the appealing theory that more doctors will take up practice in remote areas if only the medical schools can be made to admit more students from these regions. With each

added step, new areas of discretion will be enshrouded by inflexible rules imposed by public officials, without experience in education, who pursue initially plausible but ineffective schemes for achieving social change.

A related proposal before the Congress would induce each medical school to set aside fifty percent of its residencies for training in primary care. Since the government is understandably reluctant to draw controversial distinctions between schools, the measure takes no account of the fact that different institutions have very different capabilities. Some medical schools can easily adapt and produce more general practitioners. But other medical centers have extremely distinguished programs emphasizing sophisticated medical specialties. For these schools, it is wasteful to ask that so large a fraction of post-graduate training be set aside for primary care. Moreover, there is as yet no agreed definition of primary care itself. As a result, the current proposals would provoke endless hours of debate, followed by more detailed regulation to determine which residencies are truly designed for primary care and which are merely programs for subspecialty practice in pediatrics and internal medicine.

Still another proposal would empower the government to distribute residency slots geographically. This measure would diminish the number of residencies in regions of the country richly populated with physicians and allocate them to areas of the country that are less well endowed. In so doing, the proposal would weaken many of the outstanding residency programs in the country in the hope that students who were forced to take their training in other regions would eventually decide to practice in neighboring locations. Although the effects of this proposal are severe, there is little indication that it would achieve its hoped-for effects. Evidence is available to show that doctors are more likely to practice in the area where they have taken their residency. But these doctors presumably applied for training in regions where they already hoped to practice. There is no real showing that Congress can alter the distribution of doctors by requiring students to take their residencies in localities they would not otherwise have chosen. And even if these doctors should remain in the region, it is not at all clear that they will practice in underserved areas within the region instead of moving to suburban communities which may already be adequately supplied with physicians.

The proposals reveal the dangers that arise when public officials make decisions involving complex educational issues or impose uniform rules on a diverse body of institutions. These drawbacks underscore the need to search for incentives or other alternative devices to achieve the government's goals. At present, however, such incentives as exist actually work against the government's objectives. Reimbursement practices under current federal programs offer strong deterrents against entering primary medicine or practicing in underserved areas. Under Medicaid, general practitioners receive substantially less than specialists for office visits. Medicare permits reimbursement according to the "usual and customary fees" in the area, which serves to depress the levels of compensation allowable in the less affluent rural and inner-city communities. Federal policy has also worked against the voluntary development of effective programs of primary care by providing methods of financing that are available only to inpatient hospital training even though it is clear that adequate programs in primary care must largely take place in an ambulatory or community setting.<sup>3</sup> Unless these problems are addressed, Congress is likely to



The Stacks at Widener Library

defeat its own ends by imposing regulations which are not only unnecessary but ineffective as well.

### 2. Respecting the Character of University Government

A further source of difficulty in regulating universities arises from the different roles which they perform. In one sense, universities are commercial institutions employing thousands of people. In another, universities represent a social force affecting the occupational mobility and status of their students. In their most familiar role, universities perform an educational function through their teaching and research. Federal agencies preoccupied with one of these roles can easily overlook the effects of their handiwork on other functions of the institution. The danger can be illustrated by examining the government's efforts to provide safeguards to protect the employment rights of professors.

In the late 1960's, faculty members in a number of institutions began to press for collective bargaining. Without extensive review, the National Labor Relations Board abruptly reversed a long-standing policy and undertook to apply federal labor legislation to universities. But laws designed for employees in an industrial setting are not easily adaptable to the world of higher education. Although professors work for the institution that hires them and pays their salaries, they are not "employees" in the ordinary sense of the word. Faculty members have long had great influence in making a variety of decisions involving such matters as promotions, curriculum, methods of instruction and even teaching loads. By debating these issues in faculty committees, departments and

<sup>3</sup>Congress is considering other proposals that do provide substantial monetary incentives to attract recent medical graduates to spend a period of time in underserved areas. But even these inducements are not likely to suffice without overcoming other disincentives mentioned above and providing professional incentives by linking doctors in remote areas to hospitals, medical centers, and opportunities for continuing education. It is also possible that no incentives will suffice to lure enough doctors to remote rural areas. Thus, a comprehensive strategy should embrace other measures such as strengthening programs for training nurses and other medical auxiliaries recruited from the rural communities in question.

elected councils, professors have typically shared authority with deans and presidents in deciding matters that are clearly "terms and conditions of employment" within the meaning of federal law. Under the National Labor Relations Act, however, employees are forbidden from discussing any subjects of this kind with their "employer" except through a duly selected union. If these rules applied to higher education, they would have the unfortunate result of abolishing most of the traditional methods of decision making in colleges and universities. As a result, the application of laws designed for industry has confronted the Labor Board with a Hobson's choice of either imposing drastic and inappropriate regulations on universities or twisting legislation in highly unusual ways to fit the special circumstances of higher education.

### 3. The Burdens of Compliance

Because the government is so large and the surrounding society so complex, all regulation is bound to create a certain amount of confusion, red tape and administrative expense. But problems of this kind place special burdens on higher education. The costs of complying with federal regulation have arisen at a time when almost every college and university faces a generation of grave financial austerity. Beset by rapid rates of inflation and by the prospect of stable or declining enrollments, many institutions are struggling to survive and almost all have had to cut back their academic programs. They are not alone in facing financial difficulties. Unlike most large businesses, however, colleges and universities cannot easily pass along added costs by raising their prices. Many public institutions must conform to tight budgetary limits and cannot obtain enough from their legislatures even to maintain existing academic programs. Facing stiff competition from tax-supported state colleges, private institutions are pushing their tuition as high as safety permits and still find it necessary to cut back faculty and staff. Under these conditions, the cost of complying with federal regulations can often be met only by making further reductions in academic programs.<sup>4</sup>

Higher education is also specially vulnerable to any force that increases bureaucratization. In the past fifteen years, most educational institutions have found their administrative staff growing much more rapidly than the size of their faculties. The volume of paperwork has also risen enormously, and the amount of committee work has expanded at an extraordinary rate.

There are many reasons beyond government intervention for the growth of campus bureaucracy. The added size of many colleges and universities has created new administrative complexities. The emergence of statewide systems of higher education has removed many decisions to more distant centers of authority. Financial constraints have led to tighter, more detailed budgetary controls. Student activism and the concerns of new constituencies, such as women and minority groups, have uncovered new problems to be solved.

These developments have had noticeable effects

<sup>4</sup>Some critics may reply that the expense of coping with federal rules is small in comparison with the amounts of money received through government programs. But virtually all federal assistance is devoted to specific purposes such as scientific research or particular types of student support. Such funds must be used in the manner prescribed by the government and most of them do not relieve the core budgets of universities in ways that permit the institution to defray other expenses. As a result, although federal support is extremely valuable, it hardly offsets the administrative costs of complying with other federal regulations, such as equal pay requirements, occupational safety rules, or regulations governing student records.

upon the internal life of educational institutions. The growing sense of impersonal bureaucracy has impaired relations between faculty and administration already strained through the process of belt tightening and budgetary restraint. Students have likewise experienced less flexibility and informality in their dealings with the administration. Detailed rules and computerized forms have replaced much of the individual treatment which students formerly experienced in attempting to resolve their academic and personal problems. It is this sense of depersonalization that provoked the plaintive slogan of Berkeley students in the sixties: "I am a human being. Do not fold, spindle or mutilate."

Administrative burdens are particularly troublesome when they invade the time of the faculty. Government agencies, corporations and foundations are all clamoring for expert advice, and the jet airplane makes it all too easy for professors to comply with these requests. Faculty members are also devoting much more time to committee work and administrative assignments in order to cope with a rising number of campus problems. These activities have done much to produce the complaint on many campuses that faculty members are inaccessible and too busy to give adequate attention to their students. This problem is often misperceived as a conflict between teaching and research. In fact, teaching and research complement one another, and there is usually time enough to carry out each function effectively. The predicament of the modern university is that both teaching and research must compete with the growing burden of committees, administrative assignments, consulting, and searching for grants.

Universities cannot solve this problem by the simple device of adding more professors. A larger faculty works in subtle ways to aggravate the pressures of bureaucracy. And there is no money, in any case, to hire new faculty members. Thus, added administrative burdens necessarily diminish the time available for professors to spend on their primary obligations of teaching and research. The costs cannot be demonstrated with precision. But no experienced observer would deny that the burdens are grave. Distinguished teaching and research require unhurried contemplation. They are less likely to result from days dismembered by the recurrent necessity of attending meetings, writing reports and filling out forms. As a result, new inroads on faculty time diminish the capacity of the university to carry out its central responsibilities for teaching and research.

It is clear that government regulation has added substantially to the costs of universities and the bureaucratic burdens they must carry. In meetings of college presidents, which were once devoted primarily to educational issues, the agenda today is dominated by discussions of how to cope with existing regulations and how to respond to the threat of new government initiatives. In order to comply with federal rules, institutions have centralized authority in many areas so that decisions are increasingly made at levels more remote from the students and faculty. Although the burdens of compliance have fallen principally on administrative staff, federal regulation has also eaten heavily into the time of professors. At Harvard, for example, compliance with federal regulations consumed over 60,000 hours of faculty time in 1974-75 alone.

While some expense and red tape are understandable, the costs of complying with federal regulations seems excessive. In many programs,

regulations have been vague, and different regional offices have often interpreted them in conflicting ways. In addition, many of these rules have been changed so frequently that universities find it difficult to plan intelligently. Even when the government has approved comprehensive plans for compliance over a period of years, the plans have turned out to be subject to unilateral reopening whenever major new contracts are awarded, amended regulations issued, or on-site reviews decreed.

Further problems have arisen by moving too quickly to extend regulatory schemes from industry to the very different sphere of higher education. For example, the government has been developing extremely complicated regulations for industry to implement legislation in the fields of occupational safety and pension reform. When detailed regulations of this kind are applied verbatim to higher education, they produce needless confusion in the short run and often lead to large, unnecessary expenditures. For example, the Employees Retirement Income and Security Act (ERISA) was a law designed to cope with widely publicized abuses in the industrial sector, such as conflicts of interest, diversion of pension funds and arbitrary destruction of benefits. These abuses, however, were almost entirely foreign to educational institutions, which have nonetheless been required to make extensive changes in their pension plans to comply with the law. While it is still debatable whether the benefits of ERISA are worth the considerable cost and confusion to private industry, there is little question that the heavy burdens for higher education far outweigh any possible advantages.

The government has also created confusion in certain areas of regulation by delegating responsibility to several agencies to enforce the same policy. In the field of equal employment opportunity, for example, authority has been shared by the Department of Labor; the Department of Health, Education and Welfare; the Equal Employment Opportunity Commission; and even the Internal Revenue Service. This dispersion of authority has many undesirable and unnecessary effects. Aggrieved individuals are free to shop around to seek relief from a variety of agencies, universities face multiple demands for information covering the same subjects, and their officials are often caught between conflicting requirements issued by different public authorities.

As in many other sections of the economy,

government efforts to regulate universities have also led to excessive amounts of data gathering and requirements of byzantine complexity. The effect has been to blunt the efforts of all concerned from achieving the desired results to the preparation of exquisitely detailed pieces of paper. Affirmative action affords the most vivid example. In rapid order, the emphasis of the program moved from supporting efforts to hire more women and minorities to the development of satisfactory plans for HEW approval. Successive regulations added steadily to the reporting requirements until the appearance of the celebrated Berkeley Plan, which demanded no less than 70,000 separate statistical computations. After completing this monumental task, one Berkeley official was indelicate enough to describe the earlier Harvard Plan as a "sweetheart agreement" even though the Harvard Plan ran to five thick volumes totalling over a thousand pages of carefully developed tables and text.

The problems just described have been very expensive to many institutions. Preliminary studies suggest that out-of-pocket costs of coping with government regulations have risen by ten- to twenty-fold in the last ten years. Another survey estimates that the expense to higher education of federally mandated programs has reached \$3 billion annually. At Harvard, the total cost of administering five government programs—equal employment opportunity laws, the Buckley amendment, occupational health and safety rules, environmental protection and pension reform has been running from 4.6 to 8.3 million dollars per year.

What can be learned from the problems just described? Clearly, part of the expense and burden of federal regulation must be counted as a necessary price to pay for achieving legitimate social ends. But much of the cost cannot be readily justified on these grounds. The experience to date offers several lessons that are worth considering in order to reduce the unnecessary burdens of administration.

To begin with, those who have the power to impose rules and prohibitions might pay closer heed to the administrative problems that are bound to result. It is misleading to suppose that public ends can be neatly achieved by sweeping injunctions. Every rule imposed on higher education takes authority from educators and gives it to civil servants who lack comparable experience in



President Bok and Students



Harvard-Yenching Library

academic matters. These officials must issue regulations not merely for a single institution but for a vast array of different colleges and universities with their own particular aims, traditions and practices. Such rule making almost always results in unintended mistakes and unnecessary red tape. Although the costs involved do not clearly emerge as a line item in the budget, they do exist and they will be paid in large part, not by tax dollars or higher tuitions, but by cutting more deeply into the quality of teaching and research.

These problems underscore the need to exercise greater caution in regulating universities and to refrain from imposing new rules unless it is clear that they are necessary in order to remedy demonstrated abuses. It was certainly unwise for Congress to enact such measures as the Buckley amendment without making a careful showing that regulation of this kind was justified. And it was likewise ill-advised to take safety rules or pension reforms designed for industry and apply them to higher education without attempting to discover whether such regulations were truly appropriate to the special conditions of colleges and universities.

Once the government decides that it must intervene, care should be taken not to scatter responsibility for enforcement among a number of duplicating agencies, or change regulations continuously, or demand the volumes of data that some government agencies have required. In order to minimize these burdens, federal agencies will need to work closely with university officials in the drafting and enforcement of regulations. Unfortunately, the degree of cooperation to date has left much to be desired. In some instances, virtually no consultation has taken place, as in the case of the regulations issued in connection with student loan programs. More often, government officials draft extensive regulations and only then submit them for comment. This procedure forces universities to react in haste. By the time their comments are received, agency officials have already devoted so much time and energy to the task that they are largely committed to their handiwork. At this late stage, the comments often have a marginal impact and seldom affect the basic regulatory strategy employed.

Whenever regulations seek to resolve differences between universities and other organizations and groups, the usual method of consultation also minimizes any real chance for the interested parties to reach agreement through patient, informal discussion. Once the regulations are submitted for comment, there is too little time for negotiation, and any unilateral concession would seem foolhardy. Most of the interested groups remain at odds with one another, and none of them can have confidence in the regulations or feel a stake in making them succeed. The resulting frustration inevitably hampers the government in carrying out the wishes of Congress. Much greater success could be achieved if agencies would regularly appoint advisory committees composed of knowledgeable representatives from universities and other interested groups and then work closely with them from the outset of the drafting process.

The need for consultation does not end with the issuing of regulations. However carefully drafted, agency rules will inevitably carry a multitude of ambiguities. New circumstances and unforeseen problems of enforcement will require periodic changes and clarifications. On these occasions as well, the government should seek the advice of representatives from higher education either by convening a new advisory body to review the regulations every two or three years or by maintaining a permanent consultative committee. A useful case in point is the committee recently appointed by the Secretaries of Labor and of Health, Education and Welfare to give advice on the affirmative action program.

#### The Future Agenda

This brief review gives ample cause for concern. In a few short years, universities have been encumbered with a formidable body of regulations, some of which seem unnecessary and most of which cause needless confusion, administrative expense and red tape. If this process continues, higher education will almost certainly lose some of the independence, the flexibility, and the diversity that have helped it to flourish in the past. But educators do not expect enlightened regulation unless they do everything possible to assist the government in achieving its proper objectives without damaging the vitality of higher education. Clearly, colleges and universities will need to make much greater efforts along these lines to protect their legitimate interests.

These interests extend well beyond the topics taken up in this report. Thus far, I have only discussed the process of direct federal regulation. Universities must also help the government to define a more coherent policy for research that will provide a balanced program of applied and basic research with adequate support for facilities, equipment and library resources. America also needs a more enlightened health policy that will go beyond the regulation of medical schools to build a system that provides the entire population with reasonable access to care at prices they can afford. A further challenge lies in developing a policy for undergraduate education that offers every qualified student access to college with a reasonable degree of choice among public and private institutions.

These problems are critical to higher education. As matters now stand, however, public officials are bound to have difficulty in creating enlightened policies. Both Congress and the Executive Branch are burdened with many other responsibilities of

pressing importance. Few public officials have much experience in higher education or much understanding of its special problems. Moreover, responsibility for higher education is distributed among literally dozens of congressional committees and executive agencies so that it is almost impossible to perceive the implications of each new federal initiative or develop a coordinated strategy to deal with major educational issues.

The fragmented responsibility of federal authority for higher education has doubtless contributed to several of the problems of government regulation. Public officials might have perceived the cumulative costs of federal regulation and avoided delegating administrative authority to a variety of overlapping agencies if there had been some central mechanism to coordinate all the federal initiatives affecting higher education. For these reasons, it is tempting to try to solve the problems of regulation by suggesting that the government recognize itself to insure a more comprehensive view of higher education. This is undoubtedly a subject that demands further study. But it is not easy to prescribe the form such a reorganization should take and harder still to conceive of such changes being implemented in the near future.

After all, virtually every sector of society must find itself in a similar position, and one can hardly expect Washington to reorganize itself to deal in coordinated fashion with all the institutions it seeks to regulate. For the present, then, it seems wiser to take the government as it stands and ask what higher education can do to provide the advice and information that will help public officials to develop more enlightened policies.

Unfortunately, colleges and universities have not done nearly enough to play a useful role in the formation of federal policy. According to Stephen Bailey, Vice President of the American Council on Education: "Whether we believe it to be fair or just, we have a reputation—at least in (Washington)—for being exclusive, self-indulgent, patronizing and sloppy . . . the simple fact is that educators have not been adequately helpful to those who are trying to be helpful to them."



Center for International Affairs



Students leaving the Science Center

What has gone wrong? Many of the deficiencies are immediate and obvious. Educators have not had enough contact with federal officials to detect emerging policy problems at an early stage or to give the government an adequate understanding of the needs of the varied institutions they represent. While Congress has been considering vital pieces of legislation, college and university leaders have often been too busy or uninformed to present their views at the right time to the right officials, and too much of this work has been delegated to staff members of the higher education associations. The staffs in turn have spent too little time talking with government officials and have even failed on occasion to alert their member institutions to key developments in the government so that they could present their views in timely fashion.

These weaknesses have clearly affected the quality of the materials submitted to Congress on matters of prospective legislation. By failing to focus on emerging problems at an early stage, colleges and universities consistently find themselves reacting at the eleventh hour to initiatives proposed by the government. Their submissions are often short on facts and largely defensive in tone. In most cases, the materials have been chiefly devoted to criticizing proposed legislation without offering constructive proposals to deal with problems of undoubted national concern. For example, the presentations made by medical schools in 1974 on vital health manpower legislation were meagre documents which did little to suggest constructive solutions to the problems of providing a better geographic distribution of doctors and a better mix of physicians among the various specialties. Almost no research was offered even to refute some of the premises on which the government's proposals were based, let alone point the way toward better solutions. By limiting themselves to submissions of this kind, colleges and universities have needlessly compromised their status as thoughtful, objective critics and have come to be regarded as just another self-interested pressure group.

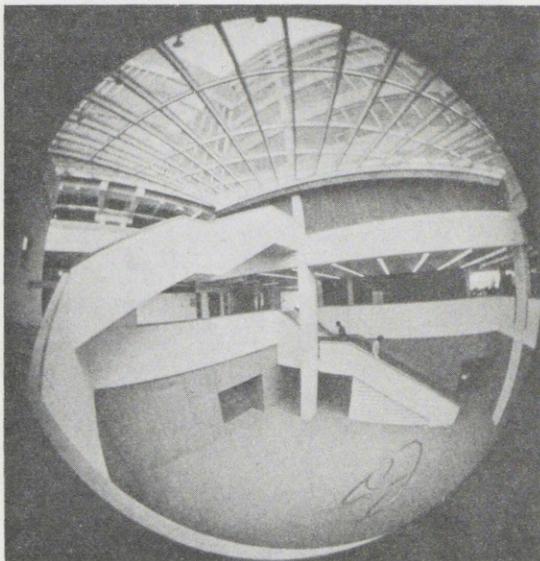
Higher education must improve upon this record. This is not a congenial task for educators, who dislike the thought of seeming to play

the part of lobbyists. But it is wrong to conceive of the effort in such narrow terms. Government officials are harried by an awesome number of difficult problems. They need the best information and advice they can get in order to discharge these responsibilities. Thus, communicating more effective-

ly with public officials is not simply an exercise in enlightened self-interest; it is a contribution to better government as well.

If the task is to be carried out effectively, much of the burden must be assumed by the organizations that represent the colleges and universities in Washington. Fortunately, the associations have begun to strengthen themselves for this purpose. With added staff, they should make a particular effort to gain the earliest possible notice of problems that may lead to government intervention. Almost all of these problems become apparent many months, and usually years, before specific proposals are advanced by public officials. With adequate notice, the associations can then take steps to initiate careful studies and develop policy proposals with the help of universities, foundations and other interested groups. In addition to work of this kind, association representatives must cultivate a broad range of acquaintances within the government so that they can discuss the needs and problems of higher education in a context removed from the specific issues raised by impending regulations. Finally, associations should make greater efforts to identify and suggest able people for important government posts affecting higher education. If this task is not narrowly conceived for partisan ends, it can contribute much to the quality of government while eventually building a cadre of experienced people who can continue to play a useful role when they leave public service and return to their colleges and universities.

Although associations can be extremely useful by keeping their members informed of developments in Washington and coordinating efforts to com-



The Science Center

municate with public officials, there is much that they cannot be expected to do. Stationed in Washington, association representatives may not fully perceive the impact of government policies on their member institutions. They cannot work as effectively as their member presidents in persuading knowledgeable faculty members to help in the research and analysis that are needed to develop thoughtful proposals in fields as complex as health care or research policy. Neither can they reach out as effectively as many presidents to enlist the support and understanding of a wider public sympathetic to the needs of higher education.

For all these reasons, individual universities, and especially their presidents, must devote much more energy in the future to government affairs. At present, many universities lack even a single full-time experienced person in the field of federal relations. Few presidents have done enough to inform their faculties, alumni and trustees of the most important public issues affecting their universities. Fewer still have considered ways of enlisting knowledgeable faculty members to work on the larger questions of federal policy affecting undergraduate education, health care, and research. Until this situation changes, it is unlikely that higher education will do much more than fight a series of rear-guard actions to ward off the more menacing forms of government intervention.

Beyond these needs lies still a larger opportunity for educational institutions. The problems that universities have experienced in their relations with the government are only a part of a greater predicament confronting the society as a whole. The complexity of national issues and the claims upon the government have steadily outdistanced the capacity of the Congress and the Executive Branch to respond. Although citizens complain about the failure to resolve such issues as inflation, urban decay, unemployment, energy and crime, any honest critic must acknowledge that the task is extremely difficult. Because the problems are so great, there is no sector in our society which can rival the government in its need for the ablest and best-trained minds. And yet, the training given to public servants is clearly less adequate and more haphazard than that traditionally afforded to businessmen, doctors, lawyers, or academicians.

In a larger sense, therefore, educational institutions are caught in a situation that they themselves have helped to create. Despite the power and importance of government, our universities have never provided the educational support to the public sector that they have offered to the major professions through their schools of medicine, business and law. It is high time that we begin to make much greater efforts to provide effective programs for public service at the preprofessional and midcareer level, and for reasons that extend far beyond our own special problems with the government. In fact, several universities are well along in developing curricula to meet these needs. As I tried to make clear in last year's annual report, such programs must convey a knowledge of the developing techniques of policy analysis, a grasp of modern methods of management and administration, a sense of history and a sensitivity to the moral and humane aspects of government. Unfortunately, there is a thinly disguised concern in many quarters that better training of this sort will only make the government more ambitious and clever in its efforts to regulate private institutions. This is a dangerously shortsighted view. For better or worse, the government already exerts substantial influence over every significant sector of society, including our colleges and universities. Only when public officials are prepared more systematically for these responsibilities can we expect the quality of regulation to rise appreciably.

#### Harvard's Federal Relations Program

The task of developing more effective relations with the government is so large that no one institution can hope to accomplish very much by its own efforts. It is this sense of impotence that helps to account for the limited progress that has been made thus far. But there are useful steps that can be taken, at least by the larger educational institutions. At Harvard, we have begun to work on a number of fronts to cope with the problem.

1. We have developed a small staff of persons with long experience in government affairs. In the past few years, they have worked at an extraordinary pace to respond to a long series of crises and opportunities in such fields as tax reform, the Buckley amendment, aid to undergraduate education,

health manpower legislation, affirmative action, and many other areas.

2. We have cooperated closely with other institutions on a number of these issues. Since many of the established associations have only recently begun to prepare themselves to play a more active role, we have often had to work through ad hoc coalitions of sister institutions sharing common goals. These efforts have produced several detailed studies analyzing such issues as federal aid to undergraduate education and the impact of various tax reform proposals affecting charitable contributions.

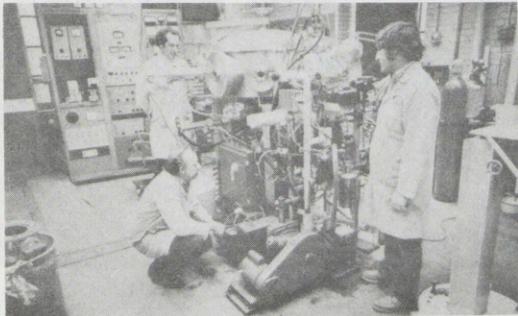
3. We have also tried to play a part in strengthening the higher education associations — especially the Association of American Universities, which most closely represents the interests of the large research university. During the past year, I have served as chairman of a committee appointed to review the scope and functions of the AAU. The principal task of this committee has been to determine how the Association can be reorganized to play a more effective role in federal relations.

4. Another promising initiative has begun through meetings of a group of presidents who are trying to develop a clearer understanding of the problems of major research universities. Several presidents have been assigned the task of enlisting faculty members to help in preparing detailed policy papers on the need for federal support for libraries, international studies, graduate education and scientific research. These papers in turn will serve as a basis for a sustained effort to inform public officials of the role of the research university and the difficulties that hamper our efforts to make an effective contribution to society. As its share in the undertaking, Harvard has assumed the task of helping to prepare the paper on scientific research.

5. It is also important to become more active in the field of health-care policy, both to contribute to the resolution of a significant social problem and to avoid misguided efforts to improve health delivery by merely regulating the curricula and admissions policies of our medical schools. I have been meeting with the Deans of Medicine, Public Health and Government to devise a structure which can encourage more work in this important field.

None of these efforts will guarantee more enlightened regulation or even provide public officials with a clear direction to pursue. As universities and associations increase their efforts to communicate with Washington, it is unrealistic to expect that they will always speak with one voice. The institutions that comprise higher education are so diverse that they are bound to have conflicting views on many important issues. In the end, therefore, public officials will still have to make hard decisions just as they were selected to do. In making these decisions, the government will serve the public well only if it pays greater heed to all the ways in which regulation can diminish the vitality, independence and diversity of higher education. But higher education must also make a contribution by supplying the information that will enable the government to understand the effects of its proposals and by suggesting alternative measures that offer better solutions to problems of acknowledged national concern. If this much is done, the government can at least aspire to making a thoroughly informed choice. In a democracy, one cannot insist upon more — or settle for less.

DEREK C. BOK, President



Emil Sliner, Charles Materas and Frank Connors examine vacuum chamber which they constructed in Mallinckrodt Laboratory

# Conservative College Fights U. S. Controls

By GENE I. MAEROFF

Special to The New York Times

3/19/76

HILLSDALE, Mich. — George C. Roche 3d, the president of Hillsdale College, got an unexpected letter recently containing a donation of \$10,000 to the college, accompanied by a note saying "Give them hell, George."

The contribution is part of an overflow of support that Hillsdale has received since announcing that it was telling the Federal Government that the college does not consider itself bound to comply with Title IX of the amendments to the Elementary and Secondary Education Act, which bans discrimination on the basis of sex.

By making a conspicuous show of its disdain for the right of Federal intervention, Hillsdale has become a symbol of the growing dissatisfaction in higher education with Washington's eagerness to impose costly and cumbersome regulations on the nation's colleges and universities.

It is perhaps appropriate that Hillsdale, where campus life is like an act out of a 1950's play, would have taken such a stand since the college has always had a policy of not accepting any sort of government aid.

Several years ago, Hillsdale even withdrew from the Association of Independent Colleges and Universities of Michigan when the group successfully lobbied for state aid for private institutions, and Hillsdale has declined to accept its share of the funds.

## A Conservative Campus

Hillsdale is a socially and philosophically conservative place where fraternities and

In the meantime, Dr. Roche has begun a drive to add \$25 million to Hillsdale's \$5 million endowment. He says that if the confrontation with Washington leads to a cutoff of Federal student aid the college will try to make up the loss out of its own resources.

Hillsdale, by taking this position and emphasizing its conservatism, feels it is establishing its individuality. Such a step is seen as crucial at a time when hundreds of other private, liberal arts colleges are searching desperately for the distinctiveness that might assure survival as competition for funds and students grows more intense.

## Hopes for Payoff

There seems to be a ready constituency for such a college, and Hillsdale's officials concede privately that they are hopeful that their flouting of the Federal Government—an adversary popular even with some Presidential candidates—will pay off in donations and freshman applications.

Hillsdale is the sort of institution that has an inordinately high proportion of students whose parents convinced them of the school's worth. The 132-year-old institution, founded by but no longer affiliated with the Freewill Baptists, is admired in some circles for the absence of left-wing thinking and the presence of behavioral standards.

"My daddy wanted me to go to a conservative private college," he read about Hillsdale in *The National Review*, said Sharon Ledbetter, a psychology major who

sororities are still thriving, in-room visitation between the sexes are tightly restricted, a dress code is on the books and the biggest issue is whether beer should be allowed on campus.

The college has a chapter of the John Birch Society that students fund through their activities fees. The free-enterprise system and a laissez-faire economic approach are stressed in business courses. A steady stream of conservative speakers' descriptions on the college, which numbers Russell Kirk, the nationally syndicated conservative columnist, among its faculty members.

Dr. Roche, who invited William F. Buckley, the conservative columnist, to speak at his installation as the college's president five years ago, observed:

"The issue at stake in Hillsdale's resistance to the Government is not discrimination but whether Federal control is appropriate on our campus."

This college was admitting women and blacks before the Civil War," said the tall, neatly groomed president, who is also a director of Young Americans for Freedom and whose office is decorated with awards from the Freedoms Foundation at Valley Forge. "We were actively engaged in anti-discrimination 100 years before the Federal Government got into it."

Regarded as "Recipient" Despite Hillsdale's refusal of Government aid, the United States Department of Health, Education and Welfare regards the college as a "Recipient" institution because more than \$200,000 in Federal student aid is distributed each year among Hillsdale's 1,025 students.

Washington has tentatively rejected Hillsdale's contention that the aid is to individuals and not to the institution and that, thus, it is not a recipient institution and not subject to Federal regulations. A final H.E.W. ruling is expected in the spring.

is the daughter of a Norman, Okla., petroleum engineer. Miss Ledbetter, a shy blonde in a denim skirt who was wearing her Kappa Kappa Gamma sorority pin on her blouse, said that in the Title IX controversy "the main issue is not women but whether the Government can dictate to private colleges."

## Pride Is Evoked

The staunch support at Hillsdale for the college's stand against H.E.W. has evoked institutional pride that extends through most of the students, the faculty and the trustees.

