Reg Review: DoEd

National Performance Review II

Regulatory Reinvention at the U.S. Department of Education

Agenda

March 2, 1995

I. Context for reinventing the regulatory process at ED

A. *Overview*

B. *Examples of why reform of the regulatory process and federal regulations is absolutely necessary*

C. *Coordinating federal agencies—a proposal*

II. Initial steps for regulatory reform and reinvention

A. *Concrete principles for when and how to regulate*

B. *Making reinvention real*

III. New themes for ED's regulatory reinvention

A. *"Mini"/"semi"/"maxi" regulation*

B. *Creating a new framework for reinvention: flexibility and performance incentives*

C. *Flexibility*

D. *Performance incentives*

E. *Tensions and challenges that affect regulatory reinvention*

IV. Concluding comments

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE GENERAL COUNSEL

NPR II REGULATORY REINVENTION MEETING
MARCH 2, 1995
3:15 p.m.
274 OEOB

- SECRETARY RICHARD W. RILEY
- MARSHALL S. SMITH
  Under Secretary
- THOMAS W. PAYZANT
  Assistant Secretary, Elementary & Secondary Education
- DAVID A. LONGANECKER
  Assistant Secretary, Office of Postsecondary Education
- JUDITH A. WINSTON
  General Counsel
- FRANK S. HOLLEMAN
  Chief of Staff
- MICHELE CAVATAIO
  Chief of Staff, Office of the Deputy Secretary
- JAMIENNE S. STUDLEY
  Deputy General Counsel for Regulations & Legislation
- KENNETH TOLO
  Senior Advisor to the Under Secretary

Regulatory Reinvention at the U.S. Department of Education

ED's Mission: To ensure equal access to education and to promote educational excellence throughout the nation.

Reinvention values for ED

- Partnership
- Flexibility
- Accountability
- Achievement of high standards

The School's View of Regulatory Burden

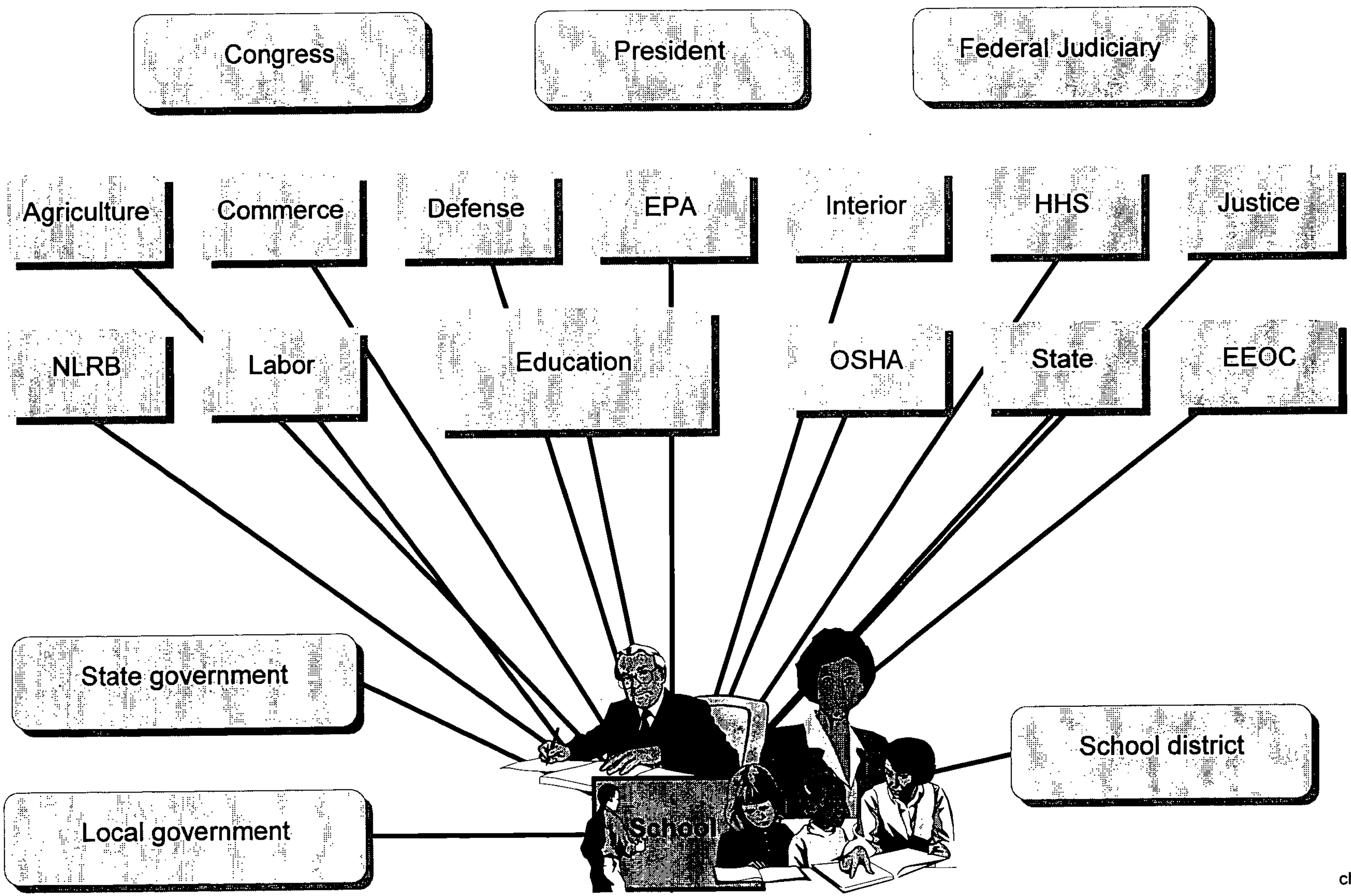
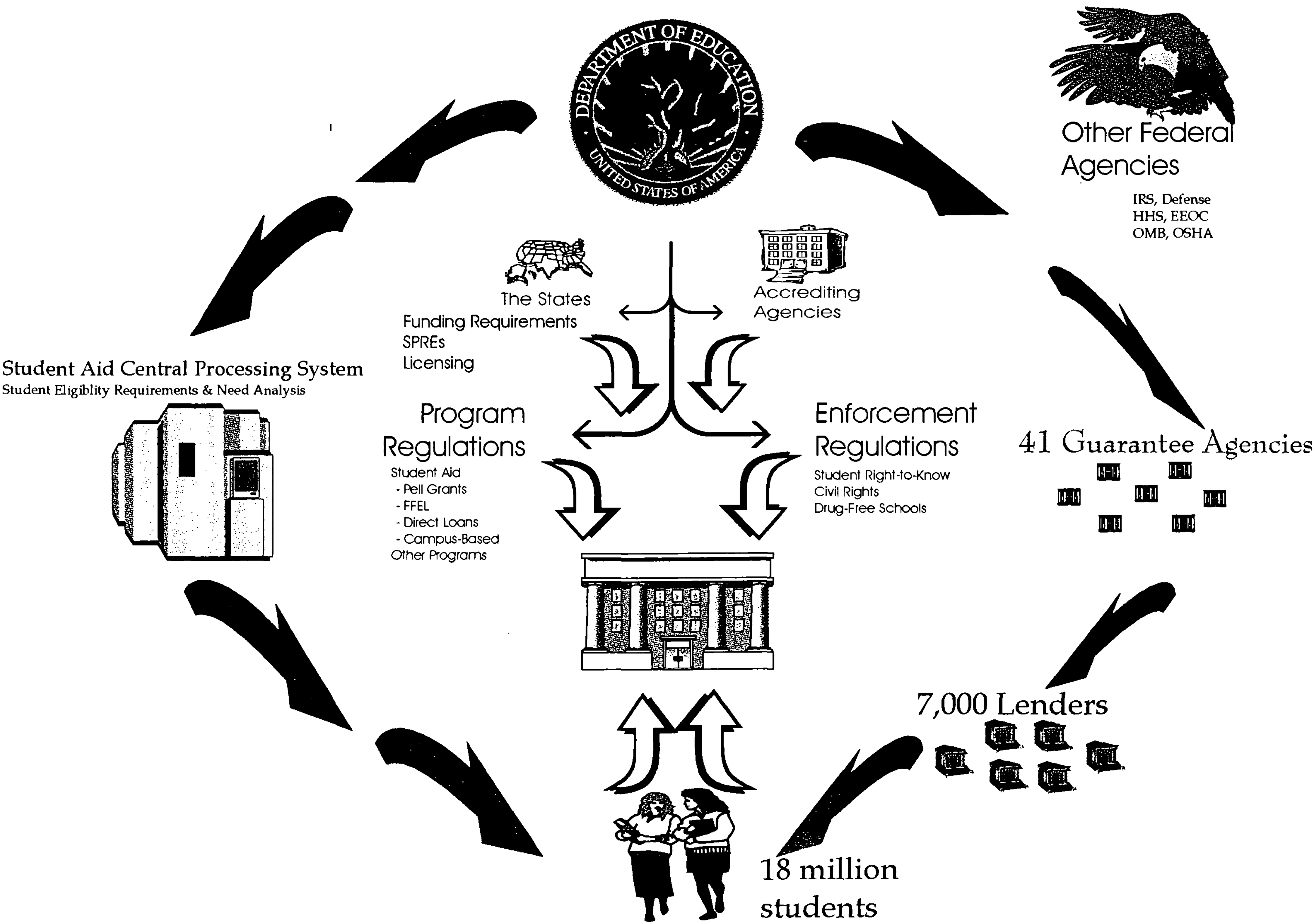


chart 3

University View of Federal Regulations



ED's principles for regulating

The Department of Education will regulate only when it improves the quality and equality of services to its customers—learners of all ages. ED will regulate only when absolutely necessary, and then in the most flexible, most equitable, and least burdensome way possible.

Whether to regulate:

- When essential to promote quality and equality of opportunity in education.
- When a demonstrated problem exists and cannot be resolved without regulation.
- When entities or situations to be regulated are so diverse that a uniform approach does more harm than good.
- When necessary to provide legally binding interpretation to resolve ambiguity.

