UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

FACSIMILE TRANSMISSION

DATE: December 28, 1993

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TO: Bill Galston

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MESSAGE:

name~
title~
company~
address~

Dear greeting~:

Thank you very much for your letter to Secretary Riley concerning the Department's proposed regulations implementing the Higher Education Amendments of 1992. The Secretary has asked me to respond in his behalf.

We very much appreciate your sharing your concerns about the proposed regulations. There has been considerable consultation with the higher education community in the course of developing these draft regulations, including the negotiated rulemaking process. In the past few weeks, however, it has become apparent that there is a great deal of confusion among the higher education community as to the requirements of the statute versus the proposed regulations.

To help alleviate some of this confusion, the Department has decided to postpone the timeline for publication of Notices for Proposed Rulemaking (NPRM) governing the State Postsecondary Review Program and accreditation until mid January. The later publication date will allow us to incorporate changes in the recently passed technical amendments. In addition, this extra time will enable us to rewrite the preambles to the notices to ensure they clearly stipulate those aspects of the proposed regulations which are statutory and those which are regulatory. Where the regulatory language appears to differ from what was negotiated, we will highlight the change and provide our rationale for the change.

I assure you that the Department is committed to developing regulations for accreditation and the State Postsecondary Review Program that effectively implement the provisions of the Higher Education Amendments. Our goal is to ensure that accrediting agencies, States, and the Federal government are linked together, in as complementary a manner as the statute permits, to create a stronger and more coordinated evaluation of institutions, which can only enhance the quality of American education. I do not believe either the law or the proposed regulations give the Federal government or the States control of faculty hiring, curriculum, or tuition, as you fear. Rather, they seek to enhance oversight of institutions so that access to a quality education is assured for all students who pursue postsecondary education.

You can help us to achieve our goal by giving us - in as precise regulatory language as possible - your suggestions for changes to the proposed regulations during the official comment period. I look forward to receiving your comments, and I assure you that we will give them the utmost consideration in developing final regulations.

Sincerely,

David A. Longanecker

SUPPLEMENTARY INFORMATION: In order to approve a postsecondary education institution to participate in the student financial assistance programs authorized under Title IV of the HEA (Title IV, HEA programs) and many other Federal programs, the Secretary must determine, in part, that ~~a postsecondary education~~ the institution satisfies the statutory definition of an "institution of higher education." Under the HEA and other Federal statutes, one element of that definition requires an eligible institution of higher education to be accredited or preaccredited by an accrediting agency recognized by the Secretary as a reliable authority as to the quality of the education or training provided by the institution. Another element requires an eligible institution to be legally authorized to provide an educational program beyond the secondary level in the State in which it is located. Thus, the statutory definition of an institution of higher education provides the framework for a shared responsibility among accrediting agencies, States, and the Federal government to ensure that the "gate" to the Title IV, HEA programs is opened to only those institutions that provide students with quality education or training worth the time, energy, and money they invest in it. The three "gatekeepers" sharing this responsibility have traditionally been referred to as "the triad." While the concept of a triad of entities responsible for gatekeeping has had a long history, the triad has not always worked as effectively as it should to ensure educational quality, nor has it served as an effective deterrent to abuse by institutions participating in the Title IV, HEA programs. ~~During the past several years, concern has been raised regarding the quality of education offered by institutions participating in the SFA programs and the financial responsibility and administrative capability of these institutions. In addition, concern has been expressed about some accrediting agencies with regard to their decisions to accredit particular institutions and programs as well as other educational matters.~~ For several years, certain institutions participating in the Title IV, HEA programs have failed to provide students with education or training of an acceptable level of quality; they have also failed to treat students fairly. In addition, they have failed to meet acceptable standards of financial responsibility and administrative capability and to adequately protect Title IV, HEA program funds entrusted to them. The institutions that have engaged in these abusive practices are not restricted to a particular sector of higher education. Rather, the abuses have been found in all types of institutions participating in the Title IV, HEA programs, including those in the private non-profit and public sectors of higher education as well as those in the proprietary sector.

At the same time, gatekeeping functions have not been carried out effectively. For example, some accrediting agencies have not taken sufficient care to ensure the quality of the education or training provided by the institutions or programs they accredit or to protect student interests when they accredit particular institutions or programs. Moreover, some States have also not taken sufficient care to ensure the quality of the education or training provided by the institutions they authorize or license to operate in the State or to protect student interests. Finally, the Federal government's management of its responsibilities to determine eligibility and to certify institutions to participate in the Title IV, HEA programs has not always been adequate to prevent abusive practices at institutions that participate these programs.

~~As a result~~ Consequently, in the Higher Education Amendments of 1992, Public Law 102-325, Congress amended the HEA to provide for a new part H of Title IV entitled "Program Integrity Triad."

Under that part, States and accrediting agencies are required to assume major new oversight responsibilities; and States, accrediting associations, and the Secretary are linked to create a stronger and more coordinated evaluation of institutions that participate or wish to participate in the Title IV, HEA programs. The Secretary believes that the most appropriate approach to this coordinated evaluation of institutions by the three components of the triad is a complementary one with each component focusing its evaluation on its obligations within the context of the HEA. Thus, the focus for accrediting agencies is the quality of education or training provided by the institutions or programs they accredit. ~~For the States' evaluation of institutions the focus is primarily consumer protection~~ For States, which already had responsibility for determining that institutions have the legal authority to operate within the State, the HEA added a new focus: reviewing institutions that meet trigger certain statutory review criteria. The focus of the Secretary's evaluation of institutions is the administrative and financial capacity of those institutions to participate in the Title IV, HEA programs. While the specific statutory responsibilities for the three triad members may overlap somewhat, when viewed as a whole, the triad brings together in a coordinated fashion three different yet very important ~~aspects of institutional review~~ perspectives for evaluating institutions. ~~Where overlap in a particular area is necessary, or is required by the HEA, the Secretary will consider the oversight that each component of the triad provides, in the~~

~~content of each component's responsibilities.~~

Subpart 1 of part H creates a new program, the State Postsecondary Review Program, or SPRP, under which State oversight of institutions participating in the Title IV, HEA programs is strengthened. Subpart 2 of part H establishes procedures and criteria under which the Secretary recognizes an accrediting agency as a reliable authority as to the quality of the education or training offered by institutions that the agency accredits. Lastly, Subpart 3 specifies the procedures the Secretary uses to determine whether an institution meets the eligibility requirements and has the administrative capacity and financial responsibility to administer the Title IV, HEA programs.

Along with this Notice of Proposed Rulemaking, the Secretary publishes in the Federal Register the NPRM to implement the accrediting agency provisions in Subpart 2 of part H of the HEA. This provides interested parties the opportunity to comment on the SPRP and accreditation NPRMs in a coordinated way. The Secretary also intends to publish in the Federal Register a NPRM implementing subpart 3 of part H of the HEA before the date the proposed regulations for Subparts 1 and 2 of part H of the HEA become final regulations.

Bulletin Board

Friday *January 28, 1994*

Quote of the Day

"We must set tough, world-class academic and occupational standards for all of our children."

— **President Clinton**
State of the Union address
Jan. 25, 1994

Stat of the Day

One-teacher schools in 1929-30 numbered 149,282. By 1991-92, only 569 remained.

Source — NCES

Phone Numbers

Building problems	401-0910
Computer hotline	708-5450
Credit Union	488-5400
Employee locator	708-5366
ED/OERI statistics	219-1513
Fire/safety specialist	401-1301
Goals 2000	401-0039
Health Unit (Capitol Place)	512-5486
Health Unit (FOB-6)	401-0464
Health Unit (ROB-3)	708-6703
Health Unit (Switzer)	205-5416
I.G.'s Fraud Hotline	1-800-MISUSED
Main library reference	219-1692
Motor pool	401-3861
Parking	401-3907
Satellite library (FOB-6)	401-1045
Security (FPS Control Ctr.)	708-1111
Skill Clinic	205-5758
Student aid info	1-800-4-FEDAID
Suggestion System	732-1866
Telephone repair	708-8254
Union	401-0945

Contact

Bulletin Board Editor:
Jim Bradshaw
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or send cc:Mail.

Windows 3.1 Classes Added

Due to the demand for Windows 3.1 training, the Horace Mann Learning Center has added five classes to its previously announced schedule. Each class will cover such topics as getting started with Windows, the Windows Desktop and using the file manager, program manager and control panel. One-day courses will be held in the FOB-6 DuBois Room (basement A036). The dates: Feb. 3, 4 and 14 and March 7, 8, 9, 28 and 31. For more information, call Judy Hickey at 401-0530 (or use cc:Mail).

Emergency Blood Drive Feb. 2

An emergency Red Cross Blood Drive will be held from 9 a.m. to 1 p.m. Wednesday, Feb. 2 in the FOB-6 Barnard Auditorium. "The weather has virtually paralyzed all of our efforts for blood collection and we are very concerned that because of the short shelf-life of platelets, our supply will quickly vanish," said David L. Simms, chief executive officer of the Red Cross Blood Services Greater Chesapeake and Potomac Region. To schedule an appointment for the FOB-6 blood drive, call Latonya Anderson at 401-0156.

Next Microcomputer Lab Feb. 4

Need help with computer software like WordPerfect and Lotus? The Horace Mann Learning Center will sponsor another Microcomputer Lab Friday, Feb. 4 in FOB-6 basement room A036. You can get personal instruction during the hours of 9 a.m. to noon and 1-3 p.m. Similar labs will be held on Fridays Feb. 11, March 4 and March 25. To make an appointment, call Judy Hickey at 401-0530 or Lucindia Nobles at 401-1973.

Thrift Open Season Ends Monday

Thrift Open Season ends Monday, Jan. 31. Until then, you may join the plan or change your account. For details, call the Employee Relations Branch at 401-1920 or your regional personnel office.

2

College Accreditors Feeling Criticism

Questions about standards of quality and multiculturalism.

By SAMUEL WEISS

For almost a century, the oversight of colleges, universities and professional schools in this country has rested largely with a group of private accrediting organizations, whose judgments usually went unchallenged and carried the academic equivalent of the Good Housekeeping seal of approval.

But within the last few years, the judges have been scrutinized by members of Congress, Federal and state officials, college presidents, faculty members and the press, and criticized for exercising either too much or too little authority.

Indeed, the criticism has reached such intensity that the leaders of six regional accrediting organizations are meeting this week in Tucson, Ariz., with the heads of six major associations, representing more than 2,000 colleges and universities, to consider the future of the entire accrediting process.

Although participants said no immediate changes in the present system were expected, one of the more radical proposals calls for the merger of all accrediting groups into a single national organization.

"The credibility of voluntary accreditation has sunk so low that we have to do something dramatic if it's going to survive," said Dr. Robert E. Atwell, co-chairman of the meeting and president of the American Council on Education, which represents 1,800 institutions.

To be accredited, member universities are evaluated by visiting teams of consultants from comparable institutions chosen by the accrediting group. All six regional groups insure minimum standards at member institutions, no matter the academic emphasis at each.

In California, the Western Association of Schools and Colleges has been criticized in recent months for its efforts to promote cultural diversity and recognition of gay rights on campuses by taking into account a college's affirmative-action policies and whether its curriculum is multicultural.

