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001. memo	Patricia Smith to Barry White re: TRIAD developments (1 page)	04/28/1994	P5

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CAREER COLLEGE ASSOCIATION

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Washington, DC 20002-4242

(202) 336-6700
FAX (202) 336-6828

Monday

GEOFF TIBBETTS

Domestic Policy Council

Geoff: This is the material we messengered to you:

Department of Education proposals which exceed statute

Loan access problems for eligible students

Performance-based school evaluation legislative proposal

See you Tuesday and thanks -- Lisa Phillips

LENDER OF LAST RESORT (LLR) UPDATE

The LLR program was reformed in August of 1993, to assure that it will serve as a safety net for Federal student loan programs for students seeking loans while the direct lending program was being put into place and traditional banks were evaluating their continued participation in the HEA Title IV loan programs. Safeguards in law to ensure the uninterrupted flow of loans quickly showed itself to be a program in trouble. The Department of Education focussed energies on the creation and implementation of LLRs, but there have been very few success stories. CCA members have provided information on loan access problems to both the Department and Congress to prod them into action to create state-by-state LLR programs.

Only a few states have submitted LLR plans and have had them officially approved. California, after months of noncompliance with LLR requirements, and months of negotiations with the Department, seems to be nearing a full, functioning program.

The Department has interpreted the LLR program to apply only to subsidized loans--leaving SLS and PLUS loans outside the safety net. For low income students, in particular, having no access to supplemental loans can create a crisis around their continuation of postsecondary education. Under statutory language, Congress provided that all HEA Title IV loans would be in the LLR program once SallieMae entered the program, no later than November 1993, if state agencies and the Department could not fund LLR applications. A Department contract with SallieMae was signed on March 15, 1994. That contract, however, does not allow SallieMae to offer unsubsidized loans unless SallieMae acts as the LLR for a state. During this delay, CCA has received examples of students who have had to drop out of school because state LLR programs do not provide SLS loans.

Difficulties in states which are required to have an LLR program are far ranging--from no program in place, to application criteria which exceed the statutory requirements and Departmental guidelines. The following state-by-state examples show problems in the LLR program which have been experienced by CCA students and schools. Some problems may have recently been resolved; some problems may have become more pronounced. There is no central source of information, no uniform state program standards, and no comprehensive LLR program for all HEA Title IV student loans.

IDAHO: The state guaranty agency has no LLR program in place. The state agency currently processes a number of loans and as part of this process they conduct credit checks on applicants. While the LLR program prohibits credit checks, the Idaho agency is processing loans as traditional loans, rather than LLR loans and will continue with their policies until they develop an LLR.

ILLINOIS: The state guaranty agency has placed loan volume caps on several schools, has not provided LLR loans and will not cover SLS or PLUS loans. A student at a CCA school in Illinois is our first documented case of that individual having to leave school because of loan access problems.

KANSAS: The LLR program will not serve students seeking SLS or PLUS loans.

MARYLAND: With the withdrawal of NationsBank as a lender and a policy change with the only other lender for the proprietary sector in that state (Signet Bank) eliminating access for students attending eligible institutions with cohort default rates in excess of 15 percent, the Maryland guaranty agency indicated it would be LLR for all FFELP loans. However, the Department denied them the authority to make unsubsidized loans, in effect denying students a full package of student aid necessary to meet educational expenses. No substitute program is in existence to meet this shortfall which the state agency was directed not to meet.

MISSOURI: The state guaranty agency has initiated a procedure which contradicts the purpose of the LLR program by stretching the timeline to half a year for an application to result in a FFELP loan check. For students and schools this wait is equivalent to denial of access to postsecondary education and training. The Missouri guaranty agency has indicated that a student must submit two individual denials before the agency will act. The student must seek the denials sequentially, with two months allowed for each lender to deny a loan. The LLR then has 60 days to complete action and provide loan funding. The total time lapse in many cases is six months.

In addition, the Missouri procedures are daunting in their requirements of a student applicant. In a three page letter of instructions to a student applying for an LLR loan, the state agency requires, among 10 requirements, that the student must be in a program to submit their application for an LLR to pay for that program, that the application may be returned for a number of editorial reasons, if the application is denied because of poor credit a new lender will be assigned (a puzzling requirement since LLR lenders may not conduct credit checks), and a final paragraph which states, "The Missouri Student Loan Program (MSLP) will make every effort to process your loan application. The Last Resort Program, however, does not guarantee you will receive a loan." (October 22, 1993 letter from the state agency to Linda Hamilton of Independence, Missouri)

MONTANA: The state guaranty agency has no LLR policy and are currently developing one which they anticipate will be completed and submitted to the Department by July of 1994. The LLR program became effective in Federal law in August of 1993.

NEBRASKA: The LLR program will not serve students seeking SLS or PLUS loans.

NEVADA: Only one lender serves students in the proprietary sector and the state has not submitted an LLR plan. Discussions with the Department indicate that when an LLR program is instituted, every student will have to submit two **loan** rejection letters, rather than institutional rejection letters. This process can extend the period of no loan access to many months for students and discourage continued education and training. Using Colorado as an example, that state agency explains the problem, "The requirement that students obtain denial letters is burdensome for them, and requires that they go to greater lengths to obtain loans than their counterparts applying for FFELP loans. Furthermore, once a school is aware of two (or more) lending institutions not willing to loan to their students, the school would most likely refer students to those lenders to obtain denial letters. This would, in effect, create an increase in student inquiries at those lending institutions specifically asking not to be approached for funding. Where we are week to maintain positive relationships with our lending institutions, this is not the optimal process. The effect of requiring denial letters could, therefore, cost students more time and effort, in effect penalizing them for a situation they did not create." (November 19, 1993 letter to Larry Oxendine, U.S. Department of Education from Robert Former, Director of the Colorado Student Loan Program)

OHIO: The state guaranty agency has no functioning LLR program. There has not appeared to be an access problem, however, for a limited number of CCA schools, traditional loans have not been available to students. For example, a school in Cleveland has not served a FFELP student since July of 1993--no loans have been generated to their students in over ten months.

VIRGINIA: The state agency conducted credit checks for the LLR program during its first period of implementation--an example of lack of guidance on the part of the Department and state-by-state variations of LLR programs in place or being patched together.

These examples of problems with the letter and intent of the LLR program reflect the "bumpy" start of a new system. However, when students get caught in these bumps and are faced with a lack of access to loans to complete their education, the entire purpose of LLR becomes a cruel joke to individuals who are denied an education because of an avoidable delay in funding.

Please continue to send your examples of LLR problems to CCA. We have been sharing your comments with Congress and with the Administration. It is critical that SallieMae be brought into the LLR program to provide financial resources for <u>all</u> Federal student loans.

THE EDUCATIONAL QUALITY INDEX ACT of 1994

(NJ)

The enclosed suggested legislative language is for purposes of discussion only. Congressman Andrews will submit this, or something like it, to House Legislative Counsel, to be translated into tight legalese.

What this proposal does is:

Establishes an Educational Quality Index. That Index will be on a scale of one to 100. 25 points on that index will be a Pell eligible student offset. It is not spelled out how the offset is established. (As you know, we have assumed that the offset should be the number of Pell eligible students at a school, minus the national average of Pell eligible students).

The Index includes 75 points for graduation, placement, licensure and certification as available, and cohort default rates. No more than 25 points can be for default rates. (We have assumed a weighted factor of 75% for graduation/placement and a 25% weighted rate for default rates.)

Schools reaching a score of 40 and above will be Title IV eligible and will avoid several oversight and compliance provisions of the Higher Education Act, such as:

Loss of eligibility if cohort default rates exceed 25% for three years;

Elimination of 85/15 restriction for program eligibility, elimination of the two year rule for eligibility;

Elimination of the two year rule for eligibility for postsecondary vocational institutions;

Replaces short term program eligibility based on the 70/70 formula;

Eligibility and certification procedures will be uniform for all institutions of higher education, whether proprietary or traditional;

If the institution meets the Educational Quality Index eligibility, provisional certification cannot exceed one year and must be for cause;

A change of ownership of an institution which meets the Educational Quality Index will not lead to provisional certification unless the institution is placed on provisional certification for other allowable reasons; and

SPRE reviews can be triggered by administrative capability and financial stability criteria only. These criteria cannot differ for proprietary and traditional schools.

Departmental program reviews will not apply to institutions meeting the Educational Quality Index eligibility standards, except the Secretary's review is triggered if an institution scores below 40 in the Educational Quality Index, except under paragraph (D), which provides for review based on deficiencies or financial aid problems identified by the SPRE or the appropriate accrediting agency. (NOTE: This is a broad exemption which Congressman Andrews would like to narrow--ideas welcome.)

Also, in this legislation as it progresses from a discussion document to the formal bill for 1995, members have suggested that in calculations of the Educational Quality Index that the law be clear about withdrawal for cause students not in the count, and a reasonable definition of placement.

Some specific school examples based on the formula follow:

Point maximum and weighting factor are equal

"mitigating circumstances"

25 points maximum	Pell Eligible Students (PES) less the national average
37.5 points maximum	Placement (licensure and certification where and when available)
18.75 point maximum	Graduation rate
18.75 point maximum	Cohort default rate (rate of non-defaulters)

SCHOOL A--high poverty/high default/mid-range graduation and placement

PES	60%	11.2
Placement	60%	22.5
Graduation	40%	07.2
Default	50%	09.4
		50.3

SCHOOL B--significant poverty/borderline default rates/mid range graduation and placement

PES	30%	3.8
Placement	60%	22.5
Graduation	40%	7.2
Default	25%	14.0
	(75% non defaulters)	
		47.5

SCHOOL C--significant poverty/borderline default/good graduation and placement

PES	30%	3.8
Placement	65%	24.5
Graduation	60%	11.3
Default	25%	14.0
	(75% non defaulters)	
		53.6

SCHOOL D--little poverty/borderline default/mid-range graduation, high placement

PES	15%	0
Placement	80%	30.0
Graduation	50%	9.4
Default	25%	14.0
	(75% non defaulters)	
		53.4

Recognize that this formula is not spelled out in the proposed legislation. What numbers should be used would be the point of discussion of the bill. However, as you have all suggested, we need to run numbers to ensure that most, if not all of our sector is within reach of the Index's blessing.

Other examples--although these schools would not be covered by the Index in the proposed legislation (based on averages from a variety of sources including the Chronicle of Higher Education):

State University of ABC (undergraduate program)

PES	15%	0
Placement	no record-graduation used for this and other criteria	
Graduation	48%	27.8
Default	25%	17.1
	(75% non defaulters)	
		44.9

Ivy League University

PES	4%	0
Placement	no record-graduation used for this and other criteria	
Graduation	95%	53.0
Default	4% (96% non defaulters)	17.9
		70.9

Community College of Bolivar WVA

PES	15% (based on most students' part-time status)	0
Placement	no record-graduation used for this category	
Graduation	8%	5
Default	0% (100% non defaulters based on zero loan volume)	18.75
		23.75

WHAT IS A 30% School?

PES	50%	9.0
Placement	10%	3.7
Graduation	30%	5.6
Default	40% (60% non defaulters)	11.2
		29.5

THE EDUCATIONAL QUALITY INDEX ACT of 1994

PURPOSE: To establish an educational quality index to measure educational effectiveness based on student retention, graduation and job placement. Such an index will supersede other requirements for Title IV, Part B eligibility for vocational, occupation and career institutions of higher education, except provisions for program integrity, as noted below.

Strike Part G, Section 481 (a) (1) of the Higher Education Act, as amended, and insert in lieu thereof the following:

Section 481 DEFINITIONS

(a) INSTITUTIONS OF HIGHER EDUCATION-(1) Subject to paragraphs (2) and (5) of this subsection, the term "institution of higher education" for purposes of this title includes, in addition to the institutions covered by the definition in section 1201(a)-

(A) a proprietary institution of higher education; B a postsecondary vocational institution;

(C) a postsecondary institution, serving students in a transitional phase from high school to either an institution of higher education or employment; and.... (continue existing language for foreign medical schools)

Strike subsection (a)(3) and insert in lieu thereof:

(3) An institution shall be considered to meet the definition of an institution of higher education paragraph (1), if such an institution-

(A) Meets a mark of 40 or above on a scale of 100 on the Educational Quality Index;

(B) Meets a mark of 30 on a scale of 100 on the Educational Quality Index, and is provisionally certified for no more than three years in which the institution must reach an Educational Quality Index of 40, or be eliminated from Part B eligibility. A mark of 30 to 40 on the Index shall trigger a review by <u>SPRE</u> . The year an institution meets the Educational Quality Index of 40, the institution shall be considered fully certified, assuming other requirements of certification are met. An appeal of provisional certification shall be made by an institution within one year of notification of its provisional status, based on the Educational Quality Index.

(C) Meets a mark under 30 on a scale of 100 on the Educational Quality Index during the first year of implementation, and meets provisions under <u>section on financial stability</u>. Such an institution shall be triggered for a review under <u>SPRE</u> and review under <u>PART H-Integrity and financial stability provisions</u> and be provisionally certified

for one year during which the institution must reach an Index of 40 or be eliminated from Part B eligibility.

Strike paragraphs (5) and (6), insert new paragraph (4) and renumber the current paragraph (4)as (5).

(4) The Educational Quality Index is a measure of educational effectiveness based on student performance and school outcome data.

(A) Seventy five percent of the Index shall consist of weighted data including cohort default rates, as defined in cohort default rate section, student completion rates, and student job placement rates. When and where graduate certification and licensure rates are available, they will be included in the Index. No more than 25% of the Index shall be cohort default rates, measured by the number of students not in default. No more than 25% of the Index shall be graduation rates, unless placement, certification and licensure rates are unavailable.

(B) Twenty five percent of the Index shall be an offset for the number of hard to serve students from disadvantaged backgrounds as measured by student Pell grant eligibility.

Section 481 (b), strike (5) and (6). Section 481 (c), strike (3).

Strike Section 481 (e) (2) and insert in lieu thereof:

(2) Programs of less than 600 clock hours in length will be Part B eligible if they meet the Educational Quality Index of 40 or higher. During the first year of a program, certification may be provisional until the institution reaches a verifiable rate of 40 or more on the Educational Quality Index.

Subpart 3-Eligibility and Certification Procedures
Section 498

Insert new paragraph (b) and renumber the following paragraphs accordingly.

(b) For purposes of this subpart, section 481 institutions meeting the Educational Quality Index for program eligibility shall be required to meet provisions of this subpart only as they are applied to Section 1201 institutions of higher education.

(Section 498 includes requirements for financial guarantees from owners--what should be taken out??)

Section 498 (h), renumbered (i), insert after (1)(B), new paragraph (C):

(C) Provisions in this subsection for provisional certification may not exceed one year if the institution meets the Educational Quality Index measure. Provisional certification for reasons other than those in Section 498 shall not apply to institutions eligible under the Educational Quality Index.