How to regulate:

- Regulate no more than necessary.
- Minimize burden and promote multiple approaches to meeting statutory requirements.
- Encourage federally-funded activities to be integrated with state and local reform activities.
- Ensure that benefits justify costs of regulation.
- Establish performance objectives rather than specify compliance behavior.
- Encourage flexibility so institutional forces and incentives achieve desired results.

Making reinvention real

The Department of Education is:

1. **Eliminating obsolete and unnecessary regulations:**
   a. Eliminating 25 percent of grant regulations in FY 1996.
   b. Eliminating an additional 25 percent of grant regulations in FY 1997.
   c. Reducing the number of discretionary grant priorities by 50 in FY 1996.

2. **"Scouring" regulations for excessive prescription and burden:**
   a. Publishing popular burden reductions for families and schools. For example, in our fall 1994 student aid rules, we:
      — Used a performance-based approach tying schools' cash reserve requirement to refund track record.
      — Provided greater flexibility in cash management and award tolerance rules.
   b. Scrutinizing regulations for Rehabilitation Services' relationships with state agencies, cash management rules, and all rules under Improving America's Schools Act.

3. **Improving ED's regulatory development process to make it customer responsive:**
   a. Using Internet for comments on every proposed rule and for electronic dialogue on Direct Loan regulations.
   b. Conducting voluntary and statutory "reg negs."
   c. Holding numerous regional meetings on regulations (1994: elementary and secondary, bilingual, and special education, and student aid).
   d. Secured statutory changes recommended by NPR-I to increase rulemaking flexibility and expedite grants to customers.

4. **Carrying reinvention into customer service and compliance:**
   a. Providing Direct Loan schools with intensive customer support, training, and service.
   b. Initiating the "Achieving Reform through Monitoring" (ARM) project integrating on-site reviews across programs to foster coordination and increase efficiency.
   c. Considering a "one-step settlement" proposal for flexible handling of compliance findings under old programs to clear the slate, improve state/federal coordination, and streamline auditing.

Need for regulation: "mini," "semi," "maxi"

The amount of regulatory control necessary varies widely for ED statutes and programs, based on such factors as:

- —duration of the federal role
- —amount of federal funds at stake
- —number of parties involved
- —involvement of private organizations that are not accountable to the public
- —the number of transactions likely
- —potential for fraud or financial misdoing
- —the program's focus
- —appropriateness of other forms of oversight
- —extent to which non-compliance by intermediate institutions would harm program beneficiaries
- —the level of Congressional interest.

"Mini" regulation: Goals 2000 and School to Work

"Semi" regulation: Elementary and Secondary Education Act

"Maxi" regulation: Student financial assistance gatekeeping

A new framework for ED's reinvention

Two themes:

1. ***Flexibility***. Ensure that regulations and statutes provide maximum flexibility to support state and community education reform.

2. ***Performance incentives***. Support institutional performance, maintain the integrity of our programs for the benefit of the ultimate customer—the student, and use market principles rather than government controls.

Flexibility under education statutes and regulations

- ***Waivers under Goals 2000, Improving America's Schools Act, and School to Work Opportunities Act***—Waivers are authorized for Elementary and Secondary Education Act and Carl D. Perkins Vocational and Applied Technology Act programs.

- ***Ed-Flex***—ED may delegate to six states (with approved Goals 2000 plans) the authority to grant waivers to themselves and school districts.

- ***Charter schools***—Waivers may be granted covering almost any statutory or regulatory requirement.

- ***Schoolwide programs under ESEA Title I***—No waiver is needed by qualifying local schools to combine most of their federal funds to support schoolwide reform and be free from most federal requirements.

- ***Consolidated plans for federal funds***—States and school districts may submit a single plan for most federal funds supporting elementary and secondary education programs. This consolidated plan eliminates the need for separate, overlapping plans.

New flexibility Initiatives

1. Propose and develop plan to implement expansion of Ed-Flex statutory authority to all states.

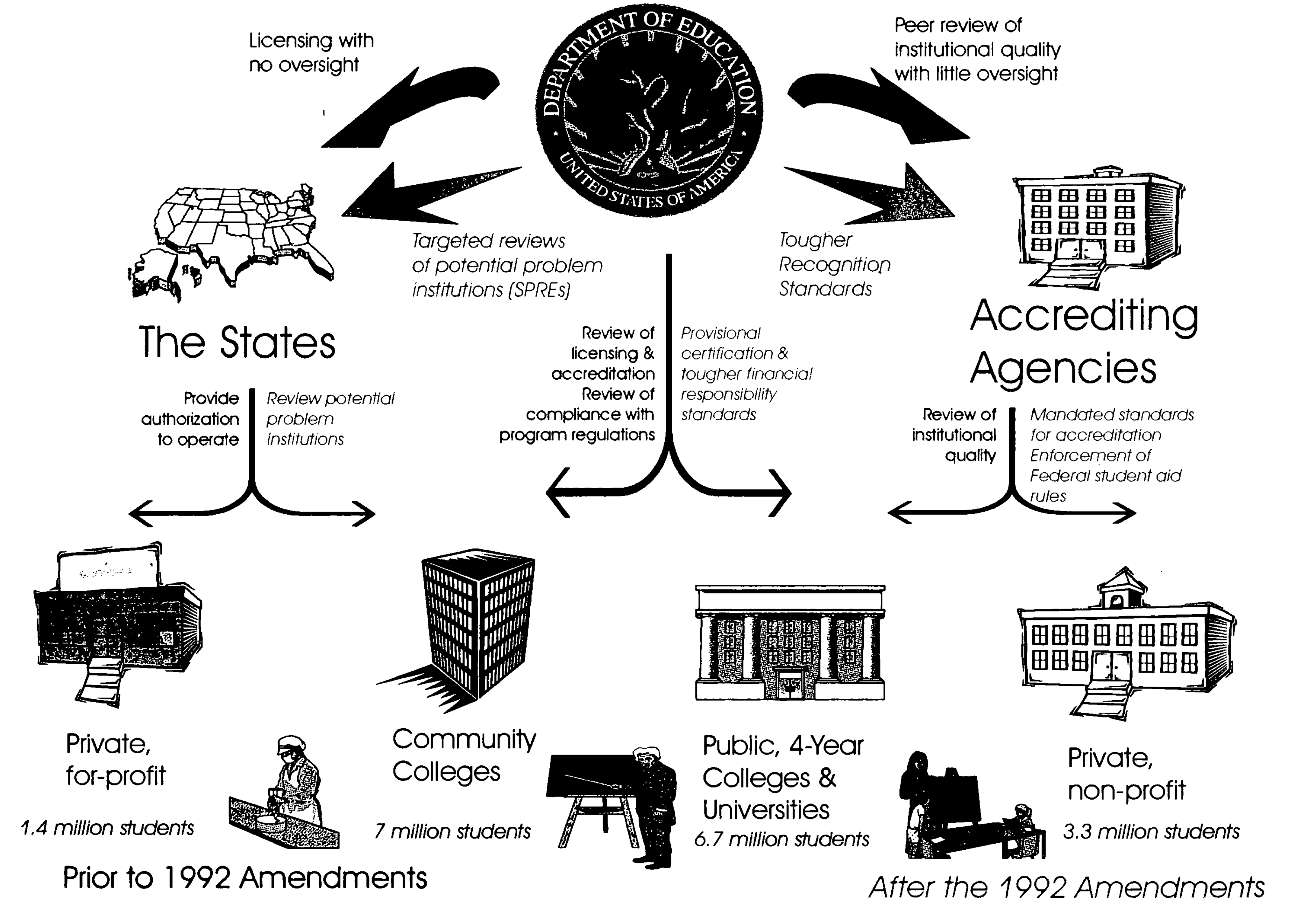
2. Use Cabinet agency education group to coordinate and simplify state-level consolidated planning, funding applications, paperwork, and waivers across federal agencies.

3. Conduct customer-focused evaluations of ED flexibility initiatives and use results to improve and simplify statutory requirements.

4. Work with other federal, state, and private agencies and organizations to provide on-line electronic access to federal program information for education customers (e.g., superintendents).

5. Explore continuum leading to performance partnerships.

Gatekeeping & Oversight of Postsecondary Institutions



New performance incentives initiatives

1. Eliminate rules and burdens whenever possible.

2. Where regulations are essential, design performance standards to replace "how to" rules and distinguish among institutions, with top performers relieved of requirements and committed to results.

3. Waive statutory or regulatory requirements for institutions or consortia that propose to try alternatives to existing rules and evaluate them, using statutory "experimental sites" authority.

4. Explore the potential for schools to collaborate to improve institutional performance, joining in groups (i.e., "bubbles") to develop, for example, monitoring systems, job placement projects, and student aid management training.

Tensions and challenges in regulatory reinvention

1. ***Flexibility/inertia bind.*** Flexibility can result in inertia—states and localities just do what they did before and don't take advantage of flexibility.

2. ***Outside oversight versus efficiency.*** Trying to respond to Congress' and the media's zero tolerance for error can cost more than accepting some error.

3. ***Equity/burden dilemma.*** Ensuring equity can conflict with reducing burdens of record-keeping, reporting, inspections, and other forms of oversight.

