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ABSTRACT

This publication reports on two December 1993 events of the Commission on Higher Education events which addressed the reauthorized Higher Education Act and regulations to be issued by the Department of Education during January 1994. The first event described in the report featured United States Secretary of Education, Richard W. Riley. The report from that event also includes Leon M. Goldstein's short introduction of Secretary Riley followed by the text of Riley's remarks titled "Reforms, Accountability, and Partnerships in an Age of Transition." This is followed by his responses at a question-and-answer session to queries on such topics as the purpose and value of unannounced visits to institutions and administration ideas for fostering partnerships between secondary and postsecondary institutions. The report from the panel on "Living with More Regulation," a discussion of regulations flowing from the Higher Education Act, contains "An Overview of the Legislation" (Terry W. Hartle); "The Impact of Flawed Legislation" (Patricia McGuire); "Less Passive and More Active Accrediting Agencies" (David Rhodes); "Rulemaking at the Federal and State Levels" (Jane Stockdale); and "Concluding Observations" (Terry W. Hartle). An appendix contains the guest list for the meeting with Secretary Riley. (JB)

75th Anniversary Series

INDEPENDENCE or INTERDEPENDENCE

CAN GOVERNMENT AND ACCREDITING ORGANIZATIONS GET ALONG?

CHE 1919-1994 75TH ANNIVERSARY

COMMISSION ON HIGHER EDUCATION
Middle States Association of Colleges and Schools

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COMMISSION ON HIGHER EDUCATION
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Preface

This publication brings together reports of two important Commission events that occurred just days apart. The first, held on December 6, 1993, was a special meeting in Washington to inaugurate the Commission's 75th Anniversary observance. We were pleased to have U.S. Secretary of Education Richard W. Riley with us as the guest of honor on that occasion. The second event, which took place on December 10 at the Middle States Annual Meeting, was a panel discussion led by higher education colleagues in the Middle States region.

Although the speakers at the two December affairs were separated in space and time, their remarks, summarized in the following pages, constitute the initial stages of a colloquy on matters of importance to the educational future of our nation. We hope this modest beginning will stimulate continuing dialogue between the Commission and the Department of Education on both current and long-range issues.

On the most immediate level, the subject for discussion on December 6 and 10 was the reauthorized Higher Education Act and the proposed regulations that the Department of Education will publish during January 1994. The Commission has urged its member institutions to participate vigorously in shaping these regulations and continues to do so even as this publication goes to press. The Commission's most recent memorandum, dated December 20, 1993, asked all institutions to respond at once to the proposed regulations after careful study of the legislation itself.

As Commissioner/panelist Patricia McGuire points out, the legislation is deeply flawed in its assumptions about the role and pruposes of voluntary accreditation.

Nevertheless, for the time being, we are bound by the law and will be so bound unless and until it can be changed. Of more immediate concern for our colleges and universities are the impending regulations.

The regional accrediting directors, through their recently established National Policy Board, expressed "grave concern" about the regulations, particularly their prescriptiveness and excessive detail, the undue burdens they would place on institutions and accrediting agencies, and the duplication of federal and state responsibilities. Of special concern is the gap between the intent of the law and the regulations that would implement it.

The statute, for example, specifies that "nothing in this Act shall be construed to permit the Secretary to establish standards for accrediting agencies or associations that are not required by this section (of the 1992 Higher Education Amendments)..." Yet, the proposed regulations prescribe in detail the specific content of 12 standards that accrediting agencies must assess, including such matters as minimum and maximum program lengths and tuition and fee charges; measurements of programs in clock hours or credit hours; and standards regulating student refunds, among others.

Responding to the proposed regulations, then, should still be a priority for all institutions of higher education.

The immediacy of our concerns with the regulations should not blind us, however, to the underlying themes that we must continue to address. On a deeper level, the dialogue now in progress concerns the dual claims of freedom and responsibility, both within the educational community itself and between our community and the government.

Balancing freedom and responsibility within the educational community has long been of concern to the Commission and, indeed, remains a central point in any discussion of accreditation. We support unequivocally the principles stated in the Commission's policy on

institutional responsibilities, reissued with each succeeding policy review since it was first promulgated in 1978:

> *There are few privileges without obligations, and freedom without responsibility is an invitation to chaos. The educational community has enjoyed a privileged position in the United States, and freedom is the lifeblood of its strength. That privileged position obligates educators and their institutions to strive for the highest level of quality and achievement possible. That freedom requires that higher education so conduct its affairs as to exemplify the meaning of responsibility. Accreditation and the accrediting process are means to that end.*

Freedom and responsibility. We acknowledge that the circumstances which gave birth to the amended Higher Education Act have cast doubt in some minds on the educational community's ability to act both freely and responsibly. But even as we seek to develop more effective ways of doing our work and responding to legitimate public concerns about educational quality, the Commission firmly believes that we have no alternative to self-regulation and peer review as means of stimulating educational improvement and quality.

Governmental regulation has never been and is not now a viable alternative but, rather, one distinct facet of a tripartite separation of powers. It has been clear from the early stages of discussion about the Higher Education Act, when accreditation was about to be removed from the "triad," that what is required to meet our joint responsibility to the public is a judicious balance of powers among the major partners—federal, state, and voluntary accreditation.

What, then, is our dilemma? The Secretary of Education has stated his agreement with the principle described above. In the "Notice of Proposed Rulemaking," summarizing the regulations governing the recognition of accrediting agencies, he comments on the complementary nature of the components of the "triad": "[T]he focus for

accrediting agencies is the quality of education; for the States' evaluation of institutions the focus is primarily consumer protection; and for the Secretary the focus is the administrative and financial capacity of institutions to participate in the Student Financial Aid programs...."

Yet, the principles embedded in this three-way partnership have become attenuated—indeed, all but obliterated in some respects—both in the Higher Education Amendments and the proposed regulations, especially with regard to the role and function of voluntary accreditation.

Over a decade ago, the Middle States Association published *MSA and Government*, a policy statement which refers to the "calculated interdependence between government and education that was built into the American democratic policy...." The challenge before us now, its urgency heightened by the 1992 Higher Education Amendments, is to develop strategies for more clearly defining that interdependence and making it work.

— *Howard L. Simmons*
Executive Director

The 1992 Reauthorization of The Higher Education Act

Introduction

Leon M. Goldstein
Chair, Commission on Higher Education

Secretary of Education Richard Riley has dedicated a major portion of his life to public service and to education reform and improvement at all levels. Because of this, he was the first former Governor to be given the Harold W. McGraw, Jr. Prize in Education. His work as Governor in K–12 reform produced what is widely referred to as the most comprehensive education reform package in America and directly led to concrete results, including record numbers of South Carolina high school graduates being prepared for, and now going to, college.

Those reforms contained interesting linkages between K–12 and postsecondary education. He promoted connecting high school graduation and college entrance requirements, creating incentives for greatly expanding Advanced Placement course participation, improving teacher education, linking high school vocational programs with postsecondary technical education, and networking innovative college personnel with the K–12 schools that are restructuring.

Also, it is important to note that the last time that higher education in South Carolina was funded close to 100 percent of their formula request was almost a decade ago, during Dick Riley's last term as Governor.

As a governor and state legislator, he was very supportive of innovation and improvements in the State's community and technical colleges. Also, he created a special state research authority to expand research opportunities among the State's colleges and universities and with the private sector. His final major act before being appointed Secretary of Education was to chair, as a private citizen, the fund-raising drive at his undergraduate alma mater, Furman University, which resulted in an $83 million endowment.

As you can see, Secretary of Education Riley has a set of rich experiences to call upon as he leads our nation forward in educational reform and renewal at all levels.