The accrediting association's proposed new statement has been questioned by religious schools and some major institutions, including the University of California at Los Angeles and Stanford University, on the ground that the association is infringing on the universities' autonomy.

On the other hand, members of Congress have accused accrediting groups of not doing enough to insure the quality of the institutions they oversee and not cracking down on colleges with high default rates on student loans.

As a result of legislation passed two years ago, the Department of Education published guidelines in the Federal Register this week to tighten the Government's oversight of the accrediting organizations.

The proposed rules would force the organizations to make public most of their findings concerning individual universities. The guidelines would also require the accreditors to insure that colleges comply with Federal regulations on financial aid to students, a proposal the accrediting organizations say is beyond their purview.

In addition, many college presidents have been angered by the proliferation of specialized accrediting associations. Critics say these associations take up increasing amounts of time and resources and often act as vested interest groups promoting their individual discipline.

Faced with these problems, Dr. Atwell and others said the participants at Tucson meeting, which ends today, were trying to address these questions:

¶Should the six regional associations, responsible for evaluating entire institutions, and the dozens of specialized associations be merged into a national accrediting body?

¶If the current fragmented system is maintained, should the regional associations adopt a common set of minimum standards for evaluating colleges, and what should those standards be?

¶Even if a common minimum set of standards is agreed on for all institutions, should there also be additional standards for evaluating different types of institutions, like two-year colleges or research universities?

¶Should the accrediting groups continue their 40-year-old practice of certifying, for the Federal Government, the eligibility of colleges for receiving Federal financial aid?

'Real Educational Quality'

Experts agree that the answer to these questions will have major consequences for how higher education is regulated.

Dr. David Longenecker, an assistant secretary of education, said this week that if the accrediting associations decided to stop certifying the eligibility of colleges for Federal aid, the Department of Education would be forced to invent additional regulatory mechanisms and more deeply involve state and Federal agencies in the regulation of higher education.

Dr. Stephen S. Weiner, executive director of the Accrediting Commission for Senior Colleges and Universities for the Western Association of Schools and Colleges, said new standards of accreditation could come out of the Tucson meeting.

"The fundamental issue," Dr. Weiner said, "is whether the accrediting associations will continue simply to insure minimum standards" or whether "we'll deliver on the promise we've made to insure real educational quality."

He said this would involve the accrediting agencies paying less attention to traditional criteria for evaluating colleges, like certifying the number of books in an institution's library, and developing criteria that would measure the effectiveness of teaching and learning in the classroom.

Colleges fear rules threaten autonomy

WASHINGTON — When Congress moved to stanch a hemorrhage of bad student loans in 1992 with the passage of the Higher Education Act, a subclause set in motion a fundamental change in the way the nation's 3,600 colleges and universities are supervised.

No one seemed to notice much. But the provision opened the door for the first time to direct federal intervention in private education.

Now, 18 months later, as the Education Department prepares to publish the rules for putting that law into effect, educators are crying foul. They complain of a coming blizzard of paperwork and say America's tradition of independent education is imperiled by the government's unwelcome intrusion into everything from curriculum to tuition and staff hiring.

"What we fear," said Robert H. Atwell, president of the American Council on Education, "is that we are federalizing what has always really been a voluntary process in this country."

"They are reacting to something that's new and uncomfortable," said David A. Longanecker, the Education Department's assistant secretary for post-secondary education. "They imagine that it will hurt. And some of it will hurt."

More paperwork

In the short term, the changes will probably make barely a ripple in the operation of the nation's leading colleges. More paperwork will likely be required.

Educators will have to keep records on internal details like tuition, loan defaults, course requirements and graduation rates. Yet none of it really threatens academic integrity.

But educators also have more serious concerns, which are as yet hypothetical. The possibility exists, they say, that overzealous bureaucrats might some day micromanage the nation's schools, dictating what intellectual terrain college students should traverse, under whose guidance and over what period.

Political agendas could come into play, they warn. So could social ones.

"The thing here, really, is a case of the camel's nose under the tent," said David R. Merkowitz, the director of public affairs for the American Council on Education.

"What is to prevent the federal government down the line from writing new regulations that go to questions like Darwinian science versus creationist science?"

The change grew out of bad loans and good intentions. Faced with a $2.5 billion mountain of defaulted student loans and troubled by financial scandals involving federal grants at such elite colleges as Stanford University and Massachusetts Institute of Technology, Congress set out to make colleges prove that they were worth the billions in federal aid they received each year.

The initial target was fringe, for-profit trade schools responsible for most of the bad loans. But many prestigious schools are afraid that they, too, will be hit.

Voluntary reviews

In most countries governmental supervision is standard. But U.S. schools were always different, regulated by a rather gentlemanly system of voluntary and private reviews by accreditation agencies made up of academic peers, with almost no federal involvement. Under the legislation passed by Congress, responsibility for accreditation was shifted to Washington, giving the Education Department the ability to specify the standards used by those agencies in their reviews.

At the same time, the measure imposes a whole new layer of supervision: state agencies, awkwardly titled State Post-secondary Education Entities, usually state education departments, will interpret and enforce broad standards devised by the Education Department.

Not every school would likely be reviewed by these agencies. The Department of Education has proposed 11 criteria that would require a review.

While the shift in supervision occurred with the passage of the 1992 law, alarm over it did not really begin to grow until late last year, after the Education Department was already well on its way to setting out the specific rules.

By November, when an early draft of those regulations was released, the language included some very specific clauses addressing things like the percentage of loan defaults and the ratio of tuition costs as measured against probable earnings by graduates.

MORE...

4.

Colleges fear rules

CONTINUED...

Undermining of mission?

Those and other details troubled some educators, especially those serving disadvantaged students, because they feared that the government, in applying a single standard, would force them to attract more financially secure students, thus undermining their mission.

Several of the nation's leading academics circled their wagons and set their sights on the Education Secretary Richard W. Riley, who had inherited the responsibility.

"Please write or phone Secretary Riley immediately," David L. Warren, the president of the National Association of Independent Colleges and Universities urged in a letter to that group's more than 800 members. He urged them to write in support of the basic principles of independent education in America.

THE NEW YORK ... JANUARY 30, 1994 P-19

COLLEGE OFFICIALS AGREE TO CHANGE

Facing Criticism, Accreditors Plan to Set Uniform Rules and Make Data Public

By SAMUEL WEISS

The six regional accrediting associations responsible for certifying the nation's colleges and universities have agreed to develop of a new set of common criteria for evaluating institutions.

The accrediting associations have also agreed to make public reports on their findings concerning individual universities, and eventually to cease their cooperation with the Federal Government in certifying the eligibility of colleges for Federal financial aid.

The agreements, which represent a major change in the oversight of higher education in this country, were reached at a two-day meeting last week in Tucson, Ariz., between the accrediting associations and six national organizations representing colleges and universities.

'A Major Step'

Robert H. Atwell, president of the American Council of Education and co-chairman of the Tucson meeting, said at the conclusion of the meeting on Friday that the agreements was "a major step toward basic reform of higher education accreditation."

He added that an overhaul of the accrediting process was needed "to let the public know that we are serious about guaranteeing the integrity of our colleges and universities and striving for improvement in the education of students."

Dr. Atwell and other participants said the meeting was convened in the aftermath of intense criticism in recent years by state and Federal officials, college presidents and the news media.

Members of Congress, for example, criticized the accrediting groups as doing too little to insure the educational quality of colleges and as failing to crack down on those schools with high student-loan default rates.

As a result of legislation passed 18 months ago, the Education Department proposed guidelines in the Federal register last week to tighten the Government's oversight of the six regional associations and of specialized accrediting associations that oversee individual disciplines like law and teacher education.

The regional associations are responsible for certifying the credentials of more than 2,500 institutions. They are voluntary not-for-profit groups made up of their member institutions. Until now, each of the accrediting associations has sought to insure certain minimum standards, including the number of books in a college's library, the number of faculty members holding doctoral degrees and the financial soundness of institutions.

Dr. Atwell said after the meeting that the regional groups had agreed to develop a common set of new standards aimed at insuring better quality of education, particularly at the undergraduate level. These new standards, Dr. Atwell said, would involve the associations' looking more closely at issues like curriculum and teaching effectiveness.

Detailed Public Reports

The accrediting associations also agreed to issue public reports concerning the evaluation of individual colleges and universities. Previously, the groups informed the public whether a school was accredited, unaccredited or on probation, but did detail the reasons for their decisions.

Dr. Atwell said a consensus had been reached at the meeting that the regional accrediting associations would sever their relationship with the Federal Government by the end of the decade.

For the last 40 years, the accrediting groups have certified the eligibility of colleges and universities to receive Federal financial aid. But the accrediting groups have been severely criticized for not cracking down on institutions with high student loan default rates, a task the accrediting groups have said is beyond their purview.

6.

The Washington Post Sunday, January 30, 1994 P-1 H

Finding a Way Through the College Aid Maze

By Albert B. Crenshaw
Washington Post Staff Writer

For many middle-class families, this week brings the deadline for filing one of the most important—and in many ways controversial—financial documents that they ever will face.

No, it's not their tax return. It's their application for college financial aid. Tuesday is the deadline for submitting federal and many other college aid forms.

As the price of higher education has soared, more and more families have been forced to rely on the assistance of the federal government or the colleges themselves to meet the price of a bachelor's degree for their offspring.

Already, only a well-off family has much hope of paying the tab at an elite private college out of cash on hand. The cost for four years of room, board, tuition and other expenses at those schools easily tops $100,000 for incoming freshmen. And state schools, though cheaper, have been boosting fees at an even higher rate than private schools in recent years, so that these institutions as well are becoming a financial stretch for many families who think of themselves as middle class.

The increased reliance on financial aid that these trends have created also has focused attention on the ways the government and the colleges go about deciding who gets aid and how much.

Critics—led by Harvard economist Martin Feldstein, who in a 1992 study dubbed the aid formula an "education tax"—charge that financial assistance calculations penalize thrift. Since savings and other assets are taken into account when figuring a family's ability to pay the formula creates, in Feldstein's words, "a strong incentive not to save for college expenses."

Congress, in response to middle-class complaints, has altered the federal aid formula somewhat, beginning last summer, so that a family's equity in a home is not included in the asset base. At the same time, it eased the rules on federally guaranteed borrowing so that students and their families more easily can obtain credit to pay for college.

But while the changes by Congress ease the rules a bit on federal programs, much of the aid still comes from the colleges themselves, especially the very expensive ones, and these schools can and do use their own formulas for deciding what help they will give.

The formulas work much the same, except that the schools tend to include more parental assets in their calculations than the government does and look more critically at what makes up the adjusted gross income that appears on the parents' tax forms.

Families of students who aspire to a top private college will have to deal with both formulas because the total value of federal grants and subsidized loans is "peanuts" when compared with the costs of attending such schools, said John Clark of the financial aid office at Georgetown University.

So even if college is some years off, parents should begin to understand how the aid process works so they can decide how best to position themselves.

The colleges admit there is a "Robin Hood" element to their tuition and aid policies—charging the well-off a lot and using the extra to help the less affluent—but they argue that Feldstein and other critics overstate their case.