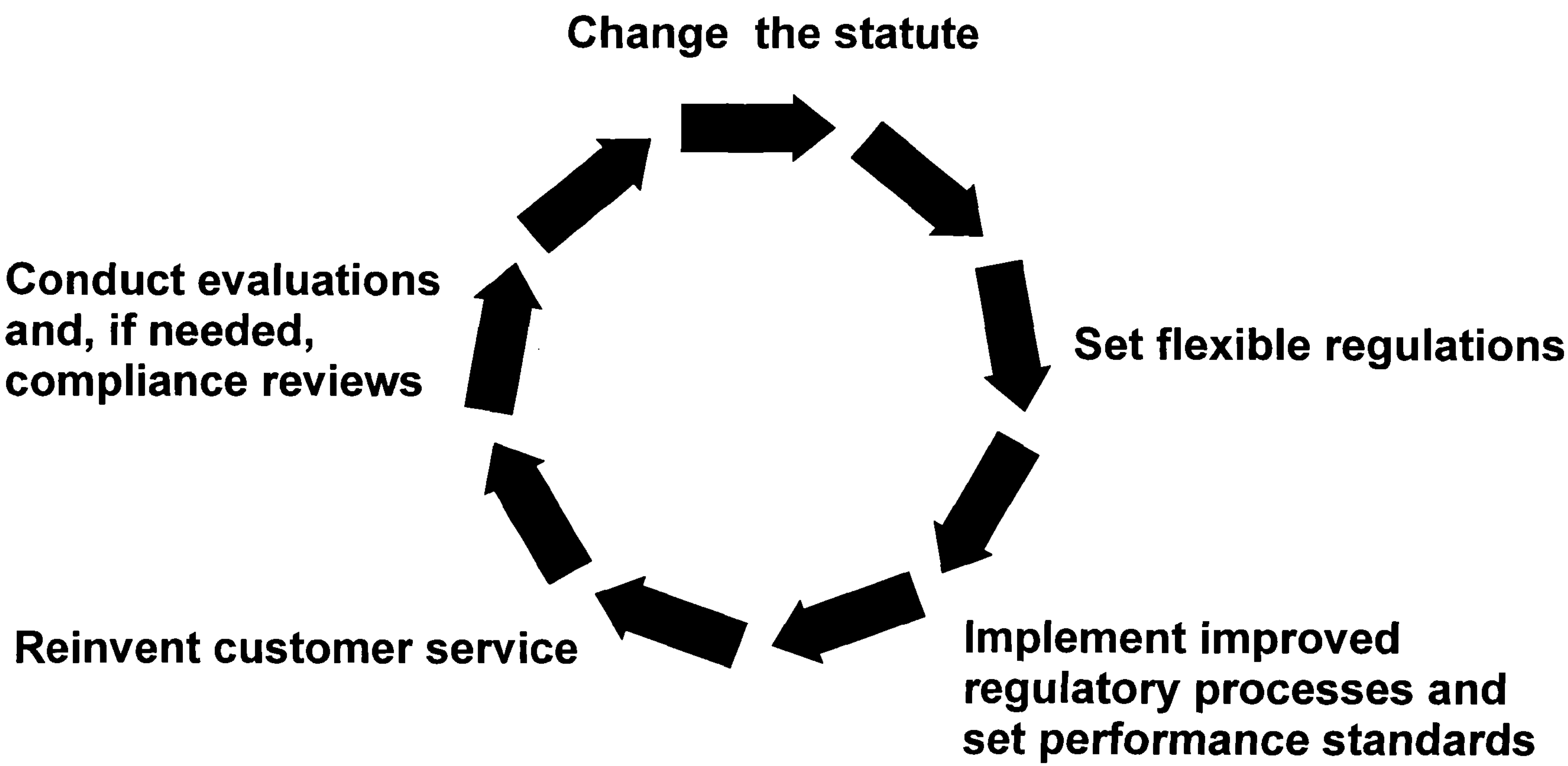
4. ***Trust but verify.*** But who trusts first—ED or its customers?

5. ***Standards in a situation of uncertainty.*** Setting performance indicators can be hard—education results are unpredictable.

6. ***Compliance versus turning off funds.*** Enforcing legal requirements with intermediate customers, such as states, can result in terminating services to innocent ultimate customers—students.

7. ***Participation and clarity versus words and pages.*** Involving customers in regulation development and making regulations and options clear may result in more words, not less.

Transformation Cycle for Regulatory Reinvention



REGULATORY REINVENTION

IN THE

U.S. DEPARTMENT OF EDUCATION

DRAFT

February 22, 1995

I. INTRODUCTION

The mission of the Department of Education (ED) is "to ensure equal access to education and to promote educational excellence throughout the nation." To achieve our mission and serve successfully our customers, namely, learners of all ages, ED is committed to applying reinvention principles at every step of the legislative, regulatory, implementation, communication, and compliance processes. The Department's October 1994 streamlining report to OMB says it best, in addressing K-12 education:

> The Department has begun to move away from a role characterized by a narrow compliance mentality to one of stimulating change through new partnerships with States and localities. The challenge is to break out of the old system of categorical, top-down programs and to help States and local educational agencies develop coherent, comprehensive strategies for improvement.

Reaffirming the importance of our customers is also a theme emphasized in ED's December 1994 strategic plan:

> The most critical task now facing us is to implement our... programs in a way that supports improvements in teaching and learning and reduces regulatory burdens to customers.

II. CRITICAL COMPONENTS OF REGULATORY REINVENTION

Achieving comprehensive and long-lasting regulatory reinvention in the Department of Education rests on consideration of several critical components. These include

1. Education Statutes and Implementing Regulations

Ideally, statutory goals, responsibilities, and structure should fully reflect reinvention values and processes. Education statutes should provide the Secretary with broad discretion to determine whether, and to what extent, to regulate. Nevertheless, certain statutes are more compatible with flexible, non-regulatory modes of implementation than others. **TAB A** highlights the features of statutes that affect the detail of implementing regulations and reviews Department of Education statutes requiring "mini-regs," "semi-regs," and "maxi-regs."

2. Education Customers' Views of Regulations

The Department's goals and strategies for (re)shaping the nature and structure of our programs should reflect the views and perspectives of our customers. Although additional steps need to be taken, ED's recent successes in reinventing its regulations give strong evidence of this commitment to outreach.

At the same time, the Department's customers often feel as if they are overly burdened by ED regulations. **TAB B** illustrates this over-regulation burden as perceived by K-12 schools and postsecondary education institutions. In many instances, however, customers do not differentiate between statutes and their implementing regulations, or between ED regulations and those of other federal departments that also affect customers' schools and other institutions. **TAB C** illustrates these misperceptions through a brief analysis of a recent critique of regulations impacting a major private university. Thus, ED regulatory reinvention must, in some instances (especially at the postsecondary level), include statutory changes as well as cross-agency Executive Branch collaboration.

3. ED's Principles for Regulating

During the past year, the Department's views about the purpose and extent of regulation have been influenced strongly by the Administration's commitment to "reinventing government." Elementary/secondary education statutes enacted in 1994 reflected ED's commitment to less regulation (see TAB A), while our increased openness to customers' perspectives and concerns about ED over-regulation and "maxi-reg" statutes in some program areas is now leading to reassessments of existing statutes, regulations, and regulatory practices.

Decisions about whether and how to regulate and how to provide guidance to education customers and partners must be consistent with our reinvention values of partnership, flexibility, trust, customer sensitivity, and accountability through results. To affirm our commitment to regulate only when absolutely necessary, and then in the most flexible, most equitable, and least burdensome way possible, ED has enunciated a set of "Principles for Regulating" that apply to every program and activity in the Department. **TAB D** includes a statement of these principles.

4. ED's Regulatory Tensions and Challenges

Regulatory principles are a necessary condition for regulatory reinvention---but they are not sufficient. ED must have and show the commitment and will to apply our principles in the face of complex and often contradictory forces.

Some regulatory improvements make sense to everybody: clearer language, reduced burden, less paperwork, no outmoded procedures, coordinated requirements across comparable programs, and no outmoded procedures. Reinvention on this level is a matter of prioritization, resources, and leadership, not controversy. ED has an excellent starat on this kind of reinvention and is committed to accelerating our regulatory reviews and results.

The next level of reinvention extends beyond cleaning out the regulatory attic, however. This is where equally significant, deeply-held values often clash head-on. Reinvention at this level requires tough decisions to honor one value over another, or extraordinarily creative approaches that reconcile conflicts. These ED challenges and tensions, highlighted in **TAB E**, include such conflicts as those inherent in Congressional and press oversight vs. efficient use of resources, flexibility vs. inertia, equity vs. burden, and trust vs. verification.

III. BOLD INITIATIVES FOR IMPROVING SERVICE TO CUSTOMERS

At the Department of Education, regulatory reinvention is not simply theoretical or aspirational. ED has made a good start in adopting and following its customer commitment and regulatory philosophy. We have solid accomplishments in increasing public involvement, streamlining and burden reduction, shifting to performance-based accountability, and refocusing enforcement energies to technical assistance and compliance.

The Department's next frontier is to continue to design creative education strategies, programs, and procedures that meld ED's customer needs and regulatory principles, while successfulloy confronting the tensions and challenges of the social and political environment, to achieve more fully our mission. A related critical test lies in diffusing and institutionalizing our regulatory values througho¥ut our programs and employees at every level, so that changes for customers are real and actually enhance excellence and access in American education.

The Department believes that its regulatory reinvention initiatives in the past year have been both creative and customer-focused. We also recognize clearly that we have not yet done enough to address our customers' regulatory burden. In the coming months the Department is committed to institutionalizing its principles of regulatory reform and implementing even bolder and more creative approaches to program management that reflect the federal role in education.

TAB F outlines several areas in which ED has committed itself to bold regulatory reform initiatives and to additional activities that serve the Department's customers even more successfully. In areas where the Department has the statutory flexibility to eliminate or minimize regulations(e.g., Goals 2000, School-to-Work Opportunities Act, Elementary and Secondary Education Act), it will do so. In areas where federal education statutes require regulations (e.g., Higher Education Act), the Department is committed to dramatically reducing and simplifying its program rules --- and proposing statutory changes when they are necessary. The Department also is committed to simplifying its internal rulemaking processes and customer outreach activities in all potential regulatory areas.

TAB F includes bold ED initiatives in each of these areas. They include a streamlined Goals 2000 application process, flexibility in K-12 program planning and administration by state and local education agencies, improved gatekeeping for federal student aid programs, a "zero-based" review of student financial aid regulations, experimental sites for federal student aid programs, implementation of the customer-friendly Federal Direct Loan Program, a Master Calendar change for federal student aid programs, greater and more useful customer participation in rulemaking, and *EDGAR* revisions to eliminate grant competition regulations specific to each program.

TAB A

EDUCATION STATUTES AND IMPLEMENTING REGULATIONS

EDUCATION STATUTES AND IMPLEMENTING REGULATIONS

The Executive Branch has broad authority to regulate and manage within statutes. Not withstanding this discretion, certain statutes are more compatible with flexible, non-regulatory modes of implementation than others.