Section 498 (i), renumbered (j) shall be superseded by Section 481 (a)(4) during the first year after a change of ownership, and years thereafter.

Section 494C FUNCTIONS OF STATE REVIEW ENTITIES

Insert at the end of paragraph (a):

Those institutions which meet the Educational Quality Index in Section 481 shall be triggered for review only by their ranking on the Index as defined in that section, and review criteria in paragraph (b) (4). (5), (6), (8) and (11) of this section.

Section 498A PROGRAM REVIEW AND DATA

Insert at the end of (a)(1) the following phrase:

except those institutions qualifying under Section 481, Educational Quality Index measurements, which shall be reviewed under provisions of paragraph D of this subsection;

(NOTE--this is a wide exemption from reviews which Congressman Andrews would like to narrow. If you have suggestions, please let us know.)

Insert new paragraph (b) and renumber accordingly:

(b) Program eligibility based on the Educational Quality cannot be superseded by eligibility standards developed by a state guaranty agency.

Insert after (a)(2)(G), a new paragraph (H):

(H) institutions which are below a numerical rank of 40 in the Educational Quality Index in Section 481.

MEMORANDUM OF CALL

Previous editions usable

TO: As requested -

☐ YOU WERE CALLED BY — ☐ YOU WERE VISITED BY —

President Richard Levin

OF (Organization)

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☆ U.S.G.P.O. : 1993 342-198/80011

YALE UNIVERSITY
NEW HAVEN CONNECTICUT

OFFICE OF THE PRESIDENT

April 22, 1994

William A. Galston
Deputy Assistant to the President
for Domestic Policy
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Bill:

I want to let you know how much I enjoyed meeting you yesterday. It is always a pleasure to discover members of the Yale family, and a particular delight to find them serving the nation in a senior policy-making role.

As we discussed, leaders of colleges and universities across the country are seriously troubled by the proposed regulations issued by the Department of Education under the Part H "Program Integrity Triad" provisions of the Higher Education Amendments of 1992, and by the direction signalled by the Department in this process. Let me be clear that I and my colleagues emphatically support the Congressional aim of curbing student loan defaults by improving the management of the federal student aid programs, including through measures that eliminate participation by institutions that engage in fraudulent or abusive practices, and that assure that reliance on accrediting agencies is well founded and apply reasonable requirements for certification of institutions to participate. However, we are faced with the prospect of regulation that goes far beyond these aims and indeed will transform the relationship of colleges and universities to the government in ways that are unwarranted and harmful to the national interest.

Our concerns are essentially twofold. First, the approach taken by the Department in all three sets of regulations imposes vast new paperwork and empty bureaucratic requirements upon institutions that will be extremely costly and burdensome. In practice the overwhelming majority of this burden will fall upon institutions whose reliability and integrity as Title IV participating institutions is unquestioned and whose student default rates are insignificant. Much of the data called for is of little or no value and will serve no useful purpose. Moreover, the requirements come at a time when colleges and universities are straining to trim administrative expenses so as to better contain the cost of education to families, and when reversals of these cuts necessarily will cause consternation and distress. And second, the thrust of this unprecedented maze of regulation runs deeply contrary to the historic principle and tradition of institutional autonomy that has been one of the defining features of this nation's success in higher education, and particularly so at institutions that have sought to maintain over time the highest standards of academic excellence.

I and others fear that in pursuing this course the Department of Education has not fully appreciated both the importance of these issues and the dangers that they pose to the nation's system of higher education. As promised, I enclose a copy of the comments which Yale submitted in response to the Department's Notices of Proposed Rulemaking under Part H. I believe that it is critical that the Department be urged to reconsider its approach.

Once again, thank you for your interest in this matter. If you wish to have any further information, or if we can otherwise be of assistance to you, please do not hesitate to call me or Dorothy Robinson, Yale's General Counsel, at (203) 432-4949.

Sincerely,

Rick

Richard C. Levin
President

Enclosures

Yale University

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BY FAX

March 30, 1994

Ms. Wendy L. Macias
U.S. Department of Education
400 Maryland Avenue, S.W.
Room 4318, ROB-3
Washington, D.C. 20202-5346

Re: Notice of Proposed Rulemaking on Student Assistance General Provisions and Federal Pell Grant Program

Dear Ms Macias:

Yale University submits this letter in response to the invitation to comment on proposed regulations to implement portions of Subpart 3 of Part H of Title IV of the Higher Education Amendments of 1992, published in the February 28, 1994 Federal Register, pages 9526 to 9590. and entitled "Student Assistance General Provisions and Federal Pell Grant Program." We earlier submitted comments on proposed regulations implementing the related Subparts 1 and 2, on State Postsecondary Review Entities and the Secretary's Procedures and Criteria for Recognition of Accrediting Agencies, respectively.

Yale endorses and supports comments with respect to these proposed regulations submitted by the American Council on Education, the National Association of Independent Colleges and Universities, the Association of American Universities, and the Connecticut Conference of Independent Colleges. We do not attempt in this letter to repeat the specific comments in that document with respect to the numerous individual provisions of the proposed regulations which cause us concern.

However, we wish to express our views here both with respect to the process employed in this rulemaking proceeding and with respect to the major substantive objections we have to the proposed regulations as drafted.

We are keenly disappointed with the period for comment provided with respect to these regulations. We believe that a 30-day period was clearly insufficient given the length, importance and extreme complexity of the proposed regulations. As the Department is well aware, the comment period for the proposed regulations on Subparts 1 and 2 imposed extraordinary demands on institutional personnel whose involvement is essential to assess the potential effect of these regulations, and we note that the period has coincided with the peak workload of the college admissions season. We urge that the Department withdraw these proposed regulations, reconsider them, and publish revised proposed regulations with an adequate comment period.

As we have stated on our comments on Subparts 1 and 2, Yale University strongly supports the Congressional purpose underlying Part H, to improve the management of the federal student aid programs so as to curb abuse and avoid inappropriate expenditure of resources. However, we are very concerned, indeed alarmed, that these proposed regulations under Subpart 3 create a confusing, overlapping system of regulation that imposes major new paperwork and expense burdens on institutions to no valuable end. They stray beyond the statute to create regulatory control over institutions in ways that that bear little relation to the purpose of the subpart, unnecessarily and inappropriately invade institutional autonomy on academic and administrative matters, and create major uncertainties for institutions that unquestionably are and have been responsible participants in the federal student aid programs. We urge the Secretary to address these critical issues.

We note the following substantive points:

1. The application and certification procedures subject institutions to costly and virtually unlimited processes of furnishing documentation that are entirely at the discretion of the Department. The Department also has excessive authority under the proposed regulations to require recertification in circumstances where it is not warranted. Every effort should be made to minimize the paperwork burden associated with application for certification and to limit the occasions for recertification. Institutions' participation should not be at risk on account of delays by the Department in processing approvals of continued participation.

2. The certification procedures do not afford institutions facing possible termination of their participation sufficient due process protections. Excessive numbers of institutions will be forced into "provisional" certifications. Under this category, certification may be revoked without customary due process. The regulations should dramatically scale back the use of provisional certification.

3. The implications of program participation agreements are vastly expanded, and the attendant risks to colleges and universities and are excessive. This area creates redundant and inappropriate monitoring and responsibility over areas unrelated to the purpose of Title IV. It should be scaled back.

4. The financial responsibility standards include excessive requirements. They fail to provide sufficient flexibility and to frame appropriate alternative avenues for demonstrating financial responsibility. It is extremely important that institutions not be encumbered with requirements that impose administrative or other costs upon them (such as requirements to invade endowments or quasi-endowments to create specified cash reserves). All approaches to alternative demonstrations of responsibility, including that provided in the Technical Amendments permitting an institution to demonstrate that it has the resources necessary to ensure against precipitous closure, should be fully reflected in the proposed regulations.

5. The standards of administrative capability include a stunning array of requirements that invade institutional autonomy on academic and on management matters and create unreasonable recordkeeping and reporting burdens. Those numerous requirements that do not relate to the purpose of Subpart 3(including all requirements relating to academic issues) should be eliminated. Those requirements that are relevant to its purpose should be scaled back to eliminate micromanagement and invasion of management prerogatives of institutions (e.g., prescribing the staffing of aid administration; setting requirements for written communications between on-campus offices). The provisions of these regulations should further be reviewed to eliminate the many areas of redundancy with the State Postsecondary Review Program and accreditation requirements.

6. The provisions on institutional refunds are excessively complex and confusing. The Department should simply require an institution to publish and disseminate its refund policy to all students and applicants.

We are grateful for the opportunity to comment on these regulations.

Respectfully submitted,

Dorothy K Robinson

Dorothy K. Robinson

cc: The Honorable Richard W. Riley
The Honorable Christopher J. Dodd
The Honorable Joseph I. Lieberman
The Honorable Barbara B. Kennelly
The Honorable Sam Gejdenson
The Honorable Rosa DeLauro
The Honorable Christopher Shays
The Honorable Gary Franks
The Honorable Nancy Johnson
Commissioner Andrew DeRocco
Ms. Sally Katzen, Office of Management and Budget

Yale University

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March 18, 1994

Ms. Karen Kershenstein
U.S. Department of Education
400 Maryland Avenue, S.W.
Room 3036, ROB-3
Washington, D.C. 20202-5244

Re: Notice of Proposed Rulemaking:
Secretary's Procedures and Criteria for Recognition of Accrediting Agencies

Dear Ms Kershenstein:

Yale University submits this letter in response to the invitation to comment on proposed regulations to implement provisions under Part H of Title IV of the Higher Education Act (HEA) as amended, published in the January 24, 1994 Federal Register, pp. 3578 - 3601, regarding the Secretary's recognition of accrediting agencies. The University also has submitted a letter of comment in response to the related notice of proposed rulemaking concerning the State Postsecondary Review Program (SPRP), published on the same date. We welcome this opportunity to comment on the proposed regulations. We also endorse and support comments submitted by the American Council on Education, the National Association of Independent Colleges and Universities, the Association of American Universities, and the Connecticut Conference of Independent Colleges.

As we have stated in our comments on SPRP, Yale strongly supports the purpose underlying Part H to improve the management of the federal student aid programs so as to curb abuse and avoid inappropriate expenditure of resources. We appreciate the separate roles to be played by the Department of Education, the states, and accreditation agencies recognized by the Department (the "triad"), in effecting the partnership on which oversight by the Department of Education depends. We are very concerned, however, about several aspects of the proposed regulations on recognition of accrediting agencies. We believe that as written they deputize the accreditation agencies into the regulatory system in ways that will substantially diminish, if not destroy, the important role traditionally performed by accreditation as an independent avenue for quality assurance within higher education. In addition, they would create an intrusive and extremely expensive new system of regulation on institutions that was not envisioned by Congress, and create a crushing new burden of responsibilities for accrediting agencies that will require them to pass along substantial additional costs to institutions. These and the related proposed regulations under Part H would create an inappropriate, confusing, and burdensome duplication of function among the triad entities. We urge the Secretary to address these critical issues in the final regulations.

We wish to emphasize the following points:

1. The proposed regulations should not define standards for accrediting agencies. While the law requires that the Secretary determine that an accrediting agency have standards that assess some twelve listed characteristics of the institution, it does not require the Secretary to determine what those standards should consist of -- and therefore also does not permit the Secretary to prescribe them. HEA §496(g) states that "[n]othing 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. . . ." However, the proposed regulations in many respects do

prescribe the details of standards. Such regulation, which inappropriately creates federal accreditation standards, intrudes squarely upon the historic independence of accrediting agencies, and intrudes upon the autonomy of institutions that are accredited by them. The language addressing agency standards should be pared back to that in the statute.

2. Requirements beyond those in the statute should not be imposed. There are numerous instances in the proposed regulations where requirements not compelled by the statute are imposed upon accrediting agencies or institutions. These requirements, which are not necessary to accomplish the purpose of Part H of assuring program integrity, and which impose burdens and costs that are ultimately borne by institutions, students and their parents, should be eliminated.

3. The proposed regulations inappropriately entwine the accrediting agencies in regulatory responsibilities and in effect deputize them as an enforcement agency of the Department of Education. This thrust of the regulations will dramatically alter the relationship between the accrediting agencies and the institutions they accredit. The preservation of the integrity and with it the value of the accrediting process depends in strong measure upon the reality and perception that the accrediting process operates in a manner that is independent and expert in its subject matter, and that does not carry the burden of any other agenda. The proposed regulations should not saddle accreditation agencies with numerous reporting and monitoring requirements, and, above all, should respect and assure the confidentiality of the accreditation process.

We respectfully disagree with the Secretary's statement in the Regulatory Flexibility Act Certification that these regulations would not have a significant economic impact on the institutions affected. Because the funding of regional accrediting agencies for colleges and universities comes from fees charged to institutional members, any new requirements, such as those for visits, data collection, data analysis, reporting and record maintenance, will impose new fiscal burdens on the institutions. These costs will be in addition to the institutions' own increased costs in responding to the new requirements.

In addition to the foregoing, we offer the following specific comments with respect to the sections indicated:

Definitions

§602.2 We urge that the Secretary adopt the same definitions of vocational education for purposes of regulations under all subparts of Part H. We also agree with the suggestion of the Secretary that vocational education that triggers action under the regulations should be prebaccalaureate only, leading to a certificate or other credential but not to a degree. However, we urge that this be further narrowed to reach such programs only at institutions whose activities consist predominantly of such vocational programs. Moreover, the definition should provide that the many programs that generally require a baccalaureate degree for entrance, but also allow exceptions to be made for individuals with some substitute education or experience, are not considered "pre-baccalaureate."

Application for Recognition

§602.10 If it is necessary to conduct unannounced site visits on applicants, the confidentiality of records relating to institutions in any event should be respected. The Department of Education should not have access to materials for which an institution has an expectation of confidentiality. The requirement that the confidentiality of institutional information be respected is essential. The nature of accreditation will be radically altered and its value diminished if institutions and reviewers cannot rely on confidentiality protocols.

Preliminary Review by the Secretary

§602.11 The provision for review of institutional information in §602.11(b)(2) is problematic. Such information may have been prepared under a policy of confidentiality. In addition, the Department of Education is not capable of reviewing the effectiveness of the agency's standards without itself reviewing the institution and without deriving a set of criteria, as yet not revealed, as to how effectiveness can be assessed. This paragraph should be deleted.

Additions to or substantive changes in educational programs

§602.25 This provision is not required by the statute and would be exceedingly burdensome to the institutions and to the accrediting agencies. It is far more extensive than current practices of regional accrediting agencies, which have a much higher threshold for reporting changes. Current practices essentially only involve reporting changes such as the addition or deletion of new majors or programs. As written, the regulations would require, for example, submission of explanations concerning simple changes in the requirements within a major. Requirements such as this would represent another inappropriate intrusion into an institution's autonomy and self-governance. For pre-baccalaureate vocational education programs, the requirement of pre-approval of changes constitutes an even more serious invasion of institutional prerogatives.