To calculate how needy a family is, the formulas limit the portion of the family's assets that will be counted each year; the government and most universities do not count retirement fund balances, and they exclude a certain portion of other assets as well.

The family begins by listing its adjusted gross income from its tax return, adding back in such exclusions as 401(k) contributions and other nontaxable income.

Then the family subtracts its tax requirements, including payroll taxes, an "employment expense allowance" of as much as $2,500 if both parents work (this is meant to offset the extra cost of two jobs, such as needing day care) and something called the "income protection allowance," based on the number of family members. The figure for a family of four for the 1994-95 academic year is $16,670, and is, in effect, a living allowance.

"You're supposed to be able to feed a family of four on $16,670," Joseph Re of Octameron Associates, an Alexandria firm that publishes a series of guides to college finance, said dryly.

What's left is the "parents' available income."

The formula then asks the family to go through its assets, including cash, real estate other than its residence, stocks, bonds, trust funds and the like. Business and commercial farm assets also are included.

From that, the family subtracts an "asset protection allowance," which increases with the age of the parents, and the result is the "discretionary net worth." From this, parents are expected to contribute 12 percent annually to college expenses.

The contribution from assets is added to the parents' available income to reach the "adjusted available income."

More....

Good News for Class of '94

Continued...

"We find we have to compete somewhat harder," said Lisa Phelan, director of recruiting in the Los Angeles office of Andersen Consulting, a nationwide business consulting group. She said she plans to hire at least 110 graduates through her Los Angeles office this year, up from 85 in 1993.

On-campus hiring never disappeared entirely, even during the depths of the downturn. And some corporations that eliminated recruiting during past recessions took a different tack this time.

"Many years ago, our company and others made a mistake by cutting the staff tremendously—keeping the senior people and laying off the junior people," said Allen G. Bormann, corporate director of college relations and recruiting for Rockwell International in Seal Beach. The result, he said, was having to assign highly paid employees to tasks that could have been handled by people with less experience.

For that reason, Rockwell has continued to hire new grads every year, even though its total work force has shrunk by a third since 1986. The aerospace giant expects to make about 175 campus hires this year, Bormann said, about the same as in 1993.

College career counselors say they had expected a recruitment rebound, but not so big or so early in the economic recovery.

"We are surprised it was this soon," said Walter Brown, associate placement director at UCLA. "Now students will not have to look as long or as hard" to find jobs.

The surge has so surprised students and campus counselors that some companies report having recruiting time slots unfilled, especially those interviewing to hire graduates in technical fields, Scheetz of Michigan State said.

But not all college seniors have perceived an improvement in job prospects.

Take Peggy Kuo, a 21-year-old senior at Cal State Fullerton.

"It is hard for students without experience to find good-paying jobs," she said. Though she will graduate next month with a degree in biology, she said, her work history so far shows only clerical positions.

"Students are forced to take jobs that are not their first choices," Kuo said, adding that she is more likely to end up selling equipment to laboratories than working in them as a researcher.

"Even delivering pizza pays $9 an hour, compared to $5 to work in a lab," she said. "It just seems like a college degree is not what it used to be."

May 4, 1994 • The Chronicle of Higher Education

A Modest Retreat on Accrediting

New policy would impose fewer specific rules, but colleges still aren't satisfied

By Scott Jaschik

WASHINGTON

THE DEPARTMENT OF EDUCATION backed away last week from some of the most controversial rules it had proposed to regulate American higher education.

The final version of the rules, due to appear in last Friday's *Federal Register*, would impose fewer specific requirements on how accrediting agencies must evaluate colleges. The final version also limits the authority of new agencies, known as State Postsecondary Review Entities or SPRES, to review colleges.

Hundreds of college presidents opposed earlier versions of the rules, saying they would infringe on the independence of colleges, especially private institutions.

David A. Longanecker, Assistant Secretary for postsecondary education, said at a press briefing last week that the "unprecedented amount of concern" over the rules had had a major impact at the department.

The final rules, he said, avoid the "one-size-fits-all mentality" that angered so many college officials. "We've tried to show an appreciation for the diversity of higher education," he said.

Because the rules are lengthy and complicated, few people had had enough time last week to evaluate them fully. The general reaction was that the Education Department was moving in the right direction, but not nearly far enough.

"I see some progress, but still some central and fundamental problems," said David L. Warren, president of the National Association of Independent Colleges and Universities.

12 AREAS FOR EVALUATION

The regulations carry out provisions of the 1992 reauthorization of the Higher Education Act. In that law, Congress tried to step up the government's oversight of institutions that receive federal student aid by asking more of the federal and state governments, as well as of accrediting agencies.

The law, for example, spelled out 12 areas that accrediting bodies would have to evaluate at colleges to be eligible for recognition by the department. Recognition is crucial to the agencies and colleges because students can receive federal aid only if they attend institutions that are accredited by recognized organizations.

The 12 areas included such topics as curricula, faculty, tuition, student services, and loan-default rates.

The first draft of the department's regulations gave lengthy definitions of how accrediting agencies should evaluate each of those areas. In evaluating student achievement, for example, agencies would have been required to look at the results of admissions tests, job-placement rates, graduation rates, evaluations by employers of alumni, and many other factors.

The final regulations appear to withdraw that level of specificity, leaving only the general requirements from the 1992 law. However, an appendix to the regulations repeats much of the specific language that was dropped from the regulations and says that the Education Secretary believes the detailed instructions provide a "sound framework" for accrediting agencies.

'BUILD A GOOD CASE'

Mr. Longanecker said that, by removing the specific language from the regulations themselves, the Education Department would leave accrediting agencies with much of the freedom they feared they would lose. He said the appendix was not intended as a back-handed way to achieve the goals of the original regulations, but simply to provide "guidance" to the agencies.

He said that if accrediting agencies adopted policies from the appendix, their approval would probably "go by us easily." If the agencies develop different policies, he said they could still be approved by the department as long as they "build a good case."

Accrediting officials said they welcomed the removal of the specific language from the regulations. "That's a very positive move," said Patricia A. Thrash, executive director of the Commission on Institutions of Higher Education of the North Central Association of Colleges and Schools.

She stressed that accreditors did not object to conducting rigorous reviews of institutions, and argued that the detailed regulations might have actually discouraged that. "When you have that level of detail, people don't think of other, more creative ways to look at colleges," Ms. Thrash said.

James T. Rogers, executive director of the Southern Association of Colleges and Schools, said: "I'm very encouraged to learn that this change has been made be-

MOre...

Latest Accrediting Policy to Impose Fewer Specific Rules on Agencies

(2)

Continued...

cause college officials have felt it was quite adequate to have the listing of the 12 standards and quite appropriate to leave interpretation of those to the accrediting bodies."

Others, however, were dubious about the department's leaving the detailed language in the appendix. Said Mr. Warren of the private-college association: "I find that problematic. The department continues to intrude and to federalize the accreditation process."

Sister Mary Andrew Matesich, president of Ohio Dominican College, said: "I would have been much happier if they had forgotten about that appendix. The question that is now going to occur is how free we are to depart from this template and develop as appropriate to our own institutions."

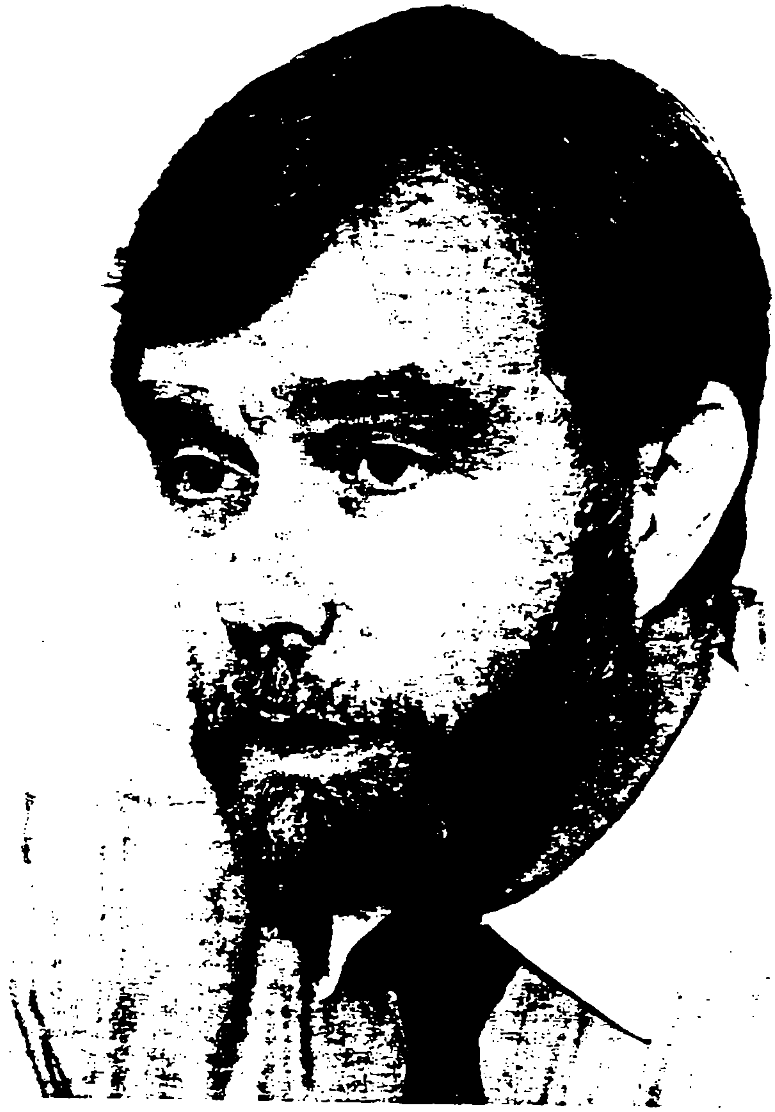
'REFERRED' TO STATE AGENCIES

As with the accrediting regulations, the new rules for the State Postsecondary Review Entities included some provisions that college officials welcomed. The SPRES must be up and running by September 1995.

The department will then "refer" to the SPRES colleges in their states that may merit close investigation for compliance with student-aid laws.

The department will refer colleges based on "triggers," such as high default rates or rapid increases in default rates or participation in various federal aid programs. The SPRES will then have standards, which must first be approved by the department, for determining whether institutions that hit such triggers should be removed from federal aid programs.

The final regulations specify, as the earlier rules did not, that the purpose of SPRES is to eliminate "fraud and abuse." Many college officials complained that the implied broader mission of the earlier regulations could have opened the door for the SPRES to evaluate private colleges for no legitimate purpose.



David A. Longanecker, Assistant Secretary for postsecondary education: The "unprecedented amount of concern" over the rules led to changes.

In another concession to colleges, the department's new regulations give institutions 30 days to demonstrate that the data that served as the basis for a referral to a SPRE were inaccurate. Many colleges complained that Education Department data are so faulty that it would be unfair to use them to trigger a SPRE investigation without giving colleges a chance to challenge them.

On other points, however, the department did not yield.

Higher-education officials have questioned the wisdom of allowing the SPRES to develop their own standards for evaluating whether colleges should remain in student-aid programs.

Robert H. Atwell, president of the American Council on Education, questioned whether it was le-

More...