With few exceptions (e.g., the state formula program under the Drug-Free Schools and Communities Act), the Department of Education has chosen to implement its major programs through regulations. This is a decision based largely on tradition, Congressional expectation, and the desire not only to include the public in the development of policy but also to provide program participants and recipients the comprehensive guidance they often request.

Below are some of the characteristics of federal education statutes that bear on the Department's exercise of regulatory discretion. In general, the extent of regulation issued by ED tends to increase with

* the duration of the federal role;

* the amount of federal funds at stake;

* the number of parties involved and the complexity of their interests (e.g., whether the statute establishes significant individual rights or merely affects administrative procedures);

* the involvement of nongovernmental parties that are not directly accountable to the public;

* the number of transactions that are likely;

* the potential for fraud and/or financial misdoing;

* the program's focus on particular transactions, activities, and beneficiaries;

* the inappropriateness or ineffectiveness of other sources of oversight (e.g., peer review, non-regulatory guidance, or performance measures);

* the extent to which non-compliance would cause significant harm to program beneficiaries; and

* the level of Congressional interest or instruction.

Following are examples of ED program statutes for which the Department has developed or is developing few or no regulations, some regulations, and many regulations, respectively.

MINI-REGS: Goals 2000 and School-to-Work Opportunities Act

The Department will issue **no** regulations under the Goals 2000: Educate America Act and few, if any, under the School-to-Work Opportunities Act of 1994, at least in part for the following reasons:

* The duration of federal assistance is expected to be short.

* A relatively small amount of money is at stake.

* The types of actors are few in number and are ED's traditional clients (i.e., state education agencies (SEAs) and local education agencies (LEAs)). These actors are governmental entities, so there is a large measure of accountability built into the program through public awareness of, and involvement in, program implementation.

* The purpose of these two statutes is to promote broad-based, comprehensive reform that is designed by states and communities to serve their own needs and situations within broad federal parameters.

* The programs are intended to be flexible, to promote "bottom up" reform, and to foster creativity and innovation.

* Other methods of oversight, such as peer review and performance measures, are available to protect the federal interest in seeing that program purposes are met and federal funds are well spent.

SEMI-REGS: Elementary and Secondary Education Act (ESEA)

The reauthorized ESEA, enacted as part of the 1994 Improving America's Schools Act, occupies a regulatory middle ground between institutional gatekeeping for Title IV of the Higher Education Act (HEA) and Goals 2000 and the School-to-Work Opportunities Act, at least in part for the following reasons:

* Federal assistance is expected to be long-term.

* ESEA involves much more federal funds than Goals 2000 and the School-to-Work Opportunities Act, but less than HEA.

* ESEA is aimed primarily at SEAs and LEAs, but through a multiplicity of discretionary grant programs makes money available to many other recipients as well.

* ESEA focuses primarily on a variety of narrowly-described beneficiary groups and operational activities (e.g., poor children, Native Hawaiians, migrants, school construction), albeit in the context of systemic reform.

* ESEA promotes flexibility and creativity through such measures as waivers, while promoting accountability through such mechanisms as state and local planning, peer review, and performance measures.

MAXI-REGS: Gatekeeping for Student Financial Assistance Programs

Regulations implementing Part H of Title IV of the 1965 HEA (as amended) are voluminous, at least in part for the following reasons:

* A vast amount of federal funds (approximately $34.4 billion in fiscal year 1995) is involved annually.

* A large number of different types of schools (over 7,300 public and private colleges and universities, community colleges, and trade schools) of varying quality and with diverse programmatic and financial interests participate in the Title IV programs.

* These schools, some of which are savvy and unscrupulous, are presented with powerful financial incentives to take advantage of the programs at the expense of students, parents, and taxpayers.

* Many of these schools are not otherwise customers of ED and are not usually subject to regulation by ED outside of Title IV.

* Non-binding mechanisms for preserving program integrity are likely to be ineffective; in the past, before sufficient binding mechanisms existed, many vocational training programs failed to provide effective training, and many schools closed suddenly because of financial problems.

* Students are harmed when schools take advantage of the programs; in these cases, many students are unable to support themselves, repay their student loans, or obtain credit after they graduate from problem schools.

* Ensuring that the programs' purposes are realized and that their integrity is maintained in millions of specific student cases at thousands of institutions involves a myriad of issues (e.g., program length, financial strength of the institution) that need to be addressed specifically by the Department.

TAB B

OVER-REGULATION BURDEN AS PERCEIVED BY A SCHOOL PRINCIPAL AND A UNIVERSITY PRESIDENT

TAB B

THE WORLD OF FEDERAL REGULATION THROUGH THE EYES OF A SCHOOL PRINCIPAL

I. NON-EDUCATION REGULATION

B. EDUCATION-RELATED: NON-EDUCATION DEPARTMENT

Agriculture: School lunch program
HHS: Head Start, EPSDT, Medicaid
EPA: Asbestos
Treasury: Guns in the Schools
Interior: Indian Affairs
State: International exchange programs
Justice: violence prevention, crime control, dispute resolution
Labor: Manpower training program

B. GENERAL REQUIREMENTS: APPLICABLE TO ALL EMPLOYERS

Labor: Wages and hours, Davis-Bacon
EEOC
Americans with Disabilities, Age Discrimination Acts
NLRB
OSHA
IRS
Justice: anti-drug laws, criminal laws
Immigration and Naturalization Service
Commerce: Patent rules, copyright
EPA: Clean Air, Clean Water, Hazardous Substances, etc.

II. EDUCATION DEPARTMENT REGULATIONS

A. ELEMENTARY AND SECONDARY EDUCATION PROGRAMS

Key examples of Federal Assistance include:
<u>ESEA</u>: Formula Grant Programs
Title I: Aid to Educationally Deprived, Migrant, Neglected and Delinquent
Title II: Professional Development
Title IV: Safe and Drug Free Schools
Title VI: Consolidated Programs
Title VII: Bilingual Education
Title VIII: Impact Aid
Title IX: Indian Education
Title XI: Coordination of Social Services

Perkins Vocational Education
School-To-Work
Goals 2000
Individuals with Disabilities Act

There are many other discretionary grant programs for which schools and local districts can compete, such as

Gifted and Talented
Magnet Schools
Women's Educational Equity

B. OTHER EDUCATION REGULATION (CROSS-CUTTING)

Civil rights and gender equity requirements
(gender equity in athletics)
Education research and grant requirements
FERPA (Buckley Amendment)
Student Rights in Research, Experimental Programs, and Testing (Hatch Amendment)
Disclosure Requirements (IASA 238, GEPA 429)
Drug-Free Schools and Campuses
Restrictions on Lobbying
Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace
Historic Preservation
Research restrictions
Title XIV, ESEA: Gun Free Schools

<u>State and local requirements:</u>
A principal would also have to be sure that the school complies with a myriad of state and local requirements, relating to such diverse areas as health and safety rules, fire code, food service facilities, nurse practice laws, truancy laws, zoning, parking, and child abuse reporting requirements.

<u>District requirements:</u>
A principal is also expected to follow rules established by the local educational agency (school district), which might include such topics as accounting and attendance requirements, selection of instructional materials, student transportation rules, relationships with union members and labor-management procedures, and building use policies.

THE ASBESTOS QUANDARY

> The opening day of school in New York City was delayed 11 days pending judicially-ordered asbestos removal and remediation efforts to meet minimum standards. New York City has spent $113M on asbestos removal since fall of 1993 alone. The National School Boards Association rates asbestos regulation as a significant burden on school districts.

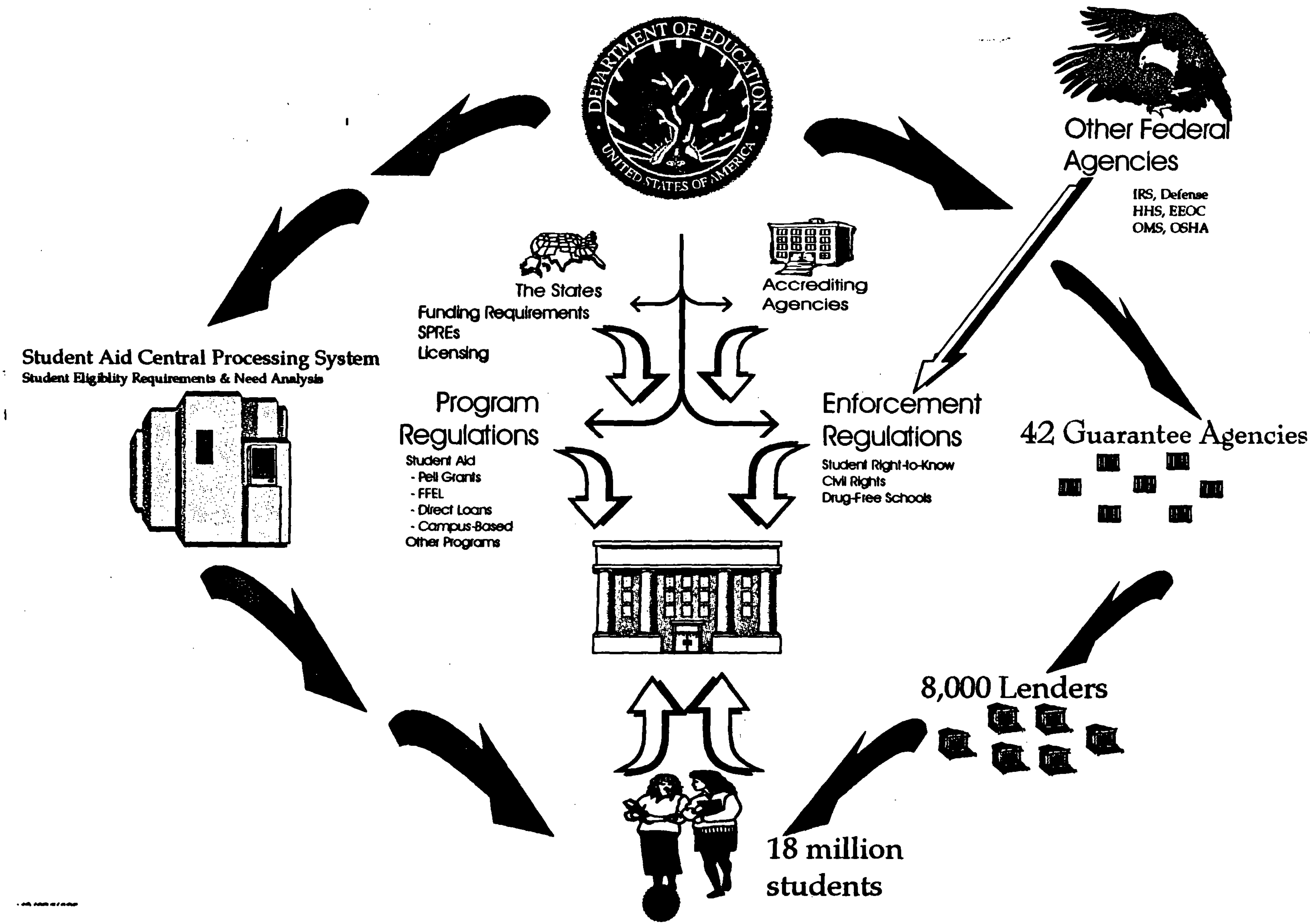
The Department of Education pays careful attention to the cost and potential burden on local school districts of complying with conditions of participation in education programs, but decisions about such expensive obligations for schools as meeting asbestos or lead paint removal requirements, which may be even greater, are not calculated in the same policy conversation.