"I'm on the board of another school and well aware of what happens when you take government money, have piles of red tape, restrictions on what you can teach and who can teach it and quotas by color and sex," said Donald R. Mossey, an Indiana businessman who is the chairman of Hillsdale's trustees.

"We don't want to take away anyone's rights; we just want to keep ours," Mr. Mossey continued. "We were the first to let women into college in Michigan, and we have colored folks too."

Hillsdale's 31 black students, just about 3 percent of the students, do, in fact, constitute a larger black proportion than is found in at least three of the state universities in Michigan and in many of the state's private institutions of higher education.

There are, however, a few "tiny cracks" in the unified front that Hillsdale would like to project on the Title IX issue. For example, Dr. Marjorie H. Sutton, a middle-aged education professor, does not oppose Title IX.

## Title IX Defended

"I'm for Title IX, doggone it," she said in an interview. "All it says is there will be no funds if you don't obey the law. We should obey the law and say that we will provide fair and equal treatment for women and minorities, even if we don't accept Federal money."

✓  
PITTINGER CALLS PA. GENERAL ASSEMBLY TO BATTLE      Warning that his departments may soon be "little more than a branch office of the U. S. Office of Education," Pennsylvania Secretary of Education John Pittenger last week told the state legislature to "act before it is too late."

Asking Much, but Giving Little      In testimony before the state House and Senate appropriations committees, Pittenger called Federal attempts at regulation "frankly preposterous. At the present time the Federal government is contributing about seven percent of the cost of public education, K-12, in Pennsylvania; 50 percent comes from state revenues and the other 43 percent from local sources. In higher education the pattern is somewhat different, with a somewhat higher Federal share. But on the basis of their very modest contributions, the Congress and HEW are attempting to control the expenditure of state, local and even private funds."

Voc-Ed      Pittenger complained that Congress, finding state spending of Federal vocational education money unwise on the basis of "slender evidence," had apparently abandoned corrective proposals requiring a State Board of Vocational Education with a prescribed membership only because its opponents agreed to accept "a totally unnecessary Planning Council in its place."

Title IX      Pittenger also took issue with OCR's plan to enforce Title IX at colleges that receive no direct Federal assistance, only student aid money. "I do not mean to suggest opposition to Title IX, which I strongly support; but only that it is another example of the Federal foot-in-the-door."

Unholy Conspiracy      It's not just HEW, Pittenger said. "There are several ironies. One is that it seems to make little difference whether Republicans or Democrats, conservatives or liberals, are in charge; the encroachments on state and local policy have been as great during the Nixon and Ford years as they were during the Kennedy and Johnson administrations. Another is that the encroachments come from both the legislative and the executive branch (not to mention the Federal judiciary, in some ways the worst offender of all). Each blames the other; each, I am convinced, is secretly delighted that the other has opened up new avenues for the exercise of Federal power."

## PAPERWORK PANEL PLANS EDUCATION DATA STUDY

Federal education programs will be a primary focus of attention of the new Commission on Federal Paperwork, it appeared at a Dec. 5 meeting at which the commission reviewed the results of recent regional hearings and discussed future plans. The commission began its two-year task in July (see Vol. XXIV, No. 30). A 19-month study of education reporting requirements is planned, concentrating on the U.S. Office of Education. The commission staff reported that USOE requires 43.4 million data items from educational institutions, and that the institutions deal with 42 other Federal agencies besides those in HEW.

The National Association of College and University Business Officers is providing liaison with the commission for the higher education community. Any comments or analyses of Federal reporting requirements and forms should be sent to Steven C. Hychka, staff associate at NACUBO, Suite 510, One Dupont Circle, Washington, D.C. 20036.

## Message From Home—

# CURB THE BUREAUGRATS!

People are getting angry, jumping on Congress for red tape, fuzzy laws, mushrooming agencies. Lawmakers say they're listening.

Congress is starting to react to the heat from home over Big Government.

Lawmakers are finding that Americans are fed up with the seemingly free rein Congress has given bureaucrats—elected by no one—to lay down and enforce rules affecting millions.

People are hopping on their representatives in Washington for the steady proliferation of agencies.

Example: In the last 15 years, 236 new federal departments, agencies or bureaus have sprung into being, while only 21 have been disbanded.

Nor can people understand the duplication of effort by various arms of the bureaucracy.

Example: As shown by a study of federal categorical aid programs, made by Congress's General Accounting Office, seven separate programs provide funds for outpatient health centers.

Eleven separate programs provide funds for child care.

Fourteen separate units of the Department of Health, Education and Welfare administer programs for education of the handicapped.

At least 25 bureaus, services or offices in a dozen different departments or agencies support research into water pollution. All have been authorized, or at least tolerated, by Congress.

What's more, Congress is riling people by passing laws that allow administrators more leeway than proves to be desirable.

Example: Under powers granted by Congress, auto-safety regulators went so far that the lawmakers last year had to specifically outlaw systems that kept a car from starting if seat belts weren't fastened.

And those aren't all the laws that aren't working or are generating a thicket of red tape. The box on page 41 details troubles surrounding recent attempts to make a warranty law work.

"We pass a law and let it go," laments Senator Hubert Humphrey (Dem.), of Minnesota. "It's a little like fathering a

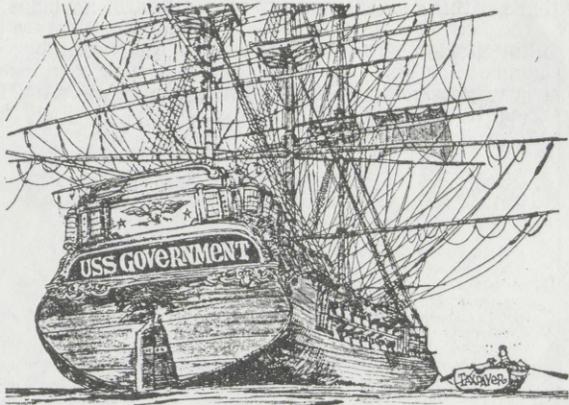


ILLUSTRATION BY RICHMOND NEWS LEADER

child and turning him over to the neighbors to raise, and not bothering to wonder how he's growing up."

All in all, the situation is sparking a growing move to beef up Congress's "oversight" of legislation—the keeping of constant tabs on the programs, agencies and laws Congress has approved.

More and more, lawmakers are being drawn to the idea of a complete overhaul of Congress's machinery.

The revolutionary budget system being phased in this year is just a start. Now reformers are pushing for a top-to-bottom shake-up in the committee system, still more budget reforms, and other changes to enable Congress to get a grip on the federal colossus.

"Congress has created something that is beyond its level of competence to control as we are presently structured," says Senator William E. Brock III (Rep.), of Tennessee.

Conservatives—traditionally skeptical of Government programs—are not the only ones getting behind the drive for big changes. At least as large a role is being taken by liberals, and particularly younger Democrats.

"Almost impossible." Warns one freshman Senator, Patrick Leahy (Dem.), of Vermont: "Oversight is hard work and it's not glamorous, but if we don't start doing it, we're going to

reach the point where we won't be able to afford the Government. Government has already grown so big, oversight is almost impossible."

Up to now, most oversight work has been largely patchwork.

Journalistic exposés, for instance, have provoked investigations such as today's probes of American intelligence agencies and of foul-ups in the Supplemental Security Income program.

Floods of critical mail have also sometimes triggered oversight hearings—and corrective legislation. The outlawing of mandatory seat-belt systems is an instance of this. But such "chills and fever" oversight, reformers say, has largely ignored the dull but necessary task of streamlining the accretions of bureaucracy built up over the years.

For that reason, many experts question how fast Congress will really move now toward keeping tabs on its own laws. Those who have studied the problem cite a number of obstacles that have led Congress to shirk its oversight duty for decades. One is lack of time.

"We're frantically trying to keep our noses above water, racing from one problem to the next," says Senator Adlai E. Stevenson III (Dem.), of Illinois. "Oversight is something that can always be deferred in favor of something more immediate." More often, the problems

## CURB THE BUREAUCRATS!

*(continued from preceding page)*

cited by officials are of a political and institutional nature.

Congress traditionally is geared to looking forward—to passing new legislation, rather than to riding herd on past decisions.

"We find something wrong and some-

body says 'There ought to be a law,'" explains one veteran staff member. "We put out a press release, hold a hearing and we get the law. Then we go on to something else."

Politically, members have found they have much less to gain by demolishing an old program.

"It's very hard to kill a program, because every program has some kind of

constituency. It does something for somebody," says Senator William Proxmire (Dem.), of Wisconsin.

Another roadblock to better oversight is this: Voters tend to be of two minds with regard to Government spending. Freshman Senator Gary Hart (Dem.), of Colorado, points up the problem for an elected politician:

"Every group that comes through my door has two messages. No. 1: Cut back on federal spending. No. 2: Help us get some money from the Federal Government."

The way in which Congress's committee system functions also discourages vigorous oversight. There are 40 major House and Senate committees and almost 300 subcommittees. Jurisdictional lines are often blurry.

"*Ways to duck.*" Thus, says Representative William A. Steiger (Rep., of Wisconsin):

"The hodgepodge and jumble of overlapping jurisdictions makes it awfully easy to avoid responsibility for oversight. There are lots of ways to duck an issue."

The committee system not only discourages oversight, but also invites waste and duplication in the executive branch, critics believe.

There's been a tendency for each of several committees to develop its own program to solve the same problem—each plunging ahead without coordinating with the others.

Take welfare, for instance.

"Everybody wants to get into the welfare business," says Representative Barber B. Conable, Jr. (Rep., of New York). "The Housing committees are in it through housing aid. The Ways and Means Committee is in it through Social Security; Interstate and Foreign Commerce through health programs. The Agriculture Committee has food stamps. Education and Labor has its programs. Everybody wants a toe hold."

*Lobbyists a power.* The lobbying that bureaucrats and special-interest groups constantly do is another aspect of the committee system that works against tough oversight.

Special interests frequently contribute to committee members' campaigns; program administrators socialize with committee members and cultivate them with special favors.

"The chances are the guys on the committee wrote the bill or started the program. They work with their friends in the agency. They're soul brothers," says Representative Bill Frenzel, of Minnesota, chairman of the House Republican Task Force on Reform.

In short, committee members tend to be protectors of existing programs and agencies, not critics.

## FIGHTING WASTE AND SECRECY: FOUR "WATCHDOGS"



Proxmire



Leahy



Moss



Aspin

*If Congress as a whole generally does a poor job of keeping tabs on federal laws and bureaucrats, the same can't be said about every Congressman. Here are four Capitol Hill "watchdogs."*

*Persistent gadfly.* Senator William Proxmire, labeled a liberal when he entered the Senate in 1957, has been battling for years for elimination of waste.

His targets have been both large and small: the supersonic transport plane, federal limousines, allegedly frivolous National Science Foundation grants.

Each month, Senator Proxmire gives his own "Golden Fleece Award" for what he feels is a waste of taxpayers' money.

Among recent winners of his award is the Federal Aviation Administration, for spending \$37,800 on a study of the measurements of airline stewardesses to help in the design of safety equipment.

*New breed.* Like many of the new Democrats who entered Congress this year, Senator Patrick J. Leahy believes the federal bureaucracy could stand some whittling.

One small victory for the Vermonter came last summer when the Senator blew the whistle on the Federal Fire Council, which was doing next to nothing and spending \$67,000 a year in the process.

Mr. Leahy is now plumping for creation of a special Senate committee to weed out overlapping

programs and agencies. And he thinks that before Congress approves any new program, it should be required to get a full report from the General Accounting Office on the program's workability.

*Secrecy fighter.* Representative John E. Moss has spent much of his 22 years in Congress trying to pry information out of bureaucrats. He recently roared at a recalcitrant Cabinet member: "When I want information, all the forces of heaven and hell could not stop me."

The chairman of the Oversight and Investigations Subcommittee of the House Commerce Committee hasn't always had success. But he made considerable headway when the Freedom of Information Act was passed by Congress.

Only if "the cult of secrecy" is broken, says the California Democrat, can Congress and the public determine whether laws are being carried out properly.

*Scourge of the Pentagon.* Representative Les Aspin (Dem.), of Wisconsin, is widely regarded as the most effective critic of the military on Capitol Hill.

A former Pentagon official himself, Mr. Aspin and his staff function as a kind of unofficial inspector general's office—churning out several carefully researched broadsides against the Pentagon each week. The targets: cost overruns, arms sales abroad, costly new weapons—whatever strikes Mr. Aspin as waste or bad judgment.

When agency administrators come to Congress for an appropriation, Congress almost never questions whether the agency or program should exist.

Reports one staff member with long experience: "The committees usually start with the assumption the agency is doing its job. The question simply is, 'How much more do you need next year to keep doing whatever you're doing this year?'"

It is the kind of once-over-lightly review that gives outmoded or wasteful agencies such a high life expectancy—frequently approaching immortality.

Even when a committee or subcommittee does take its oversight duties seriously, it frequently finds it has far too few staff members to do a thorough job.

The House Commerce Subcommittee on Oversight and Investigations, for example, has 16 professional staff members and a \$600,000 budget.

It oversees 21 executive agencies with a total budget in excess of 4 billion dollars and many thousands of workers.

Says one staff member: "As hard as we're trying, we can't keep up with the demands of oversight. We're not even coming close."

**Help from GAO.** Congress does get significant oversight help from the General Accounting Office—an auditing arm it set up half a century ago. Of GAO, one Republican says: "It's the best thing we've got going for us."

But as a creature of Congress, GAO tends to be overcautious, many believe. And Congress, for its part, finds it easy to file and forget GAO reports.

Most reformers think that tough oversight will come only if Congress makes fundamental changes in its operations.

A streamlining of committee jurisdictions is a high priority. A major shake-up of House committees was largely derailed last year, but reformers did succeed in creating six new oversight subcommittees. The Committees with these new subcommittees are: Agriculture; Banking, Currency and Housing; International Relations; Interstate and Foreign Commerce; Small Business, and Ways and Means.

The Senate has set up a special blue-ribbon commission to study its committee system and recommend changes. Among the commission's targets will be the whole problem of oversight.

Also being pushed by reformers.

- Being a termination date into every law creating an agency or program—so that it would go out of existence after three to five years unless Congress re-creates it.

- Build into all new programs a provision for a thorough evaluation by outside consultants or by a new "Office of Program Review."

- Adopt a system of "zero based" budgeting. Agencies would have to fully justify every penny they request every time they come to Capitol Hill for a new appropriation.

- Give Congress a 60-day period in which to veto any federal regulation promulgated before it takes effect.

However, the effectiveness of whatever Congress adopts, say members

who have studied the problem, will depend on whether there is a change in the "politics of oversight."

Effective oversight must come to be seen as not only good government but good politics at a time when discontent with bureaucracy is running strong.

50 ways to bring spending under control, page 42.

## WARRANTY LAW: THE BEST LAID PLANS ...

The new Federal Warranty Act is a vivid example of the frequent gap between congressional intent and life in the real world.

In this case, Congress wanted to make sure consumers wouldn't get stuck with faulty products. It passed a law setting broad rules covering warranties and ordered the Federal Trade Commission to draw up specific guidelines.

But the law went into effect July 4 and the FTC, which was given six months to issue its regulations, is still holding hearings.

**Chaos, not clarity.** Manufacturers, retailers and consumers have all been left in a quandary about what the law requires.

The upshot: Some companies have restricted the language of their warranties and others have labeled theirs "limited" rather than "full" even though the wording is the same.

So much uncertainty exists that some companies have withdrawn, temporarily, the guarantees they once supplied with their product.

And at the retail level, storekeepers are balking at a proposal that would require them to keep on file a "library" of warranties on every product worth more than \$5 that they carry in stock.

Although Congress obviously intended to protect consumers from deceptively worded and misleading warranties, the immediate effect of the law has been to actually weaken some warranties previously considered models.

For example, Corning Glass Works switched to a limited warranty "at least until present confusion is cleared up," says a company official. He adds: "This puts us in something of an awkward position, since at the hearings that led to the new law, our warranties were sin-



gled out as among the simplest and clearest in the country."

Proposed FTC regulations would compel manufacturers to put a tag or sticker on their products saying, "The retailer has a copy of the complete warranty on this product. Ask to see it."

One dissenting FTC member, Mayo J. Thompson, complains that such a warranty "library" would "drag the customer away from the merchandise and over to the reading stall."

The costs would far outweigh the benefits, he says. He sees the proposed regulation as proof of "the astonishing capacity of those who pass the laws and those who enforce them for overestimating the public's interest in some of the more esoteric forms of consumer information."

In sum, the warranty law, as critics see it, shapes up as one more instance of an all-too-common congressional practice—legislation that leaves the really tough decisions to administrators.

Says one lawyer: "Congress just came up with some sweeping changes and then dumped the whole thing in the Trade Commission's lap. It's a classic case of bungling a very touchy issue."

SPECIAL SECTION **SCHOOLS****RISING COMPLAINTS FROM EDUCATORS  
ABOUT THE ROLE OF "BIG BROTHER"**

All those federal billions flowing into education are exacting a heavy price—imposing Government control over academic decisions.

School administrators, from kindergarten to college, are balking at the price they have to pay for federal support of education.

Many are asking whether it is worth what it costs in the loss of academic freedom. The situation is this:

"Big Brother," the Government in Washington, is pouring billions of dollars into education at all levels. But strings are attached to almost every penny.

**Plethora of paper.** Federal intrusion into education is accompanied by what one schoolman described as "sheaves of fine print, bales of report forms and panoplies of inspectors."

This intrusion, it is charged, is diminishing able leadership on school grounds and campuses, weakening institutional autonomy, and threatening academic diversity, creativity and reform.

Government control of the educational process stems mostly from civil-rights legislation passed in the 1960s.

Washington bureaucrats have been enforcing these laws with a "money club"—threatening to withhold millions of dollars in grants and contracts from noncomplying schools and colleges or to cancel those already awarded.

The trouble is that for many school systems and colleges today, federal financial aid has come to mean the difference between life and death.

Even such prestigious institutions as Harvard, Yale and Stanford are reported by Yale's president, Kingman Brewster, Jr., to be "at least one-third financed by the national Government."

The chart on this page shows the great and increasing size of the Government's contribution to education.

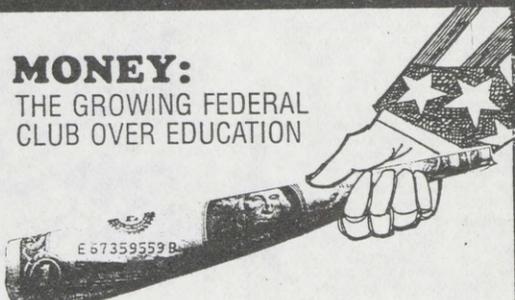
The impact of Government controls on public elementary and high schools is best exemplified by the mass busing for racial integration. Washington also has a finger in the employment of principals and teachers according to race and sex, as well as their distribution throughout the nation's school systems.

On August 20, the U.S. Civil Rights Commission made this recommendation on Boston's court-ordered desegregation of schools—delayed by months of intermittent racial violence: "If the Boston School Committee persists in its refusal to take affirmative actions in support of the constitutional rights of the children and young people of Boston, the federal district court should consider placing

the Boston public-school system in receivership and designating the State board of education, some other public official or a private institution or person as the receiver."

Laws against sex discrimination are changing the nature of courses like home economics and manual training, and opening up sports programs to girls.

School systems that fail to fall in line



**MONEY:**  
THE GROWING FEDERAL  
CLUB OVER EDUCATION

Years Ended June 30 —	Federal Funds Earmarked for Education		
	Elementary and Secondary Schools	Higher Education <i>(billions of dollars)</i>	TOTAL
1965	\$1.0	\$2.8	\$ 3.8
1966	\$2.1	\$2.9	\$ 5.0
1967	\$2.3	\$3.9	\$ 6.2
1968	\$3.0	\$3.8	\$ 6.8
1969	\$2.9	\$3.7	\$ 6.6
1970	\$3.3	\$4.1	\$ 7.4
1971	\$4.0	\$4.3	\$ 8.3
1972	\$4.6	\$4.8	\$ 9.4
1973	\$4.6	\$5.1	\$ 9.7
1974	\$5.1	\$5.7	\$10.8
1975	\$5.3	\$6.2	\$11.5

In just one decade, federal outlays for education have tripled. It's the fear of losing such funds that tends to keep schools and colleges in line with regulations from Washington dealing with educational standards, curriculum, hiring practices, research and a wide range of other matters.

Source: U.S. Dept. of Health, Education and Welfare

## "BIG BROTHER" ROLE

(continued from preceding page)

face loss of federal aid for such popular—and expensive—programs as help for the handicapped and vocational, bilingual and adult education.

Growing protests against the "federalization" of education are loudest on the nation's college campuses.

At a meeting of college business officers this summer, Stephen K. Bailey, vice president of the American Council on Education, said pressures arise from federal laws that "attempt to achieve a variety of social ends only marginally related to the educational objectives of colleges and universities."

Among them he listed laws involving equal-employment opportunity, equal pay, affirmative action, age discrimination, occupational safety and health, and environmental protection.

Costs of complying with these laws are enormous. To meet the costs, Mr. Bailey said, "fellowship funds have been robbed, academic priorities have been skewed, dangerously high tuitions have been increased even further." In one large private university, he reported, the annual cost of implementing federally mandated social programs rose from \$110,000 in 1965 to 3.6 million dollars in 1974-75.

**The controls.** With its power to grant, or deny, federal aid, the U.S. Department of Health, Education and Welfare (HEW) has come to control not only research programs at universities but admission policies, athletics, even living conditions in college dormitories.

Through its affirmative-action programs, which require racial and sex goals, HEW dictates the hiring, promotion and pay of both faculty members and institutional staffs. President John A. Howard of Rockford College charged that, in affirmative action, "Government has imposed its own policy, which says that the academic competence of the faculty members shall no longer be the supreme determining factor in faculty appointments." He added:

"If academic freedom once existed in this country, it is now a thing of the past, and federal subsidy has been the bludgeon employed to demolish it."

**Muscle and money.** Many educational leaders share Mr. Howard's concern. Yale's President Brewster has asserted that the "leverage of the federal spending power is used indirectly to control private colleges in ways the Government could not use directly." He put the blame on Congress and accused Wash-

ington of taking an attitude of "Now that I have bought the button, I have a right to design the coat."

As one example of federal muscling, Mr. Brewster cited an attempt by the White House, when Richard M. Nixon was President, to cut off defense contracts to the Massachusetts Institute of Technology because of opposition by MIT President Jerome Wiesner to a missile program.

President Brewster also cited a health-manpower bill pending in Congress which would require medical and other health-profession students to repay the Government for per capita grants to their schools if they do not work in medically underserved areas after graduation. The bill has been passed by



"NOW—A LITTLE HIGHER"

the House and is awaiting action in the Senate.

The president of Stanford University, Richard W. Lyman, contends this legislation would introduce a "young doctors' draft" without admitting it, make the nation's medical schools instruments of social policy, and enable Congress "to govern parts of our curricula in health sciences by legislative fiat."

Challenges to policies imposed on education by the Federal Government are bringing about changes in some areas. For instance, the tide shows some signs of turning against busing for purposes of integration.

In Detroit, on August 15, a federal court ruled out massive forced busing of

Detroit schoolchildren this fall and turned over the job of achieving racial balance in classrooms to the city board of education.

The court, in an order that took on national significance, indicated it was more concerned with the quality of education in Detroit than with busing children from one school to another. City and State officials welcomed the ruling, but civil-rights leaders, claiming that the decision would cost them five years of progress in integration, announced they would appeal.

Another challenge to "Big Brother" came in August from Governor Marvin Mandel of Maryland—and it may lead to a court test of the Federal Government's authority to withdraw financial aid for alleged noncompliance with desegregation orders.

HEW has threatened to cancel about 55 million dollars in grants and contracts to Maryland colleges and universities unless the State meets new federal demands for quicker desegregation.

**"Clumsy intimidation."** Governor Mandel said Maryland's institutions, which admit members of all races, were desegregating as fast as possible. He accused HEW of making "a clumsy effort at intimidation," which he said must be rejected out of hand.

His challenge to Washington: "Please feel free to initiate enforcement action at your earliest convenience."

Twenty-five years ago, educational leaders were almost unanimously opposed to taking money from the Federal Government. The feeling was that American education had been built on principles of local autonomy and local responsibility, and that these principles should not be abandoned.

President Truman tried hard for aid-to-education legislation, but the academic community stood firm until 1957, when Sputnik appeared in the sky and scared the country into thinking that the Soviet Union had outdistanced the U.S. in technology.

Reluctantly, educators agreed to grant new powers to the Government. The result was the National Defense Education Act of 1958, which opened the door to "federalization" of education.

Those who oppose federal subsidies say there is one sure way to get out from under Washington's thumb: Don't take any more money. But this does not appear to be a practical solution. U.S. education, in spite of its cries of anguish, wants more federal money, not less—and school authorities fear "Big Brother" will be around for a long time.

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## ASSOCIATION VIEW OF FEDERAL IMPACT ON EDUCATION

Charles B. Saunders, Jr.

*If fiascoes caused by bureaucratic solicitousness are to be avoided, federal regulatory and legislative actions must be carefully monitored by the postsecondary community. Legislation affecting education as a business and social enterprise as well as the regulations bearing directly on the conduct of education must be observed, commented upon, and shaped by watchful spokesmen. To see that a bill doesn't suffer from administrative overkill, that those most affected by the reality of the situation can be heard—and their wisdom applied—and to assure that executive discretion corroborates rather than derails the original purposes of the law—such are the duties of the associations and the obligations of a vigilant educational community.*

LAST FALL I received a letter from the small liberal arts college my son attends, informing me that they could no longer report his grades to me because of the passage of the Buckley Amendment with its requirements for the confidentiality of student records.

My dismay at congressional usurpation of parental rights was more painful when I reflected that the staff time involved in preparation of the letter, the legal advice that had to be obtained, and the clerical work required for processing and mailing must have cost several thousand dollars—and probably accelerated plans by the financially hard-pressed institution for a tuition increase. Furthermore, if most of the nation's colleges sent out similar letters, that mailing alone cost our institutions of higher education several million dollars.

Most unfortunately, the letter was delivered to my house the day after an embarrassed Congress rewrote the Buckley Amendment, making the letter (and all the effort it represented) unnecessary.

Of course the incident is only a small example of the ways in which the federal presence is being felt increasingly on campuses across the nation. Any college administrator can cite other examples to match the confusion that accompanied the Buckley Amendment.

Yale University President Kingman Brewster, in a widely noted speech to the American Bar Foundation last February, charged that federal legislation and regulations show a growing tendency to prescribe educational policies, and he called for vigilance against "the use of spending power as a lever to extend regulations beyond the accountability reasonably related to the purposes for which the support is given."<sup>1</sup>

Surely Brewster offers sound advice. But perhaps our utmost vigilance should be devoted, not to federal laws and regulations that deal directly with education policy, but

<sup>1</sup> Kingman Brewster, reprinted in *Congressional Record*, 94th Cong., 1st sess., 10 March 1975, p. S3516.

to those that were never intended to affect higher education. Such measures may have the most significant impact on colleges and universities in terms of costs and other unforeseen consequences.

President David Mathews of the University of Alabama, President Ford's new secretary of the U.S. Department of Health, Education, and Welfare, recently described the growing web of controls and regulations as threatening

to bind the body of higher education in a Lilliputian nightmare of forms and formulas. The constraints emanate from various accrediting agencies, federal bureaucracies, and state boards, but their effects are the same: a diminishing of able leadership on the campuses, a loss of institutional autonomy, and a serious threat to diversity, creativity, and reform. Most seriously, that injection of more regulations may even work against the accountability it seeks to foster, because it so dangerously diffuses responsibility.<sup>2</sup>

Isolated warnings, speeches, horror stories, and anecdotal evidence, however, are insufficient to state the growing impact of federal laws and regulations on higher education, and they are inadequate in describing the problems and prescribing appropriate strategies. Systematic analysis is required and should be undertaken. As a starter, we could identify several distinct kinds of problems: legislative, regulatory, and administrative. Each calls for distinctly different strategies.

### Legislation

Take the legislative process, for example. Theoretically many undesirable effects of federal laws could be avoided or ameliorated if they could be predicted and dealt with

<sup>2</sup> David Mathews, "Carnegie and Newman: Higher Education in Traction," *Saturday Review/World*, 9 February 1974, p. 63.

*Charles B. Saunders, Jr., is director of the Office of Government Relations of the American Council on Education. His article was delivered at a panel session during the annual meeting of the National Association of College and University Business Officers, 11 July 1975, in New Orleans, Louisiana.*

before the legislation is enacted. Of course, the education community would energetically have to monitor the Congress, and this poses at least two kinds of problems.

The first concerns legislation designed to deal directly either with educational issues (such as student aid or the various other categorical programs of the Higher Education Act) or with issues that clearly involve educational institutions (National Science Foundation authorizations, health manpower legislation, and other proposals on training and research for national needs).

In such instances the problems tend to arise out of failures of the legislative process—cursory hearings that fail to build an adequate record, committee actions taken without sufficient notice for interest group reactions, acceptance of significant floor amendments without committee consideration, insufficient attention to whether the timetables for implementation contained in the legislation are reasonable.

### Without consultation

One major example of such failures of the legislative process is the current health manpower legislation, developed by House and Senate committees with almost studied disregard for the implications of imposing service obligations on enrolled students and mandating course offerings and faculty staffing in federally supported health programs. Stanford President Richard W. Lyman recently criticized the bill's provisions as "ominous for individuals and ominous for higher education." The legislation, he said, would introduce a young doctor's draft without admitting it, make the nation's institutions of medical education into instruments of social policy, and enable Congress "to govern parts of our curricula in health sciences by legislative fiat."<sup>3</sup> But such arguments have not been adequately considered in developing legislation.

In such cases, the educational community obviously has a responsibility to state its views vigorously and effectively and to provide sound analysis and accurate data supporting its views. But the primary respon-

<sup>3</sup> Richard W. Lyman, Remarks delivered to medical alumni, 31 May 1975, at Stanford University, Stanford, Calif.

sibility lies with the congressional committees for conducting thorough hearings, providing ample opportunity for comment on proposed legislation, and ordering careful staff analysis of legislative implications. Possibly we should follow the example of Ralph Nader and grade the committees on how they meet responsibilities.

### Unaware and unfamiliar

The second kind of problem related to the legislative process concerns those issues which seemingly do not affect education policy or the educational system because the legislation is not designed to do so. In such cases, where the impact on education is largely unintended, the situation is quite different. The committees considering the legislation are probably unaware of the possible implications for the education system, while the education community tends to be unfamiliar with both the committees and the subject matter.

A current example is the Federal Grant and Cooperative Agreement Act now before the Subcommittee on Federal Spending Practices of the Senate Committee on Government Operations. The bill has the laudable purpose of simplifying government-wide contracting and grant-making procedures, but certain of its technical provisions would unnecessarily and unintentionally complicate life for colleges and universities conducting federally sponsored scientific research. Fortunately, knowledgeable officials of the National Association of College and University Business Officers (NACUBO) spotted the difficulties. We called our concerns to the attention of the Subcommittee, and we have been assured that appropriate revisions will be made before the bill is reported out.

We were lucky. For every such case that is spotted in time for correction, there must be hundreds of bills considered by dozens of committees that have not been scrutinized for possible effects on the education community. In many cases it may be impossible to judge the impact on colleges and universities until many years later. A startling example is the finding in a current study by the American Council on Education that the gradual shift of federal tax

policy from taxing income to taxing employment in the last 15 years has significantly depreciated the imputed tax advantage that colleges and universities have historically received from their nonprofit status. The change has not happened as a result of any deliberate policy decision to dilute the tax advantage of nonprofit institutions; it has just come about gradually over the years, as federal budget receipts derived from taxes on employment have doubled from 15 percent to 30 percent and corporate income taxes have declined from 23 percent to 15 percent of federal receipts.