Required accreditation standards

§602.26 The twelve areas in which an accrediting agency must have standards should be pared back to the language of the statute. To the extent that they are not, the proposed regulations, by filling in detail, are essentially creating federal standards and thereby usurping the proper role of the agencies. Even where the Secretary is proposing to incorporate in the regulations agency practices which it believes are good ones, he should exercise the restraint not to do so. The fact that something is believed to be a good practice does not mean that it should be required by government regulation.

§602.26(b)(4)(iii) and (iv) The requirements of annual submission and review of financial information is an example of unnecessary duplication of function. There is no reason why this exercise should be undertaken by an accrediting agency with that degree of frequency. As the proposed regulations state, most of the desired financial information is already submitted to the Secretary via annual financial statements sent to the Regional Inspector General for Audit, Department of Education. These statements are reviewed by that office and, therefore, the accreditation entity should not be expected to duplicate these actions.

§602.26(b)(7) We believe that the determination of a specific acceptable relationship between tuition and fees for vocational education and the earnings of a graduate not only inappropriately intrudes upon institutional decision-making, but also is fraught with definitional and other difficulties. Of all the requirements, this one is perhaps best suited for the proprietary sector only -- if it can sensibly be done even there. The very note in the prologue that reminds commenters of the difficulty in obtaining information from graduates beyond the first year calls this exercise into question. What relationship is important? The first-year out relationship? Or career or lifetime earnings? Is a school supposed to adjust its tuition in accordance with employment conditions? The statutory language simply does not require that the "assessment" of tuition and fees "in relation to" the "subject matters taught" and the "objectives of the degrees or credentials offered" be a quantified standard of acceptability in relation to earnings. Since the statutory language appears to leave flexibility for the accreditation agency to define this standard, it may even contravene §496(g) for the Secretary to regulate such a standard.

§602.26(b)(9) Similarly, the prescription by regulation of standards for measurement of student achievement, if that is the Secretary's intent here, violates §496(g) of the Act. Rather, the accrediting agencies themselves should determine these standards. Many of the suggested vehicles for measurement of student achievement are impractical if not impossible (e.g., obtaining employers' evaluations) and would require virtually an army of data gatherers.

§602.26(b)(13) Regardless of whether the promulgation of a standard on refund policy is necessary to comply with §484B of the HEA , it contravenes Sec. 496(g), which refers only to standards required by <u>this section</u>, for the requirement of such a standard to be introduced here by the Secretary and therefore should be deleted.

<u>Regard for decisions of States and other accrediting agencies</u>

§602.30 The provisions requiring an accrediting agency to be continually aware of other agency actions are impractical and burdensome. Also, the requirement that agencies share with other agencies the actions they <u>plan</u> to take could create the possibility of real, escalated damage from a planned action that is not justified -- and is determined not to be justified when the institution has the chance to respond or appeal.

We are grateful for the opportunity to comment on these regulations.

Respectfully submitted,

Dorothy K. Robinson

Dorothy K. Robinson
General Counsel

cc: The Honorable Richard W. Riley
The Honorable Christopher J. Dodd
The Honorable Joseph I. Lieberman
The Honorable Barbara B. Kennelly
The Honorable Sam Gejdenson
The Honorable Rosa DeLauro
The Honorable Christopher Shays
The Honorable Gary Franks
The Honorable Nancy Johnson
Commissioner Andrew DeRocco
Ms. Sally Katzen, Office of Management and Budget

Yale University

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March 18, 1994

Mr. John Kolotos
U.S. Department of Education
400 Maryland Avenue, S.W.
Room 4318, ROB-3
Washington, D.C. 20202-5244

Re: Notice of Proposed Rulemaking:
State Postsecondary Review Program

Dear Mr. Kolotos:

Yale University submits this letter in response to the invitation to comment on proposed regulations to implement the State Postsecondary Review Program (SPRP) authorized under Part H of Title IV of the Higher Education Act (HEA) as amended, published in the January 24, 1994 Federal Register, pp. 3604 - 3623. The University also has submitted a letter of comment in response to the related notice of proposed rulemaking concerning federal recognition of accreditation agencies, published on the same date. We welcome this opportunity to comment on the proposed regulations. We also endorse and support comments submitted by the American Council on Education, the National Association of Independent Colleges and Universities, the Association of American Universities, and the Connecticut Conference of Independent Colleges.

Yale strongly supports the purpose underlying Part H to improve the management of the federal student aid programs so as to curb abuse and avoid inappropriate expenditure of resources. We appreciate the separate roles to be played by the Department of Education, the states, and accreditation agencies recognized by the Department (called the "triad"), in effecting the partnership on which oversight by the Department of Education depends. However, we are very concerned about several aspects of the proposed State Postsecondary Review Program (SPRP) regulations that implement part of these provisions. We believe that as written they would create an intrusive, burdensome, and extremely expensive new system of state-based regulation that is far more extensive than what Congress envisioned. Moreover, we believe that these and the related proposed regulations under Part H would not provide the efficient operation of the "gatekeeping" system for the Title IV programs intended by the Secretary, but instead would create an inappropriate, confusing, and burdensome duplication of function among the triad entities. We urge the Secretary to address these critical issues in the final regulations.

In addition, we believe that the burden of collection of information, recordkeeping and other paperwork imposed on institutions by these regulations has not been adequately considered. We believe they would cause colleges and universities to incur significant expenses which ultimately will be borne by students and their families in higher education costs.

We wish to emphasize the following points:

1. The proposed regulations exceed the statute in defining the SPRP's purpose. The statute authorizes the State Postsecondary Review Entities (SPREs) to review only those institutions that meet the statutory "triggers" for a review, and to develop standards for

purposes of those reviews. The proposed regulations, however, state that the purpose of the program is "to strengthen State oversight of institutions participating in [Title IV] programs through the development of State standards for those institutions." §667.1(a)(1). This misstatement of purpose is a mischievous invitation to new state regulation that was not intended by Congress, and that fundamentally would alter the traditional relationship between independent higher education and state government.

2. The standards for review of referred institutions include excessive and inappropriate requirements. The requirement that states establish quantified minimum standards in several areas for use in reviewing referred institutions introduces inappropriate, burdensome, and substantively invalid or meaningless tests for a variety of factors. This effort is misguided and contravenes the statute, which provides that "the Secretary shall not require a State to establish standards that are unrelated to ensuring institutional or program integrity. . . " HEA§ 494C(g), and also states that "[n]othing in this subpart shall . . . require the States to establish specific mechanisms recommended by the Secretary." HEA§494C(k). These requirements should be pared back to the statute, and the SPREs should be permitted to develop standards as contemplated by the statute in a fashion that minimally burdens institutions and that address the specified factors in an appropriate and non-intrusive way.

3. The due process protections for institutions that are referred for review and for those that are terminated from participation in the Title IV programs are inadequate. Serious damage may be done to the reputation of an institution if it is referred for a SPRE review. There should be a preliminary step, therefore, whereby an institution has a right to challenge the basis of a determination that it has met one or more of the criteria for referral, and it should not bear an unfair burden of having to disprove data furnished by another party that is the basis of such a determination. There should also be a fair opportunity for an institution to contest a SPRE determination terminating its participation in the federal student aid programs, including an opportunity to appeal such a determination to the Secretary before final notice from the SPRE is delivered to the Secretary that results in automatic termination.

4. The proposed regulations implicitly impose burdensome and costly requirements to maintain data for purposes of a potential review. While disavowing the "technical" applicability of review standards to institutions that have not been referred for review, the preamble explains that if an institution is referred and does not have the data on hand to demonstrate its conformity with the review standards if it is reviewed, it will be in jeopardy. Therefore all institutions essentially have to maintain such data. See §667.21(b)(2). This coercive approach to recordkeeping is inconsistent with the purpose of the statute, and would create enormous costs for colleges and universities. Institutions that are referred for a SPRE review should instead be allowed at that time a reasonable opportunity to generate the data necessary for the review.

5. Significantly greater effort should be made to eliminate duplication among the functions and requirements imposed upon institutions by the triad entities. The Secretary has asked how final regulations should be structured to reduce the burden on institutions and enable the triad entities to carry out their functions. To the greatest extent possible, statutory requirements should be read not to require submissions or de novo reviews of the same or similar material or area by more than one entity. Where the same area or material is specified by statute, the regulations should simply call for a determination or assurance that the material or area has been furnished to or reviewed by the most appropriate entity for that function. In every case where a requirement imposed by subpart 1 of Part H appears to duplicate a requirement or data called for elsewhere under the HEA, the subpart 1 requirement should be defined and satisfied in the same manner.

In addition to the above, we offer the following specific comments on the proposed regulations, as indicated by section:

Scope and Purpose

§667.1(a)(1) As indicated above, the second sentence of this paragraph misstates the purpose of the SPRP. It should be modified to eliminate the reference to a broader oversight purpose, and to change the phrasing so that the standards are tied only to referred institutions and not to participating institutions. It is perfectly clear in HEA §494C(d) that the standards only apply to institutions that meet one or more of the review criteria provided in HEA §494C(b).

Definitions

§667.2(c) The definitions of "professional program" and "vocational program" should be the same for purposes of the SPRP regulations and the other regulations under Part H. Both of these definitions, however, as drafted, would create confusion and uncertainty with respect to the treatment of many programs of a university such as Yale. With respect to the term "professional program," it in unclear whether doctoral programs, where some of the graduates enter into licensed professional fields, such as clinical psychology, would come within the definition. It is similarly not clear whether a university school of management or business would be a "professional program," in that some graduates enter licensed professions. In addition, the term should apply to post-baccalaureate programs only (rather than post-associate degree). Finally, many generally post-baccalaureate level programs admit, under some exceptional demonstration of equivalency in education or experience, non-baccalaureate degree holders. The definition should make it clear that such alternative requirements do not mean that such programs are not post-baccalaureate.

With respect to "vocational program," the definition should extend only to pre-baccalaureate non-degree programs of institutions whose activities consist predominantly of such programs. Otherwise, it may reach a variety of certificate programs in liberal arts colleges and universities which arguably "prepare students for gainful employment in a recognized occupation," but really are better considered part of a broader liberal arts offering.

State Postsecondary Review Entity

§667.4(a)(2) Rather than perpetuate the misimpression that institutions not referred are subject to state review standards, this paragraph should employ language that clarifies that the SPRE's function is to ensure "that all institutions in the State that participate in a Title IV, HEA program" that are referred for review comply "with the State review standards established under §667.21," since it is clear in HEA §494C(d) that the standards only apply to institutions "triggered" for review.

Criteria the Secretary uses to refer institutions to a SPRE for review

§667.5(b)(11) This paragraph exceeds the scope of the statute, and should be rephrased to bring it back into conformity with HEA §494C(b)(11), which speaks only of student complaints, not complaints by "faculty or others, including information provided to the Secretary by the SPRE." In addition, the final clause should be worded "that in the Secretary's judgment are sufficient to justify review of the institution." This change would make the threshold the more restrictive one provided by the statute.

§667.5(e) The provisions of this section do not provide adequately for an institution to be able to challenge a proposed referral for review. The institution should not be referred if data on which a referral is based cannot be confirmed.

State review standards

§667.21 This section, which provides for the development of State review standards, contains numerous departures from the language of the statute, expanding the reach of the regulations beyond that intended by Congress. In several instances, the regulations call for judgments and evaluations of institutional programs and policies, the design or definition of which is rightly determined by the institution. Each instance threatens institutions' rights of autonomy and self-governance. Instead, the regulations should only ensure the existence of such programs and policies. Some of the standards simply create new exercises not envisioned by the statute. For example, the statute calls for determination "that the institution has a method to assess a student's capability to successfully complete the course of study for which he has applied;" i.e., an admissions process. The regulation, on the other hand, calls for the SPRE to evaluate "the extent to which [that method] . . . accurately assesses that ability as measured by the completion rate of the program." §667.21(a)(4). Not only is this evaluation nowhere called for in the statute, but it also assumes that the completion rate is the correct measure of the "accuracy" of the admissions process. It may very well not be, for example, in the case of two-year colleges when successful students transfer out into four-year programs after their first year, or when successful students leave to take employment opportunities. The wording of the standards under §667.21(a)(10) also extend them well beyond the statute by calling for a judgment on whether tuition and fees are reasonable given the expected earnings of a graduate. This is very different from determining the relationship between tuition and fees and the reasonably expected earnings of a graduate, as the statute provides. Again in the wording of §667.21(a)(14), the statutory determination is expanded, for example, in (v), which calls for measurement of the "success of the institution's graduates who express other completion goals." This language is a considerable departure from the statute, which simply calls for the determination of the "variety of student completion goals . . .". One can readily imagine the difference in the survey research effort that would be required to address the former as compared with the latter. How, for example, is "success" to be measured?

§667.21(a)(10). The wording of this paragraph is another apparently subtle, yet extremely consequential, change from the statute. The regulation states "[i]f a program provides an educational program that is designed to prepare students for gainful employment. . ." in place of the statutory wording "[I]f the stated objectives of the courses or programs of the institution are to prepare students for employment . . ." HEA §494C(d)(7). The statute's wording would seem to limit its applicability to programs of vocational institutions, since that wording addresses the programs generally of the institution and speaks of stated objectives being preparation for employment. The regulations should reflect this limited reach, rather than employ language so broad that even liberal arts B.A. programs would seem to fall under it.

§667.21. The Secretary has asked whether a SPRE's review should include compliance with statutes and regulations on disabled access. We believe it should not. There is ample compliance oversight provided under other laws and regulations. Such multiple layers of compliance review are burdensome and redundant for institutions.

§667.21(b)(2). This paragraph, by failing to modify the word "institution" with the word "referred" or "subject to review," implies that all institutions need or are required to maintain records and data to establish compliance with standards. As discussed above, coercing institutions to gather and maintain data in anticipation of a potential SPRE review will be an extremely costly and burdensome affair for institutions. It will entail needless administrative expense with no institutional benefit whatsoever. Yale University currently expends approximately $6,000 every two years to perform and compile the results of a simple two-question survey of 1200 Yale College graduates in their first post-graduate year. The data gathering called for under §667.21(a) is far more complex, and calls for multiple surveys of various kinds in many different programs that will be far more labor intensive and expensive than that currently undertaken. There are numerous definitional and survey design problems that will be encountered, and problems with access to certain data, such as licensure examination results, which may be confidential or otherwise not readily obtainable. At a time when colleges and universities are doing everything they can to cut unnecessary administrative costs, these data collection and recordkeeping provisions would easily add tens and more likely hundreds of thousands of dollars (including extra personnel) to an institution's annual operating expenses.