This example dramatizes that ED is only one of many federal agencies whose decisions and actions profoundly affect education. As in every area of the economy and government, the regulatory policies of each agency affect diverse entities. Often the regulating agency does not include among its regular "customers" all of the affected entities, and is not familiar with their particular circumstances, needs and problems. Customers sometimes feel "blindsided:" they're watching out for rules from the agency with which they consistently deal, commenting on programs and proposed rules, when out of the blue an unexpected, possibly more onerous, obligation arrives from another agency.

The point is not that children should be exposed to asbestos in their elementary and high school classrooms. The short- and long-term safety issues are complex, change over time in light of health and risk research findings, and warrant careful cost-benefit assessment by the responsible agency. Rather, the point is that effective interagency communication and coordination on cost-cutting could make policy development more complete and implementation less burdensome.

> One role for the Secretary's cabinet-level education group (TAB F) could be to assure that issues such as this receive appropriate consideration and priority at the "home" agency. Asbestos in schools may be a big issue for schools, but relatively low on EPA's list for reevaluation. An education-sensitive process can advocate for education entities at sister agencies and seek burden-sensitive solutions.

University View of Federal Regulations



THE WORLD OF FEDERAL REGULATION THROUGH THE EYES OF A COLLEGE OR UNIVERSITY PRESIDENT

I. NON-EDUCATION REGULATION

A. GENERAL REQUIREMENTS

Commerce: Patent rules, import restrictions
EPA: Clean Air, Clean Water, Hazardous Substances, etc.
State: international exchange programs
Justice: Antitrust, criminal laws

B. RESEARCH RELATED REGULATION

NIH: research funding requirements
indirect cost rate regulations
human subjects research requirements
Defense: research requirements

C. HEALTH CARE SCHOOLS OR FACILITIES

HCFA, HHS: Health care reimbursement rules
HHS: Health professionals practice and training requirements

D. REGULATION APPLICABLE TO ALL EMPLOYERS

IRS
EEOC
Americans with Disabilities Act
NLRB
Wage and hours laws
OSHA
Immigration and Naturalization Service

II. EDUCATION REGULATION

A. STUDENT FINANCIAL AID

Federal Direct Student Loan Program
Federal Family Education Loan Program
Pell Grant Program
Institutional eligibility ("gatekeeping," including accreditation, state postsecondary review, and ED review)
Other Federal student aid programs--Campus-based; State Student Incentive Grants, etc.

B. OTHER EDUCATION REGULATION

Civil rights and gender equity requirements (gender equity in athletics)
Education research and grant requirements
FERPA (Buckley Amendment)
Student Rights in Research, Experimental Programs, and Testing (Hatch Amendment)
Disclosure Requirements (IASA 238, GEPA 429) (if the IHE enrolls any minors)
Higher education research program requirements (including Human Research Subjects regulations)
Drug-Free Schools and Campuses
New Restrictions on Lobbying
Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace

TAB C

MISPERCEPTIONS OF EDUCATION REGULATIONS

Ivy and Red Tape

By Steven Rattner

Four years ago, as part of the relentless struggle to balance its budget, Brown University eliminated financing for four varsity teams — two men's and two women's. Female athletes sued, and now, after a trial that dragged on three months, a Federal judge in Providence, R.I., is considering whether the university is offering enough opportunities for women to take part in sports.

The case is ironic on at least two counts. First, Brown has spent more in legal fees than it ever saved by cutting the teams. Second, few institutions are more eager to encourage women than Brown is. This fall, 54 percent of the entering class was female; in relation to the number of participants, Brown has more women's varsity teams than men's, and it has more women's teams (17) than the national average of women's and men's teams combined. But when it comes to Federal harassment of colleges and universities, Brown is hardly alone.

Late last year, without a single hearing, Congress passed the Equity in Athletics Disclosure Act, which requires colleges and universities to gather an assortment of statistics on their men's and women's sports programs — team sizes, operating and recruiting expenses, sex and annual salaries of each coach, male-female breakdown of undergraduate enrollment, spending on athetic scholarships, the ratio of male to female recipients — and to make the numbers public.

And it isn't just sports. More than two dozen special regulatory burdens are imposed on higher education. For example, Federal law requires that every university report annual crime statistics on campus. No comparable institution — no company, no landlord, no public authority — must make similar reports, even though crime on campus is generally less pervasive than on public streets a few blocks away. Graduation rates have to be reported; how many companies must release termination rates?

Some reporting is certainly appropriate, to be sure, since colleges and universities get substantial Government aid. But Federal support of higher education gives new meaning to the term "strings attached." There are 7,000 regulations for Federal student aid programs alone. The Institute for Higher Education Policy found that in one typical year the Department of Education issued 171 letters to all institutions of higher education to clarify its regulations.

As a result of an antitrust suit, Ivy League institutions can no longer collaborate on financial aid awards, a decades-old practice intended to insure that students receive the financial assistance that they need, but not more. Hints of financial-aid bidding wars are already evident — leaving less money for books and teachers.

Why such problems for higher education? For one thing, a few widely publicized but isolated incidents have shaken public confidence and created great political support for tighter controls. For example, the crime-reporting legislation was passed after a vigorous campaign by the parents of a student who was murdered on a Pennsylvania campus. Under such pressure, how many legislators can resist seemingly innocuous legislation?

Executive branch zeal (or lack of it) has also played a role. For all the talk of less government, neither Ronald Reagan nor George Bush significantly deregulated higher education. During the more activist Clinton Administration, the burdens have been increasing. Why is the Government imposing requirements on higher education that it refuses to impose on itself?

How the Feds harass higher education.

Special rules are just part of the problem. Other regulations place a particularly harsh burden on colleges and universities because of their limited resources and other attributes unique to education.

When Congress outlawed m[illegible]tory retirement, for example, it carved out an exemption for colleges and universities, permitting [illegible] to require retirement at age 70. That special provision was justified: without mandatory retirement, the tenure system would have allowed aging professors to remain indefinitely, leaving few openings for t[illegible] new ones.

But the age-70 provision expired in 1993, and to create openings, B[illegible] has been forced to offer buyouts of two years' pay and other benefits. This will cost more than $4 million, at what could hardly be a worse time for Brown and other institutions: Republicans' Contract With America would cut spending for higher education by $14.4 billion over five years. (The G.O.P. would offset that slightly with tax relief for college bills; President Clinton is proposing similar but greater relief.)

Colleges and universities surely haven't done everything right, but they are an enormously constructive force. They deserve a prompt Federal housecleaning of old regulations, and great restraint in imposing new ones.

Steven Rattner, a trustee of Brown University, is a general partner of Lazard Frères, investment bankers.

IVY AND RED TAPE
New York TIMES (1/28/95)

General observations

• The piece confirms that the public does not distinguish between Federal law and regulatory requirements, nor between Congress and agencies, as the source of obligations.

• There seems to be an assumption some amorphous body called "the feds," to quote the author, are the force behind laws, forgetting that it's the public -- or subgroups like women athletes, parents of a murdered girl -- who call for laws to correct problems and right wrongs.

• The positive reason FOR the requirement gets lost in criticism of the burden.

Specific issues

• **Title IX Athletics Litigation**

Brown is engaged in litigation with student athletes under a federal statute assuring women's equal opportunity in all aspects of education. The author's complaints go to the heart of Title IX and equal opportunity, not red tape. The decision about whether to spend money on litigation defense or sports programs rests with Brown.

• **Equity in Athletics Disclosure Act**

This is a "sunshine" law to assure that student athletes, their families and the public have access to information to understand a college's commitment to equitable athletic programs. The information will help athletes make important decisions about what school to attend.

-- The Secretary opposed EADA, and in particular the statutory provision that would have required schools to report the information to the Department of Education, successfully urging that the additional burden was unnecessary to achieve the goal of increasing students' and the public's access to information.

-- The statute requires the Secretary to publish regulations on EADA. The NPRM, published 2/3/95, tracks the statutory requirements exactly; adds no additional requirements or paperwork; and requests comment on whether any additional voluntary or regulatory steps are needed to accomplish the statutory purpose.

- **Campus Crime**

As the author recognizes, the genesis of this law was the murder of a young woman on the Lehigh University campus. Her parents, the Clarys, mounted a passionate and successful campaign to convince Congress to require colleges and universities to publish data on crimes committed on campus to help students and parents choose a school or work to improve campus security. Parents successfully made the case to Congress that in this respect colleges to which they entrust their children ARE special, and different from landlords or businesses.

-- The regulations published under the statute are reasonable and do not impose unnecessary burden.
-- The data are used, reported, and, anecdotally, seem to have focused campus attention to crime prevention in useful ways.