Not only Social Security contributions, but an array of federally mandated social programs are imposing cumulative costs of growing significance on colleges and universities. The costs of compliance with improved standards of employee safety and health, promulgated by the U.S. Occupational Safety and Health Administration, are estimated to be over \$3 billion. The costs of other programs may be no less considerable, though less direct; for instance, the necessary professional and clerical staff will have to be trained to provide the sophisticated administration and reporting required for student assistance, employee pensions, minimum wage, unemployment insurance, and a variety of other programs.

The commitment of the higher education community to the national policy objectives represented by socially mandated programs is not the question. The point is that proposed federal programs have costs which should be recognized, but which are seldom considered by Congress, and which are virtually impossible to estimate in advance.

### Regulation

Unlike the recognizable education issues, the solution cannot be expected to come from the congressional committees, since their jurisdiction lies in other fields. Rather, the education community must take responsibility for more systematic monitoring of all congressional committees, better sharing of information and coordination of activities among the associations and interest groups, and the development of better accounting techniques such as the American Council on

Education is devising to identify and project the cost impact of current and proposed federal programs. Perhaps such data could lay the basis for future legislation to provide for appropriate compensation.

After Congress writes legislation, the lawyers and the bureaucrats in the executive branch decide what it means. The executive bureaucracy is a world apart from Capitol Hill with an entirely different set of procedures and cast of characters. Legislation is formed in the comparatively public glare of committee rooms and hearings by congressmen who are ultimately liable to their constituents for their acts; regulations are drafted in the dreary recesses of obscure downtown buildings by unknown officials whose names rarely can be found on their agency's organization chart (assuming an organization chart can be found).

### Influence on regulations

Access is more of a problem here. Congressional members and staff are relatively accessible compared to the agency personnel assigned to draft new regulations. Bureaucrats are usually reluctant to discuss agency views on issues involved in writing regulations until an official position has been taken—when it is apt to become fixed in concrete.

In past years, preliminary drafts usually were circulated to knowledgeable representatives of the academic community for reactions, so that the agency and its constituents could reach an early understanding of the issues involved. Today, however, the practice has been abandoned (at least at HEW) on the ground that it is unfair to let some outsiders see and comment on material that is unavailable to others.

Officially, everyone has 30 days in which to submit comments on proposed regulations once they are published. By publication time, however, the bureaucracy has committed its views to print in language that must be defended against all criticism. And, in reality, the 30-day comment period is considerably less time once the microscopic print of the *Federal Register* appears, is read, digested, analyzed, and called to the attention of appropriate officials in the academic community.

Even if education's representatives are able to submit comments within the time period, they have no assurance that their views will be considered seriously. Last spring, responding to President Ford's expressed interest in encouraging greater participation by colleges and universities in federal manpower programs, the higher education associations made detailed recommendations for modifications of the U.S. Labor Department's proposed new regulations for the Comprehensive Employment and Training Act (CETA). The department published its final regulations without accepting any of our recommendations and without explaining why the advice was rejected.

The solution here lies in more open communication in the preliminary drafting stages. A good-faith effort on the part of the agency to understand the issues from the perspective of its constituents is essential long before the proposed regulations are published for comment. If the agency is sensitive to its constituency, constructive relationships should be developed informally on the basis of mutual trust and should include the exchange of views on troublesome issues and specific language.

If consultation is impossible, however, legislation may be necessary to establish systematic procedures for public participation in the drafting of regulations. Representative advisory panels might be appointed to assist in the process, more realistic time-tables might be established for commenting on proposed regulations, and agencies might be required to respond in detail to all comments submitted.

### Administrative discretion

Regulations drafted by agencies not responsible for education matters present a more difficult problem for the education community, which may have little basis for comment on the technical issues involved. Safety requirements, for example, raise questions of engineering, structural design, and feasibility, which are matters of expert professional judgment; that the imposition of safer standards may require costly renovation of antiquated college buildings is essentially irrelevant.

Schools can hardly request an exemption from standards of safety and health that are required of the rest of the nation. The presentation of accurate cost data, however, could justify a more realistic and orderly phase-in of national standards or suggest future modification of the legislation to provide appropriate federal assistance in achieving new standards.

Once the laws are written by Congress and implemented by agency regulation, a vast area of discretion is left to program administrators. Conventional wisdom holds that good legislation protects administrative discretion and avoids detailing the mechanics of implementation. However, the ways in which the executive branch has used its discretion in recent years provide grounds to challenge the conventional wisdom. We have seen a calculated defiance of clear congressional directives through impoundment and other devices to avoid spending appropriated funds, and a willingness to engage in extralegal tactics to retaliate against critics has been obvious. Greater assurance is needed that executive agencies will lend their energies to carrying out the laws, not to frustrating legal intent.

#### Explanations and time sheets

To illustrate the abuse of administrative authority, Kingman Brewster cites the enemies-list mentality of the Nixon White House, which sought to deny Department of Defense funds to MIT because of Jerome Wiesner's opposition to the antiballistic missile program.<sup>4</sup> Such abuse of political power, however, is hardly cause for special vigilance from the education community. It is likely to occur in the administration of any federal program where corrupt officials misuse their authority. The best response in such cases is to document the pressures, make them public, and let the political process work its will. To prevent such pressures from being applied surreptitiously, it may be desirable to establish a more clearcut procedure whereby rejected applicants can learn why they were denied federal grant or contract funds.

But the occasional misuse of political

<sup>4</sup> Brewster, *Congressional Record*, p. S3516.

power has caused far less damage to the higher education community than that inflicted by well-meaning federal officials. The list of problems in the latter category lengthens almost daily.

One over-eager regional director at the Department of Health, Education, and Welfare has singlehandedly managed to delay and complicate the grant-making process in his area of jurisdiction by inviting state officials to participate in HEW's already-cumbersome Regional Director's Review and Signoff process.

Government-wide reporting requirements on indirect costs are being interpreted more strictly by HEW auditors in some areas of the country than in others, and institutions in those areas have been ordered to submit monthly statements detailing the time and effort each faculty member devotes to federal projects.

#### Civil rights protection

One of the grossest examples of bureaucratic overkill in recent weeks was the attempt by HEW's Office for Civil Rights to force a number of major universities to accept new affirmative action requirements—which the *Washington Post* called “preposterous and pointless”—or lose large federal contracts in the closing days of the fiscal year. The episode, the *Post* editorialized, illustrated the need for the government

to rethink and reform the reflexive, oppressive and unproductive way it has been dealing with many of its obligations in this area. . . . The purpose of these laws and regulations, after all, was to generate fairness, not to generate blizzards of paper and threats and sanctions that end up doing next to nothing—except to hobble institutions and make everyone very angry.<sup>5</sup>

Unhappily, such problems seem to be endemic to the nature of our large, complex government in which dozens of separate agencies oversee hundreds of programs that affect the colleges and universities. Interagency coordination may be next to impossible in some cases, difficult at best,

<sup>5</sup> “Rebellion of the Chancellors,” editorial, *Washington Post*, 25 June 1975.

and in a distressing number of cases not even attempted—as when the Internal Revenue Service produced its February 18 guidelines and record-keeping requirements for determining whether private, tax-exempt institutions maintain racially nondiscriminatory policies. As one dismayed university president wrote Treasury Secretary Simon, “the IRS proposals are oblivious to the web of regulation that already exists,” and would generate a paper nightmare for institutions that are already monitored for similar purposes by HEW, the Department of Labor, and the U.S. Equal Employment Opportunity Commission, as well as counterpart agencies at the state level.<sup>6</sup>

The solution to such problems demands a capability in the education community to alert institutions, share information, and take an aggressive and united stand against the imposition of unnecessary or foolish requirements. Of necessity, the education associations headquartered in Washington are building the needed capability, and NACUBO is a major participant in the effort.

### General observations

From my very preliminary effort to enumerate the different ways federal programs impact on higher education, I would draw several general conclusions.

Increasing government regulation, with its accompanying red tape, is a trend not only in higher education but also in other sectors of our society. Congress and the administration have already recognized the growth of regulation as a problem, and last month they established the Commission on Federal Paperwork with a mandate to conduct a two-year study of paperwork generated by government reporting requirements and to recommend ways to simplify the management and control of these activities. I would expect that NACUBO will be the logical organization to identify the concerns of the higher education community related to the mandate and make them known to the commission.

On one hand, regulations are proliferating due to concern for the economy, which gives

rise to demands for further justifications of new federal expenditures. In the education sector of the economy, however, there are special factors accelerating the development of regulations. In the search for solutions to complex national problems, the government inevitably looks to the expertise and research capabilities of the nation's colleges and universities, and this results in the development of new patterns of relationships between federal agencies and the academic institutions. And with each new set of relationships comes a new set of regulations.

As Michigan State University President Clifton Wharton, Jr., recently wrote to Congressman James O'Hara, “Perhaps it is time for Congress to take a close look at this practice before we become a nation of regulations rather than of laws.”<sup>7</sup> There are some signs that Congress may do so.

### Limits to goodwill

As Chairman O'Hara declared last month during the hearings of his Subcommittee on Postsecondary Education on HEW's new Title IX regulations: “Surely we have learned in the past two years that however laudable the goal, we cannot trust in the limitless goodwill of government—that agencies that are charged with carrying out the law have an almost irresistible tendency to go beyond the law, and that we have to maintain constant vigilance to see that they stay within it.”<sup>8</sup>

We should be prepared to resist that “irresistible tendency,” document examples of unnecessary and burdensome regulations, and encourage congressional committees to exercise their oversight powers more actively.

I would observe further that future federal encroachments on the autonomy of colleges and universities cannot be effectively resisted unless our institutions can withstand and welcome public scrutiny of their performance in areas of national concern, such as equal employment, equitable distribution of student aid, consumer protection, energy conservation, and maintenance of health and safety standards. It is

<sup>6</sup> Richard W. Lyman to the Hon. William E. Simon, 28 February 1975.

<sup>7</sup> Clifton Wharton, Jr., to the Hon. James O'Hara, 1975.

<sup>8</sup> *Higher Education Daily*, 25 June 1975.

ASSOCIATION VIEW OF FEDERAL IMPACT *Saunders*

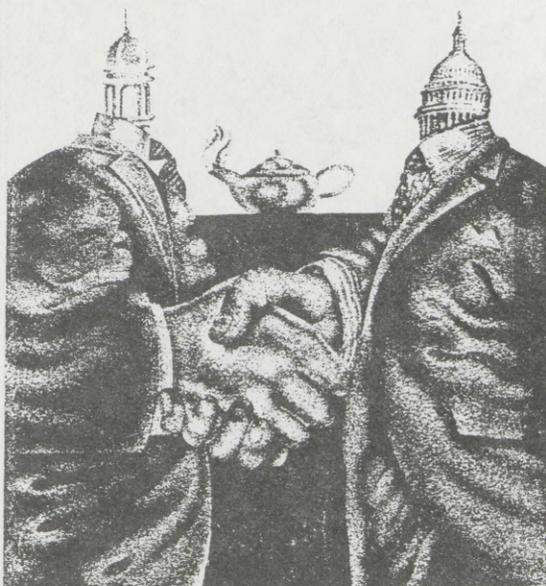
not enough to complain about federal red tape; there must be a positive effort within the community to develop acceptable codes and standards that will achieve maximum results with minimum enforcement costs.

All of us share responsibility for the complexities of the federal role in higher education. We should petition Congress to

reduce irrationalities and to simplify the whole structure of federal education legislation. We should resist the temptation to propose new federal programs unless we can justify their necessity. And we must ask ourselves earnestly—and with increasing frequency—whether the benefits of existing programs are worth the growing costs. □

# The Endangered Partnership

BY HAROLD L. ENARSON  
President, The Ohio State University



*(The following remarks are excerpts from a June address to the Ohio congressional delegation.)*

A fundamental change is taking place in the relationship between Washington and the nation's colleges and universities, a change that I find deeply disturbing.

Once we were partners working together to solve national problems. Now we view each other with suspicion, almost as adversaries. We overregulate on one hand and overreact on the other. We have placed the partnership in peril. And

if it is to be restored, it urgently needs our attention and understanding.

Neither higher education nor the federal government fully understands what is happening, in all its subtleties and side effects. Certainly we don't.

I had hoped to come before you with statistics honed to a sharp edge. If not that, at least some reasonably accurate picture of the total federal impact on Ohio State.

What folly. I soon discovered that our search for precision was an exercise in frustration. Yet the

reality is undeniable: The federal presence is everywhere in the university.

As president of Ohio State, my position may be unique in that I can see on one campus the federal impact on public higher education in all its manifestations. This year, one-eighth of our total budget, or \$43 million, will come from federal sources. And here are some of the things that I find so disturbing:

I see dollar costs: out-of-pocket expenses on a staggering scale.

I see debilitation: a draining away of time and energy from the primary tasks of teaching and research.

I see bureaucratization: the entanglement by and with government in ways that serve neither.

And I see no end to the overregulation of the American people.

Consider first the dollar costs. In a recent study, the American Council on Education concluded that it costs colleges and universities between 1 and 4 percent of their operating budgets to comply with federally mandated programs, such as Social Security, affirmative action, occupational safety, and the rest. For institutions such as ours that don't come under Social Security, the range is roughly ½ to 2 percent.

If we apply this yardstick to Ohio State's budget, it means that this year such programs will cost us several million dollars. And this estimate may well be understated. As ACE points out, its study did not include costs imposed by state government, expenses resulting from less-than-full recovery of indirect costs on federal contracts, and staff time devoted to implementing federally mandated programs.

When the dollars for such programs are laid out on a multi-million dollar scale, our first reaction is utter disbelief. Then the bills start coming in:

- \$50,000 a year in new costs to

“... If the partnership between Washington and higher education is to be restored, it must be restored on the basis of reality. To say to a university such as ours, ‘You want the money, you accept the controls,’ is too simplistic.”

haul waste to a landfill, the result of EPA requirements;

- an estimated \$250,000 in staff time and computer changes to protect the privacy of students under the Family Educational Rights and Privacy Act;

- some \$885,000 the last two years, in anticipation of OSHA requirements, and as much as \$9.1 million in the years ahead, to bring our buildings into compliance.

At this point, so that there is no misunderstanding, let me make it clear: We support the goals of the federally mandated social programs with which we must comply. There is no question or equivocation on that score.

Yet our alarm is nonetheless as real as the mounting costs we face each day. And I am tempted to observe in a moment of black humor that the lamp of learning, with its hazardous open flame and its environmentally polluting smoke, is fast becoming an inappropriate symbol for education.

The burden of intense regulation also forces the university to bear a second kind of cost—debilitation. It results from the maddening business of trying to fill out forms that seem unfair or inappropriate, of trying to understand regulations that are needlessly complex, of rushing to meet deadlines that are unrealistically short.

These exercises in compliance effectively drain morale and frustrate people at every level of the university. They reverberate throughout the organization, consuming our time and energy and diverting us from other tasks.

The third change that troubles me is the bureaucratization of our colleges and universities—a kind of mummification under layer upon layer of rules and requirements. At Ohio State, we struggle and survive under the rules of some



275 to 300 agencies, bureaus, departments, and regulatory bodies.

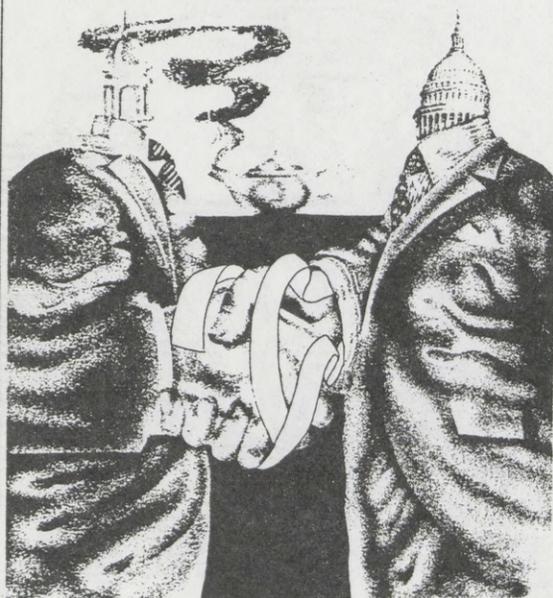
We comply with a dozen or more mandated activities. We submit regularly a series of major compliance reports, plus a growing number of special reports and data profiles required by HEW, EEOC, etc.

But information is not free. In a bureaucracy, paperwork equals people. Someone has to keep the records, fill out the forms, summarize the data, write the reports—only to have to do it again next month for a different agency and invariably in a different format.

We find ourselves caught between software and hard deadlines. And the only real option open to many institutions is to add more staff and to create new layers of bureaucrats.

Fourth, and perhaps most troubling, is the fact that I see no end to the federal tendency to govern by decree rather than by consent, as one observer put it. Laws beget regulations and court decisions and new laws and new regulations. And as each new Congress convenes, with its renewed sense of urgency, the cycle begins again.

*"... Most colleges and universities are ill-equipped to deal with the massed forces of the federal bureaucracy. We are on unfamiliar territory and losing ground."*



I will leave it to you, in your quiet moments, to conjure up your own private nightmare of a nation immobilized by regulations.

Admittedly, a university president's view of the federal impact is only one perspective. We also need to hear from those in the trenches—in student aid, research, the health professions, and many other areas—who daily try to make federal programs work.

As I listen to them describe the problems they face in doing business with Washington, I hear several common themes. We might

give them these labels:

1. "Flying Blind": the bizarre experience of attempting to comply with federal law in the absence of regulations. Or, more commonly, of trying to understand forms or regulations that are not clear.

2. The "Moving Target" problem: particularly familiar to those in research who try to follow shifting federal priorities. Yesterday it was space; today it is energy. What will it be tomorrow?

3. The "Short Fuse," "Long Delay," and other timing problems:

too little lead time, either to apply for programs or to meet compliance deadlines; delayed release of funds; long uncertainties about appropriations—an agonizing waiting game for the student in mid-program or the scientist in mid-project.

4. "Feast or Famine," sometimes known as the "Spigot" problem. This is caused by lack of commitment and continuity in some federal programs and is readily recognized on campus by the frantic annual scramble for funds.

5. "The Nose in the Tent" problem: the dangerous business of government attempting to dictate curriculum or organizational structure, or in other ways moving into academic territory where it does not belong.

So much for catchy nomenclature. It is useful only to a point. Let's get down to cases.

Our university radio and TV stations, under recent FCC orders, are now required to pursue a new and complex procedure called "ascertainment of community problems." This is an additional FCC effort to ensure that broadcasters operate in the public interest. Yet somehow our stations are expected to include this complicated review in their normal operations and to absorb the staff costs involved.

Capitation grants: When the federal government said there was an urgent national need to train more health professionals, we responded as readily as the next institution. Now the phaseout has begun. In just two years, our support has dropped \$1 million, and the deans of the health colleges are filing bleak reports about what could happen if funds are cut off.

Negotiation of indirect cost recovery now goes on continuously and costs the university an estimated \$50,000 a year. Recently, our business office created a full-time position for this purpose.

Last year it cost our student aid

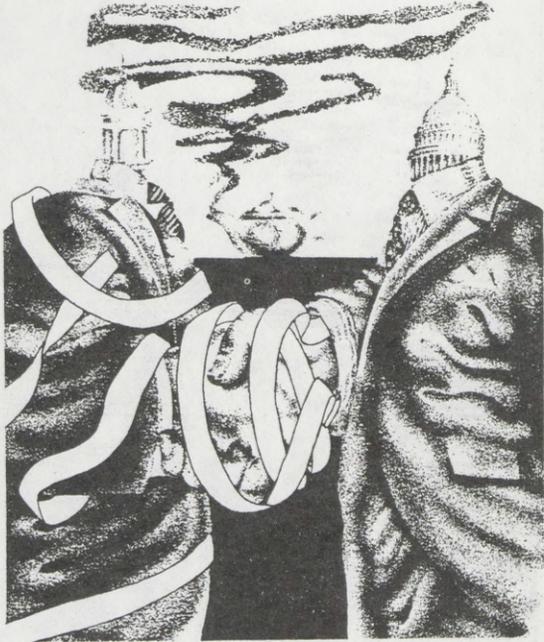
*"... There is presently no one place in government to go to for a total view of the federal impact on higher education. Agencies operate in isolation, spinning out regulations to suit their separate needs."*

office nearly \$55,000 in unreimbursed expenses to administer federal aid programs. This year it will be higher due to the enormous growth in the Basic Education Opportunity Grants program, which is much more complex to administer. We have just added a full-time person to keep pace. Yet no administrative allowance is provided for BOG. I hope new legislation will soon change this situation.

New regulations protecting human subjects in research now cost us an estimated \$25,000 out-of-pocket and probably as much again in staff time. No one disagrees with the intent of these rules. But we question whether the new review system imposed will be any better than the system of committees that we had for a long time. And it is certainly not self-evident that non-federal research should be subject to these controls. Nor is it self-evident that we should be threatened with the cutoff of *all* federal money if we do not comply.

But enough of problems and frustrations. It is not my purpose to bring to you an unrelieved litany of complaint. We also need to keep clearly in mind the good things that federal programs continue to accomplish at Ohio State. The record is impressive. Consider these examples:

- a medical center with facilities that are among the finest in the nation, made possible, in part, by \$24.5 million in federal funds received during the past 10 years;
- a comprehensive Cancer Research and Demonstration Center, which some of you helped us achieve, that provides a growing array of services;
- a modern veterinary teaching hospital, largely federally funded;
- an estimated 10,000 students who are getting a chance to go to college, thanks to financial aid from one or more federal programs.



Clearly, the ultimate payoff of the federal partnership with higher education is better and more humane lives for people. And these few illustrations from our experience convey some sense of why it is absolutely essential that the partnership not be allowed to fall into disrepair.

Having come this far, I don't intend to leave you with only the problem. After all, the problem is not yours, nor is it mine. It is ours. The real question we face is: How do we go about restoring the partnership?

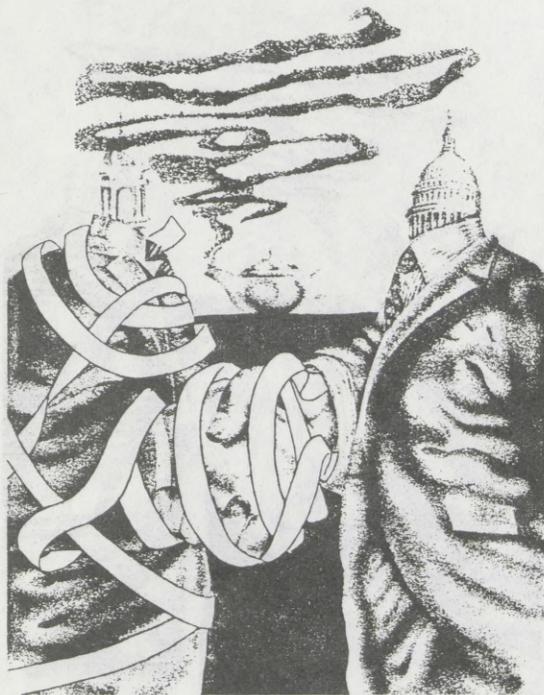
Briefly, I think there are some things higher education is obliged to do.

First, we have a moral duty to cry with pain and anguish when we are hurt, to complain bitterly, and to publicize it. I can't guarantee that in the short run we will get anywhere. But, if enough of us are outraged and the cause is just, something will happen. To be numb in the face of gross imposition is terribly wrong.

Second, we in higher education have an obligation—as well as a strategic necessity—to work to-

*"I am tempted to observe in a moment of black humor that the lamp of learning, with its hazardous open flame and its environmentally polluting smoke, is fast becoming an inappropriate symbol for education."*

8



gether to effect change. We stand on common ground, and there is much about which we can speak with a unified voice.

Third, we have an obligation to work closely with government. Only in this way can we meet the needs of government for accountability and responsiveness, and the needs of the universities for basic autonomy.

I sense a kind of mutual exhaustion in higher education and government, not surprising after a decade of upheaval and rapid change. I think we both could use a

breather from several things, including:

- new laws passed too quickly, without adequate consultation with those affected;
- excessive regulations, overlong in gestation, tortured in delivery, and malfunctioning from the start;
- new programs created but never funded. Translation: promises made but never kept.

We need to restore our mutual respect by remembering the accomplishments of the past and remind-

ing ourselves that the partnership can work. The G.I. Bill worked, and it changed the lives of millions. The Cooperative Extension Service continues to work, a good example of a program that has not bogged down in regulations.

We in higher education need your renewed understanding of the fundamental fact that a university is not a public utility, nor is it a business selling items off the shelf. Our services do not lend themselves to hardware contracting. Rather, a university is a distinctive institution in society—and a fairly fragile one at that—with a distinctive job to do.

Ohio State University is not a supplicant beseeching the powerful government for a handout. We take on major federal responsibilities because there is a *joint* interest involved. When we enter into a partnership to help fulfill a national goal, it does not follow that we should be subject to every regulation or constraint imaginable. In a partnership, if it is to succeed, one partner does not heavy-hand the other. Their common interest must be their guide.

At the same time, if the partnership between Washington and higher education is to be restored, it must be restored on the basis of reality. To say to a university such as ours, "You want the money, you accept the controls," is too simplistic. The fact is, we have no choice whether to be involved in major federal programs. There is no way that the president of Ohio State can say that we will not participate in federal student aid, research, or health assistance.

Consequently—and this is the key point—all laws, rules, and regulations affecting higher education thus have a direct, immediate, and forceful impact on us.

The reality upon which we rebuild our partnership must also recognize the fact that Washing-

*"There are some in higher education who already feel their backs are against the wall. Their growing cries of alarm and anger should be a signal to Congress and to the administration that something dangerously wrong is happening..."*

ton's total impact on higher education is fast reaching "critical mass." A recent Library of Congress study identified 439 separate laws on the books affecting post-secondary education. Do we dare add more laws and more controls without first understanding the consequences?

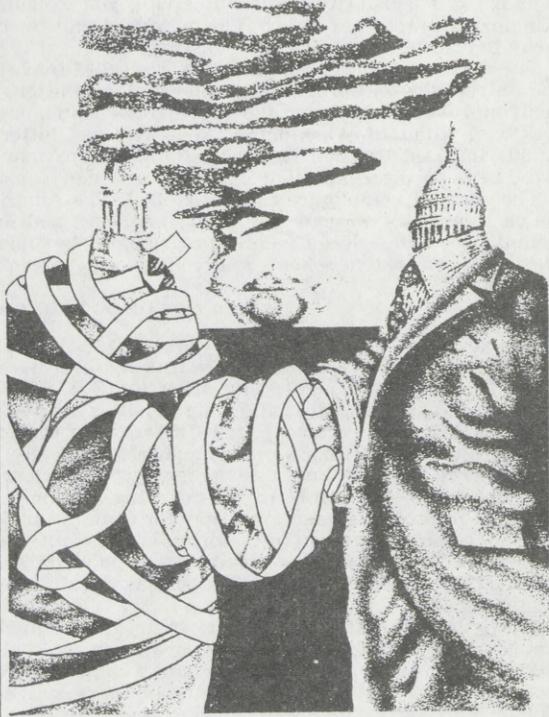
Should we not require Washington to file an *educational* impact statement each time it proposes to tamper further with the academic landscape? To our credit as a people we have recognized the value and fragility of our natural resources, and we proceed now to alter them only with caution. Too much caution, some say, too little to suit others. But we generally agree that we want to understand the consequences of our actions before we take them.

Are the places where we train the minds of our people any less important to our future as a nation than our land, air, and water? I think not. Yet there is presently no one place in the government to go to for a total view of the federal impact on higher education. Agencies operate in isolation, spinning out regulations to suit their separate needs. At no point do they add up the bill.

Finally, and perhaps most urgent, we need to make the regulatory process more sane and sensible. Higher education must find ways to participate intimately in the drafting of regulations that are of basic concern.

I applaud the efforts of HEW Secretary David Mathews in creating an Office of Regulatory Review for the specific purpose of improving the writing of regulations. I have been in touch with him, and we are working with his staff to give reactions and suggestions from Ohio State's vantage point.

I remain hopeful, but I don't expect miraculous change. Regulations are not going to go away. But



I do see an encouraging awareness of the problem in Congress and the administration, and I hope it continues after November.

Meanwhile, higher education must become much more expert and systematic in dealing with regulations and the process by which they are developed. Does this mean adding more staff—technical and legal experts we do not now have? That prospect goes against the grain. Yet most colleges and universities are ill-equipped to deal with the massed forces of the federal bureaucracy. We are on un-

familiar territory and losing ground.

There are some in higher education who already feel their backs are against the wall. Their growing cries of alarm and anger should be a signal to Congress and to the administration that something dangerously wrong is happening: wrong, not for the federal government nor for higher education but wrong for the people and the country and whatever hopes we hold for the future.

Will the partnership be restored? I think that remains an open question. *CSA*

[From the Wall Street Journal, Wednesday, Dec. 8, 1976]

RED TAPE IN ACADEME—UNIVERSITIES SEE THEIR AUTONOMY SLIPPING AWAY DUE TO U.S. RULES ON BIAS, PENSIONS AND PRIVACY

(By Jonathan Spivak)

The unwanted intrusion of Washington bureaucrats is a familiar grumble of conservative businessmen. But now these same complaints are coming from an unexpected quarter: the often-liberal presidents of American universities.

Listen, for example, to Derek Bok of Harvard: "Government should not penalize you legislatively without giving you a chance to state your case." Or Kingman Brewster, of Yale: "The mere fact that the cause is a good one does not mean it justifies bypassing the Constitution."

The reason for these complaints is the belief that the government is engulfing the universities in bureaucratic rules and regulations which are costly to implement and which challenge the universities' autonomy. Once, these same educators were allies of Washington. Now they feel bitter and estranged by the demands imposed by such requirements as occupational health and safety standards, bans on discrimination in hiring, and new pension and privacy laws.

The costs of compliance can be painful. The American Council on Education, which represents most of the nation's colleges and universities, has found that compliance with a dozen federal programs costs \$9 million to \$10 million a year at six representative schools and consumes 1 percent to 4 percent of operating budgets.

LINKING DOLLARS TO DEMANDS

The government can impose its will because the universities depend on federal aid, and many of the demands are linked to the receipt of government dollars. Federal support for higher education totals \$2.6 billion a year, up from \$538 million a decade ago. Most major universities get about one-third of their income from the federal government; the University of California, for example, receives \$275 million a year for its nine campuses. Ironically, the institutions are crying out for more federal money even as they protest federal controls.

Certainly these controls are far-reaching. An amendment to an education law, designed to protect students' privacy for example, makes it difficult for schools to publish complete student directories because any student can insist that his presence at a university not be disclosed publicly. And before Congress recently softened the amendment, the institutions couldn't legally reveal grades to students' parents.

Yale's Mr. Brewster sees a particular hazard in the recently enacted health manpower law which requires U.S. medical schools, all of which are government-aided, to accept all American students who have completed part of their education at foreign medical schools. This, he fears, sets a precedent for federal control of university admission policies generally. For this reason, some medical schools are considering avoiding the requirements by refusing all federal aid.

The schools' bill for federal health and safety requirements is estimated to be \$3 billion. The rules dictate such things as the height of safety railings; one school complains it had to paint its fire extinguishers red; another had to outfit science students with goggles.

At Harvard, an unofficial study estimates that nondiscrimination requirements have raised the university's cost of hiring a faculty member by at least \$6,800, largely through added expenses for advertising, interviewing and processing of applications. For the same reason, Notre Dame claims it now spends an added \$2,000 a year in recruiting a woman faculty member and \$5,000 a year more in the case of a black professor.