§667.21(b)(4) The requirement of quantified minimum acceptable standards for the relationship between tuition and fees and the earnings of those who successfully complete the program is inappropriate, unworkable, and strays far beyond anything called for by the statute. Similarly, the requirements of quantified acceptable standards for completion and graduation rates, withdrawal rates, placement rates, and licensure examination pass rates are without foundation and inappropriate. Because such quantified standards are irrational (unless different rates were established for each distinct type of institution to reflect its mission and the population it serves), they would be arbitrary, and they therefore contravene HEA §494C(g) because such standards are unrelated to assuring program integrity. For example, research shows that the most important determinants of graduation rates are pre-postsecondary in nature. That is, a school's graduation rate is more or less determined by the types of students admitted. It is very possible that a school with a low graduation rate could actually be doing an excellent job, given the population it is serving.

<u>SPRE reviews of institutions</u>

§667.23(c)(2)(i) The SPRE should recommend but <u>not prescribe</u> the course by which an institution brings itself into conformity with state standards. Such prescription constitutes an inappropriate interference with normal institutional governance and management. (The term "violate" a standard is not used in the statute; it is inappropriate terminology for the regulations and should be removed in all of the places where it appears. Failure to meet the review standards is <u>not</u> a civil or criminal violation.)

The regulations should provide a fair opportunity for the institution to respond to an initial SPRE report, including a minimum time (at least 30 days, for example), and the SPRE should be required to consider that response. If, as §667.23(f)(2) states, the SPRE report becomes final on the day following the deadline for an institution's response, when is the SPRE supposed to consider the response?

§667.23(g)(2) and (3) These provisions, which punish institutions for failing to allow SPRE personnel at the institution or for failing to provide prompt access to documents and records, are unfair and inappropriate, because they do not contain language that narrowly limits the SPRE personnel visit or document request to inquiries clearly relevant to its review functions, and in the case of documents, those that are not privileged or withheld under conflicting confidentiality requirements.

<u>Peer reviews of institutions</u>

§667.24 There should be more rigorous requirements for a peer review system other than a nationally recognized accrediting agency with which a SPRE may contract for assessment of the quality and content of a referred institution's programs.

Termination of an institution's participation in the Title IV, HEA programs: due process requirements

§667.25 Prior to delivery of a final notice of ineligibility from the SPRE to the Secretary, there should be a pre-notice so as to permit the Secretary to review in advance a proposed decision by a SPRE to terminate an institution's participation, since the notice and decision to terminate is otherwise non-appealable to the Secretary.

§667.26 The due process provisions afforded an institution facing termination should be more substantial. In particular, a state should be required to provide a meaningful opportunity for the institution to respond, including ample time limits, and should provide for pre-notification to the Secretary. The regulations should specify clearly that a decision to terminate an institution should be not for a mere failure to conform to one or even several standards, but rather a conclusion, based upon that review, that the institution's failure to meet such standards demonstrates that it cannot assure institutional integrity and reliability sufficient to qualify it to participate in the Title IV programs.

We are grateful for the opportunity to comment on these proposed regulations.

Respectfully submitted,

Dorothy K Robinson

Dorothy K. Robinson
General Counsel

cc: The Honorable Richard W. Riley
The Honorable Christopher J. Dodd
The Honorable Joseph I. Lieberman
The Honorable Barbara B. Kennelly
The Honorable Sam Gejdenson
The Honorable Rosa DeLauro
The Honorable Christopher Shays
The Honorable Gary Franks
The Honorable Nancy Johnson
Commissioner Andrew DeRocco
Ms. Sally Katzen, Office of Management and Budget

UNIVERSITY OF MARYLAND AT COLLEGE PARK

OFFICE OF THE PRESIDENT

April 20, 1994

Mr. Bill Galston
Deputy Assistant for Domestic Policy
The White House
West Wing Second Floor
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Bill:

There are regulations on higher education drafted by the Department of Education which I hope you will look at carefully. These regulations, relating to Part H of the Higher Education Act Amendments of 1992, have been circulated for comment, and are expected to be published by May 1.

In my view, these regulations are very troublesome for several reasons, including:

1. They impose unprecedented governmental intrusion into the basic operations of academic institutions, ranging from curricular decisions to material included in university catalogs.

2. These regulations will impose heavy and costly administrative and paperwork burdens on every college and university in America, harming disproportionately those that are most vulnerable. At the same time, even here at College Park we will be required to devote more time and resources simply to respond to requests for information and records.

3. These regulations will be highly alienating, pushing the academic community away from the Administration because of the perceived insensitivity of the proposed standards.

I would be pleased to arrange a more detailed presentation of my concerns if that would be helpful to you. One proposal I offer is that the Administration delay implementation for one year in order to give colleges and universities an opportunity to assess the costs associated with the regulations, as well as give policy makers an opportunity to question whether these regulations go too far in the effort to achieve the intended results.

Thank you for your attention to this issue.

Sincerely yours,

William E. Kirwan
President

WEK:sm

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

28-Apr-1994 05:01pm

TO: Patricia A. Smith

FROM: Daniel J. Chenok
Office of Mgmt and Budget, OIRA

CC: Barry White
CC: Bernard H. Martin
CC: Judy L. Grew

SUBJECT: RE: TRIAD developments

Two quick points about the meeting, following on Pat's note from this morning:

-- Keith Mason, who organized the meeting, is the Deputy in the White House Office of Intergovernmental Affairs (under Marcia Hale).

-- Regarding the PRA sections in the rule, the public has 30 days to comment on the revised regulatory provisions that require reporting or recordkeeping, and on ED's revised burden estimates for these provisions. We have 60 days from the date the rules are published to approve, approve with conditions, or disapprove these information requirements. If we approve them, ED will publish a note in the Federal Register indicating an OMB number, effective date, and any relevant conditions of clearance. If we disapprove (which must be based on failure to minimize burden, duplication, or lack of practical utility), those regulatory provisions that contain information requirements would not be effective until ED amended the rule or information collection package to address concerns raised in the disapproval notice.

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P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

28-Apr-1994 11:15am

TO: William A. Galston

FROM: Barry White
Office of Mgmt and Budget, LVE

SUBJECT: Education's student aid TRIAD regulations

Because of your involvement in this issue, I am forwarding the report below of a meeting Sally Katzen had with the higher education community on the 27th. (The President of the U. of Georgia therein referred to was a Carter Deputy A/S in the Labor Department).

The controversy seems far from over, but you will note that it is ED's firm assertion that they have in the main not regulated beyond the law.

Katzen's people believe we have another bite at the apple via our responsibility to approve paperwork requirements separately from the regulation. Having approved the regulation, I think our options are limited, especially because it is by virtue of not taking some regulatory latitude that the probability of duplication and excess reporting burden exists.

We shall see.

Insofar as I know, the regs are still to come out on May 1.

CAREER COLLEGE ASSOCIATION

750 First Street, NE, Suite 900
Washington, DC 20002-4242

(202) 336-6700
FAX (202) 336-6828

April 21, 1994

TO: Geoff Tibbetts

FROM: Tony Calandro, Vice President of Government Relations

RE: Agenda for Bill Galston meeting on Tuesday, April 26

We are scheduled to meet with Dr. Galston at 10:00 a.m. on Tuesday, April 26. Besides myself, Stephen Blair, President, and Lisa Phillips, Director of Legislative and Regulatory Affairs, will be present.

We would like to discuss with Dr. Galston three items:

1. Rep. Rob Andrews legislation on outcomes. He is getting ready to introduce legislation that would determine student aid eligibility based primarily on outcome measurements: graduation rates, placement rates and state licensure rates.

   Although the legislation would also use cohort student loan default rates as an additional indicator, it would no longer be the sole indicator of an institution's effectiveness. His legislation initially would primarily apply to our institutions. We have included with this memo a summary draft of his legislation. It should be introduced within the month. Obviously, we would be interested in knowing Dr. Galston's thoughts on it.

2. The Department of Education's recent notices of proposed rulemakings. We have a chart that demonstrates where the Department has exceeded its statutory authority on several issues. We would like to discuss it with Dr. Galston. I have included a copy for your review.

3. Annual Conference remarks. Dr. Galston is scheduled to speak at our annual convention on Wednesday, May 11, from 1:30 pm to 2:00 pm. We would like to discuss with him the issues that our members would be most interested in hearing him discuss.

Please call me if you have any questions at 336-6769. I will send to you Lisa Phillips and Stephen Blair's Social Security Numbers Friday.

THE EDUCATIONAL QUALITY INDEX ACT of 1994

The enclosed suggested legislative language is for purposes of discussion only. Congressman Andrews will submit this, or something like it, to House Legislative Counsel, to be translated into tight legalese.

What this proposal does is:

> Establishes an Educational Quality Index. That Index will be on a scale of one to 100. 25 points on that index will be a Pell eligible student offset. It is not spelled out how the offset is established. (As you know, we have assumed that the offset should be the number of Pell eligible students at a school, minus the national average of Pell eligible students).
>
> The Index includes 75 points for graduation, placement, licensure and certification as available, and cohort default rates. No more than 25 points can be for default rates. (We have assumed a weighted factor of 75% for graduation/placement and a 25% weighted rate for default rates.)

Schools reaching a score of 40 and above will be Title IV eligible and will avoid several oversight and compliance provisions of the Higher Education Act, such as:

> Loss of eligibility if cohort default rates exceed 25% for three years;
>
> Elimination of 85/15 restriction for program eligibility, elimination of the two year rule for eligibility;
>
> Elimination of the two year rule for eligibility for postsecondary vocational institutions;
>
> Replaces short term program eligibility based on the 70/70 formula;
>
> Eligibility and certification procedures will be uniform for all institutions of higher education, whether proprietary or traditional;
>
> If the institution meets the Educational Quality Index eligibility, provisional certification cannot exceed one year and must be for cause;
>
> A change of ownership of an institution which meets the Educational Quality Index will not lead to provisional certification unless the institution is placed on provisional certification for other

allowable reasons; and

SPRE reviews can be triggered by administrative capability and financial stability criteria only. These criteria cannot differ for proprietary and traditional schools.

Departmental program reviews will not apply to institutions meeting the Educational Quality Index eligibility standards, except the Secretary's review is triggered if an institution scores below 40 in the Educational Quality Index, except under paragraph (D), which provides for review based on deficiencies or financial aid problems identified by the SPRE or the appropriate accrediting agency. (NOTE: This is a broad exemption which Congressman Andrews would like to narrow--ideas welcome.)

Also, in this legislation as it progresses from a discussion document to the formal bill for 1995, members have suggested that in calculations of the Educational Quality Index that the law be clear about withdrawal for cause students not in the count, and a reasonable definition of placement.

Some specific school examples based on the formula follow:

Point maximum and weighting factor are equal

25 points maximum	Pell Eligible Students (PES) less the national average
37.5 points maximum	Placement (licensure and certification where and when available)
18.75 point maximum	Graduation rate
18.75 point maximum	Cohort default rate (rate of non-defaulters)

SCHOOL A--high poverty/high default/mid-range graduation and placement

PES	60%	11.2
Placement	60%	22.5
Graduation	40%	07.2
Default	50%	09.4
		50.3

SCHOOL B--significant poverty/borderline default rates/mid range graduation and placement

PES	30%	3.8
Placement	60%	22.5
Graduation	40%	7.2
Default	25%	14.0
	(75% non defaulters)	
		47.5

SCHOOL C--significant poverty/borderline default/good graduation and placement

PES	30%	3.8
Placement	65%	24.5
Graduation	60%	11.3
Default	25%	14.0
	(75% non defaulters)	
		53.6

SCHOOL D--little poverty/borderline default/mid-range graduation, high placement

PES	15%	0
Placement	80%	30.0
Graduation	50%	9.4
Default	25%	14.0
	(75% non defaulters)	
		53.4

Recognize that this formula is not spelled out in the proposed legislation. What numbers should be used would be the point of discussion of the bill. However, as you have all suggested, we need to run numbers to ensure that most, if not all of our sector is within reach of the Index's blessing.

Other examples--although these schools would not be covered by the Index in the proposed legislation (based on averages from a variety of sources including the Chronicle of Higher Education):

State University of ABC (undergraduate program)

PES	15%	0
Placement	no record-graduation used for this and other criteria	
Graduation	48%	27.8
Default	25%	17.1
	(75% non defaulters)	
		44.9

Ivy League University

PES	4%	0
Placement	no record-graduation used for this and other criteria	
Graduation	95%	53.0
Default	4% (96% non defaulters)	17.9
		70.9

Community College of Bolivar WVA

PES	15% (based on most students' part-time status)	0
Placement	no record-graduation used for this category	
Graduation	8%	5
Default	0% (100% non defaulters based on zero loan volume)	18.75
		23.75

WHAT IS A 30% School?

PES	50%	9.0
Placement	10%	3.7
Graduation	30%	5.6
Default	40% (60% non defaulters)	11.2
		29.5

THE EDUCATIONAL QUALITY INDEX ACT of 1994

PURPOSE: To establish an educational quality index to measure educational effectiveness based on student retention, graduation and job placement. Such an index will supersede other requirements for Title IV, Part B eligibility for vocational, occupation and career institutions of higher education, except provisions for program integrity, as noted below.

Strike Part G, Section 481 (a) (1) of the Higher Education Act, as amended, and insert in lieu thereof the following:

Section 481 DEFINITIONS

(a) INSTITUTIONS OF HIGHER EDUCATION-(1) Subject to paragraphs (2) and (5) of this subsection, the term "institution of higher education" for purposes of this title includes, in addition to the institutions covered by the definition in section 1201(a)-

(A) a proprietary institution of higher education; B a postsecondary vocational institution;

(C) a postsecondary institution, serving students in a transitional phase from high school to either an institution of higher education or employment; and.... (continue existing language for foreign medical schools)

Strike subsection (a)(3) and insert in lieu thereof:

(3) An institution shall be considered to meet the definition of an institution of higher education paragraph (1), if such an institution-

(A) Meets a mark of 40 or above on a scale of 100 on the Educational Quality Index;

(B) Meets a mark of 30 on a scale of 100 on the Educational Quality Index, and is provisionally certified for no more than three years in which the institution must reach an Educational Quality Index of 40, or be eliminated from Part B eligibility. A mark of 30 to 40 on the Index shall trigger a review by SPRE . The year an institution meets the Educational Quality Index of 40, the institution shall be considered fully certified, assuming other requirements of certification are met. An appeal of provisional certification shall be made by an institution within one year of notification of its provisional status, based on the Educational Quality Index.

(C) Meets a mark under 30 on a scale of 100 on the Educational Quality Index during the first year of implementation, and meets provisions under section on financial stability. Such an institution shall be triggered for a review under SPRE and review under PART H-Integrity and financial stability provisions and be provisionally certified

for one year during which the institution must reach an Index of 40 or be eliminated from Part B eligibility.

Strike paragraphs (5) and (6), insert new paragraph (4) and renumber the current paragraph (4)as (5).

(4) The Educational Quality Index is a measure of educational effectiveness based on student performance and school outcome data.

(A) Seventy five percent of the Index shall consist of weighted data including cohort default rates, as defined in cohort default rate section, student completion rates, and student job placement rates. When and where graduate certification and licensure rates are available, they will be included in the Index. No more than 25% of the Index shall be cohort default rates, measured by the number of students not in default. No more than 25% of the Index shall be graduation rates, unless placement, certification and licensure rates are unavailable.