14.

gal to allow a variety of state standards to be used to determine eligibility for federal aid programs. "You would be giving away to the states almost total jurisdiction over federal programs," he said.

DIFFERENT RULES

Mr. Warren added that students attending comparable institutions in two states could end up with one student eligible for aid and another ineligible.

Mr. Longanecker, however, said it was appropriate for the SPREs to set different rules. He said that since the Southwest, for example, has a healthier economy than the Northeast, SPREs in the Southwest would be justified in having higher expectations for job placement in vocational programs than would similar agencies in the Northeast.

Sister Mary Andrew of Ohio Dominican said she also objected to the wide range of triggers that could be used to prompt a SPRE investigation.

She noted, for example, that increases of 25 per cent in the volume of certain student-loan programs would be such a trigger. Ohio Dominican will hit that amount this year, she said, because many of the college's non-traditional students have lost their eligibility for Pell Grants.

"We would now have to go through a lengthy process based on whatever the State of Ohio decides," Sister Mary Andrew said. "And for what purpose? There isn't any fraud and abuse to look at here." ■

What an Accrediting Agency Must Evaluate

- Curricula
- Faculty
- Facilities, equipment, and supplies
- Fiscal and administrative capacity, as appropriate to specified scale of operations
- Student-support services
- Recruiting and admissions practices, academic calendars, catalogues, publications, grading, and advertising
- Program length, tuition, and fees in relation to the subject matter taught and the objectives of the degrees or credentials offered
- Measures of program length in clock hours or credit hours
- Success with respect to student achievement in relation to mission, including, as appropriate, consideration of course completion, state licensing examinations, and job-placement rates
- Default rates in the student-loan programs, based on the most recent data provided by the Secretary of Education
- Record of student complaints received by, or available to, the accrediting agency
- Compliance with the institution's program responsibilities for student aid, including any results of financial or compliance audits, program reviews, or other such information as the Education Secretary may provide to the accrediting agency

E.D. Releases Regulations Designed To Strengthen Oversight of Colleges

By Meg Sommerfeld

Washington

After several delays, the Education Department has released a set of controversial regulations designed to strengthen federal oversight of colleges and universities.

Although a notice of proposed rulemaking was originally scheduled to appear in the Nov. 30 Federal Register, the department postponed publication until last month to respond to intense criticism that had arisen among higher-education leaders privy to early versions of the rules. *(See Education Week, Dec. 8, 1993.)*

College presidents and higher-education lobbyists had charged that the proposed regulations were unduly burdensome and would threaten the independence of colleges and universities.

Released on Jan. 17 with a 55-day comment period, the draft regulations would increase accrediting agencies' responsibilities and would also establish State Postsecondary Review Entities to tighten oversight of institutions' finances and academic programs.

Both the accrediting-agency and SPRE regulations are part of a "program-integrity triad" outlined in the 1992 Higher Education Act amendments. The program-integrity regulations were designed to improve accountability in response to revelations of fraud and abuse in student-aid programs that has resulted in the loss of millions of dollars.

The department expects to issue regulations outlining the third part of the triad—which will revamp the department's eligibility and certification process—sometime in the next few weeks, according to Assistant Secretary for Postsecondary Education David A. Longanecker.

Under the new regulations, accrediting agencies would be required to establish standards for assessing institutions in 12 areas, among them recruiting and admissions practices, program lengths and tuition, curriculum, and graduation rates.

In non-degree vocational programs, measures would include program-completion rates, job-placement rates, and students' performance on state licensing exams.

> *Proposed rules "continue to represent an unnecessary intrusion into the internal affairs of private colleges and universities."*
>
> **John A. Curry**
> *President of Northeastern University*

All postsecondary institutions would be required to comply with the regulations in order for their students to receive federal aid.

Less Intrusive?

In a briefing session with reporters last month, Mr. Longanecker said he expected that much of the original criticism would subside as a result of the department's revisions. In addition, he suggested that some of the criticism resulted from misunderstandings.

He cited as an example higher education leaders' concern that the new SPRE's would lead to excessive federal demands for private records.

However, he said, an SPRE would only conduct a review if an institution set off one of a list of "triggers"—by posting a loan-default rate higher than 25 percent, for example—or if the department had reason to suspect fraud.

But Mr. Longanecker also acknowledged that institutions would still be expected to collect the data.

"My sense is that the department has heard the concerns of the higher-education community and they've made some positive movement in the direction we've urged," said David Warren, the president of the National Association of Independent Colleges and Universities.

"In particular, I think they've backed away from the intrusiveness having to do with curriculum and faculty in the accreditation portion," he said.

However, Mr. Warren said that he remains concerned about how the new regulations will affect colleges' tuition and fee policies.

John A. Curry, the president of Northeastern University, was somewhat less sanguine.

"These regulations are a step in the right direction, but there's still a long way to go," he said in a statement. "They continue to represent an unnecessary intrusion into the internal affairs of private colleges and universities."

"They also duplicate a peer-review system that is effective and efficient at no cost to the taxpayers," he added.

FEBRUARY 2, 1994 · EDUCATION WEEK P. 11

Push Ahead on Reforms, Ky. Lawmakers Urged

By Lonnie Harp

Gov. Brereton Jones of Kentucky last week urged lawmakers to move ahead with the state's embattled school-reform programs.

In his State of the Commonwealth Address, Mr. Jones emphasized the need to bolster the training and certification of teachers while increasing incentive funding for schools with high local tax rates and building more family-resource centers.

"We must be leaders rather than followers, winners rather than losers in our educational-reform efforts," the Governor told lawmakers, who have become increasingly restive over some aspects of the state's 1990 reform law.

The Governor said his budget will increase professional-development funding from $10 million to $14.5 million by the end of the two-year budget. The budget plan will also provide for changes in the state's teacher-certification program, based on criteria to be set by the Educational Professional Standards Board.

The Governor also asked lawmakers to spend an additional $30 million over the next two years on the family-resource and youth-service centers created by the 1990 law. The increase, he explained, would increase the number of centers from 373 to 673, thus reaching all eligible schools.

"Teachers, in many instances, must teach children who are ill-prepared to learn," Governor Jones said. "Teachers today are not allowed to exert proper discipline in the class, are not given sufficient support and encouragement to excel."

While state funding still remains tight, he added, teacher-pay raises should be the top priority of every local school board.

FEBRUARY 2, 1994 · EDUCATION WEEK P-11

Roberts Seeks Doubling Of School-Based Clinics

Gov. Barbara Roberts of Oregon has announced a proposal to double the number of school-based health centers as part of a drive to reduce unwanted teenage pregnancy in the state.

The expansion would be financed by a combination of state funds and support from private foundations, Ms. Roberts said in her State of the State Address last month.

The Governor said she will also appoint a special assistant to report on the most effective programs to reduce teenage pregnancy.

"The costs of failing to curb teenage pregnancy are high: low-weight babies, more delinquency and crime, more school dropouts, and more families that can't support themselves," she said. "We need a crusade."

Another critical issue is the rise in gang activity and juvenile crime, Ms. Roberts asserted.

"The number of kids committing crimes is skyrocketing," she said. "We respond too late, with no certainty of penalty and no accountability for behavior. And that failure to demand responsibility is turning our kids into criminals and our communities and schools into war zones."

Governor Roberts announced the creation of a task force to study how to reduce juvenile crime and violence. She also pledged to add new beds for juvenile offenders in existing correctional facilities in the 1995-97 budget and called for an expansion of community-policing efforts. —MEG SOMMERFELD

Philadelphia Inquirer, May 2, 1994, P. 8

Teachers and Accountability

For the Maryland State Teachers Association, a proposal from state school Superintendent Nancy S. Grasmick to link teacher recertification with satisfactory performance ratings is nothing more than another insult to beleaguered teachers. The MSTA wasted no time in launching its campaign to send the plan six feet under. But we take issue with the union's assertion that the proposal would degrade teachers by putting them "on probationary status for the rest of their careers." That is the kind of rhetoric that paints a picture of a teaching profession more interested in the status quo than in accountability and respect.

There is another side to this story, and there is more to Dr. Grasmick's plan than performance ratings.

Currently, Maryland requires that teachers renew their certificates every 10 years; veteran teachers have only to send in $10 and the renewal is automatic. The new proposal would require renewal every five years and mandate six hours of credits, or two courses, during that time, as well as satisfactory performance ratings in at least three of those years. That is hardly onerous. In what other job could professionals practice without having to worry about keeping up with developments in their field, and having only to perform satisfactorily 60 percent of the time?

The concern about unsatisfactory evaluations is overblown as well. In many jurisdictions performance evaluations are notoriously inflated; in some cases, a majority of teachers are rated as "outstanding." What meaning does a superlative rating have when virtually everyone gets one? Rather than placing an unfair burden on teachers, the real problem with this element of the plan may be that performance evaluations are so poorly done that they would never single out the incompetent teachers the proposal is designed to reach.

But let's assume the evaluation system provides a reasonably accurate assessment of a teacher's work. Wouldn't a satisfactory performance three years out of five be an eminently fair requirement? Put another way, should any child be taught by a person who could not demonstrate competence at least three years out of five? Would you want *your* child taught by a teacher who couldn't demonstrate competence *five* years out of five?

Teachers face immense pressures, and we bow to no one in our support for the importance of their job and for giving them the resources they need to accomplish it. But it strikes a sour note when teachers, or their representatives, denounce the lack of respect they get from society and then aggressively attack any proposal that would create more accountability, which is the cornerstone of respect.

A teacher's product is a student who has learned. Certification by the state of Maryland should offer some assurance to parents, students, school administrators and taxpayers that a holder of that piece of paper is up to the job.

Washington Post, May 2, 1994, P. 18

Tightening the Aid Spigot

AS THE REPUTATION of American elementary and secondary education collapsed in the 1980s, powering the movement toward national standards and other quasi-regulatory gestures from Washington, higher education has mostly escaped the trend. Not anymore. A batch of new regulations released last week by the Education Department breaks the pattern, filling out changes Congress made when it reauthorized the federal student aid law.

The rules are mainly intended to tighten federal oversight of the $13 billion the government hands out to higher education every year and, in particular, to slash a student loan default rate that still hovers around 25 percent. But because the default rate has causes rooted in many aspects of the universities' cherished independence, the regulations work against that independence from a variety of angles. The universities are, of course, furious. But they, as much as the government, have an interest in seeing some of the tangles combed out of this messy financial relationship.

The universities' argument against tighter regulation always has been that the product works. American higher education is the envy of the world; foreign students line up for it too, often with cash in hand. The chink in the argument is the persistence of the disgraceful default rate on loans. It's hard to insist on freedom from scrutiny, let alone ask for badly needed funding increases, when so much gets lost to fraud.

The abuse, it's long been clear, is concentrated in a small subset of schools, the so-called proprietary or vocational institutions that purport to train students for specific jobs. Too often these schools neither give students any value for their (government-lent) tuition nor take any steps to see that they repay the loans. But how to distinguish the fraudulent ones from those that just serve populations less likely to graduate or more liable to default—such as, the universities long argued, minorities, poor students or older women? The government faced the complicated task of developing a fairer standard for eligibility cutoff than, for instance, cutting off funds automatically to schools with default rates above a flat figure—a remedy proposed once by ex-Education Secretary William Bennett.