Reforms, Accountability, and Partnerships in an Age of Transition

Richard W. Riley
United States Secretary of Education

It is a great privilege for me to be with you on the occasion of your 75th Anniversary as an accrediting body.[1] I congratulate Middle States for its commitment to quality and excellence and for your continuing effort at collegiality and openness—the free exchange of ideas that helps students advance in their intellectual journey.

I know that at times in the past, there have been some bumps in the road between the Association and the Department of Education regarding the role of accrediting bodies, and a few of you are very concerned about the implementation of the Higher Education Act Amendments of 1992. I want to assure you that I came to Washington when the President was kind enough to call me because I have had a lifelong love affair with learning. I have also spent the better part of my political life committed to the idea that education remains the great democratic rock that creates and sustains those qualities that are elemental to a civilized society.

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1 Edited text of remarks by Secretary Riley at a luncheon held on December 6, 1993, at the National Press Club, Washington, D.C. The Commission on Higher Education mailed the full text to member institutions with a memorandum on December 20, 1993, and additional copies of that text are available upon request.

In 1993, we find ourselves in a unique period of transition, facing increasing demands on education. Therefore, I want to talk to you about our efforts to restore integrity to our troubled financial aid system, the new public mood of accountability and a desire for higher standards, and the Higher Education Act Amendments of 1992.

Reform Efforts

One of our first tasks was to help as many people as possible pay the cost of higher education with a financial aid system of integrity and quality and one that is cost-efficient and accessible.

We are well on our way to creating a new direct lending program, and over 1,100 institutions have applied to participate in the first phase of this new effort. I want to encourage every institution that did not apply to consider applying in the next round.

Our second effort at reform has been our strong push to rebuild the Pell Grant program. When I first became U.S. Secretary of Education, I was surprised to discover a $2 billion off-the-book off-the-budget deficit. Fortunately, we have been able to maintain the size of the Pell Grant we give each student and, at the same time, cut the deficit by more that one-half.

We also have taken new measures to restore the integrity to the program. The management of this program has been worse than lax, the previous department did not even listen to its own good internal advisors, and a small minority of participants in the program took full advantage of our laxity.

I know you are working hard to reduce your default rates. I urge you to continue this good work and make certain your students understand that a student loan is very much a personal statement of integrity.

Our third effort to make higher education more accessible is one of our most satisfying. We expect to have 15,000 to 20,000 young people participating next year in AmeriCorps, the President's new national service initiative. I urge your active and full involvement, including the use of your own resources and work-study resources.

New Standards of Accountability

Whether restoring ethics in politics or questioning the levels of violence on television, the American people are moving toward a new spirit of accountability. Whether setting new standards for what is or what is not sexual harassment or new academic standards for athletic eligibility, the American people are increasingly recognizing that a price has been, and continues to be, paid for the diminishment of standards.

Those of us who have been involved in creating a world-class education system for every child at the K–12 level welcome this new attention to standards and accountability. We are working hard to pass the "Goals 2000: Educate America Act," which will create a set of national "voluntary" standards of excellence. These reform efforts at the K–12 level are the concern of higher education because they will have an enormous impact on all your institutions, from reshaping teacher education to redesigning your undergraduate programs for an influx of more and better prepared students. It will intensify the debate on the balance that must be struck between research and teaching in that taxpaying parents and students who attend college will expect first-class professors in the undergraduate classroom.

In addition, we are on the threshold of an important public dialogue on the meaning of accountability and standards for American higher education. A report being released today by the Wingspread Group on Higher

Education urges universities and colleges to raise their expectations, to accept new levels of accountability, and to strive for higher standards.

So I encourage you to intensify the important dialogue and be extraordinarily sensitive to the spirit of academic freedom that defines the independence and the very integrity of higher education in America. At the same time, this dialogue ought to reflect the reality that the American higher education community is less than uniform. Our many technical and community colleges, state colleges and universities, and private colleges are reflections of the American people's quest for knowledge.

Accountability surely will be a watchword for the 1990s. To the extent that the higher education community engages and leads this dialogue with an awareness of its necessity, I assure you that we will all benefit as a nation.

Higher Education Act Amendments of 1992

Last year, under Title IV of the student aid program, Congress passed a series of amendments that are reshaping what we call the "program integrity triad," which includes state oversight, accreditation, and federal eligibility and certification.

There is an enormous difference between the many fine institutions of learning that we have in this country and the few "certificate mills" that have traded on the desire of so many hard-working Americans to better themselves. Congress now is asking every part of the triad to move from an explicit assumption of responsibilities to a more explicit statement of our ongoing partnership and to define clearly what is expected of each member of the triad, while respecting the unique role of each.

Over the past year, we have spent a significant amount of time at the table together, as partners in this "sorting out" process, and this is surely what Congress intended in

designing the new negotiated rulemaking process. I assure you that I view this ongoing process as a partnership where like-minded people with similar goals find their way together. Next month, we will release draft regulations for additional comment, and please remember that these are proposed regulations. As Secretary, I am especially interested in your comments on the proposed rules, and we will take all of your ideas seriously. So I ask you to join me in a spirit of cooperation to make these amendments and the implementing regulations work for us all.

These amendments to the Higher Education Act give a new dimension to your work as an accrediting body. At the same time, however, they do not preclude you from defining a broader and higher definition of academic excellence. So we encourage you to see the emerging dialogue on new standards and accountability as a special opportunity to demonstrate your collective leadership, to set a new tone of excellence, and to confirm for the American people their strong belief that American higher education is, and continues to be, the best in the world.

Thomas Jefferson once wrote, "The success of the Constitution and laws depends on the progress of the human mind." As this great nation of ours seeks to find its footing in a new age of information and global change, your great institutions have a rare opportunity to have a vital role in fulfilling this powerful charge. We will need the power of knowledge and the talent of every educated American. We need your leadership, your sense of vision, your capacity to teach, and surely your capacity to inspire—just as, long ago, you inspired a young student at Furman University named Dick Riley to begin a lifelong love affair with learning.

Question-and-Answer Session

Q What is the purpose and value of unannounced visits to institutions that are based on peer review and mutual trust? We find that very troubling.

The Secretary. I understand your concern about how accrediting commissions have operated in the past. The process of having a review of certain institutions trigger unannounced visits by State Postsecondary Review Entities (SPREs) is still a long way from being resolved. Our regulations will attempt to comply with the law by setting in motion those steps that are required and then making it possible for you to function additionally as you see fit. I know there will be some procedures that may appear to you to be changes from the trust and from the high level of input and sharing on standards that you have had, and we will try to work through that. Please feel free to share your ideas on those subjects with us, and we certainly will welcome your suggestions.

Q Mr. Secretary, other than national service, does the administration have any ideas about stimulating partnerships between secondary and postsecondary institutions?

The Secretary. The whole of idea of "Goals 2000" goes to the lifelong learning process. It is built on one of the goals, which is to have higher education as part of it. All of us that have worked for improving standards by reforming education in K--12 would say that there is no way for that to occur without having strong connections between K–12 and higher education. If those two segments of our education system are to work well, there

must be a seamless web, and we have a long way to go to reach that point. In addition, the school-to-work transition bill that will follow "Goals 2000" makes a direct link between the 75 percent of young people who finish high school and do not attend a four-year degree-granting institution and those who attend one-year or two-year institutions.

As various disciplines, such as science and history, begin establishing standards, I urge you to become involved in these consensus-building processes.

Living with More Regulation

A Panel Discussion at the 107th Annual Meeting of the Middle States Association of Colleges and Schools December 9, 1993, Philadelphia, Pennsylvania

An Overview of the Legislation

Terry W. Hartle, Moderator
Vice President for Governmental Relations
American Council on Education, Washington, D.C.