The universities must process four similar forms for each student who seeks a federally insured loan to finance tuition. They claim that the government fails to reimburse them fully for this paperwork. Harvard complains that meeting the reporting and other requirements of the new federal pension law costs \$500,000, without any improvement in employees' coverage.

Accusations of unnecessary federal interference came not only from powerful private institutions, such as Harvard, but also from the big state universities and small liberal arts schools. The complaints have won a sympathetic hearing in Washington, particularly from David Mathews, Secretary of Health, Education and Welfare, who is the former president of the University of Alabama, a post to which he will shortly be returning.

"If we make the universities the home for people who are more adept at dealing with forms than ideas, we have corrupted the institutions in such a way that they have very little hope of doing what society wants them to," he says.

#### AN EFFORT TO CUT REDTAPE

With the backing of President Ford, Mr. Mathews is leading a government effort to reduce red tape and to lessen the regulation of universities. President-elect Jimmy Carter is expected to pursue the same goal.

An advisory committee, headed by Joseph Sutton, vice president of the University of Alabama, has offered 16 recommendations to ease the universities' burden. Among the proposals: reimbursing the universities for the cost of complying with federal regulations, and consolidating the sometimes conflicting civil rights enforcement activities of three government agencies.

The universities have their own ideas for dealing with the government. The Council on Education wants to be consulted on federal educational regulations before they are issued in final form. Influential university leaders, like President Bok of Harvard, urge fellow-educators to make their case to Congress before it can impose new burdens on them.

They can claim some success in swaying Congress. The Higher Education Act passed this year, gives the institutions an extra \$10 for each government grant or loan to students, and raises to 4 percent from 3 percent the share allowed them for processing the applications. The universities persuaded lawmakers not to discourage charitable contributions in this year's Tax Revision Act, and they stopped the Postal Service from raising rates on college catalogs.

Not everyone in academia is critical of Washington, however. Some educational leaders praise the government for imposing needed national goals, such as non-discrimination, which they feel the universities were late in recognizing and lethargic in pursuing. "In a sense, the universities brought this on themselves," contends Jean Mayer, the new president of Tufts University.

#### TWO SCHOOLS DEFY GOVERNMENT

"I'm not much impressed by the argument that the federal government is about to suffocate higher education; on the contrary, I want more federal legislation and support." Robert Wood, president of the University of Massachusetts, said recently in a letter to an education magazine.

Still, two schools have openly defied the government, Hillsdale College in Hillsdale, Mich., and Brigham Young University in Provo, Utah. They are challenging the HEW Department's regulations against sex discrimination on political or religious grounds. Brigham Young, a Mormon institution, claims that government rules forbidding discrimination against women who have abortions conflict with its own code of sexual morality.

Yale's Kingman Brewster has taken the lead in expressing academia's broad objections to Washington's demands. A former law professor, Mr. Brewster perceives a real constitutional threat in the government's willingness to attach conditions to its support of higher education to achieve other social purposes. He says: "I think one of the real dangers is the ease with which the Congress can attach any damn condition to the grant or contract, which is wholly contrary to the notion of a government of limited powers."

Clearly, the universities' standing on Capitol Hill has sagged from the peak it reached in the mid-1960's. Legislators have been angered by the steady rise in tuition costs, what they see as an arrogant "we can do no wrong" attitude among some academics, and the opposition of many universities to federal aid to individual students rather than to the institutions themselves. "We don't have any heroes left to help us," frets one university official.

#### UNCLE SAM AS A COP

As a result, increasing government requirements are installing Uncle Sam as a cop on the campus and are giving fits to university administrators. Among the particular causes of their complaints:

Discrimination in hiring: The move to increase hiring of minority faculty and women is probably the single most controversial federal undertaking on campus. It poses the threat of a cutoff of federal research and other grants if the institutions fail to take "affirmative action" to recruit more women, blacks and other minorities for faculty posts. Many university officials fear the cost and bureaucratic headaches of compliance outweigh the gains. They also claim non-discrimi-

nation requirements have lowered academic standards for minority students at some law, medical and other graduate schools as efforts have been made to develop potential faculty members.

**Discrimination by sex:** The Higher Education Act of 1972 bans all forms of sex discrimination on campus and has enveloped universities in a web of regulation. One immediate impact has been to open up athletic facilities to women and force higher spending on women's athletics. At Yale, the huge Payne Whitney gym is now used by women as well as men, and in the last year the university's outlays for women's sports have increased to \$500,000 from \$300,000 annually.

**Discrimination against the handicapped:** The Vocational Rehabilitation Act of 1973 bans discrimination against the mentally and physically handicapped in federally aided programs. It's likely to be a big sleeper. Recently issued HEW regulations extend the definition of handicapped to millions of the mentally ill, alcoholics and drug addicts, and require that handicapped students be given equal access to educational opportunities. The universities complain that the cost of modifying buildings for the physically handicapped will be immense. They want to pool resources and provide access for the handicapped on a regional basis only, but so far HEW officials have said no.

**Privacy protection:** The Privacy Act gives students the right to read information on them in university files, such as instructors' evaluations and records of disciplinary action, and to control its disclosure to third parties. Some professors complain that these requirements will deter them from candid evaluations, making letters of recommendation useless. In any event, it's not a fit area for federal intervention, some say. "The more you bureaucratize our lives . . . you have constrained relations between students and professors," argues Harvard's counsel, Daniel Steiner.

[From Congressional Record Sept. 9, 1976]

#### HIGHER EDUCATION STRANGLING IN FEDERAL REDTAPE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa (Mr. Mezvinsky) is recognized for 30 minutes.

Mr. MEZVINSKY. Mr. Speaker, education should be regarded as one of our most valuable national resources. An enlightened citizenry has always been considered the primary safeguard of democracy. It is the task of Government to create an environment in which educational institutions can operate with maximum autonomy and financial security. In turn, colleges and universities provide us with the expertise we need to solve complex national problems, and contribute to a unique partnership through which we utilize each other's resources to achieve our common goals.

Today, this partnership is being threatened by intensifying Federal regulation of these institutions that drains their financial and personal resources and is beginning to mummify them, as one administrator put it, in layer upon layer of protective redtape. The problem can be traced to a lack of effective communication between executive agencies and Federal administrators, and the failure of the Government to anticipate the practical effects of its decisions or to make allowances for the cost of implementing them.

Educational institutions must follow a disproportionate number of regulations by their very nature. First, they are subject to many of the same rules and participate in many of the same programs as business corporations. Second, many students are highly dependent on Government loan programs. Finally, almost every institution receives substantial Federal assistance for research programs that must be carefully monitored. It has been estimated that there are over 400 different laws which affect colleges directly, producing many thousands of separate regulations.

Unfortunately, educational institutions are uniquely vulnerable to the cost of implementing these regulations. Because they employ more people per dollar of income than do most other corporations, the portion of the budget paid out for personnel programs is also larger. Because they require extensive physical facilities, the proportion of income paid for maintenance programs like OSHA is greater as well. The only alternatives are to pass the cost of regulation on to the consumer; that is, raise tuition, or to absorb losses by cutting back on educational programs. There are no other choices.

Recently, a survey was conducted at the University of Iowa to determine the impact of Federal regulations. It was estimated that direct dollar costs alone amount to approximately \$6 million annually, which represents 4 percent of the university budget. For all American colleges and universities, this figure has been estimated at nearly \$2 billion, which is approximately the amount of all private donations to them.

Even more alarming is the rate at which these costs are growing. According to the American Council on Education, dollar costs to many private institutions have increased up to 20-fold during the last 10 years. In addition to these direct costs, there is the less visible but steadily mounting burden of administrative tasks imposed by the Government. A typical example is the situation of the University of Iowa Personnel Department, which has had to create five new administrative positions since 1970, mostly due to Federal reporting requirements, and now spends \$10,000 annually in computer costs to keep pace with federally mandated paperwork.

Despite their costs, the number of Federal regulations continues to mount. One agency, the Office of Education, published 32 relevant documents in the Federal Register in 1972 and expects to publish 270 during 1976. These are typical figures. It is no wonder educational administrators are growing concerned.

A major portion of the costs results from noneducational social programs like social security, workmen's compensation, FICA, and so forth, which affect colleges directly. No one is arguing with the goals of these programs. The problem lies in their implementation, which accounts for between one-eighth and one-fourth of their total cost, and their imposition without direct consultation with college administrators to determine how they can best be integrated into existing programs. Again, it is no wonder that an adversary relationship is developing between educational administrators cut off from the decisionmaking process and Federal bureaucrats.

The implementation of Federal affirmative action hiring guidelines provides a good example of the types of problems being encountered. The program itself is a good one which promotes equitable and impartial hiring practices. The University of Iowa, however, is also bound by law to follow the State board of regents merit hiring system, which is intended to eliminate discrimination through administration of an impartial written test. The requirements of these two programs are often in conflict; that is, a secretary who might fulfill affirmative action guidelines might not score highly on the board's test.

Similarly, high scorers might not fulfill affirmative action requirements. These conflicts result in frustrating and costly delays in filling staff positions, and could have been avoided if Federal administrators had tried to integrate affirmative action into existing programs instead of simply imposing it on them. Even though every major institution in the country was required to submit an individual plan incorporating Federal guidelines, their needs were for the most part ignored. These plans were lengthy and expensive; in my understanding that at the University of Wisconsin, the report amounted to 5,000 pages in 15 volumes, although it was neither read nor used.

Another affirmative action requirement states that each institution must monitor and report every employee action. The price tag for this service at the Iowa School of Dentistry, which is only 1 of 10 major subdivisions within the University of Iowa, was \$8,000 last year. A requirement that all professional positions be advertised in certain publications before they are filled is met at an annual cost of \$6 million nationally, although educational administrators contend that placements are rarely made through this type of advertisement, and that the money is being wasted. Ultimately, nearly all of these costs must be borne by the educational institutions themselves, with little or no help from the Federal Government which produces them.

Another major problem is the implementation of the Privacy Act, which protects student and employee records. No one seems to have been told just how the act should be applied, and many students are unaware of its requirements. Consequently, when graduate schools or prospective employers have a legitimate need to examine this information, it often cannot be obtained, resulting in long and costly delays in application procedures.

Recently enacted OSHA regulations provide perhaps the best example of the financial problems being experienced, and the failure of the Government to recognize them. The capital cost of complying with every regulation at the University of Iowa is estimated by University officials at about \$25 million, or more than one-seventh of the school's annual budget. For all of our colleges and universities, this figure is set at approximately \$3 billion, most of which must be provided out of existing funds. The only possible alternatives are cutting back on educational programs or ignoring some of the regulations. The Federal Government seems to be unaware of the problems it is causing.

Even programs directed primarily at education contain insufficient provision for their administration. Federal loan programs, which provides essential aid

for many students, also indirectly increase tuition because no provision is made for the cost of university oversight. The total salaries budget at the University of Iowa Office of Student Financial Aid has increased from \$50,000 to \$156,000 during the last 10 years, in part due to Federal reporting requirements. VA aid recipients, for example, are closely monitored at an estimated cost to the university of \$20 per student per year, only \$3 of which is provided by the Government.

Many Federal research grant programs are no more efficiently administered. These grants are now becoming the life-blood of many university departments. Similar grants are often administered by different agencies, however, and reporting requirements are often duplicative, expensive, and worthless. College and university administrators must compile and report huge amounts of data to granting agencies every year. The cheapest way to do this is by computer, but constant and often inconsequential changes in Federal reporting requirements make many computer programs obsolete before they can be used, and much of the work must be done by hand at greatly increased cost.

Dollar costs are not the only costs. Communication between Federal and college administrators is poor, and information received from the Government is often confusing and contradictory; for example, the University of Iowa personnel office has received three different IRS reporting schedules. Many Federal administrators seem far more concerned with implementing the letter of the regulations than attempting to reach the broader goals they are intended to promote. VA aid recipients at Southeastern Community College in Iowa were recently threatened with a total program cutoff not because the school did not meet VA educational quality standards, but because it did not fulfill certain technical accreditation requirements.

Many college administrators are concerned that regulations are slowing the pace of educational innovation and making it impossible for educational institutions to adapt quickly to changing program needs. Some maintain that project grant funding reflects fluctuating governmental priorities instead of the real needs of the educational community, and does not contribute to well-coordinated research and teaching efforts.

The list of problems is endless. Clearly, colleges cannot be exempted from Federal oversights. The Government can, however, administer its programs in a way that will not choke the institutions they are intended to assist. We must provide room for them to breathe, grow, and determine their own futures. Increased congressional oversight of executive rulings would provide for the consideration of more and varied opinions before decisions are made. The inclusion of more active college administrators on executive policymaking boards would help insure that required inputs are made. A popular proposal is the creation of an "educational impact review board" which would project the effects of pending decisions on educational institutions. Not only would this enable the Government to better anticipate this impact of its decisions, but would probably cause some regulations to be rejected once a cost/benefit analysis was made. Finally, Federal grants and regulatory programs should reflect their actual implementation costs.

The problem cannot be quickly resolved. To maintain our working partnership, we must begin immediately with a careful reassessment of the Government's role in higher education. We must strive to open new and effective lines of communication in an attempt to make our Government more responsive to the needs of those whom we regulate. Educational institutions must be subject to oversight, but they have unique requirements which must be recognized. They are invaluable national resources and, like all resources, must be carefully preserved.

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[From the Congressional Record, Mar. 26, 1975]

U.S. AID TO EDUCATION CARRIES "COERCIVE POWER" WITH IT

(By Hon. Philip M. Crane of Illinois, in the House of Representatives,  
Wednesday, Mar. 26, 1975)

Mr. CRANE. Mr. Speaker, when proposals for Federal aid to education were first introduced in the Congress there were many who advanced the view that such financial assistance would inevitably lead to Federal control over what schools taught, whom they hired, and how they conducted their affairs.

At that time, the proponents of Federal aid to education rejected the possibility of Federal control following Federal money. Now, it is clear to all that the opponents of Federal aid were correct.

In a recent speech to the American Bar Foundation, Yale University President Kingman Brewster, Jr., declared that, "the coercive power of the Federal purse" is infringing the right of private educational institutions to set their own policies.

Mr. Brewster stated that—

"The leverage of the Federal spending power is used indirectly to control private colleges in ways the Government could not use directly."

He indicated that private colleges and universities, increasingly dependent on Federal money, face across-the-board termination of grants if they violate a Federal guideline affecting only a single educational activity.

Discussing Mr. Brewster's speech, the Wall Street Journal stated that—

"If we may be permitted to say so, this is . . . what a good many Americans not so long ago predicted would happen once the government involved itself deeply in education . . . those who warned that federal subsidy inevitably meant federal control had a more realistic understanding of the nature of government."

Mr. Brewster, in his speech, indicated that much of the responsibility rests with the Congress. The Wall Street Journal notes that educators themselves must bear some of the blame as well—

"Educators themselves are to blame for having lobbied for ever more federal dollars, for having encouraged Congress to pour billions into education . . . and for having helped create a climate hostile to warnings that federal subsidy invites federal control."

I wish to share with my colleagues the editorial, "Thinking the Unthinkable," which appeared in the Wall Street Journal of March 14, 1975, and insert it into the Record at this time:

[From the Wall Street Journal, Friday, Mar. 14, 1975]

#### THINKING THE UNTHINKABLE

In a recent speech to the American Bar Foundation, Yale University President Kingman Brewster, Jr. complained that the "leverage of the federal spending power" is being used indirectly to control private colleges in ways the government could not use directly. This coercive power, Mr. Brewster said, is infringing on the right of private educational institutions to establish their own policies. Yet because Yale, Harvard, Stanford and other liberal arts schools are at least one-third financed by the national government, failure to go along with a "favored" government program would place any one of them at a hopeless competitive disadvantage.

If we may be permitted to say so, this is an excellent summary of what a good many wary Americans not so long ago predicted would happen once the government involved itself deeply in education. To be sure, some such warnings badly overstated the case by making it sound as though anyone or any institution that accepted a cent of government money would inexorably become a handmaiden of the state. On the other hand, politicians and the education lobby resolutely insisted that the specter of federal control was a strawman erected by those who would deprive deserving youngsters of a college education.

Obviously, both sides were guilty of oversimplification. But by and large those who warned that federal subsidy inevitably meant federal control had a more realistic understanding of the nature of government. They may not have won any plaudits for "compassion," but they understood the dynamics of political momentum.

As an example of that momentum, consider what sins are being committed in the name of education at—or more likely, to—the University of California. University officials and HEW's Office of Civil Rights have agreed on an "affirmative action" (i.e., quota) plan that calls for eventually replacing 178 of the positions now held by white males in a total staff of 1,489. The New York Times concluded this would mean replacing them with "97 women, 20 blacks, 42 Asians, 10 Chicanos, no native Americans [Indians] and nine others." University officials dispute those specific figures, explaining that the plan calls for only 96 women, two blacks and three Asians—as if that makes the concept any less grotesque. All that's missing is that the quotas extend across 30 years, rather than having a 1984 deadline.

Since the University of California is a public institution, Mr. Brewster's remarks don't apply exactly. Yet they are a good example of the sort of meddling that the federal government promotes under the guise of nondiscrimination. And the Yale educator is certainly right that Congress is to blame. But educators themselves are to blame for having lobbied for ever more federal dollars, for having encouraged Congress to pour billions into education on the pretext of national defense, and for having helped create a climate hostile to warnings that federal subsidy invites federal control.

Curiously enough, although some educators have awakened belatedly to the implications of large scale federal aid, few seem to have grasped that one solution—perhaps the only solution—would be to reduce or eliminate dependence on federal financing. Budgetary withdrawal is often painful, and being placed at a competitive disadvantage is an unenviable position to be in. But we can think of few positions potentially more destructive to education than for it to continue to invite the political regulation that necessarily accompanies federal subsidy.

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#### PAPERWORK AND HIGHER EDUCATION

Mr. McINTYRE. Mr. President, on Thursday, August 26, the Senate passed an amendment I cosponsored with several other Senators that is designed to cut the paperwork that the Department of Health, Education, and Welfare's Office of Education and Office of Civil Rights can impose on the Nation's educational institutions.

Newsweek, in its August 30 edition, further amplified the problems facing higher educational institutions in dealing with Federal paperwork and redtape.

Because of its timeliness, I ask unanimous consent that the Newsweek article be printed in the Record at the conclusion of my remarks.

It is my hope that the conferees on the Higher Education Act amendments, S. 2657, will take the gist of this article to heart and insist that the paperwork amendment be included in the bill sent to the President for his signature.

There being no objection, the article was ordered to be printed in the Record, as follows:

[From Newsweek magazine, Aug. 30, 1976]

#### REDTAPE BLUES

The U.S. Government gives colleges and universities nearly \$9 billion a year. But there is a catch. Frustrated educators find that they are spending a lot of this largesse not to teach students but to comply with arcane bureaucratic regulations. The University of Illinois, for example, may soon have to spend \$557,000 to correct a minor violation of the Occupational Safety and Health Act. The school must repair an elevated walkway connecting the building of its Chicago Circle campus; the solid granite slabs that form its banisters fall 5 inches short of the OSHA specification that all railings must stand 42 inches high. Federal inspectors recently warned Stanford that the university's 6,000 chromium-plated fire extinguishers did not meet U.S. standards, which require that all such devices must be colored red. Exasperated officials figured out a way to comply: they wrapped the offending fixtures in red tape.

Since the mid-1960s, when both government funds and regulations began to accelerate at an unprecedented rate, the nation's colleges have labored especially hard to comply. They must meet all the standards required of corporate and industrial employers, such as health and hiring regulations, and at the same time fulfill a set of obligations designed for educational institutions alone. Every Federal regulation means inspections, corrections, record keeping and the possibility of costly court battles if a school's compliance is challenged. By the best estimates available, the Byzantine Federal rules now cost colleges and universities almost \$2 billion a year—a figure that is roughly equal to the entire sum the institutions raise through voluntary donations. Noncompliance, of course, can be even more expensive. A school that does not meet the government's standards is in danger of losing its Federal assistance.

The American Council on Education has completed a new study of the problem that highlights the colleges' worst troubles. Using detailed figures of six representative institutions, from the private College of Wooster in Ohio to the cosmopolitan University of Illinois, ACE has determined that compliance costs between 1 and 4 per cent of the schools' operating budgets—enough in these tight times to force cuts in departmental funds. Many of the newest regulations, the

report notes, concern employment, an area that hits the labor-intensive colleges much harder than it does an ordinary manufacturing concern.

Bureaucrats are little moved by protests that a university academic department is different from a factory assembly line. A college may want to add more blacks to its faculty, but that can be difficult when its only job openings are in eighteenth-century French literature or sub-particle physics and there are not enough black Ph.D.'s to go around. In their search for more women and blacks, many institutions have hired special personnel officers—and even outside “head hunters”—to prove their good faith.

Obligations: While most colleges support the principles that the Federal regulations are designed to uphold—from fair hiring to environmental protection—they deplore the sheer complexity of the bureaucratic demands. In order to fulfill their obligations under the new educational privacy act, for example, school officials not only must keep complete student records, but must painstakingly note every occasion on which anyone, anywhere, requests access to them. At Ohio State, this process costs \$250,000 a year. Harvard president Derek Bok reports that the Harvard faculty spent more than 60,000 hours in the school year 1974-75 meeting the record-keeping requirements of Federal programs. “It’s not hard to imagine a day,” says Duke president Terry Sanford, “when faculties and administrators will spend all of their time just filling out government forms.”

Perhaps worst of all, some educators see a threat of government intrusion in the classrooms themselves. When the Department of Health, Education and Welfare recently proposed a review of all college curriculums to root out racism and sexism, so many schools protested the censorship implications that HEW withdrew the request. Yale President Kingman Brewster thinks that interference is inevitable when the government spends so much money on higher education. “It’s the old syndrome,” he says. “Now that I have bought the button, I have a right to design the coat!”

The last straw for some weary college administrators proved to be the regulations against sex discrimination in education known as Title IX, which, among other things, ordered schools to equalize their spending on athletic opportunities for both men and women. Last spring, two institutions—Hillsdale College in Michigan and Brigham Young University in Utah—refused to comply, and invited the government to retaliate. Neither of these colleges receives direct Federal money for any of its programs. But they do stand to lose all Federal financial aid to their students, about \$200,000 for Hillsdale and \$6 million to \$7 million for Brigham Young.

For the many colleges whose Federal assistance is a fiscal necessity, however, such nose-thumbing is not feasible. Most administrators simply want to persuade the Federal government to make sense of its regulations. But even that lobbying effort runs into Catch-22. This fall, bills will be considered in Congress that may result in new Federal regulations limiting college lobbying.

#### OVERREGULATION OF OUR COLLEGES BY THE FEDERAL BUREAUCRACY

Mr. THURMOND. Mr. President, from time to time beginning last year, I have attempted to bring to the attention of the Senate the problem of overregulation by overgovernment in our colleges. In the first of these statements, I pointed out the plight of little Hillsdale College in Michigan. President Roche of Hillsdale College still fights to stop HEW from meddling intrusion into the affairs of that small college.

Later, I pointed out the deep concerns of the presidents of Catholic University, Georgetown University, American University, and George Washington University. The leaders, among college educators, are tired of the Federal Government trying to run the colleges.

When will we in the Senate begin to pay attention to the concerns of the leaders in higher education? When will we say to the bureaucrats, “Stop”? To my colleagues in the Senate, I say the time is now. It is time that we consider the unnecessary cost with which the colleges are faced, their loss in independence and the redtape monster who always stands ready to interfere in every move they make. I say the time to act is now.

It is time we permit our colleges to once more chart their own courses and be the masters of their destinies. It is time that we give true meaning to the Declaration of Independence, which the presidents of the local universities in Washington, D.C., published earlier this year.

Recently, an article appeared in U.S. News & World Report, which stresses the urgency of this problem.

Mr. President, I ask unanimous consent that the article in U.S. News & World Report, "Another Campus Revolt—This Time Against Washington," be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

#### ANOTHER CAMPUS REVOLT—THIS TIME AGAINST WASHINGTON

A mood of rebellion is spreading among college educators who are finding themselves increasingly under the thumb of a benevolent despot—the federal bureaucracy.

Since 1960, more than 50 billions in Government dollars has flowed from Washington, D.C., to the campuses of the nation.

This money enabled them to absorb soaring enrollments, upgrade faculties and expand research—much of it for the Government.

Now educators are having to pay the price for that largess.

They are under mounting pressure to comply—just as public utilities, television stations and drug companies have to—with federal regulations on what they can and can't do, or risk a cutoff of Government support.

#### STREAM OF GUIDELINES

This means compliance with a never-ending stream of Washington's guidelines on student admissions, faculty hiring and promotion, curriculum changes, degree requirements, fees, class size, facilities, salaries, pensions, discipline and athletics.

Many of these guidelines have their origin in a rule requiring "affirmative action" by institutions to apply laws that bar discrimination against women and racial minorities whether as students or teachers. This rule is sometimes blamed by college officials for producing a lowering of standards, with "reverse discrimination" against white males.

Campus administrators also must deal with a wide variety of other federal statutes and rules that cover matters ranging from occupational safety to environment and health. Federal research-and-development contracts often change course content and direction.

Today, colleges and university are becoming restive—and even defiant on occasion.

Some are refusing to participate in any federally aided programs. Many are appealing to Congress and the courts for help against what Texas A & M President Jack K. Williams calls "bureaucratic blackmail."

Meantime they are having to live with these hard facts:

Nearly 400 federal programs now directly affect higher education. About 50 executive agencies and two dozen congressional committees crank out bills, regulations, program guidelines, criteria standards and audit requirements for colleges and universities.

Even a \$5,000 federal grant can have attached to it regulations covering 100 or more pages of bureaucratic fine print. An affirmative-action plan drawn up by the University of California at Berkeley to guarantee equality of educational and employment opportunities alone required 70,000 statistical calculations.

It is the Government's power of the purse that usually brings compliance.

#### STRINGS ATTACHED

Congress is now investing almost 10 billion dollars a year in higher education as shown in the chart on page 92. Every penny of this money has strings attached. Institutions that fail to stay in line can lose all federal financial assistance. This has never happened, however, because, as one federal official put it, "the sanctions for noncompliance are just too overwhelming."

Adds Richard W. Lyman, president of Stanford University: "In the U.S. today, a major university cannot divorce itself from Government support and remain a major university."

Educators got a taste of what divorce would be like when the Government cut back on research-and-development contracts in the early 1970s. Enrollments shrank at graduate schools as scholarship money dried up. Many institutions had to phase out major research projects, and at some a freeze was put on faculty hiring.

In their struggle to get out from under the Government's thumb, university officials look for help from David Mathews, Secretary of Health, Education and Welfare, who had first-hand knowledge of their problems as president of the University of Alabama.

Secretary Mathews acknowledges that the independence and diversity of higher education is endangered by "the enormous pressure for uniformity" applied by federal agencies. Further, he conceded that redtape is especially burdensome to small institutions with small staffs.

Mr. Mathews told U.S. News & World Report that HEW has launched studies aimed at easing the paperwork load, and that institutions are now getting more access to the development of regulations.

The Secretary pointed out, however, that much of HEW's bureaucratic machinery is the result of social legislation of the last 10 years, which has conferred great benefits as well as problems on colleges and their students.

With the help of Government tuition loans, college enrollments have grown by more than 6.5 million since 1956. In approximately the same period, higher education's land, buildings and equipment increased in value from about 18 billion dollars to more than 67 billion. Much of this was financed with federal dollars. Secretary Mathews said:

"Somebody has to monitor all this spending. Inevitably, the bureaucracy follows the dollar. But the regulations are aimed at protecting people from any capriciousness in bureaucracy and providing uniformity in administration of the law."

At present, as a result, the long arm of Government reaches into almost every corner of the campus. Harvard President Derek C. Bok described the scope this way in his most recent report to the university's board of overseers:

"Rules have been issued to regulate the internal operations of educational institutions by requiring them to grant equal admission to women and minority groups to institute grievance procedures in cases of alleged discrimination and to open confidential files for student inspection.

"Tax laws have been amended in ways that affect the incentive to make charitable contributions to colleges and universities. . . . Congress has cut certain programs and expanded others in ways that dramatize the power of the purse to alter the shape and priorities of the university. Congress has demonstrated that it is even prepared to regulate the curriculum. Although never enacted into law, the House of Representatives passed a bill in 1974 to induce all medical schools to require every student to complete six weeks of training in a health facility situated in a medically underserved area."

Confusion over the Government's role in education, critics say, is heightened by the multitude of agencies that are empowered to enforce the same or similar policies.

In the area of equal-employment opportunity, for example, authority is shared by four different bodies—HEW, the Labor Department, the Equal Employment Opportunity Commission and the Internal Revenue Service.

Widespread among educators is the conviction that many Government dictums have been poorly thought out. President Lyman of Stanford spoke of a tendency to "legislate or regulate first and ask questions afterward, if at all."

An example of this often cited by college administrators is the Family Educational Rights and Privacy Act of 1974, sponsored by Senator James L. Buckley (Cons.-Rep.), of New York, which denies potential employers and other third parties access to grades and other school records without the permission of the student who is involved.

The law slipped through Congress without public hearings and with little debate. It developed into an administrative nightmare and eventually had to be sent back to Congress for major repair work.

Barbara Pearson, director of affirmative-action programs at the University of Southern California, commented that Congress passes laws with the best of intentions but "regulations that the bureaus put out drive us up the wall." She added that some agencies "seem more interested in poundage than the contents" of the reports they receive from universities.

Typical of the impasse that often develops between universities and Government was Michigan State's struggle to get approval of its affirmative-action plans for equality of campus educational and employment opportunities.

Michigan State was told in 1975 that it would have to draft a whole new set of affirmative-action standards to keep a million dollars' worth of federal contracts. It got two weeks to come up with a new plan that would have cost an estimated \$100,000 to develop.

After frantic negotiations, HEW finally relented—by approving an affirmative-action plan originally submitted by MSU in 1970.

#### PANIC FOR WEEKS

The university's relations with the Government have improved since then, but administrators are still jittery. Said Robert Perrin, vice president for university and federal relations: "You get a Government envelope in the mail in the morning and it can throw the whole university into a panic for weeks."

At other institutions, the mood ascends to a high pitch of indignation.

"We stand at the gates of the kingdom of chaos," said President Jack K. Williams of Texas A & M. He maintained that the Equal Employment Opportunity Commission "is at war with us" and HEW "is too often our enemy, too often an agency acting from overstimulated idiocy."

A complaint of Chancellor Archie Dykes of the University of Kansas is this: "We've had to add to our legal staff because our lawyers spend so much time corresponding with the Federal Government. They hire lawyers to write to our lawyers, and we have to hire more lawyers to reply."

At the University of North Carolina in Greensboro, Donald J. Reichard, director of institutional research, said 10 reports required by HEW last year swamped his computer facilities. "All other uses of the computer stopped," he recalls. "For a six-month period we did nothing but HEW reports."

One report from Greensboro to the Office of Civil Rights was 1,187 pages in length and weighed more than 12 pounds.

Costs are equally staggering.

Compliance with five federal programs is costing Harvard up to 8.3 million dollars a year. At the University of Rochester, Government red tape is estimated to add 1 million dollars annually to operating costs.

The University of Kansas, which gets about 24 millions in federal funds annually, spends more than \$750,000 a year on compliance reports.

Result: Some institutions now are flirting with the idea of getting along without federal funds.

The presidents of four universities in the Washington, D.C., area—American, Catholic, Georgetown and George Washington—have issued a "1976 Declaration of Independence," pledging to refuse federal money that encroaches on academic freedom. They asserted:

"Government interference is disrupting higher education to a point where institutional autonomy is seriously threatened. Without the vigorous exercise of independence the American system of higher education . . . will certainly collapse."