(B) Twenty five percent of the Index shall be an offset for the number of hard to serve students from disadvantaged backgrounds as measured by student Pell grant eligibility.

Section 481 (b), strike (5) and (6). Section 481 (c), strike (3).

Strike Section 481 (e) (2) and insert in lieu thereof:

(2) Programs of less than 600 clock hours in length will be Part B eligible if they meet the Educational Quality Index of 40 or higher. During the first year of a program, certification may be provisional until the institution reaches a verifiable rate of 40 or more on the Educational Quality Index.

Subpart 3-Eligibility and Certification Procedures
Section 498

Insert new paragraph (b) and renumber the following paragraphs accordingly.

(b) For purposes of this subpart, section 481 institutions meeting the Educational Quality Index for program eligibility shall be required to meet provisions of this subpart only as they are applied to Section 1201 institutions of higher education.

(Section 498 includes requirements for financial guarantees from owners--what should be taken out??)

Section 498 (h), renumbered (i), insert after (1)(B), new paragraph (C):

(C) Provisions in this subsection for provisional certification may not exceed one year if the institution meets the Educational Quality Index measure. Provisional certification for reasons other than those in Section 498 shall not apply to institutions eligible under the Educational Quality Index.

Section 498 (i), renumbered (j) shall be superseded by Section 481 (a)(4) during the first year after a change of ownership, and years thereafter.

Section 494C FUNCTIONS OF STATE REVIEW ENTITIES

Insert at the end of paragraph (a):

Those institutions which meet the Educational Quality Index in Section 481 shall be triggered for review only by their ranking on the Index as defined in that section, and review criteria in paragraph (b) (4). (5), (6), (8) and (11) of this section.

Section 498A PROGRAM REVIEW AND DATA

Insert at the end of (a)(1) the following phrase:

except those institutions qualifying under Section 481, Educational Quality Index measurements, which shall be reviewed under provisions of paragraph D of this subsection;

(NOTE--this is a wide exemption from reviews which Congressman Andrews would like to narrow. If you have suggestions, please let us know.)

Insert new paragraph (b) and renumber accordingly:

(b) Program eligibility based on the Educational Quality cannot be superseded by eligibility standards developed by a state guaranty agency.

Insert after (a)(2)(G), a new paragraph (H):

(H) institutions which are below a numerical rank of 40 in the Educational Quality Index in Section 481.

aascu

Dr. Edward M. Elmendorf
Vice President, Division of Governmental
Relations and Policy Analysis

April 1, 1994

Biw:

AASCU provided a written response to the Part H, Subpart 3 of the Higher Education Act that establishes the "gatekeeping" functions for postsecondary institutions and students under the Student Assistance General Provisions.

I am sending you a copy of our response to the U.S. Department of Education. If you have any questions about these comments, please contact me.

6

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March 30, 1994

Wendy L. Macias, Program Specialist
U. S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-5346

Dear Ms. Macias:

The American Association of State Colleges and Universities is pleased to provide its comments on the proposed regulations under the Student Assistance General Provisions and Federal Pell Grant Program, published in the Federal Register on February 28, 1994.

AASCU participated in negotiated rulemaking and helped shape many of the issues and provisions published in the proposed regulations. We offer our written comments on these proposed regulations as a restatement or extension of our views on outstanding issues. We believe that the proposed rule has indeed improved as a result of the dialogue between the U. S. Department and the higher education community, and hope that the written comments submitted hereby will continue our collaborative effort.

In submitting our comments, we are mindful of the importance of sound gatekeeping through these regulations, and have attempted to provide the Secretary with proposed changes that would improve the proposed regulations. Despite our understanding of, and empathy with, the Secretary's aims, we are very concerned about the manner in which the proposed regulations will affect colleges and universities. We believe that most reasonable observers realize that America's colleges and universities have attempted not only to meet, but indeed to surpass, the standards proposed by the Secretary in terms of service to their students and protection of the federal fiscal interest. To impose blanket mandates on all institutions without regard to their historical record of accountability, as some of the proposed provisions will do, is entirely unwarranted.

We are convinced that a substantial number of the concerns we have embraced on behalf of public state college and universities will be addressed or changed in continuing dialogue with the U. S. Department of Education to clarify rules, explain definitions and describe processes that will be used to implement this regulation. We strongly encourage the U. S. Department of Education to consult with representatives of the higher education community in the next few weeks to effect refinement of and clarification to the proposed regulation before a final regulation is issued on or about May 1, 1994.

We look forward to your thorough review of our written comments while we await the opportunity to consult with you to further refine and improve these regulations.

Sincerely,

Edward Elmendorf

Edward M. Elmendorf

EME:dmc

COMMENTS SUBMITTED BY THE AMERICAN ASSOCIATION OF STATE COLLEGES AND UNIVERSITIES ON THE SECRETARY'S NOTICE OF PROPOSED RULEMAKING UNDER THE STUDENT ASSISTANCE GENERAL PROVISIONS AND FEDERAL PELL GRANT PROGRAM, PUBLISHED ON FEBRUARY 28, 1994.

SECTION 668.2

a. Academic Year

The proposed definition of academic year in 668.2(b) mandates a 30-week minimum, but omits a definition of "good cause" upon the establishment of which on a case-by-case basis, the Secretary may waive the 30-week minimum to not less than 26 weeks for 2- and 4-year degree granting programs. While the discussion in the preamble does explain the reasons for the Secretary's decision not to provide for a definition of good cause, we believe that failure to do so will cause unnecessary harm to the significant, but by no means overwhelming, number of institutions that have historically configured their academic years for fewer than 30 weeks.

Recommendation:

Rather than force institutions to needlessly stretch their academic year to 30 weeks, and in order to address the Secretary's concern that a large number of institutions would seek a waiver, we strongly urge the Secretary to exercise his discretion in the case of degree-granting programs that could demonstrate that:

1) The program in question has been properly accredited by a recognized accrediting agency, and is therefore, despite its shorter duration, equivalent to programs of 30-weeks of length; and,

2) The program has been successfully operating for a number of years with an academic year of a shorter duration than the 30-week minimum.

b. Full-Time Student

The preamble discussion clearly establishes the need for a definition of full-time student that is applicable to all Title IV programs. The proposed regulations, however, leave it entirely to the discretion of institutions to decide what "combination of courses, work, research or special studies" would classify the student as a full-time student. Granting this degree of discretion, while perfectly appropriate in the collegiate sector where a broad range of outside-the-classroom activities is an integral component of the educational experience, would open the floodgates of abuse in the vocational and trade sector where the greatest potential risks to the Secretary and the students exist. Allowing institutional self-certification in the latter case would defeat the purpose of this section, and render the definition of full-time student meaningless.

Recommendation:

We propose that the definition of full-time student be modified *in the case of clock-hour and non-term credit hour programs* to read "any combination of bona fide courses, related work, research or special studies that the Secretary has determined, as part of the certification process set forth in section 668.13, are . . ."

b. Minimum Workload for Credit Hour Non-term Programs

The preamble discussion of the definition of full-time student correctly points out that students and the Secretary are exposed to the greatest potential abuse with respect to credit hour programs without academic terms, and solicits comments as to whether a weekly minimum workload would be appropriate for these programs.

Recommendation:

We strongly urge the Secretary to establish such a minimum, and caution that such minimum workload must be indexed to the actual instructional time in the classroom for it to have the intended effect.

SECTION 668.8 (E)-(G): QUALITATIVE FACTORS FOR SHORT-TERM PROGRAMS

The Higher Education Amendments of 1992 require programs of between 300 to 600 clock hours to satisfy certain qualitative requirements prescribed by the Secretary, which should include, at a minimum, a 70% completion rate and a 70% placement rate. Short-term programs have historically been among the worst examples of Title IV fraud and abuse, and we believe that proper regulation of these programs is urgently needed. In light of their unfortunate history of waste, fraud, and abuse, and of massive victimization of students, these programs must be regulated strictly on the basis of their success in training students for meaningful, non-minimum-wage, jobs. We believe the Secretary's proposed regulations are a large step in the right direction.

a. (e)(1)(iii) Maximum Length of Short-Term Programs

We strongly support this provision, which mandates that short-term programs not exceed any state-established minimum number of clock hours required for training in the occupation for which training is offered by more than 50%. During the negotiated rulemaking sessions of last year, a number of negotiators expressed their view that the 70% completion and 70% placement rates written into the statute were all that the Secretary could or should require of these programs. It is our view, however, that the statute clearly provides the Secretary with the authority to regulate short-term programs through the imposition of additional requirements, and are pleased to see that he has chosen to do so in this instance.

Recommendation:

Support as written.

b. Calculation of Completion Rates

With respect to the calculation of completion rates, the proposed rule allows a school to exclude those students who withdrew from, dropped out of, or were expelled from a program and were entitled to a 100% refund, *but only* if the school actually and timely paid the refund owed. This is an important safeguard and a proper incentive for the affected schools, many of which have had a checkered history of meeting their refund obligations.

Recommendation:

Support as written.

c. Calculation of Placement Rates

We support the Secretary's decision to allow schools to count as placements only those graduates who were continuously employed for at least 13 weeks. This very modest and reasonable durational requirement will prevent schools from gaming the system by counting graduates with only one day of employment as placements.

We are concerned about the potential for abuse, however, with the exact wording of the Secretary's regulations. By allowing schools to count as placements graduate who "are employed" as well as those "who have been employed for at least 13 weeks . . .," the regulations leave open the possibility of school manipulation of the Secretary's placement requirement. Schools could time their reporting cycles and class schedules to count large numbers of temporarily-employed graduates as bona fide placements, despite the fact that most such graduates would not be 13-week hires.

Recommendation:

In section 668.8 (g) (1)(iii) delete the words "are employed."

d. Proposed section 668.8 (g)(1)(ii) would prevent a school from counting as placements graduates who were employed by the school either before or after completion of the program. In response to the Secretary's request for comments on this provision, 59 Fed. Reg. 9632, we do not believe that there is any way to distinguish between legitimate hiring and hiring merely to boost a school's placement rate. Since the 70% placement rate is a modest standard and a quality school will not have any difficulty exceeding it, inclusion of school hires is unnecessary. Only those schools that hire a student or two just to make the 70% mark, or those that are hiring large numbers of graduates just to maintain their eligibility for another cycle would benefit by the inclusion of school hires. Neither of these practices should be encouraged or allowed by the Secretary.

Recommendation:

School hires should not be counted as placements.

e. Proposed section 668.8 (g)(1)(iii) would also allow a school to count as placements both those graduates who obtain a job in the occupation for which they were trained and those who obtain a job in a "related comparable recognized occupation . . . ." We oppose allowing schools to count graduates in the amorphous category of employed in a "related comparable recognized occupation" as placements because this provision will provide shoddy short-term programs with the loophole they need to render this entire section meaningless. During the negotiated rulemaking sessions, trade-school representatives argued for allowing schools to count graduates placed in "related occupations" on the excuse that schools would be penalized if their graduates were qualified for related occupations of a higher level of knowledge or income. Examples were cited of graduates who, though only trained as computer data-entry clerk, would get jobs as programmers! AASCU and other parties, on the other hand, explained that to the extent that the term "related" denotes a mutual connection between two occupational titles, inserting this language would more often than not result in graduates allegedly trained as programmers being counted as placed even if they were only hired as data-entry clerks. The Secretary's slightly revised proposed rule attempts to divide the difference by modifying the concept of "related occupation" to require "comparability." We believe that in view of the sordid track record of short-term programs, and because of the exceedingly low probability that programs of such short duration could regularly (and legitimately) place their students in occupational categories other than the specific profession that each program represents itself as preparing its graduates for, the Secretary is creating an enormous loophole for abuse by retaining this specific language. We can foresee yet another excuse for lengthy and expensive litigation on the exact meaning of "related comparable recognized occupation" in every instance that the Secretary attempts to enforce this rule. Schools offering short-term programs advertise them as quick ways for students to obtain the specific skills needed to qualify for particular occupations. It is, therefore, not too much to ask that they manage to get at least 49% (70% x 70%) of their students into the specific jobs that the schools, of their own free will, have advertised the training will qualify them for.

Recommendation:

In section 668.8 (g)(1)(iii) delete "related comparable recognized occupation."

f. The Secretary solicits comments in the preamble as to whether a single methodology of calculating completion rates for both program eligibility and Student-Right-to-Know would be appropriate. We strongly urge the Secretary to adopt standardized definitions and methodologies here and throughout his regulations. We believe much of the confusion and compliance burdens at our member institutions could be alleviated by keeping regulations as consistent as possible. In the case of the provision in question here, students would clearly benefit from the uniformity of school-reported rates.

SECTION 668.8 (j)

We support the Secretary's proposed rule with respect to programs consisting solely of instruction in English as a Second Language (ESL). We believe the proposed regulations will prove effective in preventing fraud and abuse against non-English speaking victims. Because of their limited command of English, students at for-profit ESL programs are particularly vulnerable to fraudulent marketing and recruitment tactics. We are particularly concerned that turning ESL into yet another lucrative market for unscrupulous schools will replace high quality community-sponsored programs that currently provide low-cost or free ESL programs. We believe that the Secretary's proposal requiring institutions to administer a test to substantiate each student's proficiency at the end of ESL-only programs, while not as effective as we would wish, will still ensure that wholesale fraud against this group of students will not become institutionalized at ESL-only programs. We believe that the Secretary's proposal is a reasonable solution in that it imposes a minimal burden on quality programs, but ensures that unscrupulous schools offering worthless ESL instruction will not remain eligible for long.

Recommendation:

Support as written.

SECTION 668.8 (k)-(l)

Proposed section 668.8 (k)-(l) sets forth a clock-hour to credit-hour conversion ratio that we believe will only exacerbate the inequitable conversions that the Department has experienced in the past and that the conversion rule was designed to eliminate. During the January and February 1993 negotiated rulemaking sessions, AASCU and a number of other negotiators indicated their opposition to the Secretary's proposed formula. We continue to believe that a formula requiring 37.5 clock hours for a semester or trimester credit hour and 25 clock hours for a quarter credit hour is the proper conversion formula.

Recommendation:

a. In section 668.8(l)(1) and (2) change "30" to "37.5."

b. In section 668.8 (l)(3) change "20" to "25."

SECTION 668.14: PROGRAM PARTICIPATION AGREEMENT

The preamble to the proposed rule points out that the proposed regulations are in many instances codifications of the Secretary's current enforcement policy and practice. We applaud the Secretary for formally articulating these policies and practices through regulations so that colleges and universities will be properly informed about the standards to which they are held. The following specific issues are of concern to us with respect to the proposed provisions.

a. 668.14 (b)(1) "Additional Conditions"

Proposed section 668.14 (b)(1) requires institutions to comply not only with the terms of their program participation agreements, but also with any special arrangement, agreement, or limitation that they may have entered into with the Secretary. We support this provision, but believe that the proposed rule should limit the scope of such additional conditions to any special arrangements, agreements, or limitations related to Title IV.