- **Graduation Rate Reporting**

Graduation reporting is required by the Student Right to Know Act,

- **Student Financial Aid Regulations**

Complex student aid statutes, multiple grant and loan programs established by Congress, and the need to enforce program requirements at 7500 schools, some of which intentionally or negligently engage in practices that harm taxpayers and students, have led to a web of complicated rules. We agree that there are too many regulations, too little coordination, and not enough distinctions made among schools on the basis of their past performance, financial stability, and ability to manage their aid programs. Simplifying and relieving burden in this area is a prime target of regulatory reinvention in the Department of Education. SFA has several deregulatory initiatives underway to simplify existing student aid regulations.

It's worth noting that Dear Colleague letters to which the author refers are intended to be customer-friendly, non-regulatory ways to clarify regulations, provide options or background, and answer specific questions from the higher education community. Moreover, all "Dear Colleague" letters are not sent to the same audience, but rather to institutions, lenders, guarantee agencies, state higher education agencies, as well as different officials at the same institution.

- **Antitrust enforcement**

The Department of Justice brought an antitrust action against a number of highly selective institutions of higher education that...[insert]

- **Mandatory retirement**

When Congress passed the Age Discrimination Act, applicable to all sectors of American society, Congress in fact recognized the unique nature of tenure and the effect of the new law on colleges and universities. As a result, universities were given several years beyond the time allowed other enterprises to implement the requirements of the act, reflecting special sensitivity to the needs and interests of higher education. Brown is indeed not complaining that higher education has been singled out, but rather asking that it be accorded special treatment.

TAB D

PRINCIPLES FOR REGULATING

UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202-

January 31, 1995

MEMORANDUM

TO: Senior Officers

FROM: Madeleine M. Kunin
Deputy Secretary

Marshall S. Smith
Under Secretary

SUBJECT: Principles for Regulating

The Department of Education is committed to regulating only when absolutely necessary, and then in the most flexible, most equitable, least burdensome way possible. We will regulate only to improve the quality and equality of service to our customers, learners of all ages. In essence, we are establishing a rebuttable presumption against regulation unless it meets this test.

We are confident that the attached Principles for Regulating are consistent with our mission of assuring excellence and access in education and with our responsibility for effective program implementation. They also advance the regulatory reinvention and customer service objectives of NPR II and are essential to an effective partnership with states and localities. The Secretary received a positive response when he described these principles in his January 12 House testimony on the federal role in education.

These principles apply to every program and activity in the Department. Many of you have already begun to apply them rigorously in your regulatory planning, with positive results. Others should scrutinize any essential regulations in development to assure that they meet these principles. We understand that this may require your offices to rethink or rewrite regulations and guidance, and that is precisely what we ask you to do. Thank you in advance for giving this a very high priority.

Jamienne S. Studley, Deputy General Counsel for Regulations & Legislation, is coordinating Office of General Counsel assistance to you in developing, analyzing, or revising regulatory materials to meet these criteria.

Attachment

U.S. DEPARTMENT OF EDUCATION
PRINCIPLES FOR REGULATING

The Department of Education (ED) is committed to regulating that improves the quality and equality of services to its customers, learners of all ages. ED will regulate only when absolutely necessary, and then in the most flexible, most equitable, least burdensome way possible.

Principles for Deciding WHETHER to Regulate

- ED will regulate only when essential to serve the needs of customers by promoting quality and equality of opportunity in education.
- ED will not regulate if there is no demonstrated problem.
- ED will not regulate if the problem can be solved adequately without regulating (e.g., through local decisions, or through non-regulatory guidance by ED).
- ED will not regulate if the entities or situations to be regulated are so different from each other that a uniform approach might do more harm than good.
- ED will not regulate in the face of ambiguity alone unless the ambiguity will create a real problem if not resolved through a legally binding interpretation. (Multiple possible approaches to carrying out a statutory provision do not in themselves warrant regulatory clarification, although there may be times when a regulation could promote greater flexibility than the statutory provision makes apparent.)

Principles for Deciding HOW to Regulate

- ED will regulate no more than necessary to solve the identified problem.
- ED will minimize burden and promote multiple approaches to meeting the requirements of the law.
- ED will strive to allow federally-funded activities to be integrated with State and local reform activities.
- ED will assess the costs and benefits of the regulation and ensure that the benefits justify the costs.
- ED will, to the extent feasible, establish performance objectives, rather than specify the manner of compliance that regulated parties must adopt.
- ED will, to the extent feasible, allow flexibility so that institutional forces and incentives achieve the desired result.

TAB E

REGULATORY TENSIONS AND CHALLENGES

REGULATORY TENSIONS AND CHALLENGES

Once the relatively simple regulatory housekeeping is underway, these are some of the thorny issues and complex dilemmas that ED faces at next level of reinvention.

The Flexibility/Inertia Bind

Flexibility may just allow states and localities do what they did before, as long as that's one of the options, because of the difficulty of change and the inertia of the status quo. BUT federal philosophy disfavors requiring change without a powerful reason. Are there carrots to entice partners to exploit flexibility? Individual schools may be most likely to take advantage of flexibility. How can it most successfully be pushed/granted down to that level? How can parents and communities be supported in driving schools to resist inertia and exploit flexibility?

Congressional and Press Oversight v. Efficient Use of Resources

Congressional oversight and the press emphasize the horror story, the dramatic -- the high-income defaulter with a red Porsche, the [example] -- as proof of poor program conception, management, and enforcement. ED must meet a zero-tolerance compliance standard, even if the cost of preventing or catching an error far exceeds the value to taxpayers or program beneficiaries, or face highly critical hearings or stories.

Private companies can make reasonable economic decisions about error rates, loss, and risk. Nordstrom's can decide how much shoplifting to tolerate, given the costs of extra guards, security systems, and intrusion on customers' privacy. In the environmental arena, the wisdom of zero tolerance is being critically examined. ED, on the other hand, cannot factor in the marginal costs of achieving compliance. These costs include the government's alternative uses for that money (such as increased program services or deficit reduction), reduced public confidence in federal programs, and the costs borne by customers (such as extra paperwork, more frequent audits, or the discomfort of feeling like a cheat). Refusing to allow a reasonable error rate may at first blush appear to be efficient and responsible, but may in fact thwart the interests of both customers and government.

Equity/Burden Dilemma

Promoting equity is one of the two legs of ED's mission. The department, along with the rest of this administration, is also on record as favoring burden reduction in record-keeping, reporting, inspections, and other forms of oversight. Sometimes assuring equitable distribution of access, opportunity or services requires burdens that many argue are excessive. One person's unnecessary record or intrusive inspection may be another's ticket to a constitutionally or statutorily protected right. How do we make the difficult choices?

Trust but Verify

Distrust of the regulated drives many statutory and regulatory requirements, and in turn engenders distrust of the regulator. ED has broken that cycle in a number of programs, such as Goals 2000, School-to-Work, and Drug Free Schools; it is important, but not the whole story, that in these cases ED is dealing with states on matters of mutual and high priority. In other areas, however, lack of trust is a serious problem, such as when customers and agency staff urge ED to regulate because they do not trust state agencies to provide quality services or fair opportunities for public participation.

The problem is most vivid in student aid, where well-founded Congressional and agency distrust of some proprietary schools has led to extensive regulatory burdens on all institutions. As ED seeks to reverse its approach and set standards according to the majority of institutions that want and try to comply with program requirements, one dilemma is "Who trusts first?" Can ED set an example by providing greater flexibility and self-monitoring responsibility to its partners and customers, or is that too risky in light of the historically adversarial relationship? What will it take to assure institutions and associations that ED will not abuse honest answers about possible performance standards for educational programs?

Performance Standards v. Unpredictability of Education Outcomes

Performance measures are far more attractive than command and control, step-by-step requirements that focus on process rather than results. This approach is quite promising for some kinds of programs (for example, the fiscal side of student aid). Education is, however, a relatively risky and unpredictable business: inputs do not necessarily correlate directly with outputs, in the way that state-of-the-art smokestack scrubbers should reduce emissions at predictable rates. How can ED embrace performance measures while recognizing that sometimes even the best efforts don't produce success, and that excessive emphasis on results may produce counterproductive behaviors (e.g., keeping high risk candidates out of programs in order to maintain test results)?

Enforcing Compliance v. Turning off Funds to States

When a program partner violates program requirements, the agency often faces a painful decision between terminating program funds that would provide program services to children or other customers, or appearing to tolerate substantial violations. This choice is most excruciating when the partner is a state, given both the broad effect of on beneficiaries and the political clout that states exert. The shortage of tools available to agencies to make states honor their obligations is, ironically, a powerful motivation for finding new methods of achieiving compliance through greater trust and flexibility.

Participation and Clarity v. Words and Pages

One of our clearest responsibilities is assure that customers, partners, and other citizens have meaningful opportunities to participate in the development of -- and can understand the laws and requirements that apply to -- our programs. But the public can't cope with massive quantities of rules, information, paper, and reports. As agencies reduce the deluge of words and pages, it's important to recognize that sometimes it takes more words or pages to explain the reasons for a rule, to encourage thoughtful and relevant comment, to establish the permissible level of flexibility, or to address varied circumstances, than simply to state a blunt rule. Balancing the value of additional information, in regulations, program guides, and other materials, against the burden of overload is a ticklish business, made more difficult by superficial assaults that correlate the thickness of the Federal Register with level of regulatory burden.

TAB F

BOLD INITIATIVES FOR IMPROVING SERVICE TO CUSTOMERS

SECRETARY CONVENES CABINET AGENCIES THAT AFFECT EDUCATION CUSTOMERS

ED understands that its educational partners are affected as much or more by the regulatory policies and decisions of other federal agencies as by its own education activities. No matter how sensitive ED is to the special needs, circumstances, and responsibilities of the education sector, the federal government's relationship with states, localities, and institutions depends on how all the agencies affect education.

Secretary Riley could convene two different working groups of Cabinet-level agencies whose work affects the postsecondary education and elementary/secondary education sectors. The goals of these efforts will be to increase responsiveness across all agencies to education customers and partners, and to identify concrete ways to coordinate the policies and practices of different agencies to reduce burdens on schools, states, localities, colleges, and universities.