The new regulations are fairer and more cautious, but for that reason more far-reaching. They move in on the aid problem by heightening federal scrutiny of institutions' finances, setting standards for their accrediting agencies and requiring far more investigations of higher education institutions by the states. The investigations are set in motion by any of a list of "triggers," such as a high default rate, a low graduation rate or measures of financial sloppiness, and can—but need not—end in an eligibility cutoff.

The universities argue that such investigations can bankrupt a school and that the state-drawn criteria probably would fail to take account of schools' differing "missions"—say, to serve underprivileged groups. The department, for its part, insists that that most or all of the 700 new investigations a year would be of the fly-by-nights and that the admitted extra paperwork burden is justified by the government's financial interest. The schools' vociferous complaints have gotten the department to back down on a handful of its original draft regulations on the grounds that they overshot congressional intent, but there's no real disputing that the law meant to shift the balance in this direction. Higher education will benefit, in the end, from accepting the rules.

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Government joins anti-AIDS condom campaigns

By Kim Painter
USA TODAY

Nearly 13 years into the AIDS epidemic, the federal government is breaking new ground with its just-released TV and radio spots promoting condom use.

And the major broadcast networks are breaking ground, too, by agreeing to air the ads — which not only contain the C-word, but show wrapped condoms and tell people how to get a brochure that explains proper condom use.

The condom ads, combined with several that urge young people to postpone sex, go way beyond the AIDS "awareness" messages that have prevailed up until now in government campaigns.

For example, one features an animated condom that leaps out of a dresser drawer, scurries across a room and then under the covers of a lovemaking couple — depicted very briefly in a long shadowy shot. The message: Condom use should be automatic.

But the government's condom ads won't be the first on many cable and local stations, where a modest condom boom is already under way.

For instance:

▶ On New Year's Eve, MTV began showing ads for Lifestyle condoms, the first paid ads to run on any TV network since Fox showed a couple of Trojan spots in late 1992.

The Lifestyle ads feature women talking about what turns them off in men. "Never with a man who calls you babe," one says. Another says, "Spitters ... hate them." Finally, one says, "Never with a guy who thinks he can get away with not wearing a condom."

▶ In Washington, D.C., most local stations have agreed to air a condom ad from the Whitman-Walker Clinic, the city's major AIDS service organization. In the spots, a dozen condoms flash by, accompanied by a dozen names — the least colorful of which are "rubber" and "prophylactic."

The tag line: "It doesn't matter what you call it. Wear it."

▶ In Portland, Ore., humorous TV ads are just part of a campaign that has placed 140 condom vending machines in the stores, restaurants and community centers where teens hang out. In one spot, two teens eye each other as they travel opposite directions on a pair of escalators — and are suddenly showered with condoms. An announcer says: "Don't even think about sex without a condom."

Staffers at privately funded Project Action in Portland worked with local TV stations and community leaders for several months before airing the first ads a year ago.

CONDOM AWARENESS: A latex condom scurries into bed with lovers in a TV ad saying condom use should be automatic.

"There was some anxiety," before the ads ran, says project director Julie Convisser. But, she says, her agency has received "a total of maybe five complaints ... which was completely amazing to us."

More important, she says, is that the campaign has prompted sales of 30,000 25-cent condoms from the machines — twice the number of free condoms distributed by local school clinics in a year.

Federal health officials say they, too, worked closely with network and radio decision-makers to ensure that the spots they've produced will actually be used. And they consulted with AIDS service groups, medical associations, religious groups and others to try to work out problems before the spots were released.

Finally, the spots were shown and played for the target audience — young adults, ages 18 to 25.

"The resounding message to CDC was: We like what you're doing. We approve of what you're doing. We need to do more," says Dr. David Satcher, director of the federal Centers for Disease Control and Prevention, Atlanta.

And yet Tuesday's announcement brought the inevitable criticisms — that the spots go too far, or not far enough. And the networks put some restrictions on the ads. But the first ones aired Tuesday night.

Kiedis' red hot radio spot

Among the racier of the government's new AIDS prevention ads is a radio spot starring Anthony Kiedis, lead singer for the Red Hot Chili Peppers.

The message is called "Naked" and is intended for alternative stations. Here's how it goes:

"I'm Anthony Kiedis of the Red Hot Chili Peppers. I've been naked on stage. I've been naked on magazine covers. In fact, I was born naked and, of course, I'm naked whenever I have sex. But now I'm on the radio.

(Disrobing sounds)

"So I might as well get naked again.

By E.G. Gallagher

KIEDIS: Gets 'naked' on the radio for AIDS prevention

"There. I'm naked, see? And what I have here is a condom. A latex condom. I wear one whenever I have sex. Not whenever it's convenient. Or whenever my partner thinks of it. Every time. Look, they're very easy to open.

(Sounds of package opening)

"A breeze to put on. And best of all, they stop the spread of HIV.

"Now I'm naked. With a condom. But I'm not sayin' you should have sex, and I'm not sayin' you shouldn't have sex. But I'm sayin' wear a latex condom if you're gonna have sex.

"Just think of this helpful demonstration and remember: You can be naked without being exposed."

Proper use prevents infection

Condoms work — *if used consistently and correctly.*

That's the key message federal health officials are trying to convey in a new AIDS prevention campaign.

Over the years, they say, many people have gotten the mistaken impression that condoms aren't very effective. And some critics of the government's new campaign still insist that's the case. But officials point to these studies:

▶ In a European study of couples in which one member was infected, none of 123 couples who used condoms every time they had sex transmitted the virus over two years. But 12 out of 123 inconsistent users did.

▶ In an Italian study of such couples, 1% of consistent condom users and 15% of inconsistent users transmitted the virus.

As the Italian study makes clear, condoms, unlike abstinence, aren't 100% effective.

But much of the risk can be eliminated by using them correctly — something that is described in detail in a new brochure available from the national AIDS hot line at 800-342-2437.

Colleges fear state meddling in wake of student loan abuses

By Dennis Kelly
USA TODAY

WASHINGTON — The bad news just kept coming.

Trade schools had finagled financial aid for students who never existed, or provided schooling of such questionable quality that graduates never had a prayer of getting jobs.

The result: Congress lost confidence in agencies that monitor post-secondary schools and ordered a major overhaul of the process.

The remedy involves giving states and accrediting agencies more power to examine how schools conduct business. But at the heart of a new debate is what those agencies get to investigate — everything from how institutions set tuition rates to what's actually being taught and the graduation rates of students.

C. Peter Magrath, president, National Association of State Universities and Land-Grant Colleges, says the plan not only threatens academic independence of schools but could impose "meddlesome" record-keeping burdens that ultimately would raise the cost of a college education.

Education Secretary Richard Riley meets with university presidents and college officials today in Washington, D.C., to hear objections before regulations are released.

The new regulations are motivated largely by abuses in the student loan program, which was hemorrhaging $2.5 billion a year through defaulted loans. The finger was most often pointed at trade and proprietary schools — career schools that prepare students for jobs in fields such as cosmetology. The default rate for trade schools last year averaged 35.9%, while it stood at about 6% at four-year colleges.

The new regulations will give every state a new agency called State Postsecondary Review Entities (SPREs for short), and give those agencies power to conduct thorough reviews if a school surpasses any of 11 "triggers," criteria that will signal trouble. That includes having default rates of 25% or more. But college officials also believed some language in the regulations would allow SPREs to look at any other school selected by the state. To college groups, that's an invitation to meddling.

Marshall Smith, undersecretary of education, says that's not so, that the agencies can act only upon notification of problems at a school by the Secretary of Education.

Still, there are fears.

"I think there are clear signals that some of the authority that could be conferred under some of the regulations would give state agencies entree to say, 'Now, wait a minute. You're not teaching the right kind of courses or you don't have the right kind of faculty teaching,'" Magrath says.

"We know enough about how some overeager state agencies operate to know this is a real danger down the road."

Even if schools aren't subject to review, they could be required to keep data needed for a review, which schools see as an expensive imposition.

"Somebody has to pay for all 140 new regulations that will be imposed," says David Warren, president, the National Association of Independent Colleges and Universities.

But a representative of career colleges says four-year schools are more concerned about regulations giving state reviewers the right to look at college "outcomes," such as graduation rates or how many students are placed in jobs for which they're educated.

Nancy Broff, legal counsel for the Career College Association, says that the group wants all schools held to the same standards, but that this could be done in a way to recognize the different types of students being served. The association, she says, feels default rates alone are insufficient measures, since they reflect socioeconomic levels of students more than quality of education provided.

Warren says he and other groups support the federal government's need to root out fraud and abuse in student loan programs. But he argues the regulations drafted by the Department of Education go well beyond the intent of Congress in passing the Higher Education Act in 1992. For example, the law says nothing about looking into relations between curriculum and tuition costs, he says.

Bennett Minton, spokesman for U.S. Rep. William Ford, D-Mich., chair of the House Education Committee, says if there are new problems created by the regulations not anticipated in the new law, Congress would be willing to look at those.

PC pangs; White House cabaret

Them's fightin' words.

And who's to say the above sentence doesn't rile the sensibilities of some reader who sniffs a slur on colloquialisms?

One of today's more contentious issues — "words that wound," as Dan Rather puts it — gets the scattershot CBS News treatment in tonight's ***48 Hours: Political Correctness* (★★½, 10 ET/PT).** The hour runs the gamut: the cost of "free speech" on college campuses, the impact of gangsta rap on its impressionable audience, the trend of sensitivity training in the workplace.

WETA

CARTER: She lights up torch songs at the White House.

As usual, the show barely rests on one aspect of the big picture long enough to make much of an impression. The opening story, about a Vassar student run out of school for allegedly leaving homophobic phone messages, is a lopsided and hyped segment that attempts to spotlight the danger of "harassment codes" but does it poorly.

Better is a piece that focuses on *The Washington Post* columnist Richard Cohen, who admits to being gun-shy of controversy after stirring up a hornet's nest with a story that inflamed local racial sensitivities. *60 Minutes*' Andy Rooney is part of that segment, reflecting on having offended gays in on-air commentary that got him briefly suspended. But he doesn't sound like he learned much except, maybe, to think before he speaks.

Which is as good a moral as any for this installment, which reaches its zenith in an interview with humorist Chris Cerf, who has published a dictionary of "investigative satire" on PC speech, or "content-free language." Example: looters are "non-traditional shoppers."

LIFE IS A . . .: Cabaret is the theme of the Clintons' second ***In Performance at the White House* (★★½, PBS, tonight at 8 ET/PT, times may vary),** in which the East Room becomes a supper club, with small tables and chairs for fans of this urbane art form.

Clinton friend Dixie Carter hosts and vamps her way through several numbers, including the ribald lyrics of *Bewitched, Bothered and Bewildered*, from which PBS thankfully doesn't cut away to the president's reactions. She's joined by veteran Bobby Short at his twinkliest and an incongruous Len Cariou belting out Broadway's *Soliloquy* from *Carousel*.

It's a mixed bag. Only in the performances of jazz stylist Shirley Horn and the winsome Blossom Dearie does this achieve the cool elegance of classic cabaret. Dearie's purring of the offbeat *My Attorney Bernie* is a soft knockout, perfect for a town (and, no doubt, room) of lawyers.