Recommendation:

The Secretary should make clear that an institution's participation in Title IV programs is contingent on its compliance with "special arrangements, agreements or limitations between the institution and the Secretary with respect to Title IV programs."

b. 668.14 (b)(22): Commissioned Recruiters

The Secretary has proposed to prohibit schools from utilizing commissioned recruiters, and we are pleased that the Secretary's commentary indicates a rigorous interpretation of this statutory prohibition. Commissioned recruiters have been exclusively utilized by for-profit trade schools, and it was the unscrupulous and predatory history of the practice in that sector which induced Congress to act. We support the Secretary's proposed regulation on this matter, including his view that incentive payments based on retention are inappropriate. However, to improve the enforcement of this important integrity provision, we urge the Secretary to exempt token gifts from his list of prohibited inducements. We believe the Department's resources should be focused on egregious cases of abuse, and that exempting items of small value from this prohibition would be appropriate.

Recommendation:

Support as written, except that one-time gifts of items of small value should be exempted.

SECTION 66.15: FACTORS OF FINANCIAL RESPONSIBILITY

Rather than submit a separate set of comments on this important issue, we have signed on to the comments by the National Association of College and University Business Officers (NACUBO), which we have enclosed with these comments as an appendix. We are specifically concerned about the impact of the this proposed section on non-profit degree-granting colleges and universities in general, and on public institutions in particular. During the negotiated rulemaking sessions, AASCU consistently held the position that standards of financial responsibility should take into account not only the vastly different characteristics of the various participating institutions, but also that regulations should focus additional oversight on the subset of institutions where problems have historically existed. We continue to believe that the only way in which all institutions can receive equitable treatment is to regulate each subset of institutions in the manner most appropriate to it. We are pleased that the Secretary has taken note of our arguments and of the changes embodied in the Technical Amendments of 1993, and has developed regulations based on the different accounting systems used by schools. We are, however, disappointed to see that the proposed rule would still treat degree-granting non-profit colleges and universities unfairly, and are puzzled by the Secretary's decision to impose Draconian requirements on institutions that have had a solid and and unblemished history of participation in Title IV.

We specifically request the Secretary to incorporate the crucial changes made by the Technical Amendments bill to this section, and that he implement the four statutory alternatives to the quantitative criteria he has proposed. The statutory changes made to 498(c)(3)(C), which provide the "precipitous closure" test as one of the statutory alternatives, must be deemed as the most succinct expression of congressional intent with regard to precisely what purpose this section was designed to achieve. We believe that it is neither in the Secretary's interest, nor in the interest of the students we serve, for colleges and universities that are clearly in no imminent danger of precipitous closure to be forced to expend scarce resources on such highly wasteful and unnecessary requirements as cash reserves, performance bonds, or letters of credit. We agree that where there is a danger of precipitouss closure, colleges and universities should be asked to provide additional guarantees regardless of cost, but the imposition of costs on institutions that pose no such danger is poor policy and would only have harmful consequences.

As an association representing public institutions, we especially call attention to the unintended consequences the proposed rule would have on our members. Not a single case of precipitouss closure of a public institution can be cited. Accordingly, we believe subjecting public institutions to patently unnecessary new mandates is unfair, wasteful, and inappropriate.

SECTION 668.16: STANDARDS OF ADMINISTRATIVE CAPABILITY

The provisions contained in this section of the proposed regulations are among the most troubling to us because of the substantial, but unnecessary, costs they impose on our member institutions. We believe that by prescribing a uniform set of mandates for all institutions, the proposed regulations will do little to improve the administrative capability of the schools that are truly deficient. At the same time, colleges and universities, which generally have internal standards far exceeding those proposed here, will be required under these provisions to comply, at great cost, with a set of redundant and mechanical requirements.

668.16 (b)(3)-(4): Communications Between Offices

Proposed sections 668.16 (b)(3) and (4) require written procedures to be developed to establish standards with respect to intra-office communications. We believe that this is an appropriate standard of administrative capability, but that in the case of most colleges and universities, it imposes substantial costs without any corresponding benefits because appropriate organizational protocols are already in place in the vast majority of cases.

Recommendation:

We recommend that the proposed rule be revised to require written intra-office communication procedures only where effective protocols and procedures are found to be substantially lacking.

a. 668.16 (e)(3)(ii)(B): Maximum Timeframe for Program Completion

This proposed provision imposes an arbitrary limit on the maximum timeframe within which students at all institutions would be required to finish their academic program. While we believe that the Secretary has clear authority to impose such a limit in the case of clock hour programs and that the standard would be reasonable for such programs, we strongly disagree with the Secretary's imposition of this standard at colleges and universities. Matters such as this should be left to the cognizant accrediting bodies.

Recommendation:

In section 668.16 (e)(3)(ii)(B) insert "that is measured in clock hours" after "For an undergraduate Program".

b. 668.16 (g)(1): Reports to the Inspector General

In this proposed section, the Secretary requires institutions to report to the Office of the Inspector General any information that any employee, third party servicer or agent has engaged in illegal activity involving Title IV programs. We approve of this requirement.

Recommendation:

Support as written.

c. **668.16 (i): Special Support Services**

In proposed section 668.16 (i), the Secretary requires that schools that enroll a significant number of students with special needs have a plan for providing these students with information on how to access these services. The proposed language represents a modification of suggestions made during negotiated rulemaking that institutions that *actively recruit* from populations with special needs, be required to ensure *the availability* of such services to these students. As written, the proposed section is an example of regulations causing compliance burdens for all participating institutions without the slightest efficacy in achieving the desired end.

Recommendation:

We propose that this provision be revised to require institutions actively recruiting students from populations with special service needs to actually provide such services or make arrangements to ensure the availability of such services. The revised regulation should make clear that selectivity of admission criteria is in itself evidence that institutions are not actively recruiting students.

d. 668.16 (k) Reasonable Length of Programs

While we are sympathetic to the thrust of the Secretary's effort under this proposed section, we believe the regulation should be revised to make clear that this requirement applies only to non-degree programs. We believe that regardless of their "vocational component," all degree programs also provide students with an additional range of residual benefits that can not be fully accounted for in the manner proposed by the Secretary. This provision is perfectly appropriate and indeed necessary for non-degree vocational programs where problems with worthless and unnecessarily lengthy training have been concentrated. In the preamble, the Secretary solicits comments on how schools should document the need for the training in question. We believe that schools should be required to look to a number of sources to document this. These sources should include state and local employment departments, private industry councils, and more than two local prospective employers of graduates of the program. Allowing schools to rely on only one source could easily result in inappropriate outcomes either because of bad data or because of collusion.

<u>Recommendation:</u>

Revise the language to make this provision applicable only to non-degree programs, and require schools to consult a number of sources such as those listed above.

e. 668.16 (l) Job Information

This proposed section would require schools to provide certain job-market information to students. This would be an appropriate requirement for non-degree vocational programs only. We also believe that the information disclosure requirement should be mandated not only to students but even more significantly to prospective students.

<u>**Recommendation:**</u>

In proposed section 668.16 (l) between the words "students" and "information" insert the words "and prospective students."

f. 668.16 (m): Advertising and Recruitment Claims

We strongly support this proposed section's requirement that any advertising or recruitment claims made by schools be accurate. Because so many trade schools have engaged in wholesale misrepresentation of their programs, we believe it is important to include not only written or recorded materials, but also oral statements under this provision if a pattern of misrepresentation with the latter can be documented.

SECTION 668.22: INSTITUTIONAL REFUNDS AND REPAYMENTS AND SECTION 668.23: AUDITS, RECORDS AND EXAMINATIONS

We have signed onto the comments provided by NACUBO, which we have enclosed as an appendix.

May 1 → July 94
afterward → July 95

Clayton Spencer (Kennedy)
· letter to Riley
Student Right-to-Know Act
· by September for 7/1/95

Concerns with the Department of Education's Part H draft regulations

The draft regulations issued by the Department of Education to implement the three subparts of Part H of the Higher Education Act suffer from several basic flaws:

1. They go beyond the requirements of the law.

2. They are excessively duplicative and redundant. As a result, they violate the Paperwork Reduction Act and President Clinton's Executive Order 12866.

3. They intrude on the academic affairs of colleges in ways that are unnecessary to implement the law.

4. They create an enormous paperwork burden that has been systematically underestimated by the Department of Education.

5. The Department of Education is considering making more than 100 additional changes to the regulations that we have not yet seen.

The higher education community's most important specific concerns in each of the three subparts are highlighted below.

Subpart 1 -- State Postsecondary Review Entities

1. The regulations force states to set minimum baseline standards with "acceptable percentages" for graduation rates, withdrawal rates, pass rates on licensure exams, etc. In some cases, states lack the data to set these standards. The law does not require -- indeed it forbids -- the secretary to mandate that states set such standards.

2. Colleges must keep extensive data in the event they are triggered for a review. Only triggered schools should be forced to maintain or report data.

3. The regulations fail to provide schools with due process protections to assure that they will be treated fairly by federal and state regulators before potentially harmful action is taken against them.

Subpart 2 -- Recognition of Accrediting Agencies

1. The huge number of regulatory and record-keeping requirements (we have identified 135) will impose an enormous paperwork burden on schools and

accrediting agencies. Every single requirement should be examined carefully to make sure it is necessary and will help reduce waste and abuse.

2. The definition of vocational education will mean that all two-year and many four-year colleges will be subject to more extensive review than would otherwise be the case.

3. The Federal government sets specific standards that accrediting agencies must impose on colleges in a way that is invasive and unnecessary. This will federalize accreditation, turn accrediting agencies into a regulatory arm of the Department of Education, and intrude on the academic affairs of institutions.

Subpart 3 -- Eligibility and Certification

1. The rules impose an enormous regulatory burden. We count 165 record-keeping or regulatory requirements, some of which are not related to the law. For example, the provision of information to students about transportation and child care, according to ED, is a measure of the "administrative capability" of colleges to administer federal student aid programs.

2. The refund policy is inordinately confusing and complex. As a result, no school will do refunds properly because the rules are incomprehensible.

3. Many of the Subpart 3 requirements clearly conflict with those in Subparts 1 and 2 and also manage to go beyond the law. For example, in Subpart 1 the Department tells the states to set minimum standards for graduation and withdrawal rates. In Subpart 3, the secretary sets (or gives himself the authority to set) federal standards for the same things.

4. The eligibility of schools to participate in the student aid programs will be threatened if the Department of Education fails to act on institutional applications in a timely way. This puts schools at risk because of misfeasance by federal bureaucrats.

PART H—PROGRAM INTEGRITY TRIAD

Subpart 1—State Postsecondary Review Program

SEC. 494. STATE POSTSECONDARY REVIEW PROGRAM.

(a) PURPOSE.—It is the purpose of this section to authorize the Secretary to enter into agreements that—

(1) designate one State postsecondary review entity in each State to be responsible for the conduct or coordination of the review under section 494C(d) of institutions of higher education, reported to the State by the Secretary pursuant to section 494C(a), for the purposes of determining eligibility under this title; and

(2) provide Federal funds to each State postsecondary review entity for performing the functions required by such agreements with the Secretary.

(b) PROGRAM AUTHORITY.—The Secretary shall, in accordance with the provisions of this subpart, enter into agreements with each of the States to carry out the purposes of this subpart. If any State declines to enter into an agreement with the Secretary for the purposes of this subpart, the provisions of this subpart which refer to the State, with respect to such State, shall refer to the Secretary, who may make appropriate arrangements with agencies or organizations of demonstrated competence in reviewing institutions of higher education.

(c) FAILURE TO COMPLY WITH AGREEMENT.—If a State fails to enter into an agreement under this section or fails to meet the requirements of its agreement with the Secretary under this subpart—

(1) the Secretary—

(A) may not designate as eligible for participation in any program under this title any new institution (including new branch campuses) or any institution that has changed ownership, pursuant to section 481 and subpart 3 of this part; and

(B) may grant only provisional certification for all institutions in the State pursuant to subpart 3 of this part; and

(2) the State shall be ineligible to receive funds under section 494B of this subpart, subpart 4 of part A of this title, and chapter 2 of subpart 2 of part A of this title

(20 U.S.C. 1099a) Enacted July 23, 1992, P.L. 102–325, sec. 499, 106 Stat. 634.

SEC. 494A. STATE POSTSECONDARY REVIEW ENTITY AGREEMENTS.

(a) STATE ORGANIZATION STRUCTURES.—(1) Each agreement under this subpart shall describe a State organizational structure responsible for carrying out the review under section 494C(d) of institutions reported to the State by the Secretary pursuant to section 494C(a). Each such entity's action in reviewing such institutions shall, for purposes of this subpart, be considered to be the action of the State.

(2) For the purposes of this subpart, the designation of a State postsecondary review entity for the purpose of entering into an agreement with the Secretary shall be in accordance with the State

cation by the appropriate State postsecondary review entity or entities for purposes of this title.

(i) LIMIT ON STATE POSTSECONDARY REVIEW AGENCY FUNCTIONS.—The functions of State postsecondary review entity shall not include performing financial and compliance audits as may be required under sections 428 or 487 of this Act.

(j) CONSUMER COMPLAINTS.—A State, in consultation with the institutions of higher education in the State, shall establish and publicize the availability of procedures for receiving and responding to complaints from students, faculty, and others about institutions of higher education and shall keep records of such complaints in order to determine their frequency and nature for specific institutions of higher education.

(k) ENFORCEMENT MECHANISMS.—Nothing in this subpart shall restrict the authority of the States to establish mechanisms to enforce the standards established under subsection (d) or require the States to establish specific mechanisms recommended by the Secretary.

(20 U.S.C. 1099a–3) Enacted July 23, 1992, P.L. 102–325, sec. 499, 106 Stat. 637.

Subpart 2—Accrediting Agency Approval

SEC. 496. APPROVAL OF ACCREDITING AGENCY OR ASSOCIATION.

(a) STANDARDS REQUIRED.—No accrediting agency or association may be determined by the Secretary to be a reliable authority as to the quality of education or training offered for the purposes of this Act or for other Federal purposes, unless the agency or association meets standards established by the Secretary pursuant to this section. The Secretary shall, after notice and opportunity for a hearing, establish standards for such determinations. Such standards shall include an appropriate measure or measures of student achievement. Such standards shall require that—

(1) the accrediting agency or association shall be a State, regional, or national agency or association and shall demonstrate the ability and the experience to operate as an accrediting agency or association within the State, region, or nationally, as appropriate;

(2) such agency or association—

(A)(i) for the purpose of participation in programs under this Act, has a voluntary membership and has as a principal purpose the accrediting of institutions of higher education; or

(ii) for the purpose of participation in other programs administered by the Department of Education or other Federal agencies, has a voluntary membership and has as its principal purpose the accrediting of institutions of higher education or programs;

(B) is a State agency approved by the Secretary for the purpose described in subparagraph (A); or

(C) is an agency or association that, for the purpose of determining eligibility for student assistance under this title, conducts accreditation through (i) a voluntary membership organization of individuals participating in a proing the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity.