Said Charles U. Daly, Harvard's vice president for government and community affairs: "If it came to the point where we really felt we were sacrificing the guts of academic freedom, then we certainly would consider giving up federal aid, and I hope we'd have the courage to give it up."

"That obviously would be extraordinarily difficult for Harvard, and it would be a suicidal decision for a great many financially weaker institutions."

Robert L. Sproull, president of the richly endowed University of Rochester, agrees and commented: "Of course we could exist without federal grants and contracts, but we'd be a much different institution. And the country and the 21st century would be weaker for it."

"But nobody in Washington cares about the 21st century. It's all they can do to care about next week, and nothing—absolutely nothing—goes beyond the first Tuesday in November."

In fact, about 75 private colleges and universities receive either no Government aid or assistance in amounts of less than 2 per cent of their budgets.

Many educators, however, learned last October that there may be no escape from bureaucratic entanglements.

HEW ruled that, as of October 1, any college enrolling students who receive individual aid through Government loan and grant programs is to be considered a "recipient institution"—subject to a wide range of Government controls.

The ruling covers millions of students attending almost every institution of higher education in the country.

Brigham Young University and Hillsdale College in Michigan are leading a group of schools in efforts to nullify or at least modify this latest interpretation of a "recipient institution."

Few, however, see a way out from under Washington's lengthening shadow across higher education.

The president of Baylor University Abner V. McCall, concedes that although Baylor refuses to accept building grants or Government loans, it has been lassoed by the new recipient-institution ruling.

Mr. McCall adds ruefully: "If you're in for a penny, you're in all the way."

In that situation, educators are besieging Congress and HEW with demands for a bigger voice in developing legislation affecting their institutions and in drafting regulations for the administration of new laws. Two principal aims:

First, get Congress to assume responsibility for monitoring regulations affecting education to make sure they're working fairly.

Second, change employment rules designed for business and industry but unworkable for universities.

In courts, too, educators are challenging bureaucratic demands.

#### A VICTORY

When the State of Maryland was threatened with the loss of 65 million dollars in federal aid to its 28 public colleges because of alleged failure to eliminate racial segregation, it obtained a federal-court injunction restraining HEW's civil-rights office from carrying out its threat. The court held that the Government had acted "arbitrarily and whimsically."

Beyond those measures, Frederic W. Ness, president of the 1,400-member Association of American Colleges, is advising college officials to be more alert to what goes on in Congress. "Sometimes we have been caught napping," he said.

From Stephen Bailey, vice president of the American Council on Education, comes a further admonition to the academic hierarchy: to continue improving their old "image" in Washington, where, unfairly or not, they have had a reputation for being "exclusive, self-indulgent, patronizing and sloppy."

On more and more campuses there is rising talk of organizing a common front of faculty members, alumni and administrators in the battle against the federal bureaucracy.

Until a more effective challenge is mounted, however, many educators share the feeling of Harvard's Derek Bok that "it is unlikely that higher education will do much more than fight a series of rear-guard actions to ward off the more menacing forms of Government intervention."

## What Price Federal Support?

3-3-75

Yale's Brewster warns of 'a growing tendency' to use government spending power to regulate universities

CHICAGO  
Coercive use of federal spending power to regulate higher education has been condemned by President Kingman Brewster, Jr., of Yale University.

"My fear is that there is a growing tendency for the central government to use the spending power to prescribe educational policies," he said.

Addressing a meeting here of the American Bar Foundation, Mr. Brewster said he was concerned that the federal encroachment would be difficult to resist because of the assertion that the government, having financed part of higher education, has a legitimate interest in all aspects of higher education's behavior. He called this approach one of "now that I have bought the button, I have a right to design the coat."

"Thus," he said, "if we are to receive support for physics, let's say, we must conform to federal policies in the admission of women to the art school, in women's athletic facilities, and in the recruitment of women and minorities, not just in the federally supported field, but throughout the university."

### 'Constitutionally Objectionable'

Even in the name of such a good cause as "affirmative action," he added, the subjection of a private institution to federal regulation and surveillance in all its activities is "constitutionally objectionable."

Mr. Brewster cited as examples of federal regulation extended through the government's spending power:

► A White House attempt to cut off de-

fense contracts to the Massachusetts Institute of Technology to "discipline" the institute's president, Jerome Wiesner, for his opposition to a missile program.

► Proposed legislation to cut off general federal support for medical education unless a school increased its general-practice training and required some of its graduates to enter practice where there was a shortage of physicians.

"We have been insistent that criminal and administrative regulations should not go beyond what is rationally required by their stated purpose," Mr. Brewster said. "We must be no less vigilant about the use of spending power as a lever to extend regulation beyond the accountability reasonably related to the purposes for which the support is given." —JACK MACABELL

2-23-75

## Yale Head Hits 'Coercive Power' of U.S. Funds

By John P. MacKenzie

Washington Post Staff Writer

CHICAGO, Feb. 22—Yale University President Kingman Brewster Jr. said tonight that "the coercive power of the federal purse" is infringing on the right of private educational institutions to set their own policies.

In a speech to the American Bar Foundation here, Brewster said the "leverage of the federal spending power is used indirectly to control private colleges in ways the government could not use directly. He blamed Congress for the trend.

Brewster said private colleges and universities, increasingly dependent on federal money, face across-the-board termination of grants if they violate a federal guideline affecting only a single educational activity.

He cited the so-called Buckley amendment to last year's education act cutting off aid for research as well as for pupils at schools that fail to open up their administrative files to students.

Also cited was health manpower legislation sponsored by Sen. Edward M. Kennedy (D-Mass.) to deny federal support for medical education at schools that fail to train more general practitioners and fail to require more graduates



KINGMAN BREWSTER

... private colleges suffer

to practice in areas where doctors are in short supply.

Brewster said the law giving students access to their college files serves "a laudable purpose" of combating the build-up of prejudicial student dossiers, but the law did so by "expanding federal regulatory power beyond its constitutional bounds simply because the spending power opens the gate."

Sen. James A. Buckley of New York, who sponsors the Congressional Education Act, should have been especially alert to the danger of this further encroachment of federal regulation under the banner

of the spending power," said Brewster.

Brewster, a former law professor, said he was "not sure what constitutional grounds could be asserted to resist this leverage, but it does outrage constitutional values."

He noted that Yale, Stanford, Harvard and other liberal arts and sciences institutions "are at least one-third financed by the national government," mostly through medicine and physical sciences grants. He said some schools would be placed at "a hopeless competitive disadvantage" if they failed to go along with a "favored" government program.

Brewster said he would not object to cut-offs of federal incentive grants for desired medical education but he was con-

cerned about interference with curricula and involuntary service by medical school graduates.

An aide to Kennedy said the senator's position was "if the public is going to contribute half the medical school operating budget in this country, it has a right to expect it will produce professionals who will meet the nation's medical care needs and who will be rationally distributed throughout the country."

Buckley, told of Brewster's complaint, said, "Conservatives have always warned against the danger of federal controls that follow federal grants. I would prefer to see Kingman Brewster questioning whether the federal government ought to get into these areas at all."

Excerpts from Remarks of KINGMAN BREWSTER, JR., President of Yale University  
 Address at the Annual Dinner of the Fellows of the American Bar Foundation,  
 Saturday Evening, February 22, 1975, at the Palmer House, Chicago, Illinois

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No one is more aware than I that the so-called private research universities are very dependent upon public largesse. I would estimate that the liberal arts and sciences institutions like Stanford, Harvard, Chicago, and Yale are at least one third financed by the national government. This is of course heavily concentrated in medicine and the physical sciences. In the case of places like M.I.T. and Cal. Tech. the degree of government dependence is much higher.

By and large, federal research grants and contracts, and federal fellowship and loan funds, have not been abusively administered. We have been insulated from the corruption which so often infests municipal and state and even federal service and construction contracts. This is largely because the decision about who gets what in the academic world is determined not by bureaucrats or politicians, but by panels of scientists drawn from outside of government.

For the most part, conditions and requirements have not been attached which would strike directly at constitutionally protected interests, such as freedom of expression, of association, or of inquiry. The non-communist disclaimer required of federal fellowship and loan recipients was repealed before it was authoritatively tested. Maybe it would have been stricken down as an "unconstitutional condition". It would not have been easy, however, for a student to gain standing to sue, simply because he was denied a loan on account of his refusal to sign the disclaimer.

Such dramatic invasion of clearly protected constitutional rights is not what bothers me today, as it might have been ten years ago. It might have been on the top of my mind even five years ago, during the late sixties, when "student unrest" tempted many politicians to seek to extend a federal police power onto the campuses in violation of personal as well as academic freedom. Now my concern is less dramatic, more persistent, perhaps more fundamental than such passing lurid crises.

My fear is that there is a growing tendency for the central government to use the spending power to prescribe educational policies. These are matters which they could not regulate were it not for our dependence on their largesse. I am worried that maybe we do not have any obvious constitutional basis on which to resist this encroachment. It will always be asserted that the government as grantor, lender, or contractor, has a legitimate interest in all aspects of our behavior, once they have financed any part of our activity.

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When I say "the Constitution is dead; long live the Constitution", I mean merely to assert that even if there may be no legal basis to resist the conditions which the government imposes, there is still force to the values which the Constitution embodies: recourse to objective review of alleged abuse and limits on centralized regulation of local matters by Washington. I would assert that these values are no less valid and deserving of vigilance when regulation takes the form of conditions attached to a federal grant than they are when regulation is direct, under color of regulating interstate commerce, or promoting the general welfare.

Certainly the sanction of withdrawal of federal support is at least as great as any conceivable financial penalty which might be imposed for violation of criminal or administrative law prohibitions or requirements.

Abuse for raw political or vindictive motives is no less conceivable in the administration of the spending power than in regulatory administration. An "enemies list" policy can be as effectively carried out by one route as by another. Indeed the difficulty of obtaining review of a denial of a grant or a contract makes the allocation or withholding of funds easier to manipulate for political purposes. This was precisely what was proposed, apparently in response to Presidential request, in order to get back at Jerome Wiesner for his opposition to the anti-ballistic missile program. Memoranda, said to have been approved by John Erlichman, urged that M.I.T. be deprived of Department of Defense grants and contracts as a technique of "disciplining" its President, later revealed to have been on John Dean's "enemies list". Leakage of the vindictive plan did threaten a backlash and the matter was dropped. One wonders, however, whether legal recourse ever could have protected M.I.T.'s interest if the policy had gone forward.

But even if such raw, "smoking gun" abuses might find their constitutional come-uppance, there have been other less flagrant, but equally pernicious, efforts to use the leverage of the spending power to "discipline" educational institutions. The most notorious was Congressman Hebert's persistent effort to deny all Department of Defense grants, for students as well as for research, to any institution which discontinued its Reserve Officers Training program. When this failed as a legislated condition, the Armed Services were so terrified of antagonizing the powerful Armed Services Committee, they withheld contracts and diverted officer graduate students from colleges and universities which had terminated their ROTC programs. The spirit of the Constitution was twice flouted, first by imposing the penalty of withholding support from activities which bore no relationship whatsoever to the "offense" of discontinuing ROTC, second, by using the pressure of a legislative committee to compel a policy which that committee could not prevail upon the Congress to enact.

Use of the leverage of the government dollar to accomplish objectives which have nothing to do with the purposes for which the dollar is given has become dangerously fashionable.

Take for instance the health manpower legislation which passed the last Congress but was not resolved in committee before adjournment. Comparable bills have been reintroduced in the House just recently. With laudable motive and seeming plausibility, the proposed legislation seeks to remedy the shortage of primary care physicians and the obvious uneven availability of medical care throughout the country. It does not use the device of special assistance for

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the training of primary physicians, or special bounties for graduands who commit themselves to practice where they are most needed. It proceeds, rather, by telling the medical schools that all general support for medical education, the so-called capitation grants, will be withdrawn unless a school increases its general practice training and requires some proportion of their graduates to enter practice where there is a shortage of doctors.

Were it not for the federal financial support it would be hard to find warrant in the Constitution for federal regulation of medical school curricula. Even more dubious is the Constitutionality of requiring a school to draft some of its graduates, by lottery or otherwise, to serve involuntarily, in places not of their choice.

It is not sufficient to say that since the government is paying the bills, therefore it has a right to specify the product. This would be understandable if all that is being offered were special support for the program of special federal interest. To say, however, that support for all general educational activities of national importance will be withheld unless a school enlarges the program the government is particularly interested in, is to use the threat of cutting off aid for one purpose in order to accomplish another. What it does of course is to threaten the non-complying school with a hopeless competitive disadvantage generally if it will not go along with the favored program.

It smacks of the same coercion which makes the tying clause, or the requirements contract, vulnerable under the anti-trust laws. Such coercive use of the spending power is not a proper way for government to deal with its citizens.

I'm not sure what Constitutional grounds could be asserted to resist this leverage. But it does outrage Constitutional values to say that the curricular self-determination of medical schools must be forfeited in order to receive any general institutional support.

This same leverage is carried to far greater extremes in other federal legislation already on the books. It might be called the "now that I have bought the button, I have a right to design the coat" approach.

Thus if we are to receive support for physics, let's say, we must conform to federal policies in the admission of women to the Art School, in women's athletic facilities, and in the recruitment of women and minorities, not just in the federally supported field, but throughout the University.

As one who presided over the admission of women to a college which had been "for men only" for two hundred and sixty-seven years, and as one who also presided over a strenuous effort to recruit qualified minority students, I think I can be assumed not to be opposed to women's rights and equal educational and academic career opportunity for minorities and women. However, I do object to the notion that the receipt of a federal dollar for some purposes subjects a private institution to federal regulation and surveillance in all its activities. This is constitutionally objectionable, even in the name of a good cause such as "affirmative action".

The essence of Constitutional restraint, I was taught, is that the worthiness of the end should not justify objectionable means.

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The farthest outreach of federal regulation under the banner of the spending power is the Family Educational Rights and Privacy Act, the so-called Buckley Amendment to the Education Act. Again, the purpose is laudable. Schools and colleges and universities should not be able to build up prejudicial files on students against which the student has no redress if he has no way of knowing what is in them. But it does not follow that the end justifies the means in this case either.

To use the vernacular of judicial dissent, I would have thought that the one member of the United States Senate wearing the Conservative Party label would have been especially alert to the evil of expanding federal regulatory power beyond its constitutional bounds simply because the spending power opens the gate. I doubt if anyone would assert that the student records of local schools and colleges are within the reach of direct federal criminal law. Under the Buckley Amendment, however, we forfeit our federal support for research as well as students from the Office of Education if we do not comply with the regulatory requirements of access to student files imposed by legislation introduced by the Senator from New York.

I know there have been some inroads on the doctrine that conditions attached to a government grant cannot be attacked because the grant is a "privilege" not a "right". Since it is not a right, so the argument goes, the recipient has no standing to complain of any conditions imposed on him. Professor VanAlstyne has traced the erosion of this position at the hands of advocates and judges alert to the economic realities, which so often make government largesse a necessity for competitive survival. Still, in the legislative and in the popular mind, when the spending power is involved, there is a relaxed, "anything goes" attitude toward the spread of federal regulations.

Also apart from the traditional barriers to legal attack, there are practical inhibitions on redress. Financially weak institutions, like financially weak individuals, will think twice before bringing their indispensable banker or grantor into court.

Yet we all know that many activities once thought to be wholly private, whether for profit or for pro bono purposes, are increasingly dependent upon government funds. Government may be banker, it may be guarantor, it may be grantor, it may be contractor or purchaser. As such it has every right, indeed obligation, to be sure that every dollar is accounted for, to be sure that it is spent efficiently, to be sure that its uses comport with Constitutional requirements of equal opportunity and non-discrimination.

We have been insistent that criminal and administrative regulations should not go beyond what is rationally required by their stated purpose. We must be no less vigilant about the use of spending power as a lever to extend regulation beyond the accountability reasonably related to the purposes for which the support is given. This is crucial if we seek to remain a society which respects localism, which respects voluntarism, which respects the diversity of private initiative.

If I may be pardoned a bit of special pleading in the literal sense, I think that the independent sector of higher education is a specially sensitive case in point. Institutional diversity, autonomous trusteeship and faculty

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self-determination are the essence of the envied vitality of American higher education and its responsiveness to new fields of knowledge. The strengths would be lost if, as a condition of receiving a federal dollar for some purposes, we were to be subject to federal regulations for all purposes.

I take some encouragement and guidance from a little remembered warning in the leave-taking words of a great President of the United States, Dwight David Eisenhower. We all remember his warning against the mutual corruption of the military-industrial complex, and the dangers it held for our freedom. Hardly anyone remembers that he went on to say: "The prospect of domination of the nation's scholars by federal government, project allocation, and the power of money, is ever present, and is gravely to be regarded."

But if pleading as a college president is special, my plea as a neophyte Fellow of the American Bar Foundation is more general.

When to national security and minimal care for federal lands, and assurance of the free flow of commerce was added the awesome responsibility for the general welfare, lawyers took upon themselves the task of inventing doctrines, procedures, and practices which tried to keep administrative, regulatory power accountable to the rule of law. When to welfare and economic responsibility was added the task of mobilization for total global war, even then the rule of law was not forgotten, in the court of price appeals and later in the judicial veto of executive seizure of the steel industry.

Now the pervasive impact of government upon the citizen, upon private institutions, upon the economy, is not primarily by direct regulation but by exercise of the spending and lending power, whether by grant or loan or guaranty, or contract or purchase.

High on the agenda of the profession, especially its scholarly branch, should be to see to it that in terms of both limits on authority and redress against its abuse, the coercive power of the federal purse is made subject to a rule of law.

It is high time that we learn once again to ask not only "Is your objective worthy?", but also, "Are the means you would use consistent with the values of the Constitution?"

"The Constitution is dead: long live the Constitution."

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Samuel Halperin

## FEDERAL TAKEOVER, STATE DEFAULT, OR A FAMILY PROBLEM?

In the April *Kappan* State Superintendent Joseph Cronin decried increasing federal school regulation without commensurate financial help. Here a former USOE official provides further analysis and suggests corrective measures.

**J**oseph Cronin (April *Kappan*) describes lurid symptoms of a rampaging disease but, in my view, misdiagnoses the malady.

To be sure, as Superintendent Cronin writes, federal legislation is increasingly pre-emptive, prescriptive, and regulatory. Indeed, the weight of federal guidelines and regulations may soon outweigh the beneficial impact of relatively meager federal fiscal support. A maze of federal programs is hard to understand, let alone to administer, particularly as Congress frequently rewrites basic law. A dispirited U.S. Office of Education, with its revolving-door commissioner, labors to implement what Congress has decreed. But the USOE has neither the quantity of staff nor the élan to make such inherently cumbersome legislation workable. The cumulative impact of this overregulation, underfunding, and sluggish federal implementation is a "junior partner" impinging upon educational autonomy as never before while bearing relatively less of the educational burden with each passing year.

Yet the basic problem is not, as Cronin and a growing number of educators assert, that Congress seeks to take over the nation's schools or that power-hungry bureaucrats are intent on displacing state and local decision making. If anything, Washington is increasingly aware of the limits of federal intervention and of the vast distance between enacting a program in the federal city and making something happen in the classroom. The junior partner may be

misguided, but his "imperialism" is more akin to reluctance than to avarice or ambition.

Why, then, the increasing federal inroads on state policy making? Because, for two sets of reasons, the federal system is seriously out of balance. In the first instance, the activist, problem-solving orientation of Congress leads to increasing impatience with the states and with educators generally. In Congress's perception, state authorities and educators alike are defaulting on difficult problems. Name any major social issue of our time — the war on poverty, access to equal educational opportunity, sexual and racial equality, equalization of educational financing, privacy and the rights of individuals — and educators are viewed as tardy at best or as lacking in commitment. Washington's typical response is to "solve the problem" with federal incentives, well intentioned but sometimes ill conceived.

Congressmen see themselves as having been elected to legislate. Confronted with a problem and a showing that other levels of government are "defaulting," their strong tendency is to pass a law. Ten years ago, money was Washington's antidote for problems. Now, the new fiscal realities — inflation, high unemployment, and huge budget deficits — mean that Congress provides fewer dollars. Still determined to legislate against problems, Congress uses sticks instead of carrots. The result: What was once viewed as "tainted federal money" is now considered "taint enough" to ease the pain of accommodation and regulation.

But why doesn't "someone" stand up more often against ill-conceived and harmful public policy? In brief, because the voices of the states are scarcely heard in the nation's capital. Inter-governmental political and educational

mechanisms for developing and communicating state policies which stand in effective contrast to those advanced by various factions in Washington are in sad states of disrepair. Governors and state legislators are only now showing early awareness of the implications of Washington's 7% to 8% contribution to state and local educational expenditures. Most of them admit that they have been too busy with their own programs to study the impact of Washington's. Even the education associations in Washington are loath to criticize new authorization bills, especially ones that emanate from pro-education, activist congressmen and which promise additional financial aid for hard-pressed educational systems. To take issue with members who control key legislation is not yet fashionable. Neither is it considered politic for one education association to oppose the authorization bills promoted by another. The rule seems to be: Let every interest have its hunting license to get whatever can be gotten from the budgetary process. There is as yet no general recognition that the goals pursued by some groups can only be achieved at the expense of others or by heavy administrative and regulatory burdens for the educational system as a whole.

Overall, there is nothing today which can pass for "the states' view of education," nothing like a sense of "what educators want from the federal government" (other than "more money!"), nothing which can be described as a consensus on "the appropriate federal role in education." Whether one sees the "feds" as "trying to take over" or the states as being in "utter default on their responsibilities," the result is increasingly the same: acrimony, contention, and unsatisfactory educational outcomes.

What can be done to restore

*SAMUEL HALPERIN is director, Institute for Educational Leadership, George Washington University. From 1966 through 1969, he was deputy assistant secretary for legislation, Department of Health, Education, and Welfare.*

balance in the federal education system and halt the drift toward domination by federal priorities and federally mandated limitations on state and local decision making? There are no single, simple solutions. Rather, what is required is a systematic and sustained effort. Six specific suggestions follow. But, above all, improvement lies in heeding Cronin's counsel to "press harder for local and state resolution of many of the problems that face us... in order to make federal initiatives redundant." The best defense against big government on the Potomac is to move locally, in timely and deliberate fashion. Well-intentioned Washingtonians who would solve all problems by fiat or by financial inducement can be deflated, if not always completely blocked, by a strong showing of state and local initiative.

Other measures offer promise to bolster vigorous and countervailing state and educational leadership:

1. The Education Commission of the States must, as Cronin suggests, be strengthened, in leadership and in finances. The ECS must develop concrete alternatives to unwieldy federal action. But first the states must contribute much more than their current 8% of the ECS budget, reducing the ECS's present 85% reliance on federal funds.

Since it is not feasible for state funding to completely replace federal support, the ECS's goal should be a "no strings" annual federal appropriation geared solely to increasing the current level of nonfederal funding. Incentive grants have proven successful elsewhere. Ford Foundation grants to 84 private colleges raised over \$1 billion to match Ford outlays of \$349 million. Similarly, federal vocational education grants have been overmatched by the states by as much as 10:1. The ECS's new leadership may continue to seek federal categorical funds and foundation grants. However, a strong noncategorical basis of funding can come only by Washington's providing a fiscal incentive to the states to do better toward the ECS. An unrestricted federal outlay of \$5-\$10 million annually in return for increased state, local, and foundation support of, say, \$5-\$20 million can go far toward realizing the original Conant-Sanford vision for the ECS.

2. Other countervailing instrumentalities must also be strengthened if the federal system is to work in better balance. Key among these are the political arms of state government: the offices of the governor and the legislatures. Surely those who decide the policies and provide the budgets for the most expensive of all state public services—education—deserve strengthening of their present generally inadequate capacity to understand and to shape

state educational policy. While many educators will undoubtedly resist any such strengthening for fear of intrusion onto their turf, the alternative of irresponsible and uninformed political intervention seems by far the greater danger.

Therefore, legislatures ought to build effective processes of educational oversight and governors should obtain independent analyses of pressing educational and human resource issues. If the best way to achieve such strengthened analytical capacity is through the encouragement of a federal matching grant program, so be it. I see nothing inherently wrong with HEW's helping the states' elected public officials to do their jobs better. With the USOE currently providing from 40% to 80% of the budgets of state departments of education—\$179 million this year—it is high time to consider building up state policy-making capacity as a complement to that of state educational agencies (SEAs).

3. Federal support of SEAs also needs reconsideration. Although SEAs are rendering more effective services than before the advent of federal aid, no one believes that they are meeting their responsibilities fully. Again, some additional funding is needed, but it appears unlikely that the "feds" will absorb the tab. Title V of the ESEA, currently granting \$58 million to the SEAs, ought to be made a matching program. Legislatures should be given financial incentives to strengthen their own SEAs, rather than allow them to be little stronger than what Washington is willing to fund! (The original ESEA of 1965 proposed a matching program, but chief state school officers preferred "easy" federal cash to asking their legislatures for aid, an uncertain prospect. What seemed easy in the short run seems incredibly short-sighted, since it fosters dependence on Washington without facing the fundamental long-term need of SEAs to make their case before—and win the confidence of—their own elected public officials.)

4. Education associations which speak for the states must also be strengthened so that they can more effectively cope with Washington's various legislative and regulatory activities. It seems absurd for Superintendent Cronin's colleagues to berate Washington while they are unwilling to provide their own Council of Chief State School Officers with more than one paid legislative representative. (By contrast, the National School Boards Association has five and the National Education Association 10. Incidentally, the ECS has only a part-time Washington "consultant.")

5. Intergovernmental processes must also be strengthened and new forums

for communication must be developed if Washington is to "hear" the voices of state leadership, and vice versa. As it is, there is virtually no opportunity for sharing of views among federal and state legislators or among governors' education aides and their counterparts in the offices of the secretary of HEW and the U.S. commissioner of education. Congressional and HEW hearings and other opportunities for getting state input into federal policy formulation are increasingly empty rituals, seldom enabling Washington policy makers to hear from governors, legislators, state budget analysts, and others who will have to live with Washington's decisions. As long as state officials have difficulty traveling out of state, as long as Washington officials do not feel obliged to seek out the views of important state policy makers, and as long as such organizations as the ECS, the National Conference on State Legislatures, and the National Governors Conference are not regular parties to official Washington's considerations, so long will the federal system remain seriously out of balance. While the convening, brokering, and communicating activities of organizations such as the Institute for Educational Leadership are helpful, they are no substitute for intergovernmental bridge building on a grander scale.

6. Another necessary organizational improvement may seem paradoxical at first glance: For even a limited federal role in education to operate effectively, the USOE must be strengthened in leadership, stature, and services to education. When the USOE performs far below its full potential, those who suffer most are likely to be the very state authorities we would wish to see enhanced. Junior partner or not, the USOE is not now adequately handling its share of the load.

It is obvious that I have scant agreement with those who, particularly in this election year, run on an antigovernment platform. The dangers of federal takeover are real. State and educator defaults on their responsibilities are often equally real. The best way to resolve our difficulties is not, however, to set the "feds" against the states, and vice versa, in displays of adversary pyrotechnics. Such conflict and recrimination can only deflect government at all levels from the necessary strengthening of the educational system. Rather, we must recognize anew that the federal system means that all partners—senior and junior alike—are inextricably part of one family. Communication among family members must be kept continuously open and vital. Each member must do his proper share in the recognition that, ultimately, the well-being of the whole depends upon the contributions of each. □

# Regulating the Regulators

Higher education must push for a wiser, more effective federal role

By Charles B. Saunders, Jr.

THE CHRONICLE OF HIGHER EDUCATION

3/22/76

**I**s regulation strangulation? The question aptly conveys our uneasy awareness that government legislation and court decisions are increasingly influencing the shape of higher education in America. Recent laws and court decisions concern the admission of students, their eligibility for financial aid, the protection of their rights, and the nature of the programs they enroll in; the hiring and termination of faculty members; the conduct of research; and the governance of institutions by administrators and trustees.

In theory, regulation imposes order and rationality on the implementation of these laws. The process of rulemaking assures that participants in federal programs all meet identifiable standards of accountability for the use of tax dollars according to the intent of Congress.

In practice, federal regulations too often impede and subvert the educational process by stifling diversity and imposing costly, burdensome, and unnecessary requirements.

Some regulations, like those initially proposed for the Buckley Amendment (which deals with the rights of students to have access to their educational records and was passed hastily without the benefit of the usual deliberative committee hearings) reflect bad law. Others, like the Guaranteed Student Loan regulations requiring statistical information on the salary and employment of recent graduates, reflect an excessive zeal to substitute bureaucratic goals for Congressional intent. In the first example, Congress undertook to establish education policy without adequate consultation with the education community affected. In the second example, it was the executive branch.

But we know how to respond to such problems. We deal with the education committees of Congress and the officials of the education division of the Department of Health, Education, and Welfare on a daily basis; we know how to make our concerns known; and we do. The Buckley Amendment was extensively amended later to deal with our concerns, and so were the final regulations. The G.S.L. regulation has been modified in response to our protests.

By contrast, there is a growing body of laws and regulations that place significant burdens on higher education even though they were never designed to do so. They concern issues that are less familiar to us, and their impact on higher education may, in fact, be entirely unintended and impossible to judge for many years. We must, therefore, enlarge our own areas of expertise, monitor legislative and executive-branch activities more closely, and prepare ourselves to identify the special concerns of our constituency across the entire range of governmental activities.

**T**ALL FEDERAL AGENCIES, we must insist on a larger role for the higher-education community in the development of policies that affect us. One of the first steps is to break down the wall of secrecy that has developed the process of writing regulations in recent years. Proposed regulations typically appear in the *Federal Register* without warning, and we must scramble to submit comments within 30 days. Our efforts often turn out to be futile, for the federal agency that has committed its honor to specific language it has developed in secret will naturally affirm the validity of its own judgment by publishing final regulations with as few changes as possible.

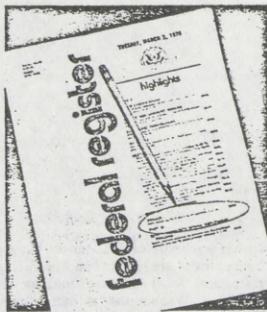
Regulation-writing was never intended to operate in secrecy. The assumption was that the process would take place in close and continuous consultation between federal officials and the interest groups concerned. The 30-day comment period was designed not to limit the participation of constituent groups, but to provide an opportunity for individual citizens to express their views.

If consultation began before drafting started, we could obtain a helpful understanding of what federal officials would require of us. They, in turn, could obtain an early warning of possible difficulties that might arise in implementing such requirements.

Proposed regulations, when published for comment, would then reflect a workable accommodation between program officials and campus administrators, and the comment period would serve to identify perfecting technical changes needed before final publication.

Federal officials who draft regulations do the best they can under difficult circumstances, in any case. The bureaucracy is not the problem; the problem is how we deal with it. Therefore, to imitate the bureaucrats, I hereby issue for public comment the following proposed regulations for dealing with federal regulations:

1. *Don't believe any politician who promises "de-regulation."* We cannot go back to "the glorious days of yesteryear," with or without the Lone Ranger. Regulation is here to stay, in a growing variety of forms. In one respect, this is a tribute to the special place of higher education in society. Government, in its search for solutions to complex



national problems, inevitably turns to the expertise and research capabilities of the colleges and universities; this means a continual development of new relationships between federal agencies and the institutions; and each new set of relationships brings a new set of regulations.

It is not enough to blame Congress and the federal bureaucracy for the growth of regulation. We must find ways to make it more rational.

2. *Never accept any regulation as final.* It is final only if we are content with it. Despite the propensity of the bureaucracy for announcing "final" deadlines for comment, comments on existing regulations may be submitted—and must be considered—at any time. If regulations that cause serious difficulties remain unchanged over time, that may be our fault for failing to document our problems and propose appropriate changes.