The Clinton administration is planning to extend the Department of Education's oversight of higher education in a way that threatens the academic independence of colleges and universities. The threat comes in the form of draft regulations to implement the Higher Education Act Amendments of 1992, dealing with accreditation, State review of postsecondary education institutions, and financial responsibility of colleges and universities that participate in the Federal student aid program.

These regulatory initiatives are required by the 1992 Higher Education Act, and colleges cannot hope that the Department of Education will simply change its mind and decide not to issue regulations. The Department of Education must implement the law, and the regulatory process does not provide the opportunity to rewrite the statute, much as we may like to do that.

Higher education institutions can and should demand that the Department of Education implement the law in a way that is faithful to what the law requires. The department's draft regulations, I believe, go well beyond the requirements of the statute, violate the academic

independence of colleges and universities, and impose significant administrative burdens on higher education institutions. Indeed, taken together, it is not an exaggeration to say that the draft regulations the department has been considering pose the most serious threat to the academic freedom of colleges and universities since the modern Federal role in education began with the National Education Defense Act of 1958.

State Review of Institutions

The first initiative is the State Postsecondary Review Entities (SPREs). It was a provision enacted in response to the abuse of the student loan program by some schools. It provides funds to States to review institutions of higher education that are identified by the Secretary as having trouble under the Federal student aid programs.

Schools will be chosen for a review by the Secretary if they meet one of the criteria specified in the law—that is to say, if they trip one of the "triggers" in the law. Triggers include, for example, a default rate in excess of 25 percent, rapid increase in the utilization of Federal student aid funds, a negative audit finding, or the failure to submit audit reports in a timely fashion.

State agencies will review the schools, using 11 review standards that are specified in the law, and States will develop their own operational definitions for each of the 11 standards and apply their definitions to the institutions in their State.

The standards that the States will develop are potentially troublesome. The draft regulations require that States develop "acceptable" completion and graduation rates, withdrawal rates, placement rates, and pass rates on licensure examinations. We are talking about threshold percentages—in other words, minimum standards.

During the debate on the Higher Education Act, collegiate institutions sought and won an assurance that only schools that met one of the criteria and were triggered for a review by action of the secretary would be subject to State review, but the draft regulations appear to permit States to use part H authority to review any State that they want to.

In addition, the draft regulations would explicitly allow States to require any institution of higher education, whether or not it had been subjected to a review, to collect, maintain, and report data needed by the State to review the institution in the future.

I think that as a result of the draft regulations, the potential for mischief by State bureaucrats and for the imposition of laborious, costly, and invasive data requirements is quite high.

I should emphasize that not all States want this authority. Some would prefer to avoid these responsibilities altogether, and some State officials will surely implement such authority very carefully and thoughtfully. Still, the potential for heavy-handed action by Federally-funded State officials is present.

The Clinton administration has requested, and has already received, $25 million to implement the State review authority, even before they have published draft regulations to tell the States and the schools exactly what it is they are supposed to be doing. There is, within the Department of Education, a great deal of enthusiasm for implementing this quickly. One can only hope that there is an equal enthusiasm for implementing it well.

Accreditation of Colleges and Universities

The second area of potential regulatory trouble is the accreditation of colleges and universities. Since 1952, the Federal Government has used accreditation as an assurance of the academic quality of institutions that

participate in Federal student aid programs. That is going to continue for the future. However, the Executive Branch and the Congress, in recent years, have grown increasingly skeptical of accreditation as a guarantee of academic quality.

The cumulative damage of this loss of confidence by the Federal Government has been pretty severe. In 1992, Congress flirted with the idea of taking accreditation out of the student aid eligibility process altogether, in favor of letting somebody else, presumably States, tackle the job of assuring the Federal Government that institutions were offering a high quality education.

In the end, accreditation remained part of the eligibility process, but the price was a major expansion in the Federal Government's role in the accreditation process. For the first time, accrediting agencies must have statutorily specified standards if they wish to be approved by the secretary. For example, accrediting agencies must now have, by law, and report to the secretary standards for program length, tuition and fees, student achievement—including course completion and success on state licensing examinations—and job placement rights.

The draft regulations circulated by the secretary so far impose heavy requirements that appear to go beyond the statute. For example, accrediting agencies will be required to review institutional refund policies, monitor the accreditation decisions at other accrediting associations, and promptly review institutions if another agency takes action against a school.

Accrediting associations must make sure, according to the draft regulations, that catalogs and other publications are "accurate, complete, and consistent" and collect information every year on the financial and administrative capacity of the schools they accredit. None of these provisions are required in the law.

Ultimately, the risk is that the draft regulations, if finalized in the form that we have seen, will turn the

accrediting agencies into regulatory extensions of the Department of Education and impose significant administrative burdens on them that will, in turn, be passed to the schools.

Financial Responsibility

The third regulatory initiative that appears problematic deals with the area of financial responsibility. The Department of Education must certify that schools are financially solid before they participate in the Federal student aid programs. This is a good idea because if the schools are not solid, and they go out of business, the taxpayers and students are often left holding the bag.

A key part here is the test of financial responsibility that the Department of Education will impose. Congress stiffened the financial responsibility requirements in the 1992 Higher Education Act Amendments, and the Department of Education is drafting regulations to implement this particular provision as well.

I should point out that the regulations dealing with State postsecondary review and accreditation have been drafted and were ready for publication until they were recently pulled back for further review. The draft regulations on financial responsibility have a much greater distance to go, and they are not yet finalized.

The early draft that we have seen of the regulations suggests that the Department of Education has been considering the imposition of an accounting methodology on colleges and universities that is inconsistent with the accounting systems currently used by most colleges. Indeed, one initial review of these standards suggests that between 300 and 500 private colleges may well fail to pass the financial responsibility test, including some very large and stable institutions with substantial endowments.

To repeat, our feeling is that these draft standards go beyond what Congress had in mind and go beyond what

is in the best interest of the Federal Government. The draft standards for financial responsibility appear to us to be a magnet that will attract schools, as opposed to a net that will catch and identify schools that are in serious financial difficulties.

This is not an idle consideration. Granted, if you fail the financial responsibility test, the Department of Education can grant you provisional eligibility or provisional certification. However, if you fail the financial responsibility test, you have passed a trigger for an automatic SPRE review, and the State agency would be coming to look at you in connection with that. It could complicate efforts to attract students and, in fund raising, to explain to people why you were only provisionally certified by the Department of Education.

The Rulemaking Process

We are about to really start the regulatory process with respect to the Higher Education Act Amendments of 1992. What has been going on so far is really a sort of prelude. The department went through a series of open meetings called negotiated rulemaking. We felt that particular process did not really meet the test of negotiated rulemaking as we had hoped. We did not feel it was an effort by all parties to find a mutually acceptable middle ground, so we were unhappy with that. The department now must publish regulations, a Notice of Proposed Rulemaking that would then be put out for comment by the higher education community, including the accreditation associations and the associations and organizations that represent higher education in Washington, D.C.

The department was scheduled to publish the draft regulations on November 30th. At the last minute, the department decided that they wanted to review these a little further, perhaps recognizing that some of the

concerns that had been expressed about these draft regulations were indeed legitimate and appropriate. We are very pleased that they have indicated they wish to keep looking at these and thinking about the best way to implement this partiular set of regulations.

The financial responsibility regulations, as I mentioned, are not quite on the same track. The department now indicates that the acccreditation and SPRE regulations should be published by the middle of January, and the higher education community will have approximately 60 days to comment. The Department of Education then will review the comments and will publish final regulations sometime next year.