(6) Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

(7) Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

(8) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.

(9) Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local, and tribal regulatory and other governmental functions.

(10) Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other Federal agencies.

(11) Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

(12) Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

Sec. 2. *Organization.* An efficient regulatory planning and review process is vital to ensure that the Federal Government's regulatory system best serves the American people. (a) *The Agencies.* Because Federal agencies are the repositories of significant substantive expertise and experience, they are responsible for developing regulations and assuring that the regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order.

(b) *The Office of Management and Budget.* Coordinated review of agency rulemaking is necessary to ensure that regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency. The Office of Management and Budget (OMB) shall carry out that review function. Within OMB, the Office of Information and Regulatory Affairs (OIRA) is the repository of expertise concerning regulatory issues, including methodologies and procedures that affect more than one agency, this Executive order, and the President's regulatory policies. To the extent permitted by law, OMB shall provide guidance to agencies and assist the President, the Vice President, and other regulatory policy advisors to the President in regulatory planning and shall be the entity that reviews individual regulations, as provided by this Executive order.

(c) *The Vice President.* The Vice President is the principal advisor to the President on, and shall coordinate the development and presentation of recommendations concerning, regulatory policy, planning, and review, as set forth in this Executive order. In fulfilling their responsibilities under this Executive order, the President and the Vice President shall be assisted by the regulatory policy advisors within the Executive Office of the Presi-

EDUCATION MANAGEMENT CORPORATION

→ Bill Galston (DPC) FYI - Phil

ROBERT B. KNUTSON
Chairman and Chief Executive Officer

April 6, 1994

Mr. Philip Lader
Deputy Chief of Staff
The White House
Washington, D.C. 20500

Dear Phil:

I know how busy you must be, but I thought you should know that there are serious regulatory issues facing the private sector in higher education.

A letter similar to the one sent to Harris Wofford, enclosed, went to a number of Senators and Congressmen, as well as to people at the Department of Education. I've spared you the four documents referenced at the outset.

Hope all goes well.

Sincerely,

Bob,

Enclosure

300 SIXTH AVENUE • PITTSBURGH • PENNSYLVANIA 15222 • 412-562-0900

EDUCATION MANAGEMENT CORPORATION

ROBERT B. KNUTSON
Chairman and Chief Executive Officer

April 6, 1994

The Honorable Harris Wofford
United States Senate
Washington, DC 20510

Dear Senator Wofford:

Enclosed are the responses of The Art Institutes to the Department of Education's four recently issued NPRMs, as follows:

- Institutional Eligibility (85/15 Rule)
- State Postsecondary Review Entities (SPRE)
- Accrediting Agency Recognition
- General Provisions (Certification, Administrative and Financial Standards)

Aspects of these regulations will have a serious and detrimental impact on The Art Institutes. This letter outlines our principal concerns. I hope you will be able to consider them and our more detailed comments in the responses.

INSTITUTIONAL ELIGIBILITY (85/15 Rule)

The "85/15" rule, published as part of the Institutional Eligibility Notice of Proposed Rulemaking on February 10, 1994, applies only to privately financed ("for-profit") institutions. It was written to implement an amendment to the Higher Education Act which is essentially contrary to all of the other laws and regulations governing Title IV student aid programs. It causes institutions to lose eligibility if the percentage of tuition supposedly financed by Title IV exceeds 85%. These regulations force privately financed institutions to assume that all Title IV aid is used to meet tuition expenses, even though Title IV financial aid is awarded based on the premise that the family contribution comes first and that all of the student's costs -- both direct and indirect living expenses -- must be considered.

When considering all of the costs of attending The Art Institutes, about 40% of total education costs are financed through Title IV programs. The remaining 60% comes from the family contribution, the students' wages from part-time jobs while attending school, and other resources such as scholarships. The 85/15 rule ignores costs other than tuition. As a result, even those schools that award financial aid properly will be forced to perform complex, labor-intensive calculations that will simply prove that the institution was eligible for participation in Title IV programs in the first place. We estimate that it would cost the eight Art Institutes upwards of $350,000 annually to perform these computations.

At the very least, those institutions which are clearly not in danger of losing Title IV eligibility -- where, for example, the percentage of tuition financed by Title IV sources is 75% or less -- should be permitted to perform a shortened version of the calculation. Institutions should be allowed to calculate their percentages consistent with the law, which clearly states that at least 15% of institutions' revenues must derive from <u>non</u>-Title IV sources. This would also result in a much lower cost to institutions and, ultimately, to students.

<u>STATE POSTSECONDARY REVIEW ENTITIES (SPRE)</u>

The proposed rules published on January 24, 1994, to implement the new State Postsecondary Review Entities (SPREs) have been written with the assumption that only some postsecondary educational programs are vocational in nature and prepare students for gainful employment. <u>We believe that virtually all post-secondary programs at all levels are vocational and prepare students for gainful employment. The federal student loan programs are based on the premise that students are expected to complete their education and find employment with earnings sufficient to repay their student loans</u>, so what kind of postsecondary education would not be vocational?

<u>We have always believed that all postsecondary institutions should be required to disclose the same kinds of statistics</u>, including graduation, completion, and employment results. Prospective students should be given some idea of their chances of completing an education program and obtaining a job thereafter.

<u>Instead, the SPRE rules propose to make a distinction between baccalaureate degree and all other programs</u>. They would require that <u>only non-baccalaureate</u> programs disclose job placement statistics, and the relationship between tuition and fees and expected starting salaries of graduates. <u>The SPRE NPRM also states that SPREs are permitted to establish different standards depending on the type of institution. This is untrue</u>. When Congress was considering the SPRE and other Triad-related regulations, it stated that it was not opposed to creating different standards according to the type of <u>program</u> -- <u>not</u> type of institution. However, the rule writers seemed to have mis-read this, and have missed the critical distinction between an institution and a program.

Because of the controversy surrounding the SPRE regulations, we have taken the position that, if the standards will not apply to all postsecondary institutions, then the standards should only be applied to short-term non-degree programs. There are too many similarities between Associate and Bachelor's degree programs to be able to differentiate as to level of degree.

ACCREDITING AGENCY RECOGNITION

In the Accrediting Agency Recognition proposed rules also published on January 24, the Department has taken a similar approach -- standards for completion, placement, and the relationship between tuition and fees and a graduate's expected starting salary would apply only to "pre-baccalaureate" programs. Again, we must restate our essential belief that all postsecondary institutions should be held accountable for outcomes, not just those that offer Associate degrees or shorter programs.

The Art Institutes compete heavily with institutions that offer four-year degree programs. In some cases, our Associate degree programs, which are intense and 18 to 27 months in length, attract students who originally intended to enroll in a Bachelor's degree program, but who are anxious to get into the job market sooner, with marketable skills. This is in the taxpayers' and students' best interests, since costs are lower and the amount of the student's lost income is less. We do not accept the premise that non-baccalaureate degree programs should be held any more accountable than Bachelor's degree programs. If there is any "cut" that should be made, it should be along the lines of short-term non-degree vs. all degree programs.

GENERAL PROVISIONS (CERTIFICATION, ADMINISTRATIVE AND FINANCIAL STANDARDS)

If the provisional certification and financial standards regulations contained in the General Provisions NPRM published on February 17 are finalized as proposed, the great majority of institutions in this country will be "provisionally certified." We do not believe that was the intent of Congress. And it will come at enormous cost to the taxpayer.

In addition, the proposed financial standards for privately financed, proprietary institutions such as The Art Institutes has potentially very serious financial consequences for those institutions affected. We know that ED was under pressure from the Inspector General's office to tighten the financial responsibility standards. However, there are many new protections in the law, particularly in Part H (Program Integrity) which make tightened financial standards unnecessary considering the scope of the regulations that have been issued in the last two months. We are particularly disturbed by the transparent justification which has been used to explain the radical difference between standards proposed for tax-supported ("non-profit") and proprietary institutions. The preamble to the proposed rules suggests that non-profit institutions have easy access to alumni to acquire funds in an emergency. This would only be true of the most elite institutions, which would never find themselves in this situation anyway.

For the first time in the history of the Title IV programs, the Secretary will have the authority to ask for specific financial guarantees which have never been defined in regulation. However, the proposed rules go too far, and could create an enormous bureaucratic nightmare at the Department. This is not a judicious use of public funds, which, in the case of the Title IV programs, should be used primarily to help students gain access to higher education, not to support a federal police force.

The Art Institutes' parent company, Education Management Corporation, established a comprehensive employee stock ownership plan (ESOP) in 1989. As a result of establishing the ESOP, a large intangible asset was created on the parent company's balance sheet. If the individual Art Institute's balance sheets are combined with the parent company's, there is a deficit tangible net worth. According to the proposed regulation, this could force The Art Institutes into "provisional certification" and result in a massive capital requirement which could not be sustained -- an estimated $45 million letter of credit, or a $10 million letter of credit plus an estimated $25 million of working capital lost through required alternate disbursement (reimbursement) procedures.

ESOPs are encouraged by government policy. There are approximately 1,800 staff and faculty associated with the Company, and most are stockholders. Approximately 60% of ownership is held by employees; the rest by three institutional investors.

The regulation should provide an exemption for ESOP companies. At a minimum, institutions and their parent corporations which have been operating successfully for several years with intangibles resulting from ESOP or similar transactions should be permitted to continue to count those assets in the calculation of the net worth standard. These institutions should be grandfathered under the existing standard.

Thank you for reviewing our concerns. We will be in touch.

Sincerely,

Enclosures

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO Bill Galston	Take necessary action ___
	Approval or signature ___
	Comment ___
	Prepare reply ___
	Discuss with me ___
	For your information ___
	See remarks below ___

FROM Barry White BW **DATE** January 12, 1994

REMARKS

This is probably more than you want to read about the Education regulations issue we spoke of this morning, but if you need a better handle on the issues, this will help.

As I told you, the upshot of the Smith/Katzen/Sawhill meeting was an agreement to let ED put out its revised NPRMs with preamble language distinguishing statutory from interpretative language, and specifically inviting comment on the overlap matters and whether there is a better way to address them. We shall see.

The NPRMs should be in the Register in a couple of days.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 29 1993

MEMORANDUM FOR BELLE SAWHILL AND SALLY KATZEN

THROUGH: Barry White
John Morrall
Shannah Koss

FROM: Judy Grew
Patricia Smith
Dan Chenok

SUBJECT: Decision on Review of Department of Education (ED) "Program Integrity Triad" Regulations for Student Aid

OMB staff and ED have been engaged for several months in discussions about proposed regulations for provisions of the Higher Education Act (HEA) regarding oversight of institutions participating in HEA student assistance programs. These regulations are of central importance to the management strategy ED will adopt for years to come for its largest and most troubled programs, and will have a significant effect on schools and students that participate in the student aid system. We have reached an impasse on these discussions.

The Department favors a regulatory strategy that, it argues, meets the requirements of the law. We agree with this contention. However, ED's strategy is only one of several alternatives, and we believe that it would not represent the most effective Federal policy or management approach. This memorandum informs you of discussions to date and seeks your decision on how to proceed.

We provided a draft of this memorandum to ED for comment. ED disagreed sharply with OMB staff's phrasing of the issues and provided extensive new material. We have accepted much of ED's language, particularly in the section of the "ED's Position" section above the asterisks. You may still receive a separate memorandum from the Undersecretary further explaining ED's views.

BACKGROUND

In response to concerns regarding institutional abuse of Federal student aid and of students, as well as a growing concern for the quality of education offered by certain institutions participating in Title IV of the HEA (including proprietary vocational schools), the HEA Amendments of 1992 tried to strengthen provisions governing institutional oversight. Most of the problems arise in the for-profit proprietary sector, but for reasons of political custom and tradition Congress chose to apply all the new provisions to each sector of higher education. This blanket coverage is, in part, what has triggered the strong, but splintered, negative reactions to the draft regulations from the higher education community (see below).

Primarily, Congress added or revised authorities in three areas, which the statute refers to as the "Program Integrity Triad." However, the statute is duplicative, ambiguous in key areas, and leaves great discretion to the Secretary. The Triad includes three components.

1) The Amendments establish a new State Postsecondary Review Program (SPRP), under which each State will designate a State Postsecondary Review Entity (SPRE) to conduct reviews of institutions referred by the Secretary based on a set of statutory criteria. Once a school is "triggered" for review by meeting one or more of these criteria, the SPRE reviews that school on the basis of standards that are developed by the State in consultation with institutions in that State and "not disapproved" by the Secretary.

   The standards must be designed to measure performance against twenty factors specified in the Act, which include graduation rates, job placement rates, standards for the financial and administrative capacity of institutions, tuition refund policy, appropriateness of advertising, and student recruitment policies. The State will perform this function only to the extent it is compensated by funds appropriated by Congress. Funds were appropriated for 1993 (mainly for planning) and 1994 (initial implementation).

2) Institutions must be accredited by an agency "recognized" by the Secretary, based on the agency's accreditation requirements. The Amendments strengthened these requirements, and the standards for the Secretary's recognition of accrediting agencies. Accreditation review requirements include a number of SPRP factors.

3) The administrative capacity and financial responsibility of institutions must be certified by the Secretary under a stricter set of standards than existed previously. Some of these standards relate to accreditation requirements and SPRP factors.

CONCERNS OF THE HIGHER EDUCATION COMMUNITY

Draft copies of the NPRMs, made available by ED, have generated intense concern, controversy, and lobbying by the higher education community (both Washington associations and Presidents of major private universities and State systems). Much of the community is opposed to the new roles of accreditors and the States. They believe these new roles will materially alter the relationship between higher education, the States, and the Federal government, threatening institutional autonomy. They are also concerned about the redundancy of functions among the three participants -- accreditors, States, and ED. The associations asked in the negotiated rulemaking process that these issues be reconciled in regulations.

The associations have pressured ED to issue these NPRMs simultaneously so that they can assess whether ED has created a system with the least amount of -- (1) duplication and inconsistency of functions among governance groups, (2) Federal and State intrusion into institutional affairs, and (3) institutional workload.

ED believes that although the community is highly critical of the draft regulations, much of their concern is really with the law itself. The community fought hard against these provisions in the 1992 legislative process, and lost.

ED'S POSITION

Responding to criticism from the community, ED is taking a minimalist view in revising regulations for accreditation and the SPREs, following the statute very closely and regulating only where ED believes it is necessary. ED is revising the preambles of the first two regulations (accreditation and SPRP) to more clearly distinguish: statutory language; regulatory language upon which consensus was reached in negotiated rulemaking; and additional regulatory language the Secretary believes is necessary. In areas where the current drafts went "beyond" what the negotiators agreed upon, ED intends to restore the consensus position. ED also plans a more detailed preamble discussion of the importance of the new functions and the respective roles of each part.