For example, could more consistent definitions and data submissions across agencies minimize schools' reporting headaches?

Is it possible for agencies to coordinate inspection visits or reports?

Indeed, agencies might learn that some requirements are unnecessary, given current state responsibilities or other realities of the education world.

This group could consider changes in compliance activities, regulations, and statutes if they stand in the way of streamlining and burden reduction.

Customer concerns should drive the agenda of the groups. The groups might want to meet regularly with customers or organizations of customers and invite them to join in setting the agenda. On a practical level, they might want to invite community comment on issues and problems for consideration and to establish an internet address for receiving comments and recommendations.

GREATER AND MORE USEFUL CUSTOMER PARTICIPATION IN RULEMAKING

The Department is committing itself to greater and more useful customer participation in ED rulemaking. Rulemaking, when it is determined to be absolutely necessary, is viewed as a continuous process in which customer participation is sought at all stages --- in advance of rulemaking, during rulemaking, and after rulemaking is completed (in anticipation of even further improvements through statutory or regulatory changes).

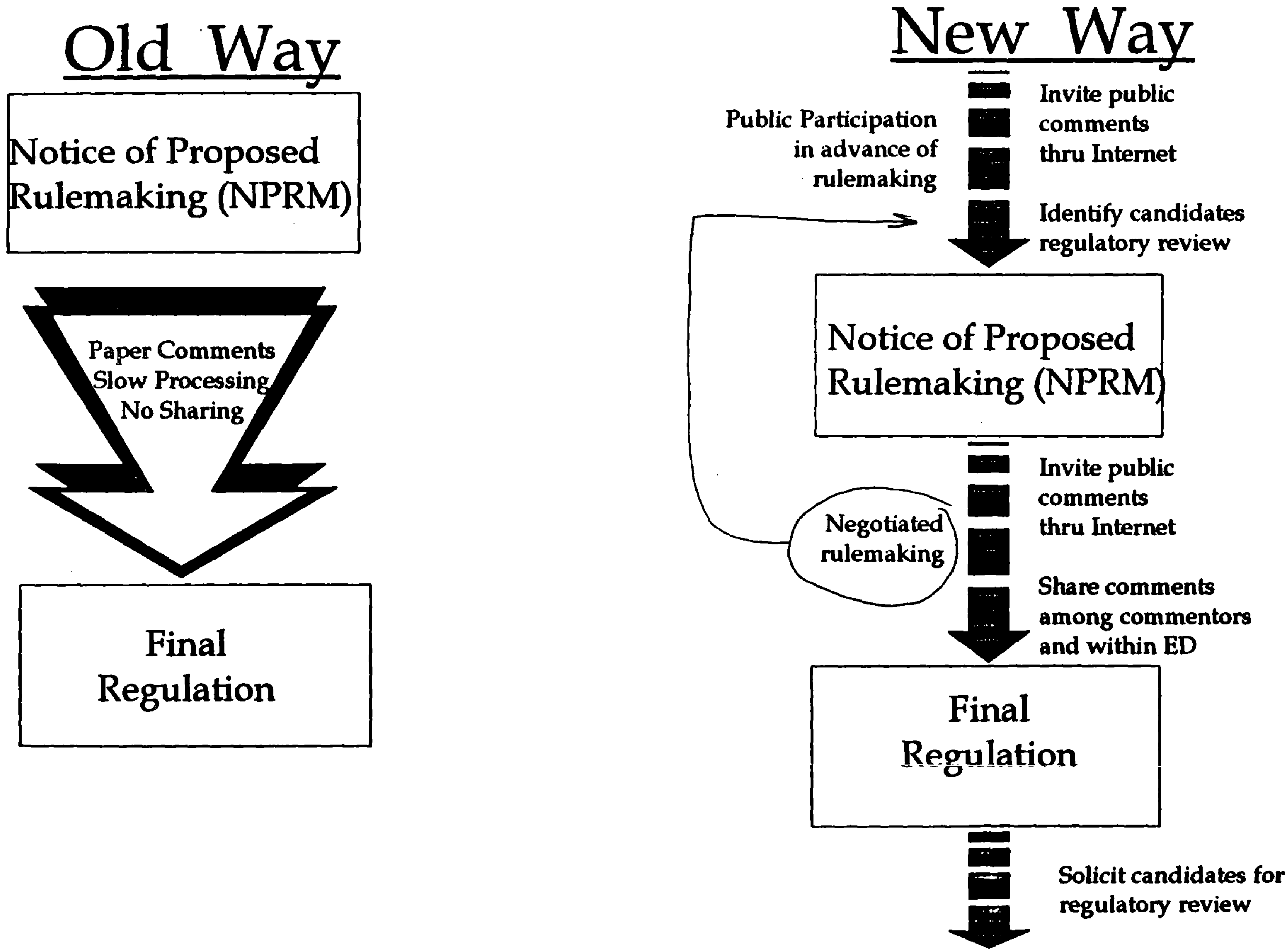
Solicitation of public perspectives in advance of the publication of notices of proposed rulemaking (NPRMs) through pre-publication meetings around the country is becoming standard procedure in ED. Recently, such discussions were held by ED on bilingual education, special education, student aid, and equity in athletics. The Department has no special *ex parte* rules that would hamper discussion with customers and the public, and it has not found Federal Advisory Committee Act requirements to be a barrier to successful outreach efforts.

ED plans to expand these oureach efforts through technological means to facilitate even broader awareness of and participation in ED's rulemaking activity. Public comments will be invited through the Internet to help the Department identify candidates for regulatory simplification or elimination.

During the public comment period for all NPRMs, the Department, at the recommendation of its Low Hanging Apples Team, now invites responses through the Internet on all proposed rules. The next step planned by the Department is to allow commenters throughout the country who are interested in a rule under consideration not only to provide their comments to ED via Internet but also to respond to each others' comments, thereby enhancing the information received by the Department. This should enable ED propgram staff to develop more effective solutions to regulatory dilemmas.

Traditionally, once ED has published a final regulation, it has forgotten about that program rule and its implementation by the Department's customers and moved onto other matters. In the future, ED plans to maintain ongoing dialogues with its customers after the publication of final rule, thereby setting the stage for responding on a timely basis with further regulatory simplification as appropriate.

Greater and More Usefu Customer Participation in Rulemaking



EDGAR REVISIONS TO ELIMINATE GRANT COMPETITION REGULATIONS

The Department, unlike almost all other federal agencies, is required to promulgate selection criteria and funding priorities for discretionary grant program competitions under rules developed through Administrative Procedures Act notice-and-comment rulemaking (except for a valuable, but narrow, exception added to the General Education Provisions Act (GEPA) in 1994 for grants in the first year of a new or substantially revised program). This requirement is contained in the Education Department General and Administrative Regulations (EDGAR). This means that every ED discretionary grant competition has required the separate publication of regulations in the **Federal Register.**

ED proposes to amend EDGAR in two ways: include in EDGAR a more flexible menu of selection criteria and priorities from which individual programs could choose, and allow programs to use "statutory selection criteria" (i.e., particular requirements included in the program statute). Then each program, when administering a grant competition, would include "statutory criteria " and other program-relevant selection criteria listed in EDGAR in the program application package, but would not have to publish these criteria as a regulation in the **Federal Register**.

This type of "regulatory reinvention" would

* significantly reduce the numbers of ED regulations related to grant competitions;

* enable customers to receive ED grants more quickly, since programs will not have to develop and publish program-specific regulations; and

* promote shared objectives and priorities across ED programs, as well as enhanced coordination across programs at state and grantee levels, through the inclusion in EDGAR of a common set of selection criteria from which each program would select those most relevant to its needs.

STREAMLINED GOALS 2000 APPLICATION PROCESS

Goals 2000 provides the framework for the Department's education reform initiatives --- and for its regulatory reform initiatives. This program provides great flexibility to schools, school districts, and states to develop and implement reforms based on their own challenging standards.

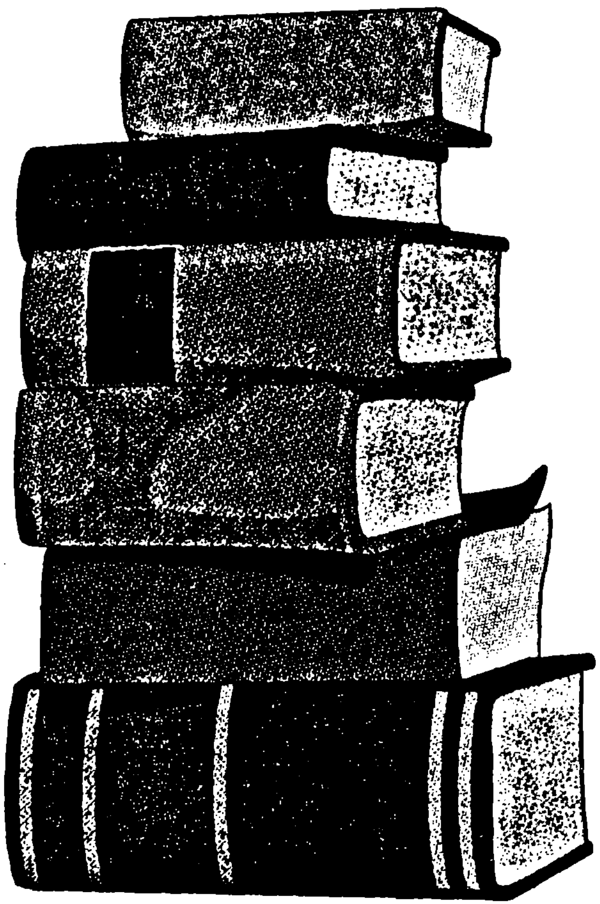
The Department's implementation of Goals 2000 is a model of thinking about and designing a federal program differently. **No** regulations will be issued for Goals 2000 state and local reform grants. Moreover, whereas in prior years states produced voluminous applications for ED's state grants based upon lists of required information, ED now has designed and is using an easy-to-read **four-page** planning grant application form. This form sends a strong and unambiguous signal to the states that ED means to be customer-friendly and that it has reduced its regulatory guidance and program requirements to the bare essentials when permitted by statute. Indeed, the Vice President's Hammer Award was conferred on the ED team that designed this four-page form.