This regulatory process is a public process, designed to encourage and solicit public comment and observation. I think it is very important that all of you in this room representing institutions of higher education and an accrediting association take a careful look at the statute and the draft regulations, see how they are going to affect your own organization or campus, and communicate your concerns, both pro and con, to the secretary of education as part of the process.

I would reiterate that we cannot take issue with the law. This is the law of the land. It has been signed into law by the President. The Department of Education must implement the law. At some point, if we decide to do so, we can try to change the law, but that is not something we can fight as part of the regulatory process.

What we can do and what we must do in the regulatory process is try to ensure that the Department of Education implements the statute as it is written and does not go beyond the statute, that it does so in a way that is sensitive to the academic independence of colleges and universities, and that it does not impose an extraordinary regulatory burden on institutions of higher education.

The Impact of Flawed Legislation

Patricia McGuire
President, Trinity College, Washington, D.C.
Member, Commission on Higher Education

Wearing my Commissioner's hat and my president's hat, I believe that the law jeopardizes not only the future of private voluntary accreditation but all of higher education. It will have a debilitating and negative impact on independent institutions of higher education, especially on the small special-mission institutions that have fewer resources to be able to cope with increasing regulatory burdens and the costs associated with that, and it will affect our public colleagues as well. This must be of special concern in the Middle States region, which perhaps has more per-capita special-mission institutions—women's colleges, religiously-affiliated colleges, historically Black colleges—than any other accrediting region in the country, and we need to take special note of that.

The legislation and the proposed regulations have been put off for a few weeks but will not go away. We know that if there is a law, there must be regulations not far behind. Do not think we are out of the woods at all; we are just still on the edge of the forest, about to plunge in.

My task this morning is to speak as a member of the Commission on Higher Education about the implications of the legislation for private voluntary accreditation. I am not going to work through the law or the proposed regulations. I assume either you have read them or will become familiar with them, and I think Terry just gave a good summary of the provisions. Instead, I would like to address three points that are a reflection on the legislation and the proposed regulations.

First, I believe that the legislation itself is deeply flawed in its underlying assumptions and intentions. Whatever

regulations emerge to implement the legislation will only exacerbate these underlying flaws in the legislation. What we must do is work to contain the exacerbation of the flaws and, perhaps eventually, to change the legislation as well. Second, I will address the impact of the law and regulations on private voluntary accreditation. I believe that potential impact is debilitating, at best, and devastating, at worst. Third, I will address what I believe must be the cure for private voluntary accreditation to survive this process, and I believe it needs to be a radical cure. I think we have to think about the relationship between private voluntary accreditation and Title IV enforcement, and we presidents need to be willing to fix what is wrong with private voluntary accreditation.

Flawed Assumptions of the Legislation

The flaws in the underlying legislation are based on some seriously wrong-headed assumptions. The first assumption is that private voluntary accreditation is a legitimate means to guarantee the integrity of the use of Title IV funds. The second bad assumption is that there is something incredibly wrong with private voluntary accreditation because there are some fraudulent and abusive people and institutions misusing Title IV funds. The third wrong-headed assumption is that Federally-mandated standards for accreditation will fix whatever is wrong with the Title IV program; I think that is an absurd assumption.

Underlying all of those obviously flawed assumptions is another pervasive assumption that we cannot escape in higher education. That is the assumption, which seems to go unchallenged these days, that there is something terribly wrong with American higher education and that the only way to fix what is wrong is massive Federal intervention, much like the railroads and much like

health care. Everywhere I go in Washington, I hear that education will be the next health care.

A Legitimate Means of Enforcement

First, the flawed assumption that private voluntary accreditation is a legitimate means to enforce Title IV. Private voluntary accreditation was not designed for the Title IV program. It was designed to address characteristics of excellence in institutional programs and services in higher education. This point is of critical importance in this debate because of the issues of methodology and practice that flow from our mission in accreditation.

If our mission were regulatory, then our standards would be highly prescriptive and quantitative, where at all possible, and their application would be rigorously even-handed among all kinds of institutions, regardless of size, circumstance, and institutional mission. Because the mission of private voluntary accreditation is to promote quality and excellence rather than to ensure minimal compliance with minimum standards, our criteria are hortatory rather than prescriptive, and our methodology and review practice are carefully tailored by peer institutions to the size, circumstances, and mission of each institution.

This is not waffling, as we have been accused of doing. It is not weaseling out of our job. This flexibility has ensured the vitality, integrity, and diversity of a higher educational system that can and must accommodate institutions as diverse as CUNY and Fordham, Temple and Rosemont, and the University of Maryland and my own Trinity College.

Governmentally-driven regulation seeks to reduce and eliminate our institutional differences. Private accreditation respects and promotes these differences.

Something is Wrong with Accreditation

With regard to the second assumption, that something is really wrong with accreditation, I keep hearing that from legislators, regulators, and even my own colleagues, among presidents and association executives. Let us be real: there are some things that surely are wrong with private voluntary accreditation, and I will come back to them at the end of these remarks.

Having said that there are flaws in what we do, we surely cannot sit quietly by while members of Congress and the bureaucrats at USDE say that we are the reason why fraud and abuse exist in Title IV programs. Accreditation does not cheat the government; people cheat the government. Can we really sit idly by in silence while others point to us and say, "You see, Middle States hasn't put any institutions out of business recently. If they're not closing down colleges, they're not doing their job." I have heard of "Theory X," but that really takes us quite to a dramatic conclusion. That is absurd.

Having chaired many teams, including some difficult situations, and having sat through many long and somewhat agonizing Commission meetings, I can assure you that we work in the best interest of our students and all of higher education. We do not shrink from the difficult decisions, but we work damned hard to be sure those difficult decisions are well made and in keeping with the characteristics of each and every institution.

Federally-mandated Standards

The third flawed assumption is that Federally-mandated standards will fix what is wrong. Balderdash, and we all know that. Just look at the mess with Title IV. Who is responsible for Title IV? There are 7,000 different regulations that already exist for Title IV. Who is responsible for that? The U.S. Department of Education is responsible for the Title IV program, and I think they

have done a rather clever job of pointing their fingers at everybody else while escaping their own responsibility for fixing what is wrong with the Title IV program.

We must remember that not a single student will learn anything more because of anything in the new law or regulations. That is what we need to be concerned about in private accreditation. All of this leads to my second point this morning. The impact of all of this on private voluntary accreditation is debilitating and potentially devastating.

Why do I say this in such dramatic terms? Do we not already do much of what the law calls for anyway? Sure, we take care of faculty, and we take care of curricula. Can we just accommodate these changes and make do?

I have a different view, as a president and as a Commissioner, especially as the president of a small, mission-driven institution, and I believe in this deeply.

Private voluntary accreditation right now is largely a volunteer-driven enterprise, and the volunteers participate because of their deep belief in independent higher education and all of higher education and its intellectual independence from government. We volunteer because we believe it is part of our good citizenship in higher education. We volunteer because we believe in the power of peer review to challenge each other to higher standards, and we believe that this is the methodology to ensure quality and excellence.

Do we volunteer because we believe we have a duty to enforce Federal regulations? Absolutely not. Do we volunteer because we want to spend hours interpreting law and regulation to ensure their application to all of our institutions? Absolutely not. The first casualty in all of this new law and regulation will be the volunteer corps that drives private voluntary accreditation. Who wants to do this work if we simply become the agents of the U.S. Department of Education?

Accreditation probably will have to decrease its reliance on a volunteer corps as it increases the level of professional staff and others who can interpret and apply the law and regulations to the institutions. I suspect we will have to increase geometrically the number of lawyers involved in the process.