ED argues that its regulations for the SPREs permit states to develop standards which the Secretary would disapprove if they are too low. The regulations are based on a law that creates a new relationship with States, and authorizes the States to set the standards. In ED's view, minimum standards are likely to become the States' standards; furthermore, they would not be useful because they will be of the "cookie cutter" variety, and would not reflect the judgement of States who are closer to the schools than is the Federal government. ED argues that such standards would be enforced by States who see themselves simply as ED's contract agents, rather than as part owners of the system.

ED hopes to publish the two NPRMs together by January 15. Regulations for the Federal part of the triad [accreditors-States-ED] would be published as soon as possible thereafter, hopefully with some overlap in the comment period. ED indicates that Federal eligibility and certification regulations will be less controversial than rules for the other two parts of the triad, which were changed substantially in the 1992 amendments.

* * * *

In meetings with OMB staff, David Longanecker, ED's Assistant Secretary for Postsecondary Education, has admitted that ED's strategy of developing the three rules separately, adopted before his arrival, was a bad decision. He further agrees that potential redundancy in the statute was not resolved in the regulations as negotiated; negotiators could not reach consensus on many issues. He has indicated that while time does not permit addressing this issue at the NPRM stage, ED could resolve accreditation and SPRP redundancies in final rules. Plans for resolving redundancies in the yet unseen rules on certification are less clear.

Longanecker administered aid programs at the State level in Minnesota and Colorado. He argues that States, being governments, are natural partners for the Federal government, share its goals, and can be trusted to carry out SPRP tasks without extensive Federal oversight. Further, he finds it acceptable if SPRP standards vary from State to State.

Both Undersecretary Mike Smith and Longanecker believe that the laws are nearly unadministerable as written, and assert that it is too late to develop a regulatory and administrative strategy that might mitigate the problems. Given what they have seen of staff products in the 16 months since enactment, they may well believe that more time would not yield a better product. Both also assert that the accreditation scheme in the law is doomed to failure. The accreditors get no Federal money for their efforts and many lack capability to perform the functions required by the statute.

OMB STAFF CONCERNS

We disagree with ED's position for several reasons:

- We believe ED should lay out for the regulated community and the other triad members a clear notion of its strategy for approving accreditor requirements proposals, SPRE standards proposals, and implementing its own role. ED accepts that it has to judge what comes in from its partners, but does not want to provide them the opportunity to comment on rules that include the basis upon which it will make those judgements.

- ED appears to conceive of Federal guidance in such matters only as "cookie cutter," "minimum," and unvarying across States. OMB staff laid out many suggestions for far more flexible approaches, which combine appropriate consistency with appropriate accreditor and State flexibility. Our goal has been to make clear in the NPRMs how the Secretary will evaluate proposals, and where possible what methods he will use to do so. We have not sought to establish minimum, unvarying targets for all elements. However, we do believe that the same school should not have to maintain different records, or be accountable to different interpretations of the same legal language when reviewed by an accreditor, a State or the Federal staff, except as explicitly provided in the relevant rules and to meet legitimate school or State variation. Students (and taxpayers) should be assured of a reasonable level of institutional integrity regardless of where they attend school. For-profit vocational school operators should not be able to operate in the weakest States to avoid proper review.

- ED believes strict adherence to statute and to the "consensus" of the negotiators are the highest goals. OMB staff believe the Secretary has a responsibility to fashion a policy and management strategy that (a) implements the law in the most effective manner, exercising the discretion the law and the responsibilities of the Executive Branch make available to him; and (b) to propose alternatives to consensus positions of the negotiators -- who are virtually all representatives of the institutions to be regulated -- when alternatives would be in the best interests of the students and the taxpayers.

- We believe that the NPRMs should clearly indicate which member of the triad has primary responsibility for development of specific standards and how the other members' activities complement and reinforce those standards. ED believes such an approach is not clearly authorized by the law. OMB staff contend that the Secretary's statutory responsibility to approve the requirements of each triad member confer upon him the ability to ensure that these requirements relate properly to one another.

- OMB staff also recommended phased implementation, where appropriate, for elements for which good data or strong theory do not exist; for such elements, ED would indicate that it was doing the necessary research and development. Specifically, where ED already has clear, definable standards (for example, tuition refund policies), ED should define the standard it expects from the accreditors and SPREs. In developing quantifiable standards where ED has no baseline experience from the student aid programs (for example, job placement rates), the triad members and the community, led by ED, should discuss and develop standard measurement procedures and one set of recordkeeping requirements necessary to have the data to calculate such measures for all members of the triad, and develop guidelines for circumstances allowing variation in the standards, such as State economic conditions.

- We have also pressed, unsuccessfully, for ED to work with DOL and VA staff who regulate and set performance measures in comparable programs, particularly for vocational education, so the Federal government speaks with one voice to students and schools.

<u>TIMING ISSUES</u>

- **Statutory deadlines.** Congress mandated in the Higher Education Technical Amendments of 1993 that only if these regulations are published in final form by May 1, 1994, can they go into effect for the Academic Year 1994/95; if they are not published in final form by May 1, 1994, they cannot go into effect until Academic Year 1995/96.

- **Funds have been appropriated for SPRP.** Without published rules, States may have to act on their own in implementing the law during Academic Year 1994/95. We note that the FY 1994 SPRP funds will remain available for use until September 30, 1995, after Academic Year 1995/96 begins.

<u>OPTIONS FOR DECISION</u>

<u>Option 1</u> (Education position): OMB concludes review of the accreditation and SPRP NPRMs as revised by the Department with whatever further improvements can be achieved at the staff level.

<u>Pro</u>: This option allows relatively timely publication of the NPRM and subsequent public comment on these issues. Comment will likely be extensive and divided. ED may see the need for a better strategy during comment and review. Changes could be made before publication of final rules.

<u>Con</u>: This option does not address redundancy and conflict among the standards and methodologies. It may provoke such critical comment that subsequent revision may be so extensive as to require republication as an NPRM.

<u>Option 2</u> (Staff recommendation): OMB requests the Department to (a) develop, and revise the preamble to all related NPRMs to describe, a Federal strategy for an integrated system that avoids redundancy and conflicting standards; and (b) in each NPRM, provide in regulations, or for comment in the preamble, options for specific approaches to each standard.

<u>Pro</u>: This option establishes Federal policy in support of an integrated system, and gives guidance to the public regarding the Federal policy being pursued. OMB staff have

already provided extensive suggestions.

Con: This option is opposed by Departmental officials as "going past the law."

A policy-level meeting will be required.

Option 3: Request that ED revise the NPRMs to seek comment on whether common Federal standards and methodologies would be an appropriate and effective alternative to ED's approach in the proposed rules of allowing maximum accreditor and State flexibility. Comment would also be sought on the specific components of either strategy.

Pro: This option would give all commenters the opportunity to evaluate the two approaches. This option would not foreclose any avenues for the final rules.

Con: Comment is likely to be as deeply divided as current lobbying is. If the weight of comment changed ED's view and led it to develop the alternative approach, it could take ED so long as to threaten its ability to issue a final rule in time to take effect for the 1994-1995 school year.

cc: Barbara Selfridge
James B. MacRae, Jr.

THE WHITE HOUSE

WASHINGTON

January 17, 1994

TO: George Stephanopoulous
Mark Gearan/Dee Dee Myers
David Gergen/Jody Greenstone
John Podesta/Todd Stern
Alexis Herman
Phil Lader

FROM: Bill Galston WAG

SUBJ: Post-secondary education accreditation

In response to multi-billion dollar abuses of the student loan system in the late 1980s, Congress included new accreditation and oversight provisions in the Higher Education Amendments of 1992. These provisions were principally directed against fraudulent trade schools but affected, to some extent, accreditation organizations and colleges as well.

Last fall, the Department of Education circulated a draft of proposed regulations implementing the 1992 act. The response from accrediting institutions and the higher education community was violently negative (see attached NYT article). The Department then negotiated with them and redrafted to take their concerns into account. The revised regulations have been cleared by OMB and are likely to be released later this week.

In out-of-town speeches before education audiences and in letters from college presidents, I received vigorous protests about these regulations. I requested, received, and reviewed the latest version. In my judgment, they are narrowly and appropriately tailored to carry out the intent of Congress; they ought to be approved and released without further delay. When this happens, the Administration may well come under renewed criticism--for excessive regulatory zeal, undermining the balance of our historic federal/state, public/private partnership in educational matters, and so forth.

These criticisms are almost entirely without merit. Our response should be that we are faithfully carrying out the clear intent of Congress in response to multi-billion ripoffs of taxpayer dollars that the prior system of oversight and regulation proved powerless to prevent. If subsequent experience shows that we need to revisit the 1992 amendments, we'll consider that in consultation with the Congress. But we make no apologies for moving, after appropriate consultation with all affected parties, to do what the law tells us to do.

WAYNESBURG COLLEGE WAYNESBURG, PENNSYLVANIA 15370
(412) 627-8191

THE PRESIDENT

"The College's 145th Year"
December 22, 1993

Dr. William Galston
Deputy Assistant for Domestic Policy
Executive Office of the President
The White House
Washington, DC 20500

Dear Dr. Galston:

Thank you for speaking at the Middle States Association meeting. It was a pleasure to have the opportunity to meet you and hear your comments.

As mentioned in our brief conversation, Waynesburg College has pioneered in the implementation of service-learning among institutions of higher education. Within our liberal arts education and extra-curricular activities, social responsibility and service to others have been integrated into the life of the College. Soon we will have students performing over 1,000 hours of service to communities in our region. It is our hope that we might continue to expand our efforts, as well as serve as a model for other colleges and universities.

At this time, Dr. Galston, I would also like to express the concerns of Waynesburg College regarding the impending regulations from the Department of Education precipitated by the reauthorization of the Higher Education Act. The diversity of institutions within American higher education requires the ability to evaluate institutions according to their stated mission, goals and standards. The Middle States Association, along with other regional accrediting bodies, has a long history of successfully providing accountability through the means of peer review and collegial evaluation. Additional requirements upon these agencies will only prove burdensome without addressing the existing problems within higher education.

It is our hope to see effective involvement of government in the support and enhancement of higher education opportunities available to members of our society. We are sure this is the hope of our current administration also.

Sincerely,

Timothy R. Thyreen

Timothy R. Thyreen

TRT:mmf

WILKES

December 15, 1993

Dr. William Galston
Deputy Assistant to the President
for Domestic Policy
The White House
Washington, DC 20500

Dear Dr. Galston:

Chris Breiseth urged me to send you his letter (attached) to Secretary Riley. He did this after I reported on your speech at the Middle States Association conference on December 9, 1993. I found your presentation to be both informative and encouraging. Indeed, it was a splendid overview of the Administration's many new education initiatives.

The matter addressed by Chris is the proposed regulations to implement the 1992 Higher Education Amendments. You may remember that the final question from MSA Executive Director Howard Simmons concerned these regulations.

I won't say anything more; Chris's letter is more eloquent than I could hope to be. Let me end by saying that I admired the clarity of your presentation. Both Chris and I are stalwart supporters of the President and hope you will read his letter in this spirit.

Please tell me if I may be of service.

Sincerely,

J. Michael Lennon

J. Michael Lennon
Vice President for Academic Affairs

esc

Attachment

cc: Dr. Christopher N. Breiseth, President

WILKES UNIVERSITY • WILKES-BARRE • PENNSYLVANIA 18766 • 717/824-4651

faxed: 202/708/9469
mailed

November 30, 1993

The Hon. Richard W. Riley
Secretary of Education
U. S. Office of Education
400 Maryland Avenue, S.W.
Washington, DC 20202

Dear Mr. Secretary:

I write in a spirit of deep frustration at the overkill involved in your proposed Procedures and Criteria for Recognition of Accrediting Agencies. While I have been President of Wilkes University for ten years and of little Deep Springs College in California for three years, I was also a guideline writer for the Office of Economic Opportunity in Washington from 1967 to 1969. From that latter experience I had the responsibility for preparing the guidelines to implement the amendments to the Economic Opportunity Act of 1967. Thus I have some direct experience with the process you and your staff are handling in interpreting the provisions of The Higher Education Act of 1992.

From these several perspectives (I also have just finished chairing a ten-year Middle States reaccreditation visiting team to a four-year college in New York State), I can say that I think you have pushed beyond what is required by the Act and have developed a full court federal press on both peer accreditation and on colleges and universities in ways that will create a nightmare of overlapping jurisdictions among the "triad" of federal government, state offices of education and accreditation agencies. Taken together with Bill Brock's report coming out on December 6, calling for public self-assessment by colleges and universities in terms of 42 institutional self-assessment standards, all properly quantified, the impact on institutions is a nightmare of bureaucratic interference.

We all are feeling the presssure to develop outcomes assesssment--no easy task in terms of liberal arts education--out of concern for student learning and for improving our institutions. I know there are frustrations with our education system, as there are with almost every other system and profession in our dramatically changing society. But there is also genuine reform going on and good new ideas being discovered and circulated on how to help students of widely varying levels of preparation and ability best prepare themselves for a dramatically changing world of work. But to put the heavy boot of the federal bureaucracy on top of our widely--and wonderfully--diverse "system" of 3400 colleges and universities, as if the Office of Education were a European Ministry of Education presiding over a centralized system of education, is a sad contradiction to the "re-inventing government" spirit of the Clinton/Gore administration. I have such hope from our President--and I am so sickened by this misapplied enthusiasm for control of institutions whose best guarantee of responding to the complex changes facing us all is our flexibility to adapt our unique institutions to the myriad challenges facing us and our students. The market is working to challenge us all. The responses you hope to encourage by your misapplied broadening of the charge given you by the HEA are better stimulated by the market forces, the gathering public concern about education at all levels, by the creative sharing on a national level of ideas that are working, and by the peer accreditation process, an authentic part of the genius of American culture.

I endorse the changes proposed by the National Policy Board on Higher Education Institutional Accreditation (a copy enclosed). Redirect your sincere good intentions towards being helpful to our 3400 colleges and universities, not constricting them.

Thank you for your personal consideration of my views.

Sincerely,

Christopher N. Breiseth
President

Enclosure
cc: Hon. Richard Durbin, Rep., Illinois
Hon. Albert Gore, Vice President of the U.S.
Hon. Paul Kanjorski, Rep. Pennsylvania
Hon. David Longanecker, Asst. Secretary of Education
Dr. Howard Simmons, Exec. Dir., Middle States Association
Hon. Paul Simon, Sen., Illinois
Hon. Arlen Specter, Sen., Pennsylvania
Hon. Harris Wofford, Sen., Pennsylvania

bc: Dr. Anne Batory, Fac. Assoc. to Pres.
Mr. Thomas Hadzor, VP for Dev.
Dr. J. Michael Lennon, VPAA
Mr. Paul O'Hop, VPBA/AE