WEDNESDAY, JANUARY 5, 1994 • USA TODAY

Colleges Fear Law on Student Loans Means Meddling

By CATHERINE S. MANEGOLD

Special to The New York Times

WASHINGTON, Jan. 11 — When Congress moved to stanch a hemorrhage of bad student loans in 1992 with the passage of the Higher Education Act, a subclause set in motion a fundamental change in the way the nation's 3,600 colleges and universities are supervised.

No one seemed to notice. But the provision opened the door for the first time to direct Federal intervention in private education.

Now, 18 months later, as the Education Department prepares to publish the rules for putting that law into effect, educators are protesting. They complain of a coming blizzard of paperwork and say America's tradition of independent education is imperiled by the Government's unwelcome intrusion into everything from curriculum to tuition and staff hiring.

"What we fear," said Robert H. Atwell, president of the American Council on Education, "is that we are federalizing what has always really been a voluntary process in this country."

'New and Uncomfortable'

Federal officials see it differently. "They are reacting to something that's new and uncomfortable," said David A. Longanecker, the Education Department's Assistant Secretary for Postsecondary Education. "They imagine that it will hurt. And some of it will hurt."

In the short term, the changes will probably cause barely a ripple in the operation of the nation's leading colleges. More paperwork will likely be required. Educators will have to keep records on internal details like tuition, loan defaults, course requirements and graduation rates. Yet none of it really threatens academic integrity.

But educators also have more serious concerns, which are as yet hypothetical. The possibility exists, they say, that overzealous bureaucrats may some day micromanage the nation's schools, dictating what intellectual terrain college students should traverse, under whose guidance and over what period. Political agendas could come into play, they warn. So could social ones.

"The thing here, really, is a case of the camel's nose under the tent," said David R. Merkowitz, the director of public affairs for the American Council on Education. "What is to prevent the Federal Government down the line from writing new regulations that go to questions like Darwinian science versus creationist science?"

The change grew out of bad loans and good intentions. Faced with a $2.5 billion mountain of defaulted student loans and troubled by financial scandals involving Federal grants at such elite colleges as Stanford University and the Massachusetts Institute of Technology, Congress set out to make colleges prove that they were worth the billions in Federal aid they received each year.

The initial target was fringe, profit-making trade schools responsible for most of the bad loans. But many colleges and universities are afraid that they, too, will be hit.

In most countries governmental supervision is standard in higher education. But American colleges were always different, regulated by a rather gentlemanly system of voluntary and private reviews by accreditation agencies made up of academic peers, with almost no Federal involvement.

The problem: A mountain of bad debts for the U.S.

Shift to Washington

Under the legislation passed by Congress, responsibility for accreditation was shifted to Washington, giving the Education Department the ability to specify the standards used by those agencies in their reviews.

At the same time, the measure imposes a whole new layer of supervision: state agencies, awkwardly titled State Postsecondary Education Entities — usually state education departments — will interpret and enforce broad standards devised by the Education Department. Not every school would be likely to be reviewed by these agencies. The Department of Education has proposed 11 criteria that would require a review.

While the shift in supervision occurred with the passage of the 1992 law, alarm over it did not really begin to grow until late last year, after the Education Department was already well on its way to setting out the specific rules.

By November, when an early draft of those regulations was released, the language included some very specific clauses addressing things like the percentage of loan defaults and the ratio of tuition costs as measured against probable earnings by graduates. Those and other details troubled some educators, especially those serving disadvantaged students, because they feared that the Government, in applying a single standard, would force them to attract more financially secure students, thus undermining their mission.

Several of the nation's leading academics circled their wagons and set their sights on the new Education Secretary, Richard W. Riley, who had inherited the responsibility.

Letter Campaign Urged

"Please write or phone Secretary Riley immediately," said David L. Warren, the president of the National Association of Independent Colleges and Universities, in a letter to that group's more than 800 members. He urged them to write in support of the basic principles of independent education in America.

His ire has hardly faded. "Never before has there been an effort to dictate to colleges what their mission should be, what the outcome of the teaching and learning process should be and at what cost," Mr. Warren, the former president of Ohio Wesleyan University, said last week. "Our basic fear is that standards lead to standardization, and what has always distinguished American education is its diversity and independence."

Adib Shakir, the president of Tougaloo College in Mississippi, has a more immediate fear. Looking at the new regulations in the context of Southern history, he says he worries about political agendas that might work against historically black schools like his own. "I'm from the South," he said, "and I don't know if the people can be objective if there is a political element involved." Congress, he says, should go back to the drawing board and rethink the law's basic wording.

A solution: Federal standards that could expand.

In fact, when Congress first looked at the loan-default problem, almost everyone agreed that the existing system of accreditation and supervision was not working.

'They Made Their Bed'

"If everyone had behaved themselves over the last 20 years, this issue would never have arisen," said Charles E. Finn Jr., a professor of education at Vanderbilt University in Nashville. "But for a while almost everybody got accredited as long as they had enough books on the shelves in their libraries. It *is* a major shift. But since the higher education community had failed to monitor itself adequately, it was clear that eventually someone else would do it for them. They made their bed. Now they are just uncomfortable lying in it."

Mr. Longanecker of the Education Department said the shift was an inevitable and positive outgrowth of evolving public policy. In an era in which taxpayers increasingly expect to know that their money is well spent, he said, Federal agencies have to find ways to insure that. "It can be costly. And it can be painful," he conceded, but it is a fair exchange for huge amounts of public aid.

Even those who criticize the new rules concede that some adjustment was in order. "We understand that this is a law and we want to work with the Department of Education," said Nannerl O. Keohane, the president of Duke University. "We all want to do what we can to help prevent abuses. But many of us have also been concerned that the language of the rules goes beyond the intent of the law."

Ms. Keohane and more than a dozen other college and university presidents met last week with Secretary Riley to voice those worries as well as their broader concern that the rules would condemn them to acres of needless paperwork and the potential for intellectual demagoguery.

Problem of Wording

Many fears go to the rules' specific wording. At Chicago State University, a 126-year-old school serving the predominantly black and Hispanic students from the city's South Side, Dolores Cross, the university's president, fears her college's history of helping high-risk students might be jeopardized.

"Most of our students are first-generation college students," she said. "A lot of them are single mothers. Eighty-five percent of our students are on financial aid. We just worry that the standards won't be able to differentiate between different missions or different goals."

Those and other complaints stem from outlining broad but specific standards in a complex and multifaceted world that includes everything from drivers' education to poetry.

"What we have here is a problem of application," said John Harris, a professor at Samford University in Birmingham, Ala. "It's sort of like when you have three kids in a classroom misbehave you decide you are just going to discipline the whole class."

THE NEW YORK TIMES, WEDNESDAY, JANUARY 12, 1994

Ignorance of the Law Can Be an Excuse, Court Rules

By LINDA GREENHOUSE

Special to The New York Times

WASHINGTON, Jan. 11 — People who keep their cash transactions with banks to under $10,000 to evade Federal reporting requirements cannot be convicted without proof that they knew such action is illegal, the Supreme Court ruled today.

The 5-to-4 decision, written by Justice Ruth Bader Ginsburg, overturned the convictions of two gamblers who paid a $160,000 casino debt by obtaining cashier's checks for just under $10,000 from several banks near Reno. The Court said that the trial judge had erroneously instructed the jury that the Government did not have to prove that the gamblers knew their conduct was illegal under a Federal money-laundering law.

The Federal law, enacted in 1970, requires banks to report all cash transactions of more than $10,000. Initially, the law placed a legal obligation only on the banks, not on their customers. But after finding that cash transactions were commonly being structured to come just under the $10,000 threshold, Congress broadened the law in 1986 to make such actions criminal, with fines and prison sentences for those found to be "willfully violating" the anti-structuring provision.

Important Word Choice

It was the use by Congress of the word "willfully" that led to the majority's conclusion today. In choosing this word, Justice Ginsburg said, Congress made it necessary for the prosecution to prove that a defendant knew not only that he was helping a bank avoid its reporting obligation but also that his own behavior was criminal.

"We do not dishonor the venerable principle that ignorance of the law generally is no defense to a criminal charge," Justice Ginsburg said, adding, "In particular contexts, however, Congress may decree otherwise," as it did in this instance.

The ruling does not require the prosecution to present direct evidence of the defendant's awareness of the law. A properly instructed jury could draw "reasonable inferences" from the defendant's conduct, Justice Ginsburg said.

Visiting Banks by Limousine

In this case, the gamblers, a married couple named Waldemar and Loretta Ratzlaf, initially brought the cash to the casino in a shopping bag, asking that the payment not be recorded, but the casino management said it could not accommodate them legally.

They then drove from bank to bank in a casino limousine as they accumulated their cashier's checks. At several banks, the two each tried to buy a separate $9,500 check, but left with only one after tellers said that the purchases would have to be reported as a single, combined transaction. The Ratzlafs, who were facing a tax audit, apparently wanted to keep their gambling activities from coming to the attention of the Internal Revenue Service.

If the Government concludes that it can persuade a jury that the Ratzlafs' violation of the anti-structuring law was willful, it can put the couple on trial again.

Crossing the Line

The Court's vote in the case, Ratzlaf v. United States, No. 92-1196, cut across ideological lines. Joining Justice Ginsburg in the majority opinion were Justices Antonin Scalia, John Paul Stevens, Anthony M. Kennedy and David H. Souter.

Justice Harry A. Blackmun wrote a dissenting opinion that was joined by Chief Justice William H. Rehnquist and by Justices Sandra Day O'Connor and Clarence Thomas. It is possible that the Chief Justice initially assigned Justice Blackmun to write a majority opinion upholding the convictions after the case was argued Nov. 1, but that another member of the initial majority later switched sides, joining a dissenting opinion by Justice Ginsburg and converting it to a majority opinion.

An instance in which defendants must be shown to know they erred.

Justice Blackmun's dissenting opinion, which at 15 pages was equal in length to the majority opinion, said that the majority had misunderstood the word "willfully" to mean knowledge of criminality. The word means nothing more than that a person "knows what he is doing," he said.

In this case, Justice Blackmun said, there was no doubt that the Ratzlafs knew about the banks' reporting requirements and deliberately structured their transactions to evade those requirements. There was no need to go further and show that they knew that Congress also outlawed that type of structuring, he said.

"The Court's decision reopens the loophole that Congress tried to close," Justice Blackmun said, adding, "As a result of today's decision, Waldemar Ratzlaf — to use an old phrase — will be laughing all the way to the bank."

The decision today overturned a 1992 ruling by the United States Court of Appeals for the Ninth Circuit, in San Francisco. Eleven Federal appeals courts had also considered the issue the Court discussed today, with the Government winning in 10 of them and losing only in the First Circuit, in Boston.

While the Supreme Court often defers to the Government in criminal cases, it has occasionally insisted on a literal definition of "willful," a word that Congress inserts frequently and rather casually into laws.

In a criminal tax case three years ago, for example, the Court ruled in favor of a commercial airline pilot who refused to file tax returns because he believed that his wages were not "income" within the meaning of the Internal Revenue Code. Although the pilot's belief was unreasonable, it was sincere, the Court said, and so his tax evasion could not be considered "willful."