Institutions will pay far more for accreditation than they currently do, as the cost of this increased professional activity escalates. As all of this is going on, the State Postsecondary Review Entities also will be hard at work with their regulating. At some point, someone will say, "We'll be paying twice or perhaps three times for the same kind of review. We do not need all of this. Perhaps private accreditation does not need to exist anymore." That is the potentially devastating picture.

Three Solutions

In my own view, there are three solutions. First of all, it is time for us to wake up and pay attention to what is going on. It is hard when we are back on our campuses, busy with all of the things we are busy about. We have to pay greater attention to all of those notices that come to our desks and to pick up our dictaphones, if you will, and write those letters to the secretary of education and to Congress when Terry Hartle, Bob Atwell, Howard Simmons, David Warren, and others call.

Second and more seriously, I think we have to be prepared to do something somewhat radical. I think we need to consider the relationship between private accreditation and the program integrity triad and ask ourselves if we are really in this business because we really want to be enforcing Federal financial aid standards. That is a very risky proposition, and I am not saying that I have come to a conclusion yet, but we need to have this discussion.

Third, before we can have that discussion, we need to fix what is wrong with accreditation. What is wrong with accreditation? I think the disease we suffer from most is the natural human disease to want to avoid scrutiny and to want to view our necessary decennial checkups as something that is a burden that we would rather escape.

I think that the presidents of our institutions need to get more actively involved. We need presidents to care at least as much about their accrediting associations as they do about the NCAA, for example. When I say "presidents," I know there are a lot of presidents in the room. We also need the presidents of our more distinguished institutions, if you will, those larger institutions who should be here with us this morning. I think the rest of us need to call on our colleagues in our cities and communities to come with us to these meetings.

We also need to address, honestly and candidly and with our eyes open, what are some of the defects in our own process and how can we fix them. So often, I receive phone calls in the middle of the day from a colleague saying, "I don't like this, that, or the other thing that has happened with my accrediting visit." I think we need a mechanism to address that candidly, honestly, and forthrightly, rather than always trying to sweep that under the rug. We talk about that at the Commission, and I know the Commission is most eager to deal with this problem as well.

Less Passive and More Active Accrediting Agencies

David Rhodes
President, School of Visual Arts, New York, NY

I am a firm believer in the peer review process and have stated many times that it has made the School of Visual Arts a much better place. The non-quantitative nature of the self-study process causes one to set high standards, even if they are not always achieved. Much of this may be lost as we move into the era of the State Postsecondary Review Entities (SPRE).

Institutional Autonomy

As a New York institution, I have had to contend with a SPRE before there were SPREs. Part 52 of the commissioner's regulations substantially control what the school may offer as a program, the length of the program, the length of my semesters, the minimum credits required for the program, minimum contact hours of instruction, how the programs are approved, what must be in my catalog, and various other kinds of ground rules. My institutional autonomy, such as it is, is clearly constrained, but we have managed somehow to accommodate ourselves to it. It does have one virtue: it is a level playing field in New York.

In some measure, I find the concept of institutional autonomy a little baffling. I did a little research and, of course, came across the *Dartmouth College* case. There, the High Court held that the legislature of New Hampshire could not impose requirements on Dartmouth College. Unfortunately, the Court's reasoning is not terribly helpful, since they reasoned that the legislature should not control an entity which was originally

chartered by the king. This case holds no solace for those of us founded after the Republic.

More importantly, Congress and the education department seem to take the view that we define institutional autonomy as our right to take public money and do with it as we will. For them, autonomy is a much less important concept than accountability. It is my view that if we seriously want to preserve what little autonomy we really have, we need to address the issues of accountability forthrightly.

It also would be helpful if I gave you a brief history of how we got into this situation in the first place.

Prior to the 1992 reauthorization, Senator Nunn held a series of hearings on abuses of the Federal guaranteed loan program. Unfortunately, our brethren to the South figured prominently in Senator Nunn's hearings. As a result, I was quite surprised to learn, as I was making the rounds, arguing for parts of the amendments and against others, that some members of Congress and certainly the congressional staff viewed all accreditors as equivalent and with the same jaundiced eye.

During the reauthorization, the original Goodling-Lowey proposal was offered. What is interesting to note about Goodling-Lowey and the State approving agency concept is that it has been a proposal from my State which has been lying dormant since 1974. Suddenly, it came to life, and I think at some point, we need to ask ourselves why. What did Congress think needed fixing that we do not perceive as being broken?

The original proposal made no mention of accrediting agencies. The conditions or provisions contained in it referred only to State approving agencies, now known as SPREs. The proposal was at one point endorsed by the American Council on Education after some modifications. The proposal, unfortunately, did make the accrediting community a little nervous. At one point, as Terry has said, on the House side, accrediting agencies were

dropped out of the triad. That was apparently an attempt to get everyone's attention. They were put back in, and unfortunately, all of this has been dumped not on the programmatic agencies but on the regional or institutional accreditors. I believe that had the original Goodling-Lowey bill gone through, we probably would have been better served. In some sense, we have the worst of all possible worlds.

Pro-rated Refunds

With respect to institutional autonomy, clearly the most invasive provision of the 1992 Amendments is the pro-rated refund policy. As you know, the pro-rating ends after 60 percent of the "period of enrollment" for a semester. This is a compromise, since one of the houses wanted the pro-rating to continue for 75 percent of the semester while the other only wanted 50 percent. Nonetheless, I do not think this is an issue worth fighting about. I might add that some of the more artful attempts at evading these regulations, indicating that the registration fee should be $500 or thereabouts or that the period of enrollment begins when one's deposit is paid, do not serve us well.

As a corollary, I would suggest that the concern of Middle States with having to develop reasonable standards for refunds is perhaps misplaced. We are not on the side of the angels in that one. Although it is clearly an intrusion, I believe any victories here may be Pyrrhic. Furthermore, it seems to me likely that these problems will increase as time goes on.

This is an administration obsessed with standards, and I suppose that is what you get obsessed with when you do not have any money. Secretary Riley has made it clear, most recently at a gathering of the state land grant colleges, that he intends to have standards similar to

those of "Goals 2000" applied to higher education. This is potentially a very bad thing.

Guiding the New Standards

What is required of us, however, is greater leadership. We can either lead, get out of the way, or get run over. I suggest that we try and guide this process, starting now, so that those standards—and there will be quantitative standards—when they are imposed are not overly burdensome.

Those standards also should take account of Federal responsibilities, especially with respect to financial aid. As you know the Pell grant is worth about 40 percent of what it was originally worth, and there has been no serious attempt to improve it.

In the most recent materials sent to us by Dr. Simmons on November 22, there are, as one can see, substantial problems. I am most concerned about disclosure regulations. I do think we have to make a clear and compelling case for some disclosure but not for all of the disclosure which seems to be implied by the regulations.

I am also concerned that as the process becomes more routinized, that substantive due process—thus, the need for lawyers—will be required and that in fact substantive due process is antithetical to peer review and will damage the accreditation process beyond repair.

The third potential danger is the SPRE. However, on a more hopeful note, my involvement with the efforts of New York State lead me to believe that we will be more effective in negotiating reasonable standards at the State level than we will be at the Federal level so that institutional autonomy, in general, will not be infringed upon to any greater degree than it already is in New York. As you know, misery loves company, and the SPREs will ensure that you all have to put up with what they already go through.

Steps To Be Taken

It seems to me that there are four courses of action available to us, if we find these regulations unduly burdensome, as we seem to. The first is education. We simply have not done a good enough job explaining to the public, and more significantly to Congress, what accreditation is, what institutional autonomy is, and why these are good things. I would also suggest that we have probably spent too much time fighting the wrong battles.

Second, we need to do a better job of negotiation. What I mean by that is, we need to take clear substantive positions in advance of congressional mandates. Third, for those very sensitive areas where persuasion has proved unsuccessful, we must seriously consider litigation.