3. *We must do our homework.* We have no right to complain in any case unless we know what we are complaining about. We must distinguish between the burdens of regulation and the burdens of bad law; the first can be corrected administratively; the second requires relief from Congress. Our complaints deserve to be ignored unless they pinpoint the offending language, demonstrate how it goes beyond or misinterprets the language of the law, provide factual documentation about the burdens it imposes, and suggest changes to relieve the problem.

4. *We should give the federal officials the benefit of our expertise, whether they ask for it or not.* We should not be reluctant to make our case on the assumption that they know more about the issue. They may know more about the language of the regulations and the law, but they cannot know as much about how those laws and regulations affect institutional policies and programs. Therefore, nev-

er change policies or programs on the advice of federal officials unless the changes make sense to you or your counsel. Make it your business to read and comment on proposed regulations and the potential impact of proposed legislation. Your judgment will improve the understanding of both the bureaucrat and the Congressman.

Double the effectiveness of your voice by making use of your professional association. Alert the association to your specific problem and give it your supporting data, so that it can generalize about the issue from the national perspective. Ask your association officials what they can do to help you. If they are asleep at their desks, it may be because you failed to call them.

5. *We must work harder to identify, articulate, and maintain the highest standards of professional conduct and competence.* Unless we do, we have little cause for complaint when federal officials attempt to establish standards.

Perhaps the most hopeful and most challenging development in our recent struggles with the regulatory process is embodied in the Administration's legislative recommendations on institutional eligibility for student-assistance programs. The proposal, submitted to Congress on Feb. 10, would permit the Commissioner of Education to prescribe regulations on fair practices in advertising, recruiting, and enrolling students; tuition policies; and the provision of information—but only "after consultation with interested parties with respect to generally accepted standards, if any."

The significance of this language is enormous, because it completely reverses the standard bureaucratic approach to regulations. Instead of assuming that the commissioner has the wisdom or the authority to tell college officials how to conduct their business, this wording actually does the opposite: it imposes a responsibility on the commissioner to consult with the education community and obtain its advice on "generally accepted standards," which then must be articulated in the form of regulations.

**H**ERE LIES A BASIS for wiser and more effective regulation, as the product of careful, open consultation in advance. This process should produce not arbitrary federal requirements, secretly prepared and suddenly imposed, but mutually acceptable guidelines designed to achieve statutory goals with a minimum of inconvenience and a maximum regard for the individuals and institutions affected.

The challenge lies in the fact that "generally accepted" standards do not exist in some areas of conduct and professionalism, and we do not now have the means for inventing them or assuring their acceptance. Nevertheless we must, if we are to prevent federal officials from establishing standards for us.

We need to develop mechanisms for deriving consensus on reasonable and acceptable standards for the administration and accounting of federal funds, as well as standards of ethics and professionalism. We also need mechanisms for affirming and voluntarily enforcing such standards. This implies, at the least, a willingness to change in significant respects the ways in which our pluralistic and traditionally autonomous institutions relate to each other and to the larger community.

Unless we are willing to make these changes of our own volition, we may never be able to simplify and rationalize the regulatory process. And one day we may interrupt our criticisms of the bureaucracy long enough to reflect, like Pogo, that we have met the enemy, and he is us.

Is regulation strangulation? Not if we can help it. And I believe we can.

Charles B. Saunders, Jr., is director of the office of governmental relations at the American Council on Education in Washington. This article is based on a speech he gave at the Southern regional meeting of the College Entrance Examination Board in New Orleans last month. The full text will appear in the summer issue of the *College Board Review*.

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# Is the Federal Government Taking Over Education?

By SAMUEL HALPERIN

To be sure, federal legislation is increasingly preemptive, prescriptive and regulatory. Indeed, the weight of federal guidelines and regulations may soon outweigh the beneficial impact of relatively meager federal fiscal support. A maze of federal programs is hard to understand, let alone to administer, particularly as Congress frequently rewrites basic law. The cumulative impact of over-regulation, underfunding and sluggish federal implementation is a "junior partner" impinging upon educational autonomy as never before, while bearing relatively less of the educational burden with each passing year.

Yet the basic problem is not, as a growing number of educators assert, that Congress seeks to take over the

nation's schools or that power-hungry bureaucrats are intent on displacing state and local decision making. If anything, Washington is increasingly aware of the limits of federal intervention and of the vast distance between enacting a program in the federal city and making something happen in the classroom. The junior partner may be misguided, but this "imperialism" is more akin to reluctance than ambition.

Why, then, the increasing federal inroads on state policy making? Because the federal system is seriously out of balance. In Congress' perception, state authorities and educators alike are defaulting on difficult problems. Name any major social issue of our time—the war on poverty, access to equal educational opportunity, sexual and

racial equality, equalization of educational financing, privacy and the rights of individuals. Washington's typical response is to "solve the problem" with federal incentives, well intentioned but sometimes ill conceived.

Congressmen see themselves as having been elected to legislate. Confronted with a problem and a showing that other levels of government are "defaulting," their strong tendency is to pass a law. Ten years ago, money was Washington's antidote for problems. Now, the new fiscal realities—inflation, high unemployment and huge budget deficits—mean that Congress provides fewer dollars. Still determined to legislate against problems, Congress uses sticks instead of carrots.

But why doesn't someone stand up



more often against ill-conceived and harmful public policy? In brief, because the voices of the states are scarcely heard in the nation's capital. Intergovernmental political and educational mechanisms for developing and communicating state policies that stand in effective contrast to those advanced by various factions in Washington are in

*Samuel Halperin is director of the Institute for Educational Leadership at George Washington University. From 1966 through 1969 he was deputy assistant secretary for legislation at the Department of Health, Education and Welfare. This article appeared previously, in slightly different form, in the June 1976 issue of Phi Delta Kappan.*

sad states of despair.

Governors and state legislators are only now showing early awareness of the implications of Washington's seven to eight percent contribution to state and local educational expenditures. Most of them admit that they have been too busy with their own programs to study the impact of Washington's. Even the education associations in Washington are loath to criticize new authorization bills, especially ones that emanate from pro-education, activist congressmen and that promise additional financial aid for hard-pressed educational systems.

To take issue with members who control key legislation is not yet fashionable. Neither is it considered politic for one education association to

oppose the authorization bills promoted by another. The rule seems to be: Let every interest have its hunting license to get whatever can be gotten from the budgetary process. There is as yet no general recognition that the goals pursued by some groups can only be achieved at the expense of others or by heavy administrative and regulatory burdens for the educational system.

Overall, there is nothing today that can pass for "the state's view of education," nothing like a sense of "what educators want from the federal government" (other than "more money!"), nothing that can be described as a consensus on "the appropriate federal role in education." Whether one sees the "feds" as "trying to take over" or the states as being in "utter default on their responsibilities," the result is increasingly the same: acrimony, contention and unsatisfactory educational outcomes.

What can be done to restore balance in the federal education system and halt the drift toward domination by federal priorities and federally mandated limitations on state and local decision making?

There are no single, simple solutions. Rather, what is required is a systematic and sustained effort. The best defense against big government on the Potomac is to move locally, in timely and deliberate fashion. Well-intentioned Washingtonians who would solve all problems by fiat or by financial inducement can be deflated, if not always completely blocked, by a strong showing of state and local initiative.

Other measures offer promise to bolster vigorous and countervailing state and educational leadership:

1. The Education Commission of the States must be strengthened, in leadership and in finances. ECS must develop concrete alternatives to unwise federal action. But first the states must contribute much more than their current eight percent of the ECS budget, reducing the ECS's present 85 percent reliance on federal funds.

Since it is not feasible for state funding to completely replace federal support, ECS's goal should be a "no-strings" annual federal appropriation geared solely to increasing the current level of nonfederal funding. Incentive grants have proven successful elsewhere. For example, Ford Founda-

## The federal system means all partners are inextricably part of one family.

tion grants to 84 private colleges raised over \$1 billion to match Ford outlays of \$349 million. Similarly, federal vocational education grants have been overmatched by the states by as much as 10:1.

ECS's new leadership may continue to seek federal categorical funds and foundation grants. However, a strong noncategorical basis of funding can come only by Washington's providing a fiscal incentive to the states to do better toward the ECS. An unrestricted federal outlay of \$5-\$10 million annually in return for increased state, local and foundation support of, say, \$5-\$20 million can go far toward realizing the original Conant-Sanford vision for the ECS.

2. Other countervailing instrumentalities must also be strengthened if the federal system is to work in better balance. Key among these are the political arms of state government—the legislatures and the offices of the governor. Surely those who decide the policies and provide the budgets for the most expensive of all state public services—education—deserve strengthening of their present generally inadequate capacity to understand and to shape state educational policy. While many educators will undoubtedly resist any such strengthening for fear of intrusion onto their turf, the alternative of irresponsible and uninformed political intervention seems by far the greater danger.

Therefore, legislatures ought to build effective processes of educational oversight and governors should obtain independent analyses of pressing educational and human resource issues. If the best way to achieve such strengthened analytical capacity is through the encouragement of a federal matching grant program, so be it. There is nothing inherently wrong with the Department of Health, Education and Welfare helping the states' elected officials to do their jobs better. With the U.S. Office of Education currently providing from 40 to 80 percent of the budgets of state departments of educa-

tion, it is high time to consider building up state policy making as a complement to that of state education agencies.

3. Federal support of state education agencies also needs reconsideration. Although state agencies are rendering more effective services than before the advent of federal aid, no one believes that they are meeting their responsibilities fully. Again, some additional funding is needed, but it appears unlikely that the "feds" will absorb the tab. Title V of the Elementary and Secondary Education Act, currently granting \$58 million to state education agencies, ought to be made a matching program. Legislatures should be given financial incentives to strengthen their own state education agencies, rather than allowing them to be only a little stronger than what Washington is willing to fund.

4. Education associations that speak for the states must also be strengthened so that they can more effectively cope with Washington's various legislative and regulatory activities. It seems absurd for the chief state school officers to berate Washington while they are unwilling to provide their own council with more than one paid legislative representative. By contrast, the National School Boards Association has five and the National Education Association 10. Incidentally, the ECS has only a part-time Washington "consultant."

5. Intergovernmental processes must also be strengthened and new forums for communication must be developed if Washington is to hear the voices of state leadership, and vice versa. As it is, there is virtually no opportunity for sharing of views among federal and state legislators or among governors' education aides and their counterparts in the U.S. Department of Health, Education and Welfare (HEW).

Congressional and HEW hearings and other opportunities for getting state input into federal policy formulation are increasingly empty rituals, seldom enabling Washington policy makers to hear from governors, legislators, state budget analysts and others who will

have to live with Washington's decisions. So long as state officials have difficulty traveling out of state, so long as Washington officials do not feel obligated to seek out the views of important state policy makers, and so long as such organizations as ECS, the National Conference of State Legislatures and the National Governors' Conference are not regular parties to official Washington's considerations, so long will the federal system remain seriously out of balance. While the convening, brokering and communicating activities of organizations such as the Institute for Educational Leadership are helpful, they are no substitute for intergovernmental bridge building on a grander scale.

6. Another necessary organizational improvement may seem paradoxical at first glance. For even a limited federal role in education to operate effectively, the U.S. Office of Education must be strengthened in leadership, stature and services to education. When the USOE performs far below its full potential, those who suffer most are likely to be the very state authorities we would wish to see enhanced. Junior partner or not, the USOE is not now adequately handling its share of the load.

The dangers of federal takeover are real. State and educator defaults on their responsibilities are often equally real. The best way to resolve our difficulties is not, however, to set the "feds" against the states, and vice versa, in displays of adversary pyrotechnics. Such conflict and recrimination can only deflect government at all levels from the necessary strengthening of the educational system.

Rather, we must recognize anew that the federal system means that all partners—senior and junior alike—are inextricably part of one family. Communication among family members must be kept continuously open and vital. Each member must do his proper share in the recognition that, ultimately, the well-being of the whole depends upon the contributions of each.

December 13, 1976

THE CHRONICLE OF HIGHER EDUCATION

# Proliferating Federal Regulations: Is Government Now 'the Enemy'?

Colleges complain about conflicting rules, burgeoning paperwork, and rising compliance costs; a survey finds institutions spend 1 to 4 pct. of their budgets simply to meet the requirements

By Karen J. Winkler  
Last year Brigham Young University announced it would refuse to comply with portions of federal affirmative-action regulations.

This year, Yale University and Stanford University said they might pass up federal funds rather than go along with certain requirements in new health-manpower legislation.

Last week, as the Veterans Administration was felling colleges and universities how to operate under the new GI Bill, many campus officials said there was no way they could—or would—comply. Several talked about possible court action to challenge the V.A. rules.

The problems colleges and universities are encountering as they struggle to comply with different, and often conflicting, government regulations have become a major irritation. Federal rules have become so costly

This is the first of two articles on federal regulation of colleges and universities.

to abide by, many educators say, and so intrusive into the internal workings of their institutions, that they are beginning to look on the federal government as "the enemy."

"A fundamental change is taking place in the relationship between Washington and the nation's colleges and universities," Harold L. Enarson, president of the Ohio State University, said at the annual meeting of the National Association of State Universities and Land-Grant Colleges last month.

"Once we were partners working together to solve national problems. Now we view each other with suspicion, almost as adversaries."

Colleges and universities are faced with rules covering pensions, taxes, student aid, occupational health and safety, veterans' benefits. They must comply with affirmative-action regulations issued by the Departments of Health, Education, and Welfare, Labor, and Agriculture; with regulations protecting the rights of human subjects in government-financed research; with strictures guarding the privacy of student records.

H.E.W. officials estimate at least 40 packages of regulations will be needed to carry out the new Education Amendments of 1976 alone.

A survey by the American Council on Education last year found that institutions of higher education were spending between 1 per cent and 4 per cent of their operating budgets on complying with federal requirements.

**Reimbursement Inadequate**

The government pays administrative subsidies to help cover those costs, but college and university officials say they come nowhere near to meeting the actual expenses. The University of Iowa has reported that while it is reimbursed 53 per cent of its paperwork in administering education benefits under the GI Bill, it actually spends \$20 per veteran for the work involved. It says it also devotes approximately 22 man-hours a week to gathering and reporting information required by regulations protecting human subjects in research projects.

The Ohio State University says it has spent \$150,000 in staff time and computer charges to comply with rules protecting the privacy of student records. Harvard University estimates that in 1974-75 alone, 60,000 hours of faculty time were devoted to complying with federal regulations.

Even worse than the cost of federal rules, says C. Peter Magrath, president of the University of Minnesota, is "the real danger that they will generate so much cynicism and frustration that we lose sight of the important social goals the regulations are designed to implement."

College officials say some of the problems with federal regulations stem from bad laws. They point most frequently to the so-called "Buckley Amendment," which was attached to a bill for elementary and secondary education in 1974 to give parents the right to see their children's school records. Higher education was included almost as an afterthought.

The result, colleges and university officials report, has been a bureaucratic nightmare as they determine which records students may see.

## 'Outrageous Infrusion'

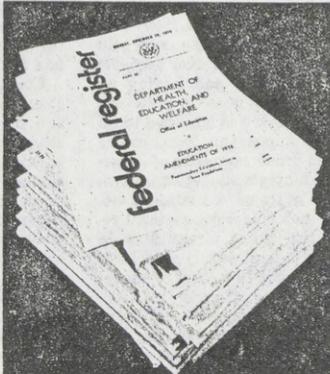
Another storm of protest is now brewing. Language in recently passed health-manpower legislation gives the Secretary of Health, Education, and Welfare the right to assign a certain number of American transfer students from foreign medical schools to U. S. universities. President Kirgman Brewster of Yale calls the provision "an outrageous intrusion upon academic self-determination."

Washington education lobbyists say they are working "to get H.E.W. to fix the law when it issues regulations" for carrying it out. They say the department may try to write out rules in a way that leaves the institutions as much control over transfer policies as possible.

Most of the complaints about federal requirements, however, are directed not at the laws passed by Congress but at the regulations that government agencies write.

"We are very much concerned about the overall attitude of the regulators," says Jerold Roschwald, director of federal relations at the association of land-grant colleges. "Federal law is born out of compromises and is therefore necessarily vague. That has given the executive agencies too much leeway in determining the intent of Congress."

A work group set up by H.E.W. to recommend ways to simplify requirements found that "those who



The Federal Register, where government rules are published.

write the administrative regulations have, over the years, assumed a decisive posture—when in doubt about legislative intent, the regulation writer's include every conceivable topic, definition, area of applicability, report and record-keeping requirement, time limit and penalty."

The work group called the regulation-writing process an "intriguing exercise of power by the bureaucracy."

Educators point to proposed H.E.W. regulations barring discrimination against the handicapped as an

example of rules that overstep the law. They say the Rehabilitation Act of 1973, as amended in 1974, is a single paragraph in length; the proposed rules for carrying it out are voluminous, H.E.W. has gone beyond its authority, they say, for example, by extending the definition of handicapped persons not only to those with physical impairments, but also to drug addicts, alcoholics, and homosexuals.

Actually there are two different, and sometimes inconsistent, sets of

regulations on the handicapped—one proposed by H.E.W. and one by the Department of Labor.

Overlapping regulations and the confusing paperwork they entail are one of the biggest problems that administrators say they face.

H.E.W., for example, has its own standards for insuring that institutions receiving federal research grants protect the rights of human subjects. The rules provide for institutional review committees to pass on all research projects. Recently, the Food and Drug Administration—an agency within H.E.W.—came out with its own different rules for protecting human subjects. In addition, the Consumer Product Safety Commission has still different regulations.

Until recently, the Energy Research and Development Administration also had separate rules. H.E.W.A., however, has just modified its rules to make agencies interpret regulations in the same way. H.E.W.A. is no longer requiring colleges to set up separate review boards or keep separate records.

## 'Notice of Intent'

Earlier this year, H.E.W. Secretary F. David Mathews instituted a policy of issuing "notices of intent" to promulgate regulations before the department actually published the rules. While regulations issued by Washington education associations praise that move as an attempt to give the public a heads-up in the regulation-writing process, they say a recent notice of intent to publish regulations for the new Education Amendments of 1976 indicates that H.E.W. is still taking it upon itself to change the law.

The notice asked respondents to put a priority on programs, the Washington lobbyists point out—even though, they say, H.E.W. has authority from Congress to decide if some programs in the law should be put into effect while others are not.

Nowhere have the problems of government regulation been more intractable than in affirmative-action regulations. "Without a doubt, the affirmative-action rules have been the most burdensome," said one Washington education lobbyist.

Institutions must comply with regulations under the Civil Rights Act of 1964, which was amended by the Equal Employment Opportunity Act of 1972, with the Equal Pay Act of 1963, with Executive Order 11246, amended by Executive Order 11375, with Title IX of the Education Amendments of 1972, and with the Public Health Service Act.

## Agency vs. Agency

A recent example of the nature of the problem:

On Nov. 23 the Civil Service Commission and the Departments of Justice and Labor published documents in the *Federal Register* outlining practices and procedures that they wanted employers, including colleges and universities, to follow in hiring and employment practices for positions in the federal government. On Nov. 24 the Equal Employment Opportunity Commission released its own guidelines because it did not agree with the Nov. 23 ones. An E.O.C. spokesman said there were "at least 33 differences" between the two sets.

Women's groups agree that the government has often bungled the writing of regulations, making them more cumbersome than they need be, in they say some of the criticism of the regulations is a smoke screen to mask the government's failure not to comply with parts of the anti-bias laws.

Women's a number of educators have come up with proposals to reform the regulation-writing process so it is more than they need be, in the government itself, there have been several recent reforms. More on these later next week.

# Clash Expected on V.A. Rules

Colleges may challenge their constitutionality

WASHINGTON  
A head-on clash between the Veterans Administration and the nation's colleges and universities appears imminent as the result of new rules the V.A. has written.

The rules, which the V.A. began sending to colleges this month, are designed to put into effect a revised GI Bill that Congress passed this fall.

They would require so much extra paperwork, a number of college officials said last week, that enrolling students receiving veterans' educational benefits might be prohibitively expensive.

Representatives of some education groups say they will ask the next Congress, which convenes in January, to amend the law to cancel some of the new provisions. Pulling that, several college officials said, they might go to court to challenge the constitutionality of the rules.

The major problem cited by the educational institutions was a requirement limiting that enrolling students who can receive veterans' benefits, federal aid, and institutional grants to 85 per cent of enrollment in any given course.

Under the old GI Bill, that rule applied only to veterans enrolled in non-degree credit courses. Public Law 94-502, the new GI Bill, was amended to include veterans enrolled in degree programs. Congress adjourned to make the provision apply to all institutions.

At the time, education groups complained that the provision would

force them to make excessive counts of the numbers of students in courses and would discriminate against institutions enrolling large numbers of low-income persons receiving student aid.

In response to the complaints, the V.A. came up with a series of waivers to the so-called "85-15 rule." However, the application process for the waivers is so complicated that it is, "practically impossible to comply with," says Cecil C. Byrd II, director of the National Association of Veterans Program Administrators.

The rules written by the Veterans Administration say:

► The 85-15 ratio must be computed for every separate major or special curriculum in an institution.

► The ratio may be waived for any course if 33 per cent or fewer of the students in the course receive veterans' benefits and the total percentage of students in the institution receiving federal basic opportunity grants and supplemental educational opportunity grants is less than 85 per cent.

► The ratio may be waived if a school applies for a "total waiver" and submits sufficient information on the "availability of comparable alternative educational facilities," the "status of the school regarding a complete history of the school, including such factors as false or deceptive advertising, complaints, and the "general effectiveness" of the

school's program in providing educational and employment opportunities to the particular veteran population it serves."

Washington education lobbyists said that while most institutions would probably be covered by the waivers, the paperwork involved in getting them would be excessive.

## Concern over Privacy Laws

"I'm also concerned that the rules violate federal privacy laws," said James A. Gilbert, associate dean of administrators at Castleton State College in Vermont. He said the V.A. had called on colleges and universities to open all student files for verification of counts—possibly in conflict with the "Buckley Amendments," which protects the privacy of student records.

Mr. Byrd said his association of veterans' affairs administrators thought "it may be unconstitutional to say to a veteran, 'If you are the one who makes it 86 per cent, you can't take a course.'"

He and his colleagues are also concerned that the criteria to be used to judge an application for a total waiver would involve the Veterans Administration in making academic and other decisions about matters involving the internal affairs of educational institutions.

The new rules are effective Dec. 1, but the V.A. said colleges and universities would have 60 additional days to file their counts of students in majors.

—J.W.

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 Editorial
 

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 Will Government Patronage Kill the Universities?
 

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Over 100 years ago, John Stuart Mill, in his essay on "Representative Government," warned: "The disease which afflicts bureaucratic governments and which they usually die of is routine. They perish by the immutability of their maxims; and, still more, by the universal law that whatever becomes routine loses its vital principle, and having no longer a mind acting within it, goes on revolving mechanically though the work it is intended to do remains undone." Still worse, the bureaucratic disease has now affected broad segments of American life, in which the country's educational institutions are perhaps one of its most dramatic victims. For the colleges and universities—until recently comparatively the freest institutions in American life—the new federal regulations have produced, as Earl Cheit put it in a *Change* essay, "a new purgatory, right here on earth."

Just how destructive governmental overkill at the federal and state levels has become has emerged clearly from a national survey the editors of *Change* have just concluded of some of the more egregious examples of governmental intervention. Some state governments, if anything, use their regulatory powers even less intelligently than federal agencies, though there now seems sufficient blame to go all around. In our view, little doubt remains that, should present trends of governmental overkill continue, what were once among the freest of institutions may soon join those now

most constrained. Increasingly, universities are expected to operate like state highway departments and civil rights enforcement agencies. The consequences are apt to be bitter in disappointments and institutional heart failures. The time has come, we believe, to regulate the regulators.

*Change* has been among those national voices that have for some years urged the universities to use their sparse resources more efficiently, to stand in the forefront of equitable employment policies, and to open their doors more widely to women and minorities than other major institutions. And, to a degree, many of these goals are being achieved within the practical limitations of means and economy. But as government generally has become less efficient and more routinized, even the most liberalizing legislation has been metastasized into a series of mindless enforcement and regulatory proceedings that could have come out of *Alice in Wonderland*. We agree with Harvard's president, Derek Bok, when he recently observed that we stand at "the threshold of an era of scarcity and restraint in which the deficiencies of Government cannot be papered over by constantly rising levels of prosperity."

The toll imposed on the universities and colleges is beginning to mount precariously. The cost is not in dollars alone, but in legislative and executive mindlessness that any sane citizen and taxpayer would find difficult to comprehend. The examples are legion, and the following were chosen simply to illustrate the dimensions of the calamity:

- This year's total cost to higher educational institutions of federally mandated programs alone is estimated by *Change* at \$2 billion—or the equivalent of the total of all voluntary giving to institutions of higher education.

- Some federal agencies play a cat-and-mouse game with colleges and universities, giving them, in effect, as little as one week's notice to comply with complex regulations and legislation.



## REPRINTS

This editorial and Earl Cheit's article "What Price Accountability?" (November) have been combined in a special reprint for mass distribution to campuses and government agencies. Free single copies may be obtained by sending a stamped, self-addressed envelope. For additional orders, see inside back page.

- At the state level, we estimate that with every new bureaucrat added to the legislative or executive payroll to oversee postsecondary education, another three college and university administrators must be added in a typically populous state.

- In one state, payment voucher applications were rejected because a college folded them wrong; in another, a governor and his staff have taken over virtual line-by-line veto power on university budgets; in another, state legislators add punitive riders to athletic scholarships because the state university rejected their sons for qualifying scholarships. In one state university, the mandated replacement cost of toilet seats with "split" models amounted to \$35,000. Another spends \$8,000 on state-mandated advertising for each new university regulation.

- "Affirmative Action" advertising, federally imposed on the colleges and universities, is now estimated to cost institutions at least \$6 million a year, though few professional placements ever result from such national advertisements.

- The Internal Revenue Service is now threatening to withdraw tax-exempt status from any educational institution—private or public—that does not practice "equal opportunities" in its recruitment of students.

- Other governmental agencies demand countless bits of useless data, from the names and addresses of all incoming students to a detailed analysis of how faculty spend their time. Follow-up data of recent alumni must now be compiled and published for the benefit of student applicants, while some states demand a complete accounting of every professional membership fee, every journal subscription, and every gross of paperclips spent by an educational institution, down to the last dollar.

- State accountability requirements often parallel federal requirements, but often exceed them, duplicating and triplicating data collection and reporting-out procedures. And regional offices of federal agencies—particularly those of Health, Education and Welfare—will often go beyond those requirements mandated by Washington, thus creating further havoc in some regions of the country.

These and many other horror stories appear to make up merely the tip of a colossal iceberg. The question must now be raised as to whether all such governmental medicine may not eventually kill the patient, a result which not even the most single-minded bureaucrat had intended. We agree with Congressman O'Hara, chairman of the House Subcommittee on Postsecondary Education:

"Surely we have learned in the past two years," the congressman said in regard to HEW's new Title IX regulations, "that however laudable the goal, we cannot trust in the limitless goodwill of government—that agencies that are charged with carrying out the law have an almost irresistible tendency to go beyond the law, and that we have to maintain constant vigilance to see that they stay within it."

The burgeoning cost of compliance is difficult to assay. Both federal and state agencies and the laws they must monitor are now so multiple as to defy the imagination. And time and again, honest answers from educators were not forthcoming in *Change's* search for the facts, since they feared retribution and further governmental interference. One of the most prominent educational leaders in the country pleaded, "We are in a very sensitive relationship with the Office for Civil Rights, HEW, in connection with our desegregation plan.... I am sure you will understand the sensitivity of this matter, and I therefore ask that you treat this as a personal communication to you."

An official of a midwestern private college writes, "It would be unwise for us (and perhaps any other single institution) to bear the brunt of an article of this kind. As a matter of fact, we feel that we in particular should maintain a low profile on this kind of thing, since we have maintained up to now a remarkable degree of freedom from involvement with the Federal Government." A president of a major research university who had stood in the forefront of the civil rights battles of the sixties confided that "we are all beginning to act like the Good Soldier Schweik." One of the Big Ten university presidents characterized the blanketing of regulations as "unreal" and "straight out of Kafka."

The blanketing of regulations is not directed specifically at the universities, of course. But businesses can pass along the additional costs of compliance to the consumer, while public services like educational and medical institutions find such pass-along economics far more difficult. And while the intent of much current social legislation lies in the public interest, it cannot be demonstrated that the resultant costs and administration represent a fair burden, and that such institutions can be pushed into repentant behavior by regulations rather than by law. It is, in the process, no longer government by consent, but by decree, and both regulator and those regulated are the hapless losers.

Twelve major pieces of federal legislation now govern various aspects of college and university behavior, and each opens up worlds of bureaucratic entanglements:

- ▶ *Equal Employment Opportunity*  
Title VII of the Civil Rights Act of 1964, as amended.
- ▶ *Equal Pay Act* of 1963.
- ▶ *Affirmative Action*  
Executive Order-11246, as amended, issued in 1965, amended to include discrimination on basis of sex, 1967.
- ▶ *Age Discrimination in Employment Act* of 1967, as amended.
- ▶ *Minimum Wage*  
Wage and Hour Law: The Fair Labor Standards Act of 1938, as amended (FLSA).
- ▶ *Unemployment Insurance*  
Social Security Act—Employment Security Amendments—1970.
- ▶ *Social Security Tax Increases*  
Social Security Act—Employment Security Amendments—1970.
- ▶ *Benefits—Health Maintenance Organizations (HMOs)* Health Maintenance Organization Act of 1973.
- ▶ *Pensions*—(Note: Public institutions excluded)  
Employment Retirement Income Security Act of 1974 (ERISA).
- ▶ *Wage and Salary Controls*  
Economic Stabilization Act of 1970.
- ▶ *The Occupational Safety and Health Act of 1970.*
- ▶ *Environmental Protection*  
Regulations implemented under several laws by the Environmental Protection Agency.

An analysis of the cost to colleges and universities of implementing federally mandated social programs has just been completed by the American Council on Education (ACE). It makes interesting reading. Using six representative institutions, the ACE study found that 1975 costs to individual institutions represented between 1 and 4 percent of their respective operating budgets, and have increased ten- to twentyfold in the last decade, rising much faster than total revenues. "Results of this study," the ACE report summarizes, "point toward the generalization that the residual effects of implementing federal social, manpower, science, and tax policies have a greater financial impact on higher education than do coherent federal education policies. Some of these impacts on higher education which flow from policies in areas of express national interest are intended, some are unintended, and some are scarcely recognized."

Many federal and state agencies have philosophized that since the carrot has not worked for academic institutions, the stick remains the only alternative. But while there has been evidence of noncooperation between a few institutions and the regulators, it reflects, in our estimate, a small

minority. To threaten and cajole as a surrogate for mutual respect is hardly a reassuring commentary about democratic institutions, academic or governmental. And the resultant cost of years of mutual distrust is simply incalculable.

Many of the present animosities stem from repeated charges of governmental agencies providing insufficient lead time for either compliance or program applications. One of the more notorious examples of such bureaucratic bungling was reported in the September 1975 issue of *Change* (see Richard A. Lester, "The Equal Pay Boondoggle"). We decided to look further into the record, tracing a number of programs announced by the U.S. Office of Education during 1975. Seven programs are cited here, with the date of the first announcement published in the *Federal Register*, and the required filing deadline:

Bilingual Education (FY '74 moneys), July 17 (August 23); TRIO (Talent Search, Upward Bound, Specialized Services for the Disadvantaged), November 29 (January 10); Fulbright-Hays Language & Area Studies, December 17 (January 17); Teacher Corps, December 16 (January 20); College Library Resources (later extended), December 26 (January 29); Public Service Education, March 24 (May 5); and Community Service & Continuing Education, March 25 (May 7).