The Court has just returned from a month-long recess, and the ruling today stands as its only decision this week, a fact that underscored the slow pace of the term that began in October. So far, the Court has issued only five decisions, compared with 15 at this time last year.

While the Court acted speedily on a major sexual harassment case, important Voting Rights Act and civil rights cases that were argued in early October remain undecided. Chief Justice Rehnquist, usually one of the Court's fastest writers, has yet to issue a majority opinion in his own name, suggesting that at least in some cases, it may be the dissenting Justices who are slow to finish their work so that opinions can be issued.

Brown Plans Radio Talk Show

OAKLAND, Calif., Jan. 11 (AP) — Edmund G. Brown Jr., the former California Governor and Presidential candidate, is embarking on a new career as the host of a daily radio talk show, a radio network says. The two-hour program, scheduled to start on Jan. 31, will be broadcast by the Talk America Radio Network, based in Marlboro, Mass.

U.S. Issues Policy on Racial Harassment

Education Dept. guidelines put responsibility on colleges for monitoring the campus climate

By Scott Jaschik

WASHINGTON

THE Education Department is trying to clarify what colleges must do to prevent racial harassment.

In a new policy statement, the department has outlined how it will investigate allegations that students have been subject to such harassment. The policy includes a series of definitions, and spells out when colleges can be held responsible for harassment—even if it comes from fellow students and not college officials.

In general, the policy gives colleges considerable responsibility for monitoring the campus climate to know when an incident or incidents have created a hostile environment. If a college fails to prevent or eliminate such hostility, the institution could be found in violation of Title VI of the Civil Rights Act and placed at risk of losing federal funds.

SAM KITTNER FOR THE CHRONICLE

Jeanette J. Lim of the Education Department's Office for Civil Rights: The new policy is a way "of codifying what we have learned in investigating complaints."

A REASONABLE PERSON

The policy, published in the March 10 *Federal Register*, contains elements that could please minority students, and others that could be attractive to civil libertarians. For the students, the policy says that racial hostility must be measured from the perspective of "a reasonable person of the same age and race of the victim."

Some college officials object to that, and say the legal standard of "a reasonable person" should be used—without reference to race or ethnicity.

For civil libertarians, the new policy twice states that First Amendment rights of free expression must be respected as colleges seek to prevent racial harassment. It specifically states that it is not directed "at the content of speech."

At the same time, however, the policy statement says that racial harassment can come in a variety of forms—physical, "verbal," graphic, or written. Some college officials say that the inclusion of the last three categories could lead colleges or the Education Department to take actions against students or employees who are expressing opinions and not necessarily harassing anyone.

'AN OMINOUS FEELING'

Robert M. O'Neil, director of the Thomas Jefferson Center for the Protection of Free Expression, at the University of Virginia, said this broad definition of harassment left him with "an ominous feeling."

Jeanette J. Lim, director of policy, enforcement, and program services at the Education Department's Office for Civil Rights, said the new policy was a way "of codifying what we have learned in investigating complaints."

In fiscal 1993 the department issued 35 rulings in cases alleging racial harassment at colleges. It found violations in only six. It found the same number of violations in the previous year, when it issued 26 rulings.

According to the new policy, racial harassment can come in two forms: different treatment of students based on race or the existence of a racially hostile environment. (The department's definition of "race" for the purposes of enforcing Title VI includes race, color, and national origin.)

"Different treatment" is defined by the department as any incident in which an employee or agent of a college, with specific authority from the college, takes an adverse action against members of a particular racial group for no legitimate, non-discriminatory reason.

IN SEARCH OF PROMPT ACTION

The more complicated analysis involves a racially hostile environment. In that situation, subjective factors are involved and a college is responsible for the actions of people it does not employ.

For a college to be found in violation, a victim would have to show racial harassment that is "severe, pervasive, or persistent," the policy statement says. "The harassment must in most cases consist of more than casual or isolated racial incidents."

In some cases, however, a college may be found in violation if it did not take prompt action after a single severe incident, such as injury or threats of injury.

The policy says that schools and colleges should be evaluated differently, taking into consideration the ages of students. The policy also stresses that a racially hostile environment can be created even if acts are not directed against specific individuals or do not result in "tangible injury."

The harassment must simply be severe enough that a reasonable person of the same race as the victim would consider it to "have adversely affected the enjoyment of some aspect" of the victim's education.

The policy says the perspective of a person of the same race will be used because "race is the immutable characteristic upon which the harassment is based."

Ms. Lim added, "That's important because we are dealing with an increasingly diverse student body."

Gary M. Pavela, director of judicial programs at the University of Maryland at College Park, said he was troubled by that aspect of the policy. "There is a hidden stereotype here that is very dangerous—that people of particular races think in particular ways," he said.

He added that a reasonable person, regardless of race, "knows what a racial epithet is."

EYE ON PURDUE

Peter I. Okeafor, president of the Black Student Union at Purdue University, said he was pleased with the policy.

"Some white students try hard to understand, but it's hard for them to see through our eyes," he said, adding that still other white students "believe the whole white-supremacist thing."

Purdue is negotiating with the Education Department to resolve a complaint that it was not aggressive enough in its reaction to a fight last year in which a group of white students injured a black student.

Under the department's policy, colleges are responsible for dealing with racially hostile environments if the incidents are reported to college officials or if those officials should have known about them "upon reasonably diligent inquiry."

Then, colleges must show that they had grievance procedures in place to deal with incidents and other ways to punish and prevent harassment. The policy states, however, that the department "cannot endorse or prescribe

"There is a hidden stereotype here that is very dangerous—that people of particular races think in particular ways."

speech or conduct codes to the extent that they violate the First Amendment."

Ms. Lim said that if colleges believe some sort of code will help prevent racial harassment, "that is up to them."

Mr. Okeafor, the Purdue student, applauded the department for making colleges responsible for preventing racial harassment. "If folks pay their tuition to come to a university, they should be protected," he said.

ALCOHOL IS BLAMED

Michael S. Greve, director of the Center for Individual Rights, predicted the policy would not help minority students, but might encourage colleges to use speech codes that inhibit free expression.

Mr. Greve said that the department and colleges should recognize that most incidents of actual violence or vandalism against minority individuals or institutions take place when students are drunk.

He added: "If colleges are really serious about creating a less-hostile environment, they would crack down on alcohol abuse. They somehow think they don't have the moral authority to do that, but they do think they have the moral authority over what people utter." ■

IRS Says College Audits Have Revealed Serious Violations

Continued From Page A19

the buildings to run bookstores—even though the bonds were issued with a provision that the facility was to be used only for tax-exempt purposes.

Mr. Owens said the IRS would use the information it gained from the audits in planning its tax-enforcement efforts.

"We're always looking for better ways to get the job done," he said. "As these audits continue, we are gaining experience so we can refine our approaches and improve the selection of the cases we take on."

'THE IRS COULD BE IN THERE'

Tax lawyers said colleges should take the IRS concerns seriously.

Bertrand M. Harding, Jr., a Washington lawyer who advises non-profit organizations on tax issues, said: "What we've seen coming for the last couple of years is the IRS educating itself on tax problems in the university area. And what we are seeing now is the result of that education, which the IRS will turn around and start applying across the board."

He added, "Universities should be reviewing all aspects of their tax operations, because the IRS could be in there next week."

Under last week's proposals by the Clinton Administration, the IRS could also have more to look for.

Leslie B. Samuels, Assistant Secretary of the Treasury for tax policy, told a House of Representatives hearing that the Administration wanted to impose an excise tax on people who receive "excess benefits" from "insiders" on non-profit boards.

TOUGHER RULES ON FORM 990

The tax could equal 25 per cent of the excess salary or benefits as determined by IRS standards on what constitutes "reasonable" compensation. Mr. Samuels said the government would be particularly skeptical of compensation awarded by boards "comprised of close friends of the organization's founder."

Mr. Samuels also said the Administration wanted tougher regulations on Form 990, the tax return that private colleges and other charities must file.

Many organizations, he said, file forms that are "incomplete or inaccurate."

To remedy that, he proposed that the penalty for filing an incomplete form be increased from $10 a day to $100 a day for any organization with gross receipts of at least $1-million a year.

He also proposed that organizations be required to mail their Form 990's to anyone willing to pay a "reasonable" fee to cover mailing and copying costs. Organizations now need only to make the form available for inspection at their various offices. ■

CCA ANALYSIS OF PROPOSED REGULATIONS WHICH EXCEED STATUTORY AUTHORITY

Proposed Regulation, State Postsecondary Review Program, 34 CFR Part 667

Section 667.2 Definitions	Statutory Provision	CCA Comment
Proposes to define "vocational program" as "an educational program below the baccalaureate degree level that is not classified as a professional program, that prepares students for gainful employment in a recognized occupation."	As the Secretary acknowledges in the preamble, the statutory language defining various types of educational institutions makes no distinctions between baccalaureate programs and those below that level.	The language should not deviate from that used in the statute. There is no basis in the law, or in sound policy, for the Secretary to grant a blanket exemption from statutory provisions simply because the programs culminate in a baccalaureate degree rather than an associate degree or other recognized credential. This is an attempt to limit application of the statute in response to opposition by the traditional higher education community.
Section 667.21 State Review Standards	**Statutory Provision**	**CCA Comment**
Proposes to allow SPREs to establish different standards for different types or categories of institutions or educational programs.	Nowhere in the statute is it contemplated that the standards of general application would be applied differently to various types of institutions or programs. The statutory language does explicitly make clear that different types of institutions may be judged separately based on the type of institution or program in several specific standards, including the standard for judging success of the program through completion and graduation rates.	It is a matter of public knowledge that the traditional institutions of higher education oppose their inclusion in the SPRE review system, and have lobbied the Department to interpret the statute in ways that are most preferential to them. Permitting States to adopt different, and presumably lesser, standards for that sector of higher education appears to be contrary to congressional intent and an arbitrary interpretation of the statute.

Note: This document includes only certain provisions which exceed statutory authority. Many other provisions in these proposed regulations are arbitrary and capricious or bad public policy; these sections will be detailed in a separate document.

Section 667.21(a)(4)

Proposes to require an institution's method of assessing the student's ability to complete the educational program to be judged by the completion rate of the assessed students.

Statutory Provision

The statute requires the SPRE to determine that "the institution has a method to assess a student's ability to successfully complete the course of study for which he or she has applied."

CCA Comment

The statutory standard thus only requires the institution to have an assessment method to attempt to predict the likelihood of success. There are a number of tests which institutions use to determine potential success in a program; the Department has approved such tests. If an institution is using approved tests in a way which is appropriate, the institution has met this standard. Attempting to use the completion rate of assessed students in fact assesses a number of factors in addition to ability to complete the program, such as the resources, will to succeed, family support, and other factors.

Section 667.21 State Review Standards

In §667.21(b)(4) and (b)(18), the Secretary proposes that States must quantify certain review standards by establishing acceptable percentages for (1) the relationship between tuition and fees charged for an educational program and the amount of money that a student who successfully completes that program earns, (2) completion and graduation rates, (3) withdrawal rates, (4) placement rates, and (5) pass rates on licensure examinations.