Middle States has litigated those areas in the past which it thought were matters of principle. I believe that in some of these, we may have to consider it again.

Where the secretary has overreached and will not relent, I see no alternative, but I think we need to choose very carefully and wisely, if we go this route. The matters need to be substantive and genuinely damaging to the process and not things that are merely inconvenient.

Finally, if all else fails, if we are to keep accreditation intact, serious consideration may have to be given to the withdrawal of regional accrediting agencies from Title IV gatekeeping functions. In essence, we need to be less passive and considerably more active than we have in the past.

Rulemaking at the Federal and State Levels

Jane Stockdale
Chief, Division of Veterans and Military Education
Bureau of Postsecondary Education, Pennsylvania Department of Education

In addition to directing the Division of Veterans and Military Education, which involves a contractual relationship between the Federal Government and the State, I was recently designated as the director of the Pennsylvania Postsecondary Review Entity, which also involves a contractual relationship between the Federal Government and the State.

During the past year, I have spent about 30 days in Washington as a member of two different negotiated rulemaking teams. I was on the negotiated rulemaking team for accreditation and the negotiated rulemaking team for the State Postsecondary Review Entities. I also want to say that Pennsylvania is one of the States that will be approaching the development of its SPRE and its SPRE reviews "thoughtfully and carefully," to use Terry's language.

I would like to talk about some of the experiences that I had as a participant in negotiated rulemaking; to discuss what we expect to do in Pennsylvania, so far as the SPRE is concerned; and to reiterate some of the things that I have heard my colleagues say, in terms of what some of the next steps for this group must be.

The Federal Rulemaking Experience

I spent a lot of time as a negotiator with the accreditation regulations, thinking about the fact that a sledgehammer was being used to crush a gnat. I was not quite sure that was what needed to be done.

I heard negotiators for accrediting commission after accrediting commission say, "You are making us regulators. That is not what we are in existence to do." This is a legitimate concern and one that may require a great deal of serious consideration on the part of Middle States and, I am sure, other accrediting bodies as well.

It is going to be very important for you to look at the proposed accreditation regulations, when they are issued, in the context of what the language of the law says and raise some serious questions about anything that is in there that appears to go beyond the language of the statute, so far as both accreditation and the SPRE regulations are concerned.

It is important to point out that in one of the initial drafts of the SPRE regulations, Federal thresholds were established for completion rates, job placement, and pass rates on exams. As negotiators, we disagreed on a lot of things. Not surprisingly, there was disagreement between the proprietary institutions, on one hand, and the traditional institutions, on the other hand, on many issues. On these particular areas, however, there was unanimous agreement that establishing thresholds was inappropriate for the Federal Government.

Instead, there needed to be separate types of review standards for different types of institutions within a State. One of the things that happened, and I think successfully, during negotiated rulemaking was that those thresholds were moved from the Federal level to the State level.

SPRE in Pennsylvania

Let me move from those comments to talk a about what we are planning to do about SPRE in Pennsylvania. The initial SPRE funding is for planning. The planning activities are of three different types: to develop and promulgate review standards, begin to develop a system for receiving and responding to consumer complaints,

and begin to examine the types of procedures and mechanisms that might be put in place for information storage and retrieval.

Within that context in Pennsylvania, we have decided that, to the extent possible, we intend to make use of existing resources, we intend to make use of existing regulations, and we intend to make use of existing databases. A set of draft proposed review regulations—In Pennsylvania, these will become the regulations of the State Board of Education—is ready to mail to institutions within about a week. We then will have a consultation process that will involve conversations throughout Pennsylvania during the month of January in about five different locations.

I urge everybody here who is from a Pennsylvania institution to plan to attend or have your institution attend these conversations. Every institution in Pennsylvania should be on our mailing list. If, for some reason, you have not received the initial notification we sent out about the SPRE, please give me your card or your name, and I will make sure you are added to the mailing list so that you can get information.

As we look at a complaint system, we will be formulating an advisory committee. Once again, we want to make use of what is already in existence. We want to build on and add to mechanisms and systems that are already in place.

I would like to conclude by saying that it looks as though, so far as the Federal regulations are concerned, the next couple of months are going to be critical. Federal regulations should be coming out in about a month. In addition, in Pennsylvania, we are in the process of developing regulations. I suggest you watch your mailboxes. It is very important that you pay attention to what is in the proposed regulations and what is in the law. Where you have concerns, it is important to make certain that you deal with them.

Finally, I want to talk about one other thing that is in the SPRE law. I do not have any answers, but I have a lot of questions about it. There is a provision in the SPRE act that requires the SPRE to contract with recognized accrediting bodies or other peer review systems to conduct reviews of or to provide information concerning the quality of programs at institutions.

Several questions come to mind: Does that put accrediting bodies even more in the regulatory arena? If so, will every accrediting body be interested in assuming this kind of contractual relationship? What about the fact that this represents a different funding stream for accrediting bodies? How would this be separate from what accrediting bodies are constituted to do? Is it a regional accrediting body that has the expertise to do this, or is it the specialized accrediting bodies, or is it some combination of those?

I do not know the answers to any of those questions. I have talked to individuals from several different accrediting bodies, and they have some of the same questions. I am looking forward to a dialogue on those issues.

Concluding Observations

Terry Hartle, Moderator

David Rhodes made a very important point when he discussed the issue of education and trying to do a better job than perhaps we have done in the past of explaining what voluntary accreditation is, what it is not, and why it is done.

The fact is that when Congress was considering the Higher Education Act Amendments in 1992 and was focusing on the triad, the part of the debate that was most alarming to the higher education community dealt with state postsecondary review entities. This was a new government entity, it was going to be getting new authority, and it potentially would have authority over higher education institutions that was not exercised by State bureaucrats before. New York State might have had some experience with this because of the State laws of New York, but many other States did not. A great deal of the attention, as Congress considered accreditation and SPRE, and eligiblity and certification, focused on SPRE, not on accreditation.

Indeed, the provision that Jane mentioned, where it says that the SPRE shall contract with accrediting associations or with another recognized peer review body to examine the academic quality of institutions, was added partly at the behest of the higher education community, which was very worried about the idea of State bureaucrats reviewing the academic programs of institutions.

Many of the burdens that Congress ended up putting on accrediting associations occurred, in part, because Congress really did not know much about the accreditation process and how it worked. The legislation was an effort to relieve some of the tensions within the

higher education community, focusing on SPREs, the burdens that they might impose on institutions, and the intrusiveness that appeared to be reflected in the concept.

Question-and-Answer Session

Q As I listened to the comments of some of my colleagues on the dais, it sounded to me as if I was listening to the tobacco industry responding to discussions at the Federal level about consumer health protection or the timber industry worried about environmental regulations. We clearly have interests, and there seems to be a knee-jerk reaction that we have in higher education to the specter of regulation, no matter what.

The keynote speaker this morning spoke eloquently about the importance of our mission and the importance of strengthening education, top to bottom, in America. It seems to me that we ought not to be so nervous about regulation *per se* but ask ourselves what public purposes are intended to be served.

In financial aid, I have always felt uncomfortable with what seemed to me to be abuses, not only by whole colleges but by individual students. Those abuses seemed to me to inject a negative aspect into our educational life. If some regulation would help terminate those kinds of abuses, I would be for it, I would support it, and I would pay the price at my institution to do my part in making that happen.

I think, as we look at these issues, it would behoove us to try to start with the public purposes and ask ourselves whether those are legitimate, whether we want to support them, and then what is the best means? The

mere fact that my autonomy as an institution might be limited is not so much important to me, because I think we all have to operate with degrees of freedom. The real issue is: If I give up some autonomy, is some good achieved by it? I did not hear that kind of discussion from the participants.