While the period allowed the bare minimum of 35 days, the actual program time available to institutions is of course considerably less: Institutions must wait for the mailing receipt of the *Register*, and appropriate application materials must then be applied for. And if the smooth working relationship between the colleges and the Office of Education hangs by the slender thread of the United States Postal Service, one can easily imagine the fragility of the entire process. Once received, a growing number of federal guidelines are simply impossible to comprehend. Even a \$5,000 grant can have attached to it applicable regulations reaching 100 pages or more of bureaucratic fine print, and regulations are frequently amended from year to year, even though the grant period may extend over a period of several years.

A more dramatic example of the quixotic nature of this process occurred recently when HEW informed colleges and universities, albeit too late, of the availability of \$375 million in grants under Title X of the Public Works and Economic Development Act. With but few exceptions, most institutions did not even know of the availability of these grants until HEW's September 9 deadline had passed. All requests for an extension have been rejected.

To savor the frequent frustrations engendered in working with governmental agencies, we shall cite a rather characteristic sequence of events hap-

pening around the country. "We were attempting to submit a document under a deadline of 4:15 p.m. to a certain field office in (city)," reports one state college president. [It was not the Office of Education.]:

Because of difficulty with the mails, we chose on Wednesday to hand-deliver the package via someone on our campus who would be going to the San Francisco area. We located such a person, who had flight reservations out of Los Angeles International Airport at 12:45 on Friday afternoon, with scheduled arrival at San Francisco International Airport at 1:45. We notified the Western Field Office that we were using this procedure, and that our completed proposal was in hand and ready to go. On Friday morning, [the airport] became completely fogged in, and the flight (with our proposal aboard) did not depart until 3:00, arriving at San Francisco International at 3:52. Our emissary telephoned the Western Field Office to indicate that we were waiting for a rental car and would be there as soon as we could clear the airport. We arrived at the appropriate desk in the Western Field Office at precisely 4:35 (43 minutes after arriving at the airport, and 20 minutes after the announced deadline of 4:15).

The specific person at the agency was not even there—she was said to have walked out at 4:15. We gave our papers to a gentleman who said he would tell the appropriate person how diligently we had tried to overcome adversity and arrive on time. But the papers were subsequently returned because they were "received too late."

Our questions are obvious. Why an unrealistic deadline on a normal working day of 4:15? What is the problem with 5:00? What is the reason that normal courtesy and consideration cannot be extended to people who are traveling 400 miles, when the individuals are "checking in" by telephone at every step of the way? And what difference is there in fact between a deadline of Friday afternoon or a more realistic time on Monday morning—when nothing was done with the proposals over the weekend? And finally, where is the human quotient in such an obstinate bureaucratic process that cannot yield a bit in structure to accommodate uncontrollable extraneous circumstances when such conditions are known to exist?

Such events illustrate the unreasonableness and arbitrariness with which some governmental agencies now seem afflicted. And increasingly, federal demands for accountability affect private and public institutions alike. The proposed regulations of the Internal Revenue Service that would determine whether tax-exempt organizations have racially nondiscriminatory policies in terms of their student bodies occasioned this letter of protest by Stanford University President Richard W. Lyman to Treasury Secretary William E. Simon:

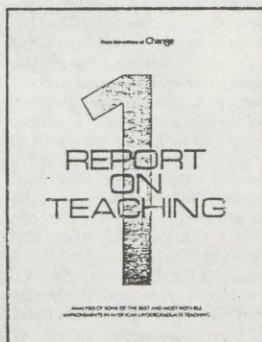
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# Change

In Forthcoming Issues

Ronnie Dugger on The Community College Comes of Age  
 More on The American Future: Robert Bellah, Brigitte Berger, Marcus Raskin, Burton R. Clark, Adam Yarmolinski, and others.  
 Fred Crossland on Unionization and Governance  
 Eleanor Lenz on the Humanities in Action

In March



This special issue is the first of two annual evaluations of some of the most creative teaching now going on in America's colleges and universities. Prepared in cooperation with the leading disciplinary associations, and presented by fields of study, this special report explores the most challenging aspects of the educational agenda.

In April

BOOKS & MEDIA

Doris Grumbach on Spring Books and Trends  
 Andrew Glass on Public Radio  
 Ruth Fischer on Academic Freedom  
 Major Review of the Feminist Journals  
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## Editorial

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*At the very least, the IRS proposals are oblivious to the web of regulations that already exist [in the case of Stanford]. Stanford, which is quite representative of others, is monitored for various purposes by HEW, the Department of Labor, EEOC [Equal Employment Opportunity Commission], and the State of California Fair Employment Practices Commission.... The [IRS] proposal would have every private institution keep for three years its applications for admission, for financial assistance and for employment. Further, it would require that in all cases in which an applicant is rejected a record of the reasons for rejection be made and kept. Let me give you some idea of what that would involve at Stanford, which is after all not a very large institution.*

*Applications for admission to the freshman class that entered in the Autumn of 1974 numbered 9,373. Of that number about 2,000 were offered admission. There was an additional group of 1,747 applicants for admission above the freshman level. In our graduate and professional schools there was a total of 17,689 applications for admission; 3,844 were successful. At the extreme was the Medical School with 4,553 applicants for 158 offers of admission, and the Law School with 3,165 applicants for 460 offers of admission.*

*"While it is clear," replied Secretary Simon, "that the Internal Revenue Service must discharge its duties faithfully and fairly, I believe it can do so without imposing duplicative and expensive administrative burdens on private universities."*

A more preemptory response to such growing incursions has more recently been given by the trustees of ultraconservative Hillsdale College in Michigan, which has consistently rejected federal funds for fear of governmental interference. But since October, even independent colleges are defined as federal recipients if any student receives governmental loans, grants, or veterans' benefits. "Rather than allow such a federal takeover of our campus," vows Hillsdale President George Roche, "we are prepared to refuse compliance with the government edicts now proposed. None of us

at Hillsdale underestimates the power of the federal government to harass and possibly destroy those who do not comply, but we feel the fight must be made if independent education is to endure in America."

For different reasons, Brigham Young University has challenged the federal guidelines barring sex discrimination. "Where we believe the regulations are unconstitutional," announced the determined trustees, "or illegal and where they prohibit or interfere with the teaching or practice of high moral principles, we will not follow them."

There are a growing number of cases where federal and state regulations affecting university life can be considered nothing less than ludicrous. New federal guidelines concerning affirmative action for the handicapped—welcome legislation, in our opinion—require as part of the internal dissemination of information to employees the conduct of "sensitivity sessions" for all university and college employees. Department of Labor employees, it seems, have been suffused of late with sensitivity training. "If the Department of Labor needed it," avers one DoL administrator, "the country does, too." The prospect of having universitywide sensitivity sessions on any topic surely remains a challenge for the doughtiest of university leaders.

Similar bureaucratic *tours de force* abound: The University of Illinois recently built a new walkway with a railing required by new occupational safety regulations. But the railing was 37 inches high, while the regulations called for 42 inches. The university estimates that it would cost \$24 million to bring this and other occupational hazard regulations into line, including the replacement of toilet seats.

Under new rules promulgated under the guaranteed student loan program, educational institutions are required to survey the status of last year's graduates. Total cost to the institutions is estimated at \$25 million a year. And HEW's disastrous "Berkeley Plan" for affirmative action is estimated to have cost the universities \$250,000 in administrative costs alone. The cost to universities of students inspecting their college files, permitted under the recent Buckley Amendment, is estimated at several hundred thousand dollars a year.

Beyond costs, there is, of course, the never-ending prospect of paperwork. On the federal level alone, more than 100,000 agency employees are now occupied with the writing, reviewing, and enforcing of regulations. The number of government forms, according to one estimate, has risen to 5,146, exclusive of tax and banking forms. One government authority puts the cost to consumers of federal regulatory programs at \$130 billion a year, or well over three times that spent on all of

post-high school education combined.

For the colleges and universities, the more mendacious aspects of complying with socially beneficial programs are particularly vexing, since most educators are ideologically in favor of their legislative intent. But their full act of compliance may kill them in the end. Far better data must now be generated by educational circles to make a public case for a retreat from this high watermark of governmental excess. Nor should university programs, such as equal pay in grade, or ethnic or minority curricula, be included in the cost of doing business with government. These activities should be carried on in any event, regardless of governmental pressures.

There will also be temptations to exaggerate the high cost of compliance. But a voluntary and honest accounting of their public business and performance will in the end win the case for the universities. Even in unreasonable times, and among unreasonable men, the sanity of sheer logic will in time prevail. It is as much up to the leaders in education as to government to decide what constitutes reasonableness and what does not. Thus far, education has not yet made its case to everyone's satisfaction. It is high time that it does.

Responsible officials in legislative and executive offices, both in Washington and in the state capitals, must forthrightly recognize the distinction

between reasonable governmental oversight and the pettiness into which matters can so easily descend when governmental restraint is replaced by capriciousness. The universities cannot be run any more like state highway departments than can a state legislature. Nor are educational institutions the private fiefdoms of a governor or a legislator hell-bent on cost cutting and on penalizing the pointy-heads in the universities.

It is the cumulative effect of legislation piled upon legislation that now threatens to kill the universities. It is thus the whole fragile organism that is at high risk, and the wisest leaders in Washington and in the state houses must now come forward to avoid the destruction of their educational institutions.

The President has just asked for another \$6-million appropriation for his Federal Commission on Paperwork. We would suggest that the answer to the problem lies not in the In and Out boxes of bureaucrats, but in the brains of people who should know better. In view of the widespread damage that has already occurred, particularly in regard to our educational institutions, perhaps the best advice to be given to government zealots is, "When in doubt, do nothing!"

Restraint, one needs reminding, is still the only guarantor of the survival of democratic institutions.

—G.W.B.

# What Price Accountability?

by Earl F. Cheit

The new regime in higher education is one of review procedures, regulation, litigation, and demands for information. Together these now account for so much of the energies and attention of college and university officials that the whole House of Intellect could soon be buried in an avalanche of paper. The public events of higher education now deal less with its goals than with its regulation. Meeting external demands for information and compliance with regulations has become a principal concern of institutional life. It is no longer surprising when the report of a college counsel is the longest item on the trustees' agenda.

What is surprising is how quickly things changed, and with what inevitability the new order of things has been accepted. The issue now is not whether higher education needs to be made accountable, but whether the accountability movement itself can be made accountable. Signs of this new age surfaced, to give but one example, in the Higher Education Amendments of 1972—Section 503, which specified a formal procedure for regulation making. Then, in 1974 the National Commission on the Financing of Postsecondary Education (see *Change* editorial, March 1974), created by the 1972 amendments, urged as its major recommendation definition and collection of institutional unit cost data at the national level; the new era of regulation had arrived. Happily, college

and university officials defeated that recommendation. In the long bureaucratic war, however, they would suffer defeat.

To illustrate what is going on, one only need look at education's traditionally "slowest" time, the month of August. For many officials of the nation's colleges, universities, and educational associations, this year's August calendar began not with a vacation but with a fast trip to Washington, D.C. Their purpose: not to talk about the vision of universal access or pure research, but to tell a Senate Subcommittee on Education that procedures for complying with federal regulations had become so costly that new regulations were imperative. In part, these should include budget provisions to reimburse institutions for costs they had already incurred in complying with a variety of regulations, such as the one on student aid. Furthermore, they urged that new measures clear up misinterpretations of congressional intent in the administration of existing regulations. The matter is now under review.

No sooner were these hearings completed than it was time for a larger number of officials to rush to Chicago for a special national meeting, this one called by collegiate institutions themselves in order to deal with complex internal regulations for athletics. There, after several days of vigorous debate, leaders of these institutions adopted regulations that reduced from 105 to 95 the number of permissible scholarships for football, and ruled that a home team may suit up only 60 players, a traveling team only 48. Since the existing regulations do not cover games played on neutral terri-

EARL F. CHEIT will become dean of Business Administration at the University of California at Berkeley this January, and is senior research fellow of the Carnegie Council on Policy Studies. His recent books include *The Lyrical Arts and the Liberal Tradition* and *The New Depression in Higher Education*, both sponsored by the Carnegie Commission on Higher Education. Another version of this article was delivered as a speech before the Association of Colleges and Universities of the State of New York.

tory—such as a Penn State-Temple University game played September 6 in Franklin Field, Philadelphia—even further regulations will be required. An official ruling declaring Temple, a Philadelphia team, the visitor, was being appealed to the NCAA when a federal court enjoined enforcement of the 48-60 rule. More appeals and rules are planned.

In the meantime, officials hurried back to Washington for the third week of August, this time for affirmative action hearings focusing on Executive Order 11246, and Department of Labor Revised Order No. 4. Two and one-half days of expert testimony seemed to produce the consensus that colleges and universities should not follow the formula that led Berkeley to conclude that by the year 2000, its faculty needed to include 1.38 blacks in social welfare, 0.19 women in engineering, 1.4 orientals in architecture, and 0.05 native Americans in drama. New directives will seek better approaches, to which end further hearings were held in September and October.

This Washington hearing on affirmative action was not as heavily attended as had been expected. Some college and university officials no doubt used the time to get ready for the September and October hearings. Others may have been more interested in the National Student Congress sessions dealing with another recent set of regulations concerning access to student information.

That meeting on student information regulations, also held in Washington in mid-August, featured a federal official of increasing visibility in higher education—HEW's Fair Information Practices Director Edward Gleiman. Mr. Gleiman allowed that the Buckley Amendment on student access to college files was, at best, vague. But he offered hope for the future. By the end of the year, he promised, new regulations will be out. However, he and his staff of four must first complete their study of over 6,000 inquiries. And that will take time, according to a recent interview with another federal official of increasing importance to higher education, the Regulations Coordinator of the Office of Education, Neal Shedd.

So much for national events for August, admittedly an off-month. The on-going state business of reviews regulation and demands for information would have been enough to keep a college official tied to his desk the whole month. Along with considering new programs, existing programs must continually be reassessed. This practice will increase in an era that demands change through reallocation rather than growth. In addition

to preparing for program reviews, campus officials will be making appeals from the decisions based on earlier reviews.

Along with these reviews and regular fiscal audits, a new type of review or audit is coming into use. In the first report to come out of his illuminating study on state budgeting for higher education, Lyman Glenny found that, of the 17 states studied, "14 had separate executive or legislative staffs that did policy-oriented performance or evaluation audits, as distinct from routine fiscal audits. These performance audits consist of specialized assessments of specific topics rather than overall institutional evaluations. In most instances, these separate audit staffs have made performance studies of higher education institutions. Performance audits have proliferated during the past five years and existing staffs are becoming larger. The role these staffs play in budgeting for higher education will probably grow increasingly important." No one could be blamed for staying home on campus to try to cope with the full implications of this new review procedure.

With August business attended to, the leaders of the nation's colleges and universities could turn to September and not even notice the difference. In the new way of things, September was less a break from August than an extension of it. September always brings the next installment of all the above business, plus the other routine academic pleasures: allocation formulas, 1202 commissions, CETA funds, OSHA rules, the bankruptcy code on student loans, FTC regulations on advertising, BEOGs and SEOGs with too many limits, and SSIGs with too few funds. And this list represents just a small sample.

Such fevered administrative activity defies simple description. But it suggests one clear conclusion: Higher education may be a faded passion of the 1960s, but it is a fully established bureaucratic enterprise of the 1970s. In 1972 the Office of Education published a total of 32 documents in the Federal Register. In 1976, it expects to publish 270 official notices and regulations. If it continues at this rate, in just five years, the number of published federal regulations alone will exceed the total number of colleges and universities. A new purgatory, right here on earth.

Just a few years ago, higher education was accused of being the servant of the Department of Defense. Today, it is fast on the way to becoming its bureaucratic equal. Defense leads higher education in hardware; I rate it a draw in software. But when it comes to acronyms, higher education has the margin of overkill. Our active vocabulary now includes NCHEMS, SHEEO, HEGIS,

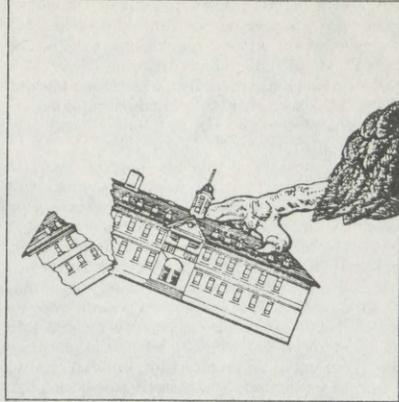
WICHE, SREB, NEBHE, FIPSE, FISL, and ACNE, as well as others which I will spare the reader.

On the bureaucratic bottom line, at least, the stock of higher education is rising. I refer, of course, to staff. There are bureaucratic staffs on state legislative committees, state executive office budgets, state departments of education, state budget offices, and state legislative audit offices: in an impressive variety of federal offices, legislative and executive; in state higher education systems, on coordinating boards, governing boards, and planning agencies; and, of course, their necessary counterparts in multicampus systems and on individual campuses. The total number of these staff persons must surely rival the number of persons actually teaching. If not, they will soon. Faculty numbers are declining, but staff size and the number of paper shufflers are increasing.

All this stands in sharpest contrast to the character of higher education as it was shaped by the Populism that began before the Civil War and as it has developed for well over a hundred years. The view that what was worth doing for an elite was worth doing for others had combined with an even older belief that the nation's welfare depended importantly on higher education. These national sentiments produced a movement which created phenomenal growth in American higher education. With depression, war, and periods of anti-intellectualism, that movement had its ups and downs but probably reached its peak shortly after that Cold War day of October 4, 1957, the day that the Soviet Union launched its Sputnik. In a famous message, President Eisenhower told a nation concerned about its scientific lag in schools and colleges, "Our schools are more important than our radar warning nets and more powerful than the atom."

If an important national official had made a speech about higher education today, his text might well have been, "Although procedures for defining the federal state interface have not been finalized, new regulations are planned. Our goals are to improve planning, governance, and accountability. All that stands in the way is a better data base, which, based on uniform definitions, and processed by a better information system, can be made operational soon."

**W**hat has happened to the vision, the great goals, the movement that produced our colleges and universities? Public officials have taken the goals very seriously and most states have taken formal steps to adopt them as state goals



for higher education. Consider three states in widely differing sections of the country: New York, Indiana, and Washington. In its report submitted to Governor Rockefeller in 1973, the Keppel Commission examined official actions of the governor, the legislature, and the board of regents, and showed that these comprised for New York five basic policy goals.

1. Every New York State high school graduate with the desire and ability to pursue postsecondary education should be provided full opportunity to do so without regard to financial ability, sex, race, or geographic residence in the state.

2. Diverse opportunities should be available to students to pursue postsecondary education. A pluralistic system of postsecondary education should include institutions which are large and small, public, private and proprietary, traditional and experimental, urban and rural, and should have programs ranging from noncollegiate and vocational to the most advanced scholarly and professional fields. It is essential that both private and public sectors be kept strong in order to encourage maximum diversity.

3. Genuine freedom of choice should be provided to students to select the institutions and programs most appropriate to their needs and abilities and at whatever time in their lives further education is needed.

4. The overall quality of postsecondary education in New York should be maintained and improved.

5. The size, complexity, and cost of the state's system of postsecondary education require effective statewide governance, planning and coordination, and concern for the most effective use of resources. Institutional initiative within this framework must be maintained and strengthened to insure achievement of this goal.

The Indiana postsecondary education Master Plan sets forth the four policy objectives of that state as follows:

1. to preserve and strengthen the vital instructional, research, and public service functions performed by Indiana's statewide system of postsecondary education;
2. to assure the availability of education programs that meet both the overall needs of society and the differing requirements of diverse individuals;
3. to promote the welfare of Indiana's citizens and to ensure continued State progress; and
4. to utilize the valuable educational resources of the independent postsecondary institutions in Indiana.

In the State of Washington, a study commission in 1972, under the auspices of the Academy for Educational Development, reported that:

There is no officially adopted statement of goals for postsecondary education in Washington, but legislative action, constitutional provision, and statements of educational leaders converge to suggest an implicit set of goals for the system. These sources warrant the inference that Washington wants a higher education system characterized by:

1. Accessibility for all citizens who can benefit from postsecondary education to programs that accommodate their particular needs and talents.
2. Equity both as to access by facilitating participation and equality of opportunity and in apportioning the costs among users and taxpayers.
3. Responsiveness to the particular needs of individuals and to the state's requirements for talent and service.
4. High quality to be achieved in part through diversity, autonomy and accountability.

Furthermore, we infer that the system should work toward these goals with maximum efficiency and effectiveness.

The main themes of these three state documents are remarkably similar. They emphasize access and opportunity for students; strength for institutions; diverse forms for the needs of citizens; and efficient use of resources.

One answer to the question, What happened to the vision, the goals, the movement?, is that growth and progress have converted it into a vast bureaucracy, that for vision to move toward reality, some procedure and regulation are inevitable. In finances, for instance, much of the regulation concerns funds appropriated to extend access. This view holds that the burgeoning of higher education necessarily involves all levels of government; in the progress toward goals, regulation and administration become increasingly necessary.

But others argue that the current bureaucratic situation is the result not of progress but of the shortcomings of higher education: without regulation and bureaucracy higher education could fulfill neither its "traditional" goals, nor its new social missions, such as efficient use of resources and affirmative action. Other big issues, such as who attends, who benefits, who pays, and why go at all, have not been settled yet either. Under this argument, regulation is a necessary price if higher education is to accomplish its missions.

What do we do with the growing bureaucracy that has replaced the American higher education movement? Max Weber taught us that progressive "rationalization" is an inevitable characteristic of modern life. But we still have to contend with a situation in which procedure begins to dominate ideas, where the costs of regulation and review alter educational priorities, where the main events of August and every other month become increasingly technical issues, where the very language of higher education becomes the province of specialists.

If ever there was a period for stock taking, for reappraisal and consolidation, this is it. Educators must first of all admit that regulation and review have come about largely because of their own failures, for example, in the field of affirmative action. It is too late to turn the clock back and expect bureaucracy simply to disappear. Where issues of access and employment opportunity are concerned, the least persuasive argument against regulation is the desire to do business as usual. Experience reveals that no foe resists conquest more aggressively. After a year's efforts to reduce bureaucracy, a Federal Communications Commission special committee just reported no progress.

Although not all advocates may agree that this is a period for taking stock, the institutional parties might. Federal agencies are far behind in their work. Regulations on National Defense Student Loans and work-study—almost four years overdue—are not out yet. The Carnegie Council described the regulatory situation in affirmative action as chaotic. The Office of Education cannot catch up with the Guaranteed Student Loan program—so millions are being paid out in overbillings. In research funding, instability is as much a problem as outlays, and staying with one theory for a while could be helpful.

Colleges and universities are struggling to adjust to reduced growth under extraordinarily difficult financial circumstances. They are just beginning to identify the costs of mandated pro-

grams and will need time to incorporate their findings, if the programs are to have real meaning.

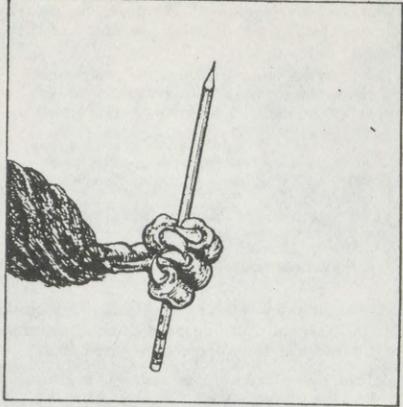
The states need to reexamine important traditional goals in their new context. Despite the large federal role in higher education, states will play the basic role of planners and funders, and should have the time and opportunity to participate more actively in the formation of federal policy on higher education.

Although historically the basic relationship of higher education to the state is sound, increasing regulation and review pose questions. Individual states have built their relationships on the most sophisticated legislative procedure in democratic government—the self-denying ordinance, by which states created and funded colleges but had only limited powers of review and control. Increasingly, it appears that the self-denying ordinance is being amended to give states increased review and regulation, but not in response to a conscious new theory, or the vision of larger goals. How should the self-denying ordinance be amended? What should the new relationship be?

In the case of the nation state too the relationship is changing. Historically the federal government performed a role as planner or entrepreneur only in the case of the service academies. Otherwise, it restricted its role to that of purchaser of higher education services. Now, as a very large purchaser of education, it is beginning to insist that purchases be made increasingly on its terms. How far should this power extend? What are the principles that define its limits?

Unless academics analyze and understand this strategic situation, these larger questions will get lost in the rush of regulation and review. Some issues—for example, the role and the future of research universities—never even get discussed. The rise of this bureaucratic presence tends to restrict the horizon, and make short-run considerations most important. Bureaucracy not only changes the time perspective, but eventually develops its own goals. In his study of the antitrust movement, Richard Hofstadter shows that the transition from movement to bureaucracy meant also the change in priority of goals, with the control mechanism itself assuming new political and social importance.

The next five years will be crucial for bringing bureaucracy and higher education to terms. These are key years of declining growth in higher education enrollments. The levelling of enrollment growth and eventual stability should have been reached by the end of that time. Since adjustments to declining growth are more difficult than maintaining stability, this period will bring the



most important internal adjustments, and the need for self-help and local initiative will be greatest.

If the new political style in the state houses of Massachusetts and California reflects future trends, the conditions that foster self-help and local initiative will become increasingly important. People who today are thinking in terms of strong, centralized state boards of education are likely to find that an outdated idea five years from now.

Academics must assume that there will be no "truce" between higher education and its patrons who are demanding regulation and review. But the leaders of colleges and universities must themselves keep the goals of higher education alive in public discourse, restating them in their new context. Educators will find an unexpected source of help in the sophisticated, responsible critics who are currently raising questions about the value of investment in a college education in general, and a liberal education in particular. Academics have always assumed they knew the answers to these questions; now they are forced to state them convincingly.

Academics must work to make the accountability movement accountable. Information is not free, or even inexpensive, and they should insist that it be treated as a valuable resource. The American Council on Education study of the costs of mandated social programs is an important first step toward identifying the impact of new programs. But except for their cost burdens, we know almost nothing about the impact of review procedures. Yet much information required in the name of review procedure and accountability is

not used in the resource allocation process.

Even if no truce is in sight, academics must promote the discussion of what the terms of such an arrangement might be. Instead of increasingly complex webs of procedural relationships and official regulations, now in the hundreds, and soon in the thousands, are there not a small number of

performance criteria, fiduciary and procedural standards, that would permit measurement of progress toward important goals, yet not require progressively greater governmental regulation? The time to turn that tide is now, before the educational establishment collapses under the weight of its own paperwork.

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Mr. BUCHANAN. Thank you, Mr. Chairman.

Mr. O'HARA. If I could take up a variant of the complaint Mr. Buchanan just noted, the complaint about some of the detail and perhaps unnecessary information required on applications under one program or another, I want to call your attention to the fact that Congress in trying to reduce that problem. For example, here in the co-op education provisions, the new title VIII, section 802, we go ahead and we made some changes that I would like to call your attention to 802(b), (4) for instance, is a replacement of the 03 that provided for the making of such records in such form and contain such information that the Commissioner may reasonably require and so forth and so on.

We tried to cut that down, providing instead that the applicant should keep such records that are essential to insure that the program's activities are conducted in accordance with the provisions.

We have done that in other places, as well, and I am sure you are aware of it. We are serious about that, too.

We think that you are, in many of these application procedures, requiring information which while interesting and useful, it is in excess of what is really essential in these things. It is causing a good deal of difficulty for institutions and applicants. The most recent one that came to my attention was part of another act, the new Public Works Employment Act. In order to assure that they were meeting the nondiscrimination requirements, applicants were asked to provide all kinds of things. They wanted a case history of every complaint that had ever been made against the applicant on the basis of discrimination.

You can imagine. I heard from a major university, one of the largest in the country, saying, "We have had, with 40-some thousand students, I do not know how many thousand faculty, staff, employees, and over the last half dozen years, we have had a whole load of complaints. How come we have to complete an application that goes into all of those? Is this really necessary?"

I think there is quite a bit that is not really necessary.

Do you have any sort of plans for reviewing applications, anythink like that?

Mr. PIERCE. Yes, we do, Mr. Chairman.

First of all, we will take, as I indicated to you, in regard to the limitation of authority, we will take particular cognizance of the sections that you noted and others regarding that issue. That is an ongoing problem that we deal with all of the time. The Assistant Secretary of Education has a task force in place where any new information being requested by any program must clear the task force. The Director is responsible for seeing to it that no program is asking for information already asked for by another program. There is no redundancy.

If we did not have the information, we could get the information from the other material.

Mr. O'HARA. That is a good point. That is what I hear complaints about. Does anybody ever look at these damn things? That is the question that I get quite often. They turn in these books. They really wonder if anybody reads them.

Mr. SPEARMAN. Having been a part of the bottom bureaucracy for

the past 8 years, I can confirm this: our clearance officer becomes a very difficult guy to deal with in sending information through on applications that we do not need. He holds us pretty tight. The second check has been the Office of Management and Budget. The information we request on applications is pretty much restricted to: Is the question related to a funding decision? If it is not, we are encouraged not to include that item. In fact, we have tried to reduce the size of many of our applications, as you well know. For instance, in the early days of special services programs, when I got here, we gave a whole booklet out to institutions, and now it consists of only three pages of information. A very real effort has been made to simplify.

Mr. O'HARA. I want to commend you for that. You are right, that has been going on. There has been some improvement, and I really think that that is terribly important.

I was the original and, I think only, proponent of an idea some years ago that we write into the law a provision requiring that no application form consist of more than two sheets of paper 8½ by 11 inches printed in 10-point pica. You really have to make a choice, what things do you really have to know, or else you do not have room.

Mr. PIERCE. We find creative ways to handle that. We leave off the name of the institution. It gives more room.

Mr. O'HARA. I just wanted you to know of our concerns, and I think I am speaking for the committee as a whole.

Mr. BUCHANAN. Mr. Chairman?

Mr. O'HARA. Mr. Buchanan?

Mr. BUCHANAN. Mr. Pierce, did you have a further response a moment ago? I think I cut you off.

Mr. PIERCE. I wanted to clarify a point. I did not want to leave the impression by my statement about the number of letters, that there was not a great deal of interest by people and that no interest is being expressed in the public hearings. We had 200 people in the Dallas public hearing. All of those people, insofar as they made public statements, or they gave us written statements at that time, are on record, since there are transcripts made of those hearings. So even though we only have two letters, that is not necessarily indicative of all the information and all the input we are getting.

We had 150 people in Kansas City. There is a hearing going on now in San Francisco and other places. I did not want to leave the impression that the public was magnificently uninterested in this. They are not. They are responding, I think, in appropriate ways.

Mr. BUCHANAN. Thank you.

Mr. SKY. I just wanted to respond to the chairman's point, with respect to those statutory provisions where authority has been altered or withdrawn; we in the Office of General Counsel are very much aware of that. We are very much taking that into account in our role in the review of those regulations.

Miss Margaret Conway, senior attorney with respect to the very program which you have been discussing is here, and I think she is very conscious of those changes.

Mr. O'HARA. I am very pleased to hear that. I will be keeping an eye out for it. You may get a nice letter from me one of these days.

Mr. BUCHANAN. Mr. Chairman, since this is our last meeting, I would like to express my appreciation for your leadership, not only

in this, but in many other ways. It has been a great pleasure to work with you.

Mr. O'HARA. I thank the gentleman from Alabama. I do prize that, the gentleman from Alabama has been one of the most constructive members of the committee and one of the most diligent and I appreciate his comments.