In the analysis of acceptable graduation and completion rates, the proposal omits a key part of the statutory construct, that the "length of the program and selectivity of the institution's admissions policies" be taken into account.

Statutory Provision

There is no statutory basis for the requirement quantifying the relationship between tuition and fees charged for an educational program and the remuneration that a successful graduate can expect. The statute calls for some analysis of the appropriate relationship between the tuition and fees and the expected remuneration, but does not specify that the relationship must be quantified in any particular way, and certainly does not specify a percentage relationship.

CCA Comment

CCA has submitted to the Department a comprehensive study, performed by an economist, analyzing the tuition/remuneration relationship. Among the elements that the Secretary should require states to consider are lifetime earnings potential, costs of training, and other similar criteria.

Graduation and completion rates must be judged based on the length of the program and the characteristics of the student body.

Section 602.2

The Secretary proposes to establish a category of programs called "prebaccalaureate vocational education," defined as "vocational education that leads to a certificate, degree or other credential that is less than a bachelor's degree." The Secretary proposes further to require only such prebaccalaureate vocational education programs to be subject to certain additional requirements, such as minimum quantitative standards for completion rates, job placement rates, and pass rates on state licensing examinations or other appropriate measures of occupational competency.

Statutory Provision

Section 496(a)(5)(I) requires the accrediting agency to assess for all institutions the "success with respect to student achievement in relation to its mission" including course completion, placement rates and State licensing pass rates. Other sections of the statute are also consistent with this interpretation. Section 494C(d)(14) requires the State Postsecondary Review Entities to develop standards for graduation rates and pass rates on state licensing examinations for all institutions, and placement rates for vocational programs at all institutions.

CCA Comment

Such a distinction between baccalaureate and prebaccalaureate programs has no basis in the law and is not sound policy. All institutions of postsecondary education should be judged on the educational outcomes of their programs. The statutory language is consistent with this concept.

Section 602.2

Proposes to make a distinction between prebaccalaureate and baccalaureate vocational programs in the standards on program length and relationship between tuition and fees in relation to objectives of the credentials sought.

Statutory Provision

There is no basis in the statute for such a distinction. Rather, the statute simply requires the accrediting agency to have standards to assess for all institutions the "program length and tuition and fees in relation to the subject matters taught and the objectives of the degrees or credentials offered."

CCA Comment

The arbitrary distinction made between prebaccalaureate and baccalaureate vocational programs should be removed from all sections of the proposed rule.

Section 600.5 Proprietary Institution of Higher Education

Proposes to implement the "85-15" rule by calculating whether the institution's students receive Title IV aid in amounts that aggregate to at least 85% of the institution's revenues.

Statutory Provision

The statute requires that the institution receive at least 15% of its revenue from non-Title IV sources.

CCA Comment

By counting all Title IV aid as the first money toward institutional charges, even if the aid is attributable to living expenses and other non-institutional charges, and including aid replacing the estimated family contribution, the Department ignores the statutory intent. The entire scheme for implementation of this provision is arbitrary and irrational. CCA is particularly concerned about possible application of a final regulation to periods of time which precede the publication of a final regulation.

Section 600.7

Proposal to require institutions that are within 10% of one of the applicable triggers for special conditions of eligibility to have a financial and compliance audit performed.

Statutory Provision

There is no statutory basis for this provision.

CCA Comment

It is inappropriate for the Secretary to place additional burdens on institutions which are fully in compliance with the law, simply because they are within a certain percentage of hitting a trigger.

Proposed Regulation on General Provisions, 34 CFR Part 668

Section	Statutory Provision	CCA Comment
Section 668.2 Minimum Program Length The Secretary proposes to calculate the placement rate based on the number of students who are placed within 180 days of completing the program and who are employed for a period of 13 weeks.	**Statutory Provision** There is absolutely no basis in the statute for such a requirement.	**CCA Comment** Institutions should be required only to substantiate initial placement, as is contemplated in the statute. The 13-week period simply places an unreasonable tracking burden on the institution, with little benefit in terms of substantiating success. An institution which does not graduate workers with the skills required by business and industry will in the long run not be able to place its students.
Section 668.12 Application procedures Proposes to require an institution to apply for certification of the entire institution if it adds a branch or additional location that provides 100% of an educational program.	**Statutory Provision** There is no basis in the statute for this provision.	**CCA Comment** Rather than require an institution to apply routinely for certification upon adding a branch or additional location, it would be consistent with the statute and make more sense to simply require the institution to obtain approval for that additional location or branch. Institutions will be discouraged from adding branches and additional locations if it results in the entire institution being placed on provisional certification.
Section 668.12 Application Procedures Proposes to require that an institution must apply for and be granted continued participation by the expiration date of its program participation agreement, or else it may be provisionally certified or lose its participation.	**Statutory Provision** This provision goes beyond the statutory language.	**CCA Comment** The provision may operate to punish institutions who apply in a timely manner for continued participation if the Department is unable to complete its review of the application in a timely manner. Based on our experience with the Department's handling of other matters, it is clear that a timely decision by the Department may not always be forthcoming.

Section	Statutory Provision	CCA Comment
Section 668.13 Certification Procedures	**Statutory Provision**	**CCA Comment**
Proposes to use provisional certification in a wide variety of situations, including failure to meet any of the financial responsibility or administrative capability standards.	While the statute gives the Secretary some discretion in the area of provisional certification, he proposes to use it here in ways that could remove institutions from participation in the program for reasons that are not supported by the statute.	CCA vehemently opposes the Secretary's attempt to use the certification process to enforce administrative capability standards that are beyond the statutory intent and the Secretary's authority.
Section 668.14 Program Participation Agreement	**Statutory Provision**	**CCA Comment**
Proposes to prohibit a broad range of incentive payments, including payment of incentives to admissions staff based on retention or other measures of student success, and gifts to alumni for referring students.	The statute provides that the "institution will not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid."	The statute does not prevent all methods of incentive payment based on employee performance, as long as the performance is related to factors other than the securing of enrollments. In fact, the interim Department guidance explicitly permitted salary adjustments and bonuses based on retention and completion goals. There is no evidence that this prior interpretation led to any abuse or problems. In addition, extending the provision to students, alumni and other non-employees is clearly beyond the scope of the law.
Section 668.15 Factors of Financial Responsibility	**Statutory Provision**	**CCA Comment**
Proposes to require that a State tuition recovery fund must be acceptable to the Secretary to exempt an institution from the cash reserve requirement.	The statute, as amended by the Technical Amendments, provides that the Secretary shall exempt an institution from the cash reserve requirement if the institution is located in a state that has a tuition recovery fund that ensures the institution is able to pay all required refunds and the institution contributes to that fund.	It is unnecessary and beyond statutory authority for the Secretary to micro-manage the State tuition recovery funds. The Department should simply require states to certify that the fund can pay all required refunds on behalf of schools that close precipitously. States might also be encouraged to inform the Secretary of other measures they have taken to reduce the likelihood that the fund will be used, such as by encouraging teach-outs.

Section 668.15 Factors of Financial Responsibility

As an exception to the financial responsibility standards, proposes to require financial guarantees of not less than one half of the Title IV program funds received during the last complete award year.

Statutory Provision

The statutory language requires the financial guarantees to equal not less than "one half of the annual potential liabilities of such institution to the Secretary under this title."

CCA Comment

Because Department regulations do not permit a semester/quarter term institution to draw down more than one semester/quarter's aid, one half of the annual potential liability is not the same as one half of the Title IV program funds received during the last award year; in fact, it is one half to one third the amount stipulated by the Secretary.

Section 668.16 Standards of Administrative Capability

Proposes to include as administrative capability a wide range of institutional performance measures. Proposes to treat all administrative capability standards as absolute standards rather than indicators of potential problems. Proposes to allow institutions which fail one or two standards to be provisionally certified if the Secretary determines that the institution is capable of meeting the standard in a reasonable time.

Statutory Provision

Section 487(c)(1)(B) of the Act states that "in matters not governed by specific program provisions, the establishment of reasonable standards of financial responsibility and <u>appropriate institutional capability for the administration by an eligible institution of a program of student financial aid</u> under this Title," the Secretary may regulate (emphasis added). Thus, the broad authority is within the general scope of institutional capability for the <u>administration</u> of the aid program.

CCA Comment

CCA strongly objects to the Secretary's attempt to use administrative capability standards to legislate eligibility to participate in Title IV programs. Taken to its logical conclusion, the Secretary's proposal here would allow the Secretary to grossly exceed congressional intent, for example, by allowing the Secretary to terminate from the program, without a due process appeal, institutions with a single default rate over 20%, rather than the statutorily mandated three years over 25%.

Section 668.16 Standards of Administrative Capability

Proposes to expand the administrative capability standards to include the general areas designated in the statute for SPRE review.

Statutory Provision

As noted above, the statutory language is limited to administrative capability for the administration of the financial aid program. The statute explicitly sets up a program integrity triad, with a proper role for each.

CCA Comment

CCA asserts that this is one of the areas where the Secretary has gone far beyond a fair reading of his statutory authority under the "administrative capability" standard. These standards are related to the academic program and general performance issues.

Section 668.16 Standards of Administrative Capability

Proposes to require an institution to have a cohort default rate for Stafford and SLS loans of no more than 20% and for Perkins loans of no more than 15%. Proposes to allow the Secretary to refuse to certify or to provisionally certify an institution for a one year rate over these triggers.

Statutory Provision

The statute clearly sets out cohort default rate triggers of over 25% for three years for Stafford and SLS loans and 15% for Perkins.

CCA Comment

As noted above, this proposal grossly exceeds the Department's authority. The statute clearly sets out cohort default rate triggers for ineligibility to participate in the federal loan programs. This provision is a back-door attempt to penalize institutions for a default rate that is well below that set by Congress for sanctions. In light of the questionable quality of cohort default rate back-up data, unacceptable rates of servicing error, and the Department's extreme delays in responding to appeals and challenges of cohort default rates, the use of such rates as a barrier to full certification is not legally supportable.

Proposed Regulation on FFEL Program, 34 CFR Part 682

Section 682.401

Proposes to allow a guaranty agency to deny participation to an institution if the guaranty agency determines that the institution does not meet the administrative capability and financial responsibility standards.

Statutory Provision

Under the statutory scheme, this is an improper delegation of authority to the guaranty agency of matters that are properly within the scope of departmental or SPRE review.

CCA Comment

This improper delegation of authority is especially inappropriate in light of the fact that guaranty agencies may well have an incentive to retaliate against certain institutions as a result of their filing of appeals of their cohort default rates. In contrast to SPREs, accreditation agencies and the Department, guaranty agencies are not impartial adjudicators of these issues; they have a real economic stake in restricting which students and schools they serve.

Section 668.12	Statutory Provision	CCA Comment
Proposes to implement the statutory provision regarding employment of or contract with individuals with "questionable past performance" in the handling of government funds.	This proposed regulatory provision goes far beyond the requirements of Section 487(a)(16) of the law. The law does not contain any references to administrative determinations, material violations of the law, or any government programs other than the Title IV programs.	The Department states in the preamble that the additional requirements reflected in the regulatory provision are needed in order to establish appropriate safeguards to protect the Title IV programs. However, the statute clearly restricts the Secretary to certain judicial determinations.