Ms. McGuire. You raise an important point. I have heard in many fora that one of the dangers in this entire discussion is that higher education in general, or accreditation in particular, begins to sound self-protecting and defensive. That is what you are saying.

We might quibble about the comparison to the tobacco industry, because I do not think, at root, we are an industry that promotes something that is bad for your health. I think your point is that we are promoting something that is very good for your health. Indeed, it is good not only for individual health but for the national health, and that is part of the struggle.

We are very different, and this is a philosophical question that is very important. As academics, we are in the business of philosophizing. If anything, higher education is in the business of teaching individuals to develop a habit of philosophizing about life. That is what Cardinal Newman said, and that is what we still try to do today. I do not read anywhere in subpart H anything about philosophizing about life. I read about other things.

It is very important for us to defend the independence of all higher education, public or private, as a necessary component of maintaining the public good. I think that is the essential debate in a free society. Higher education is a very important independent counterweight to government in a free society. Love it or hate it, all of that contention, conflict, carrying on, and dialogue on our campuses is about the "melting pot" and the "bubbling cauldron" of intellectual freedom in this country.

If we do not work to protect our intellectual freedom, if we accept that someone at the Department of Education can dictate the content of our curricula, what faculty we can hire, what our students shall do, and what our tuition shall be, it is a slippery slope, my friends. We will lose our intellectual independence if we lose our independence as an industry. That makes us very different from tobacco.

Mr. Hartle. Let me add that I also think your point is a good one. There is much truth in what you say. Most of us do not care much for the tobacco industry, and maybe next time you make this point, you can use a different analogy.

A great deal of the efforts that Congress was making were born not of malice toward accrediting associations, not of a feeling that accrediting is just a complete and total failure, but of ignorance about what accreditation is and what it does. I think we have an educational task in front of us.

I also think we need to look at ourselves and recognize that the public increasingly wants to know what goes on in publicly-supported institutions and what sort of quality is coming out of those institutions—what the outputs are, what the products are. In Federal statutes now, we have performance standards for Head Start programs. Those are programs for three-, four-, and five-year-olds who come from disadvantaged backgrounds, and Federal law has performance standards for those kinds of programs.

As we do more and more of that in other areas of social policy, it becomes harder for higher education to say, "We can't give you any idea what it is we are getting out of higher education. You can't ask us to document what our product is." There is a fair amount of that going on. Indeed, when Congress passed the Student Right to Know Act in 1990, that was part of it. They were saying,

it is about time we started putting some clear data on the table to which people can point.

Accreditation is not designed to provide that type of data. I think we probably need to start asking ourselves whether or not we need to be doing more of that through accreditation, since we tell ourselves and the outside world that accreditation is the best vehicle we have for assuring the quality of programs.

With respect to your point on burden and autonomy, there is always a trade-off there. You are absolutely right. There is no question that accrediting associations are going to be doing some more and different things. I counted all the requirements in the subpart of the draft regulations that deal with accreditation and found 147 requirements that will be imposed on accrediting associations by the Department of Education. I think it is reasonable to ask, Do we really need 147? Those requirements, in turn, will be imposed on schools.

If you adopt a very prescriptive, regulatory approach like this, people will show up with checklists. They will look at your catalogs to see if they are accurate, complete, and consistent. They will look at your course descriptions and your schedules. They will not show up in a collegial manner, trying to get at the essence of your institution or to understand what you are doing and what you are trying to do at your institution. It will be a fundamental change in the accreditation process in which all of us believe so much.

Q I share a little of the concern of my brethren here about the view of government. I spent some time in government myself, so I am sympathetic to the problems and challenges.

Probably all of us here voted in the Presidential election, and a few of us cast our votes for Bill Clinton and knew him to be an activist. Maybe these regulations are reflective of his philosophy and approach to

governing, although there is a track record, and these regulations go back in time to other administrations.

I wonder why we do not have a panel here that also includes representation from the people from the national education department to hear about that perspective? As educators, we are citizens, too. We need to include in this discussion the view of the people that we put in office. Can anyone here comment on why do we not have someone on the panel from the education department? Is that letting the fox into the chicken coop?

Mr. Hartle. I cannot answer that particular question. I did not set the panel up, and I do not think any of my colleagues on the panel did.

Ms. McGuire. I think that is a good question. In the future, we might wish to have somebody from the Department of Education.

Some of you were with us on Monday at the National Press Club, when we had Secretary Riley and Assistant Secretary Longanecker, and Assistant Secretary Kappner for lunch as part of the celebration of the Commission's 75th Anniversary. There is a great deal of dialogue between all of the associations, the regional accreditors, the higher education associations, and the colleges.

I would commend to you Secretary Riley's remarks, and I think we probably should send them to the institutions in some format. I found them to be heartening and not necessarily in conflict with a great deal of what we are saying. He respects the autonomy of higher education, and he does have duties and responsibilities that we respect. I felt he was enormously gracious, most conciliatory, and eager to hear our concerns.

One of the accrediting associations asked him directly about unannounced site visits, and he said he wanted to hear more about what those concerns were. At least from the Secretary, there was an encouragement of the

dialogue and an expression of concern. What some of us said to him afterwards was, "The good thing about this administration is, we can sit in the same room and argue like mad at each other, but we are in the same room." That perhaps was not the case in the past. There is a welcoming of this dialogue, and that should be an important message that is heard everywhere.

Mr. Hartle. I want to reinforce that. The process that has led us to this particular point was not a process that was instituted by the Clinton administration. The regulatory development process began in October or November of last year. Meetings were being held and negotiated rulemaking was held in January and February of this year, well before the Clinton team was in place at the Department of Education.

We are very much in a position where we can sit down in a room and talk with Secretary Riley and Deputy Secretary Kunin. They are willing to listen to our concerns. I can tell you, from a great deal of personal experience, they do not always do what we would like them to do, but they are willing to listen, and they give us a fair hearing.

Along with other representatives of the higher education community, we are arranging a meeting with Secretary Riley and Deputy Secretary Kunin for early next year to talk about institutional independence and the draft regulations on SPREs and accreditiation. So we are working very closely with them. I think it is an indication of the seriousness with which they take our concerns and their own wanting to do right by these issues that they reached a conclusion that they would not publish the draft regulations.

Even this spring and summer, once they were getting their people in place in the Department of Education, you may remember that they were completely rewriting the Federal student loan program, and they had other

things on their plate that were detracting from the attention that they might want to give this particular issue, given how incredibly serious it is, as far as the folks from our institutions are concerned.

When the Higher Education Act Amendments were being debated, this issue of institutional independence and control over academic programs was very emotional. The folks in the Clinton administration, in the key policymaking positions, were not part of those debates, and they did not see that. Riley was a governor, and Kunin was a governor, and David Longanecker, for whom I have the greatest admiration and respect, was a State higher education executive officer. They do not address these issues with the perspectives of institutional representatives.

They really did not have as much of a background and appreciation for this as perhaps we might wish that they did. But they are certainly folks that we have every intention of working with very closely to try and get the results right because we want to be on the right wavelength with them, and they want to do something that implements the law but does not do great damage to our institutions.

Q Secretary Riley and all the people in the Clinton administration are bound to establish regulations to carry out the statutes enacted by Congress. Terry, what is your feeling about the willingness of Congress to back off a little bit and perhaps, in either the next reauthorization or somewhere in between as a supplement, to amend the most onerous parts of part H and get it taken out?

Mr. Hartle. That is a very good question and an issue that we might want to explore as this goes along. Frankly, it would be premature for us to do that right now.