I would like to mention one other thing. Mr. Thompson very much wanted to be here because he wanted to ask some questions about the Thompson-Eshleman amendment, 411 (e); and the regulation process as it applies to that. However, Mr. Thompson called me to indicate that a very urgent matter had come up and that he could not be here.

When last seen, he was heading for the Department of Labor with a steel tape measure in his hand, so he asked if he could be permitted to submit some written questions regarding those procedures. I indicated that I thought that that would be all right.

Would that be agreeable to you?

Mr. PIERCE. Certainly, Mr. Chairman. We would be happy to respond to those questions.

Mr. O'HARA. We will keep the record open for written statements through December 31, and Mr. Thompson will have to hustle, if he wants to get his questions in.

Mr. PIERCE. Mr. Chairman, if I may interrupt, I want to sound an afterthought.

You know that this is my first opportunity to appear before you as chairman. I asked my colleagues what to expect. They told me that they wanted me as their spokesman to convey to you their thanks, as has Mr. Buchanan, for the leadership you provided to us and the delightful assistance and help that you provided from your position to the Office of Education and Higher Education. They wanted to suggest, too, that we are going to miss you sorely.

Mr. O'HARA. Thank you, I am going to miss working with you, but who knows? Maybe we will both learn a lot and later on, we can work together in some capacity.

Mr. HARRISON. Mr. Chairman, may I be recognized on behalf of the staff? Mr. Chairman, this has nothing to do with you, actually, but with some subcommittee equipment. The staff of the Subcommittee on Agricultural Labor which was the first subcommittee of the House of which you were the chairman, presented you, 6 years ago, with a brand, shiny-new gavel that the clerk of the subcommittee is now holding.

According to the best count we have been able to keep, you have used it to preside over 116 hearings of that subcommittee, the Special Subcommittee on Education and the Subcommittee on Postsecondary Education. The gavel has presided over the subcommittee discussions of minimum wage for farmworkers and students—with approximately equal success—over examinations, I think everybody would agree, in painful detail of every facet of higher education policy within your jurisdiction, and some which some thought were not.

The gavel played a small, but noisy, part in the consideration of reforms in the guaranteed student loan program, two or three amendments in the basic grant program and, of course, the Education Amendments of 1976.

The gavel, Mr. Chairman, like yourself, has given and taken some

hard knocks in the 6 years. But when it was new, it had on it a very shiny silver band that contained some expressions of our own personal sentiments as your staff. That silver band has remained remarkably untarnished by the hard work to which it has been put, and we think that says something about how it has been used.

We bought the gavel with our own money—not the public's—and we are exercising our residual rights to remove it from the subcommittee and ask you to carry it in your retirement with you until you need it.

Mr. O'HARA. Thank you, Mr. Harrison, I appreciate that. I might add that you have forgotten something. This gavel was also used in connection with the meetings of the Democratic National Committee's Commission on Rules and the Rules Committee of the Civil Rights Commission, and there are a lot of people still mad at us over that, and they have long memories.

Mr. HARRISON. In your spare time, Mr. Chairman—

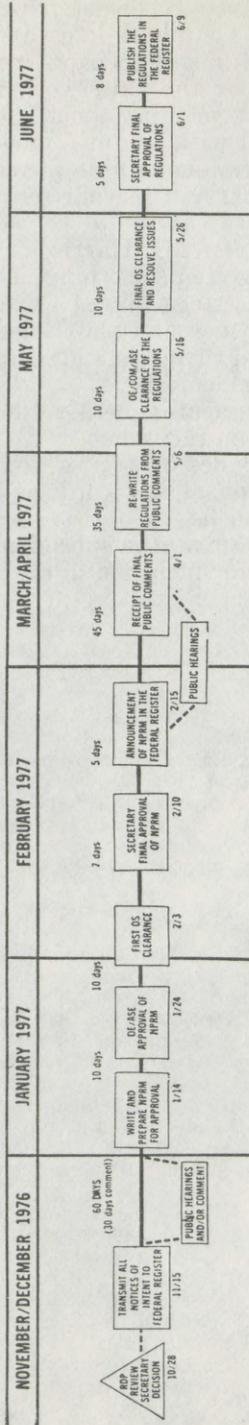
Mr. O'HARA. Thank you very much.

This, therefore, concludes today's session of this Subcommittee on Postsecondary Education. The record, as I indicated, will be held open. Thank you very much.

[Whereupon, at 11:35 a.m. the subcommittee adjourned sine die].

[Material submitted for inclusion in the record follows:]

### PROTOTYPE SCHEDULE FOR REGULATIONS DEVELOPMENT Public Law 94-482



EXCHANGE OF CORRESPONDENCE BETWEEN CONGRESSMAN THOMPSON  
AND COMMISSIONER AGUIRRE

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON EDUCATION AND LABOR,  
SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS,  
Washington, D.C., December 17, 1976.

COMMISSIONER EDWARD AGUIRRE,  
*U.S. Office Education, Department of Health, Education, and Welfare, Wash-  
ington, D.C.*

DEAR COMMISSIONER AGUIRRE: During the December 16 oversight hearing before the House Postsecondary Education Subcommittee on implementation of the Education Amendments of 1976 (PL 94-482), the representatives of the Office of Education agreed to my request that written responses for the record be supplied by the Office of Education to my questions concerning implementation of Thompson-Eshleman amendment. By this letter I am exercising that option.

By way of background, on November 19, 1976 a letter was sent from the Office of Education to the Governors of the states inviting participation of their representatives at a meeting in Washington on November 29, the Monday after Thanksgiving weekend, to discuss implementation of the Thompson-Eshleman amendment. The letter of the 19th requested the states to indicate their interest in participating in the experiment by November 23. In the case of New Jersey, the letter was not even received by November 23. Nevertheless, New Jersey did learn of the meeting and was represented. The scheduling of this meeting aroused suspicions of bad faith and of an attempt by the Office of Education to derail implementation. This atmosphere of suspicion is also in large measure of the result of the past resistance of the Office of Education to multiple contracting for the processing of the Basic Grant, which led to the passage of the amendment in the first place. At the meeting of the 29th, which a member of my staff attended, you pledged a good faith effort to achieve expeditious implementation of the amendment consistent with the law and congressional intent. I hope that that commitment still stands.

At the meeting of November 29, four options were developed for implementation of the amendment. Which of these options or what other course of action has been decided on by you for the expeditious implementation of the amendment?

What is the timetable for future steps to implement the amendment?

At the meeting on November 29th, a commitment was made that there would be a future meeting with representatives of the interested states to discuss the next steps in implementation. What is the date for this meeting and what will be its agenda?

Is it your understanding that the experiment in state processing may and, given the time constraints for the coming year, should extend for more than one year? This is certainly my understanding of the amendment and the intent of the action taken by the House-Senate conference.

At the meeting of November 29th, my staff was assured that a summary of the meeting and the option paper prepared for your review and decision would be provided to us in advance of your consideration of the options, both as a means to keep us fully informed of your progress and to allow for our comments on the way in which the options were stated. It is my understanding that this option paper was given to you on December 10, 1976. We have not yet received either a summary of the meeting or a copy of the option paper. This naturally rekindles our suspicions concerning the Office of Education's intention to implement the amendment. When will we receive these documents? Why did we not receive them as promised?

The amendment specifies that between two and five states are to participate in the experiment. It has come to my attention that the Office of Education reports that six states have indicated an interest. It is suspected by some familiar with the states involved that one or more of these expressions of interest have been ginned up to push the number of interested states over five. The consequence of pushing the number over five would be the need for an application and selection process that would substantially delay implementation. I hope you will look into this situation. I would also hope that you could reassure me that there is and will be no such attempt to sabotage implementation.

At the meeting of November 29, the representatives from New Jersey were promised a copy of the software documentation for the BEOG's processing system. They have not yet received this material. Why has it not been received by them? When will they receive it?

The hearing record will be open until the end of this month, and the representatives of the Office of Education agreed to that deadline for responding to my inquiries that are contained in this letter. Please communicate your response to the Subcommittee on Postsecondary Education for the hearing record. I would also appreciate a copy of your response sent directly to me.

In concluding, I would emphasize that every day of delay in moving ahead on the implementation of the Thompson-Eshleman amendment dims the chances for the success of this experiment. I will certainly continue my active interest in this amendment, and I hope that the current transition period will not delay action.

Thank you in advance for your attention to my inquiries.

Best wishes for the holiday season.

Respectfully,

FRANK THOMPSON, JR.

DECEMBER 30, 1976.

Commissioner EDWARD AGUIRRE,  
*U.S. Office of Education, Department of Health, Education, and Welfare, Washington, D.C.*

DEAR COMMISSIONER AGUIRRE: Earlier this week my staff finally received the "Notes on the November 29, 1976 Meeting on the Processing of Basic Grant Applications by State Agencies". In addition, we received a copy of a letter from Leonard Spearman to the interested state representatives inviting them to participate in another meeting on this subject on January 10, 1977. Copies of both of these are enclosed.

Since I have not yet received a reply to my letter of December 17 posing various questions concerning the implementation of the Thompson-Eshleman amendment for the hearing record and since these two documents strongly suggest what some of those answers may be, I would like to register some comments on several of the statements and implications of these documents.

First, the notes on the November 29 meeting state that it is "The intent of Congress to have states conduct a one year experiment in the processing of Basic Grant applications. . . ." A similar view is clearly implied by Mr. Spearman's letter. This is absolutely not my understanding of the amendment's intent as its co-author. My understanding of the congressional intent is that the experiment is of indeterminate length and may exceed one year.

Second, Mr. Spearman's letter speaks of the "three agreed upon alternatives" for implementation of the Thompson-Eshleman amendment. I do not believe this is an accurate characterization because these alternatives were presented to you and are presented in Mr. Spearman's letter in the absence of having been given to my staff for comment prior to their circulation as had been promised at the meeting of November 29.

Third, the erroneous interpretation of congressional intent limiting the experiment to one year combined with the decision to adopt as the preferred alternative Mr. Iverson's suggestion of a subcontracting arrangement by the states with the current national contractor reduces implementation to a hollow charade. My understanding of Mr. Iverson's suggestion is that it was meant to be a one year stop gap with the clear understanding that the experiment would continue for at least a second year. The first year would be used to give the states adequate lead time to gear up for the experiment to assure both the continuity of effective services to students as well as the fairness and utility of the experiment in state grant processing.

I hope these comments will help clarify some of the issues and perhaps provide some assistance in further implementation of the Thompson-Eshleman amendment consistent with congressional intent. I hope that expeditious and effective implementation of the amendment can be put on track at the January 10 meeting.

I have taken the liberty of sending a copy of this letter along with the notes on the meeting of November 29 and Mr. Spearman's letter to the Chairman of the Subcommittee on Postsecondary Education for inclusion in the hearing record.

Best wishes for the new year.

Respectfully,

FRANK THOMPSON, JR.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,  
December 20, 1976.

KENNETH REEHER,  
*Executive Director, Higher Education Assistance Agency, Towne House, Harrisburg, Pa.*

DEAR MR. REEHER: On November 29 a meeting was held between State representatives and the Office of Education staff to determine the most practical and expeditious approach to implement the requirement for the conduct of an experiment on State processing of the Basic Educational Opportunity Grant applications for the 1977-78 academic year. A copy of the meeting notes, which reflects the primary concerns and the three agreed upon alternatives, is enclosed.

You may recall that we agreed during the November 29th meeting to inform you of the alternative which appeared to be the most practical given the extremely tight time constraints, and to schedule a second meeting.

The time constraints are the result of the requirement that the experiment be conducted for the 1977-78 application processing year which begins in January of 1977. The early starting date precludes the orderly development, testing, and implementation of the critical computer systems; application printing and distribution; education of the affected State's student population regarding the new process; and the awarding of a contract to impartially monitor and evaluate the experiment.

We have carefully reviewed the suggested options, and have determined that the alternative suggested by Mr. Ronald Iverson of the Vermont Agency is the most feasible. Mr. Iverson's suggestion was that each State participating in the experiment would sub-contract with the primary processor which would be responsible for: (1) the receipt and processing of Basic Grant applications from students residing in those States; (2) the preparation of the notification documents (Student Eligibility Reports); and, (3) the transmittal of the Reports to the State agencies for coordination with State notifications of aid and the subsequent transmittal to students.

Obviously, there are a number of advantages to this option. This option meets the requirement that the experiment begin in January of 1977. In addition to being the least disruptive to all parties concerned, it also allows us the opportunity to request that Congress amend the starting date to thus assure the orderly transition to, and conduct of the experiment in State processing of Basic Grants.

As we agreed, we have scheduled a second meeting on this subject for representatives from all interested States to meet with us to finalize the implementation plans. This meeting is scheduled for Monday, January 10, 1977 at 9:30 a.m. in Room 4717, 7th & D Streets, S.W., Washington, D.C.

We hope that you can join us at that time. If you have any further questions or comments, please contact Peter K. U. Voigt at (202) 245-1835.

Sincerely,

LEONARD H. O. SPEARMAN,  
*Acting Deputy Commissioner  
for Postsecondary Education.*

Enclosures.

NOTES ON THE NOVEMBER 29, 1976 MEETING ON THE PROCESSING OF  
BASIC GRANT APPLICATIONS BY STATE AGENCIES

The primary agenda item for the meeting with representatives from State Scholarship Agencies was the development and review of the options available for implementing the Thompson/Eshleman amendment to the Basic Grant Program.

The amendment to the Basic Grant Program reads in part:

"The Commissioner shall enter into agreements with not less than two nor more than five States for the processing by such States of all applications of their residents (through an instrumentality or agent selected by such State) for grants made under this subpart for the academic year beginning after July 1, 1977 . . ."

It is widely accepted that the only possible reading of this Section is that the experiment must commence in January of 1977. The 1977-78 academic year is that "academic year beginning after July 1, 1977," and the processing of applications for the 1977-78 academic year begins in January and February of 1977.

The intent of Congress to have States conduct a one year experiment in the processing of Basic Grant applications seems to be negated by the required starting date. The early starting date precludes the orderly development, testing and implementation of the critical computer systems; application printing and distribution; education of the effected States' student population regarding the new process; and the awarding of a contract to impartially monitor and evaluate the experiment.

As noted in the meeting, most if not all of the probable participating States have already put into place their State program(s) for the 1977-78 academic year. The transition to a true multiple contracting mode would thus require the States to radically change their current operation systems in mid-cycle.

Several State representatives stated that arrangements could be made to comply with the statutory starting date either through crash efforts within the State or subcontracting with the current Basic Grant contractor. Such arrangements would, however, be of little or no experimental value.

A series of options were discussed and it was subsequently agreed that the Office of Education would call a meeting of the State Scholarship Agencies after agreement is reached within the Office of Education concerning the best course to pursue.

The alternatives that might be explored to resolve the difficulties covered by the timing of the Amendment are as follows:

1. Proceed with the implementation of the Thompson/Eshleman amendment for the academic year 1977-78 as required by the legislation. It was suggested that this might be achieved by either:

(a) a subcontract by each participating State with the national processor to operate the State processing thru the Office of Education's Basic Grant System;

(b) plan and implement the full State processing experiment with those States who feel they could participate.

2. Request a legislative amendment to change the implementation date from July 1, 1977 to July 1, 1978.

3. Reach agreements with the interested States which would provide for planning and implementation contracts to be let in the near future and which would initiate the implementation process for the 1978 academic year. With these agreements, States would notify the Office of Education that it would not be possible to begin the State processing experiment in the 1977 academic year. It should be noted that this alternative could be exercised either with or without a legislative amendment to change the implementation date since the Commissioner is not required by law to have Basic Grant applications processed by a single contractor.

The meeting took place in a cooperative manner and everyone present was keenly aware of the time constraints governing these issues.

Notes of the meeting are to be distributed to all attending parties (list attached). One agreement has been reached within the Office of Education as to the best option(s) a second meeting will be held and will involve all interested State Scholarship Agency representatives.

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,  
OFFICE OF EDUCATION,  
*Washington, D.C., January 17, 1977.*

HON. FRANK THOMPSON, JR.,  
*House of Representatives,*  
*Washington, D.C.*

DEAR MR. THOMPSON: Thank you for your letter of December 17 regarding the Office of Education's progress to date in the implementation of the Thompson-Eshleman amendment included in the Education Amendments of 1976.

Please be assured that we are proceeding with this effort in an expeditious manner while at the same time making every effort to see that the implementation is conducted in such a way as to ensure that the students living in the States involved are not adversely affected.

As you state in your letter, a meeting was held on November 29 with representatives from those States indicating an interest in participating in the State-processing experiment and a number of options were discussed. A summary of that meeting is enclosed for your information.

Subsequent to that meeting, appropriate Office of Education staff members met with me to discuss these options at length. As a result of these discussions, it seemed most reasonable for us to take the suggestions of Mr. Ronald Iverson of the Vermont Student Assistance Association. Mr. Iverson's proposal was that each interested State subcontract with the primary Basic Grant processor which will be responsible for the actual application receipt, data entry, calculation of the student eligibility index, and transmittal of the application notification documents to each State for coordination with State aid notification documents and subsequent transmittal to students.

The five States that have indicated an interest in participating in the State-processing experiment have been informed of this decision and have been invited to a meeting on January 10 to discuss these procedures in greater detail. A copy of the letter sent to Mr. Kenneth Reeher of the Pennsylvania Higher Education Assistance Authority is also enclosed for your information. Identical letters were also sent to representatives from New Jersey, Vermont, Rhode Island, and Guam, the only States which have both indicated an interest in State processing and which meet the legislative requirement for portability of State aid programs.

There appears to be some misunderstanding with respect to your staff's request for a copy of the summary of the November 29 meeting as well as a copy of the issue paper prepared by my staff regarding the options available to us in the implementation of Thompson-Eshleman. While we were pleased to provide the summary notes, neither my staff nor I recall any promise to provide him with a copy of the issue paper itself. As you may be aware, these kinds of internal administrative documents have traditionally been determined to be in-house working papers and not necessarily available for public release. Given the various factors which must be considered and the personal opinions of my staff which must be included in these kinds of documents, release of paper such as these are often counterproductive. Please be assured, however, that the pros and cons of all sides of the issues were considered at length before I reached my decision.

In addition, I am somewhat confused by your statement that the Thompson-Eshleman amendment may, and should, extend for more than one year. Our reading of the law leads us to believe that the language is very specific as to the time frame covered. In fact, the law states ". . . for the academic year beginning after July 1, 1977 . . ." We have had discussions with a number of Hill staff who assured us that this referred only to the 1977-78 academic year. The Administration's suggestion, as you may recall, was to conduct the experiment during the 1978-79 processing year which will begin in January 1978. Unfortunately, this was changed during the conference.

We are also sorry for any misunderstandings which might have arisen regarding your impression that Office of Education staff members are attempting to sabotage the implementation of Thompson-Eshleman by encouraging more than five States to indicate an interest in participation in the experiment. Please be assured that other than the initial letter sent to the Governor's of all States, no effort has been made to encourage a greater number of States (than the law authorizes) to become involved in the activity. At one point more than five States had indicated an interest or had requested additional time to decide if they wished to participate. However, since the letters were sent to every State Governor, we did not feel we were in a position of denying some States the opportunity because it would bring the total to more than five.

We also wish to assure you that the software documentation for the 1976-77 processing of Basic Grant applications was sent to the New Jersey representatives as promised. They now confirm the receipt of the documentation.

Finally, I share your concern regarding the timing of the implementation efforts and want you to know that we will continue to work closely with State representatives and your staff to facilitate the expeditious resolution of the difficult issues confronting us.

If I can be of any further assistance, please let me know.

Sincerely,

EDWARD AGUIRRE,  
U.S. Commissioner of Education.

Enclosures.



Association of Media Producers

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STATEMENT OF THE  
ASSOCIATION OF MEDIA PRODUCERS  
SUBMITTED TO THE  
EDUCATION AND LABOR SUBCOMMITTEE  
ON POSTSECONDARY EDUCATION  
December 30, 1976

The Association of Media Producers is the national trade association which represents producers and distributors of educational media and related services. We welcome the opportunity to submit this statement to the House Education and Labor Subcommittee on Postsecondary Education regarding the development of Federal regulations to implement education law.

AMP has become increasingly concerned about the failure of the U.S. Office of Education to give close examination to Congressional intent when promulgating regulations and, as we will show, in some cases USOE's statutory authority for issuing certain regulations is itself questionable.

The first area with which we are concerned is the U.S. Office of Education's "Notice of Intent to Issue Regulations for the Vocational Education Act," published in the Federal Register of November 10, 1976. As the attached letter to the Regulations Task Force of the Bureau of Occupational and Adult Education explains, USOE continues to ignore the resources available in

1707 L Street, NW Suite 515 Washington, DC 20036 202-296-4710

the private sector in issuing regulations. Although the attached letter deals specifically with "Programs of National Significance" and bilingual training programs, the problem to which we refer is much broader in scope than the illustration offered by these two programs.

While in some cases there are statutory prohibitions against contracting for services with for-profit entities, many statutes give the Commissioner the discretion to issue grants to state and local education agencies and other public and private non-profit organizations or to enter into contracts with private for-profit organizations. Faced with this alternative, it is a rare occasion indeed when USOE opts to contract with the private sector.

USOE has almost totally overlooked a sizable body of knowledge and expertise which exists in the educational media industry. Grants to develop and disseminate instructional materials flow in great numbers to state and local educational agencies and private non-profit educational organizations. Commercial producers may not compete for grants and the Federal education officials seldom exercise the option to award contracts instead of grants, even though this action would permit both private and public sector participation in competition. This practice of avoiding the private producer or publisher makes little sense and is, moreover, very costly.

Commercial producers work with educational consultants as a matter of course in developing instructional materials. What has evolved is a relationship in which subject matter specialists contribute knowledge of curriculum areas and teaching methods and producers contribute expertise in media format, packaging, and dissemination.

Unfortunately, to date Federal education policy -- largely established through the regulatory process -- has placed education institutions in the business of producing, packaging, and disseminating instructional materials, areas in which most educators cannot be expected to have expertise. Moreover, those individuals and commercial organizations which do have the requisite knowledge have been overlooked. The result is not surprising: Congress has frequently taken Federal education agencies to task for failure to disseminate the results of the projects it funds. Dissemination practices don't seem to improve, and there is some question about the quality of instructional materials to be disseminated. Further, the technical quality of the original materials usually is not sufficient to permit reproduction for mass distribution. The General Accounting Office, in its October 20, 1976 report ("National Science Foundation-Supported Science Education Materials: Problems in Evaluation, Distribution, and Monitoring" HRD-76-134) noted particularly the need to involve the private sector in the development of science education materials (such as teaching guides, textbooks, films and video tapes). Office of Education projects face the same problems as those found in the GAO study of the National Science Foundation. This should astonish no one -- educational agencies are established to provide education, not product development and distribution. Still the marketing and distribution capabilities of the private sector continue to remain an untapped, but very valuable, resource for education programs.

In addition, all too often, Federal grants are made for the development of instructional materials that are already available in the marketplace. In making the grants, Federal officials indicate there is a need for the materials. Not only does the failure to examine the availability of current

materials result in a waste of taxpayers' dollars, but the erroneous assumption that the materials do not already exist could result in a self-fulfilling prophecy; the private sector will not be willing to invest in production of educational materials, when they anticipate that the same Federally-subsidized product is likely to appear in the commercial market at non-competitive prices. Even with a contract option available, USOE apparently does not realize that grants to educational agencies act as a disincentive to commercial producers who must make large investments of their own capital to create a product for sale in a competitive market. If there is less production in the commercial sector, the Federal government will have to invest additional dollars to produce materials. If the current trend continues, commercial producers simply will be unable to afford to compete with Federally-subsidized materials; ultimately, unless policy is turned around, the only educational materials available will be those with the Federal "seal of approval." Simply stated, we are opposed to a national curriculum and we do not believe that it is premature to raise the spectre of such a curriculum at this time.

Further, in disparaging the profit motive, Federal education agencies fail to recognize a very important concept: instructional resources that don't work, that don't demonstrate their effectiveness as learning tools, also don't sell. Commercial producers simply cannot afford to invest in production of materials that won't supply a return on their investment. For this reason, they must and they do apply stringent evaluation criteria to the materials they market. Because of the resources available to them, the evaluation of materials occurs on a much broader scale than USOE could even attempt to accomplish. Almost all educational media products are sent to

school districts on an "approval" basis or for "preview"; there is no commercial transaction until the school district has reviewed and evaluated the materials -- especially in regard to their effectiveness in the classroom. Even then, whether the materials are retained or returned to the producer, each shipment contains evaluation cards which the consumer is asked to complete and return to the producer. In this way, the educational media industry is able to supply educational agencies with materials that have been tested in the most effective way possible -- with learners.

The Association of Media Producers believes the knowledge acquired by commercial producers can make a vital contribution to the education programs administered by USOE. We believe that the Subcommittee, in reviewing the regulatory powers of the Office of Education, should closely examine the arbitrary decisions that Agency makes to issue grants and circumvent the contractual process. We believe that the issuance of grants not only carries excessive costs, but it also deprives the education community of the resources available to it from the commercial sector, and further reduces the chances of achieving program objectives determined by the Congress.

Although the second problem with which we are concerned does not stem from P.L. 94-482, AMP believes that it is symptomatic of USOE's frequent promulgation of rules which surpass both the letter and the spirit of the law. Therefore, we call the Subcommittee's attention to final regulations issued on September 28, 1976, pursuant to Title I (ESEA), "Financial Assistance to Local Educational Agencies to Meet the Special Educational Needs of Educationally Deprived and Neglected and Delinquent Children."

Specifically, Paragraph 116.32(a) of the regulations provides that "an application for a project grant under Title I may include the acquisition of

equipment or the construction or remodeling of school facilities only if it is demonstrated as being essential<sup>1</sup> to the success of a program or project under Title I" (emphasis added). Section 403(14) defines equipment as including "items such as instructional equipment ... printed, published, and audio-visual instructional materials, and books, periodicals, documents, and other related materials."

However, the Title I statute, Section 141(a)(1), ESEA, while authorizing construction "where necessary," does not similarly restrict the acquisition of "equipment." In fact, not only is the "acquisition of equipment" specifically mentioned as one of the few eligible activities in the statute, but this activity is explicitly listed equally with other eligible activities such as teacher training. Moreover, "acquisition of equipment" is listed first among these eligible activities!

Although the statute places a restriction on construction "where necessary," it clearly imposes no such restriction on the acquisition of equipment. And yet the regulations, despite the wording of the statute, couple only equipment with construction in the "essentiality" requirement.

In comparison, other Title I projects are required by Paragraph 116a.22 to be "of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children to be served." This regulatory requirement repeats almost verbatim the wording of the statute, ESEA Section 141(a)(1), mentioned above, which lists "acquisition of equipment" as an eligible activity.

There appears to be no basis in law to assume that the statutory language does not apply equally to the acquisition of equipment as it does to other projects.

Furthermore, Paragraph 116a.23 of the regulations specifies that children enrolled in private schools may have the benefit of needed services and equipment. However, although it appears that the restrictions of Paragraph 116.32(a) would be applicable here too, the statute (Section 141A(a)) makes no distinction between equipment and other activities for which private school children are eligible.

Certainly, we recognize that there may have been abuses in Title I projects which have resulted in activities under the broad scope of "equipment" being used for non-Title I programs. However, as evidenced in GAO Report 76-54, this has also been true of other Title I projects. And while we would not justify expenditures of Title I funds for acquisition of equipment for non-Title I programs, we would point out that the Title I regulations imply that the rules are sufficient to deal with abuses and to require compliance with the law for other projects, but that only "equipment" acquisition projects must be singled out for the essentiality requirement.

We would draw the Subcommittee's attention to the fact that among the activities listed under Subpart D on which no restrictions are placed are cooperative projects (116.31), education aids (116.34), staffing (116.35), and training (116.36), and we would again remind the Subcommittee that these eligible, unrestricted activities appear in the statute with "acquisition of equipment" in Section 141(a) of ESEA, and with no restrictions placed on any of the projects.

The Association of Media Producers believes that these regulations not only violate Congressional intent, but that they violate the statutory mandate as well. Equally important is the fact that the restriction placed on acquisition of materials can work to the detriment of the Title I program

itself.

In this regard, the recent USOE "Study of Compensatory Reading Programs" surveyed 543 Title I schools. Within those schools, USOE identified 29 that displayed a range of effectiveness (i.e., high, medium, and low). In this range, 5 schools were determined to have unusually effective compensatory reading programs, and it was discovered that all of these unusually effective programs had five elements in common. One of the common elements was a "broad variety of instructional materials."

It is inconceivable that Congress could have intended that compensatory education under Title I was to function without providing teachers and Title I students with the resources necessary to achieve the goals set forth in the statute. For this reason, we believe that USOE, in issuing regulations pursuant to Title I, has far exceeded its rulemaking powers.

While the purview of the Subcommittee's investigations has been the examination of the regulatory actions of the executive agencies, the Association of Media Producers believes that some specific actions are required with respect to particular abuses presented by way of example to the Subcommittee. Therefore, we would urge that in keeping with the letter and spirit of the statute and legislative history, Paragraph 116.32 of the Title I regulations should be amended to remove the "essentiality" requirement from the "acquisition of equipment."

December 14, 1976

Regulations Task Force  
 BUREAU OF OCCUPATIONAL AND ADULT EDUCATION  
 Room 5002, Regional Office Building #3  
 Washington, D.C. 20202

Dear Task Force Members:

Reference is made to the Notice of Intent to Issue Regulations for the Vocational Education Act -- State Plan and Discretionary Programs, which appeared in the Federal Register for November 10th.

With respect to Subpart 2 of Part B (Programs of National Significance), we wish to point out that Sec. 171 (P.L. 94-482) of this Subpart states: "(a) funds reserved to the Commissioner under section 103 for the Programs under this part shall be used primarily for contracts, and in some cases for grants ...." (emphasis added). USOE's Notice of Intent makes no mention of the contractual priority. In particular, we believe that any contracts for the development of curriculum materials, including the conversion of job preparation curricula prepared for use by the armed services to curricula usable by schools, should be awarded to commercial producers and publishers of instructional materials. We believe that the knowledge and expertise of commercial producers and publishers of instructional materials should be more effectively utilized by USOE. Local education agencies and other education institutions do not have the expertise to produce, package, and disseminate educational media and materials; commercial producers, on the other hand, are skilled in developing effective format and efficient packaging of programs, and have, as a matter of course, worked closely with educators on content.

Subpart 3 of Part C, dealing with bilingual vocational training, is another area where stipulated contractual arrangements are not clarified. The Notice of Intent states: "10% (of the authorization) is earmarked for grants for the development of instructional materials, research, demonstration activities, and related teacher-training activities in the area of bilingual vocational training." (p. 49744). The authorizing legislation (P.L. 94-482), however, earmarks this 10% for grants and contracts under Section 188. Section 182 (a) reads, in part,

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 Act*

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"The Commissioner is authorized to make grants and enter into contracts with States, public and private educational institutions, and to other appropriate nonprofit organizations, and to enter into contracts with private for-profit individuals and organizations, to assist them in developing instructional materials, methods, or techniques for bilingual vocational training." (emphasis added.)

The Association of Media Producers has become increasingly concerned about the U.S. Office of Education's failure to utilize contractual authority and to issue grant awards for which commercial producers cannot compete. We believe that we have important resources to offer in the development of quality instructional materials and we have repeatedly offered our assistance in this regard. Therefore, we were particularly pleased to note the prompt publication of the Notice of Intent to Issue Regulations for the Vocational Education Act -- State Plan and Discretionary Programs, and we are hopeful that this time our offer to provide input will be accepted.

Thank you for your consideration.

Sincerely,

Joan E. Dannenbaum  
Director  
Federal Government Relations

JED:lmf

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