We do not know all of the various rubs that there are in the legislation. We do not know what the problems are. As we go through the rulemaking process, many issues might be identified that we might want to change and the Department of Education might agree with us should be changed. They will be issues that we might want to work out with them to see if we can put together a package of amendments or suggestions for change that we can jointly take to Congress and say, "It is our considered opinion, working together through this rulemaking process, that these are things that need to be addressed through statute to try and eliminate duplication in this process and to cut down on the burden."

In some conversations, the department has indicated that they recognize some things in the legislation create problems for them that they wish they did not have. I do not think this would be the right time to do it. I think we really need to see what the draft regulations are that the department feels they would have to implement and then work through that process with them.

This is an ongoing process. It is not like a football game, where the clock runs out, the game is over, and you come back at some point in the future. It is an ongoing activity. This is part of the business of government that never stops, where we have to continue to work on it, be vigilant, and look at these issues. We will do that.

I would add, however, what I think Congress might do on these questions. In the technical amendments of 1992, they made some changes in the financial responsibility standards because it was immediately apparent that problems had been created in drafting the legislation. I have every reason to believe that when we find things that clearly have unintended consequences, that go beyond what Congress intended or do not serve a good public purpose, we can try to get them changed.

Mr. Rhodes. On a happier note, I hope you all realize that the department never finished the regulations required by the previous reauthorization. Perhaps they will slow the pace somewhat and not finish on this round. There is always that hope.

Mr. Hartle. That is an excellent point. The Department of Education took six years to publish the final regulations on the Higher Education Act Amendments of 1986.

Part of the reason that we are in this situation now, where they are rushing to get regulations out, is that they were so embarrassed by their own performance last time that they are committed to not have that happen again. The trade-off seems to be: "We had better get something out there, so that we are not beaten up for failing to implement the law. Even if it is bad and we need to completely rewrite it, we will be moving the process along and able to demonstrate progress."

In addition, the department is dividing the regulations into 17 packages, and they have indicated they will release the packages as they are ready. They are trying much harder to move that process along.

Q I did not plan to speak, except I have drawn the conclusion here from some of those who did speak that there is a feeling in the room that the purpose of the panel or your presentations was to bash government. I just want to say, maybe a little more strongly than you did, Terry, that I think not.

I have written a number of letters on this topic, and in each of my letters, I have made it very clear, very early in the letter, that I do not like the abuses. I do not support them, I cannot stand them, and I will work with anyone and everyone to eliminate them. At the same time, as a citizen and as an educator, I felt I had a responsibility to say that the way it is being proposed is, in my judgment, not appropriate. So I have come at it from that angle: not

that I wanted to bash government, but as a citizen and as an educator, there are other points I wanted to have heard.

I have heard the word "government" used here today in the form of a reification, as if the government is some entity other than people, other than human beings, other than men and women just like us. Since I have been close to the situation and have checked with my national association in Washington, I know that the principal architect of this entire plan is not Bill Clinton and not Secretary Riley. It is one person, just like me, just like you, just like all the men and all the women in this room. One person is the principal architect of this entire plan.

We have good reason to believe that there several people within the Department of Education do not subscribe to the plan. It is one person's plan. It is a person many of us know and have heard of. Over the last six years, he has often been quoted in the *Chronicle of Higher Education*. I have never seen one quote that has not been insulting to all of higher education. He was, at one time, on the staff of William Ford, the congressman from Michigan.

As long as one person is in a position to say something about higher education, its history, its traditions, where it is now and where it is going—and I am a person who has spent 36 years in higher education—I think I have a right as a U.S. citizen to write and express my opinion.

I am not government bashing, and I do not think any of you in this room would be doing so if you also took the opportunity to say what you believe and let it stand alongside this one person's view of what higher education in the future ought to be in this country.

Mr. Hartle. Your point was very well taken about this not being a panel designed to bash government or what the Department of Education is doing. These are people wrestling with a complicated, long, and often confusing

piece of legislation that they must implement. However, they are implementing it in ways that might well be counter-productive, as far as institutions of higher education and accrediting associations are concerned. Because this is a public process, and it will go through public comment, we will have an opportunity, to improve the outcome and make certain that the regulations as written are the best for our institutions that we can manage, given the statute, and yet also meet the public interest of accountability.

Q I wanted just to comment on the operational aspects of some of these regulations as they will have an impact on schools. We will have a very severe data collection and analysis problem, which will require a good deal of attention. All of us concerned are trying to demonstrate the quality of our programs. All sorts of questions are being asked, with great specificity, about particular programs. In New York State, any one college could well have in the tens or sometimes hundreds of programs which have different definitions. We would be required to maintain a variety of outcome studies for each one of them.

The point I would like to make is, we ought to ask the government's help in trying to trace some of our students. It is next to impossible, if you are running a college on an entry level, to find out where your students have gone after they have left. There are difficulties involved in job completion and job placement. Those are very concrete problems and have not been defined well by the government.

As a matter of fact, they are asking us to provide data which they themselves do not at present have. Results on licensure examinations are not reliable, although we are asked to provide it. There are different kinds of data collection which government arbitrarily expects us to provide, without giving us the resources.

If we do go back to them, we have to say: "Your requests are reasonable, but what kind of aid are we going to be given so as to be able to provide exactly the kind of outcomes studies that would have some significance?"

Mr. Rhodes. Most of the data that I see are required in these regulations, at least in New York, we are already required to report. We have to prepare these data as part of the ongoing data collection effort for the State. In many instances, it is not an extra burden. Placement figures may or may not prove to be a burden; it will depend on how that is defined, when they get around to defining it. Licensure pass rates are pretty easy and presumably will be provided by the State which administers the exams. I do not see these, at least in New York, as being overly burdensome.

The other thing I would say is, probably we all ought to have most of this information anyway. We ought to know what our graduates are doing. We ought to know how many of our students, who come in at the beginning, graduate four or six years later. I think those are things we all ought to have, independent of these regulations. It would seem to me, they would be part of any reasonable self-study that we might want to make of our own institutions.

Ms. McGuire. I would like to respond with a slightly different point of view. I resonate to what the gentleman just said. I think that is all well and good: we should be collecting much of these data. There are many things we would like to do, but for many of us, the critical question is: What happens with teaching and learning on our campuses, and what is going on in our classrooms? The rest of this is all very nice, but is that really about the quality of what our students are learning and about the special mission of each and every campus?

I have to say, quite frankly—and I will confess my own institutional sins, rather than picking on anyone else—that these proposed regulations are enormously burdensome for my own institution. Indeed, the 7,000 regulations that currently exist to implement Title IV are also enormously burdensome.

We have just been advised by our lawyers and others that we need to double the size of our financial aid staff, just to keep up with the paperwork and do the necessary compliance even better. In a small college that has to decide whether to add a staff person or add another faculty member, we do not have another $35,000 to spend on that. We do not have another $50,000 to spend on more lawyers.

Each new regulation comes with an additional staff member, an additional paperwork burden, and an additional lawyer's fee attached with it to provide us with an opinion on what to do about that. The cumulative effect, on a small special-mission institution at least, is potentially devastating because a lot of us are looking at the choice between adding laboratory equipment, computer equipment, faculty, or compliance staff.

Those of us who see this need perhaps are special and different from larger institutions that can simply respond to regulatory burdens by saying, "Fine. We will add five more staff, and that will be taken care of." I have to ask myself, "How is this going to improve the quality of teaching and learning on my campus?" That is the only relevant question for me as a college president. The answer is, it does not. Not one student will learn better on my campus because of these new regulations, and I think Congress needs to hear that this is not improving quality in higher education. It is increasing cost, and it is wasting time.

Meeting with Secretary Richard W. Riley

National Press Club, Washington, D.C.
December 6, 1993

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