But the Department's streamlining of the Goals 2000 activity is not finished. In the coming year, ED will actively encourage states to continue to develop comprehensive K-12 improvement plans that reflect state and local priorities and standards and to use most of their federal grants to provide assistance to local school districts. The Department will continue to provide advice and guidance3 to states and school districts without imposing regulations on their efforts. Indeed, ED projects that 90 percent of all funding in the second year of Goals 2000 will flow directly to local school districts, which is an entirely new way of doing business for the federal government.

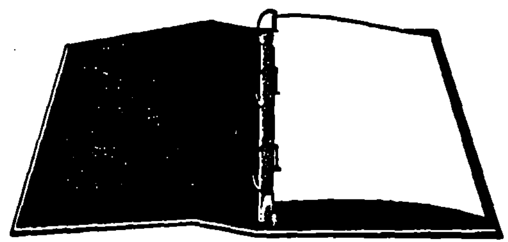
Streamlined Goals 2000 Application

Old Way

Voluminous application from States based on lists of required information.



New Way



4-page State planning grant application (received Vice President's "Hammer Award").

FLEXIBILITY IN K-12 PROGRAM PLANNING AND ADMINISTRATION

In addition to promulgating no Goals 2000 regulations and eliminating much of its regulation of Title I of the Elementary and Secondary Education Act (ESEA), the Department is creatively expanding its partnership-with-customers philosophy through the provision of numerous flexibility options for state and local education agencies (SEAs and LEAs).

Three initiatives are particularly significant:

(1) Education Flexibility Partnership Demonstration Program

(2) Consolidated State Planning

(3) Waivers of Statutory and Regulatory Program Requirements

(1) The **Ed-Flex Program** was authorized by the Goals 2000: Educate America Act (P.L. 103-227). To foster comprehensive education improvement in a state, the Secretary will grant up to six SEAs with approved Goals 2000 state improvement plans the authority to waive certain federal program requirements for the SEA or for any LEA or school within the state. The waivers are applicable to provisions of ESEA Title I, Title II, Title IV, Title VI, and Title VII(C), as well as to the Carl D. Perkins Vocational and Applied Technology Education Act.

On February 20, Secretary Riley announced that Oregon is the first state authorized to waive federal regulatory and statutory requirements under the Ed-Flex Program. To qualify for this broad waiver authority, Oregon designed and received ED approval for a comprehensive school improvement plan under Goals 2000; indeed, on February 15 Oregon become the first state approved by the Secretary to receive second-year Goals 2000 funding. Oregon also pledged in its Ed-Flex Program application to eliminate unnecessary, burdensome state and local education regulations and to hold schools and districts accountable for student performance. In addition, schools still will be expected to observe civil rightsd statutes, as well as health and safety standards.

The Department is actively working with and encouraging all 44 states who have elected to participate in Goals 2000 and received first-year Goals 2000 funding to complete their respective state education improvement plans and thereby qualify both for second-year Goals 2000 funding and for the opportunity to apply for waiver authority under the Ed-Flex Program.

(2) On January 13, ED published a notice proposing that states could **consolidate state K-12 program planning**. The consolidated planning process, authorized by the Congress in the 1994 Improving America's Schools Act (IASA) P.L. 103-382), would enable ED to avoid writing detailed rules and regulations for the K-12 programs Congress revised last year and create unprecedented flexibility for states to integrate their planning and administration of federal education programs.

Comments on the ED proposal were due by February 13, and ED now expects to issue guidelines later this spring for states wishing to submit consolidated plans for up to 13 federally-funded programs. These changes reflect increased recognition of states as educational partners. Once these guidelines are published, ED will actively encourage states to consolidate their applications and plans for the identified programs.

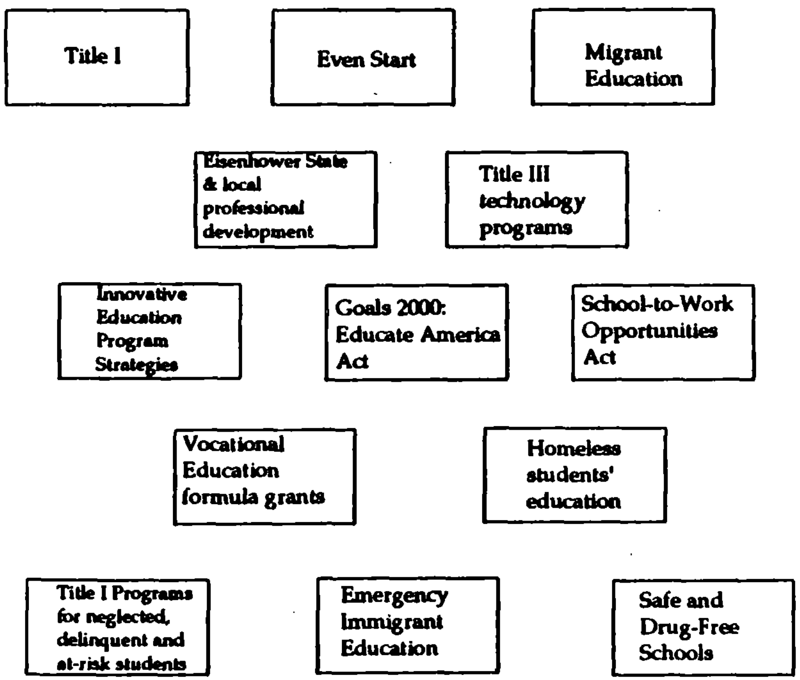
(3) The two ED regulatory reinvention initiatives summarized above describe major Department efforts to maximize SEA and LEA flexibility through the expanded use of waivers and other school improvement approaches. ED also is working with its customers to initiate **expanded waiver authority** in other programs as well.

For example, ED's new **Charter Schools Demonstration Program** will allow states with charter school laws to receive start-up grants under the IASA and to apply for waivers of all federal regulations to maximize flexibility. As the name of the program implies, groups and organizations can apply for a charter to establish and operate a public school, based on state statutes. The Department also is offering general waivers to states, school districts, and schools under the **School-to-Work Opportunities Act**.

Consolidated K-12 Program Planning

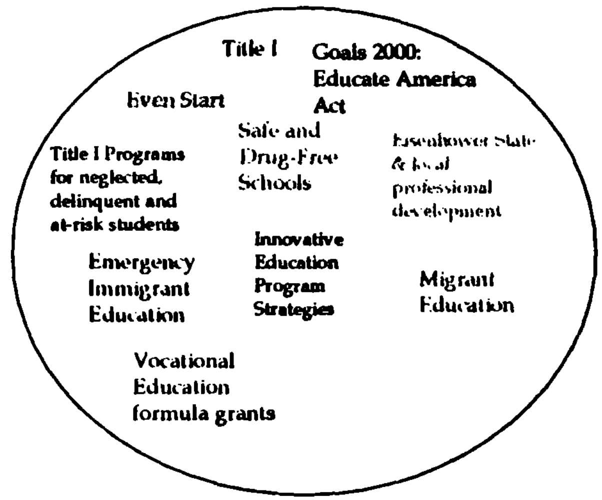
Old Way

Separate State plan for 13 Federal K-12 Programs.



New Way

Single consolidated State plan, with each State selecting which of the 13 programs to include.



PAPERWORK REDUCTION PRIORITIES FOR STATES AND LOCALITIES

A recent MacNeil-Lehrer report showed a school official surrounded by an avalanche of papers, described to viewers as the reports the superintendent was required to complete for the federal government. Forget for a moment that this particular superintendent told reporters that many of the papers on his desk had nothing to do with the feds, and the exaggerated wide angle camera shot; the fact remains that schools are frustrated by paperwork requirements from all levels -- federal, state, local and school district -- and that the burden interferes with teachers' ability to spend time with students.

ED has initiated a fast-track project, guided by the Offices of Management, Elementary and Secondary Education, Chief Financial Officer, and General Counsel, charged with reducing the burden of ED paperwork on states and localities. The team's report is due to the Deputy Secretary by April 15.

The action steps are to (1) identify, collect, and inventory the reports, forms, plans, and other materials that states and localities are asked to prepare to participate in ED grant programs; (2) analyze the frequency, scope and repetitive data elements in the reports, forms, plans and other materials; and (3) identify which forms, plans, and reports can be eliminated, combined, or simplified.

Burden-saving options include common cover sheets with basic data for multiple programs; vastly improved sharing of information across ED programs to reduce multiple reports; and replacement of routine reports with simple updates or information verification.

EXPERIMENTAL SITES FOR FEDERAL STUDENT AID PROGRAMS

Under HEA Title IV student aid programs, the same standards generally apply to all participating institutions, from national comprehensive universities to cosmetology schools, from institutions that have never had customer (i.e., student or former student) complaints or ED compliance problems to institutions with numerous complaints, errors, or violations. During the past several months, as it has sought to reform Title IV program administration in partnership with the postsecondary education community, ED has has been asked repeatedly by the community -- in negotiated rulemaking, in comments on proposed rules, at regional meetings, and in numerous informal discussions -- whether even greater institutional flexibility might be encouraged if it were linked to appropriate performance measures.

Through a notice in the **Federal Register**, the Secretary proposes to invite postsecondary education institutions that administer one or more Title IV programs to submit one or more proposals to ED to participate as "experimental sites" under HEA section 487A(d). This statutory authority permits institutions to participate voluntarily as sites for experimental regulatory and management approaches. For example, this authority could be used to develop experiments under which ED would waive burdensome (but generally necessary) requirements for an institution in exchange for performance measures suited to the institution and to the regulatory objective. An institution approved as an experimental site under this student aid reform initiative would be exempt from agreed upon statutory or regulatory requirements.

The Secretary would establish **no regulatory requirements** for the proposals invited by this notice. The Department hopes that this approach would encourage institutions to develop truly innovative administrative strategies that relieve unnecessary regulatory burden while maintaining program accountability. If these experimental strategies were to prove successful, ED would incorporate them into future Title IV regulations and, if appropriate, legislative proposals.

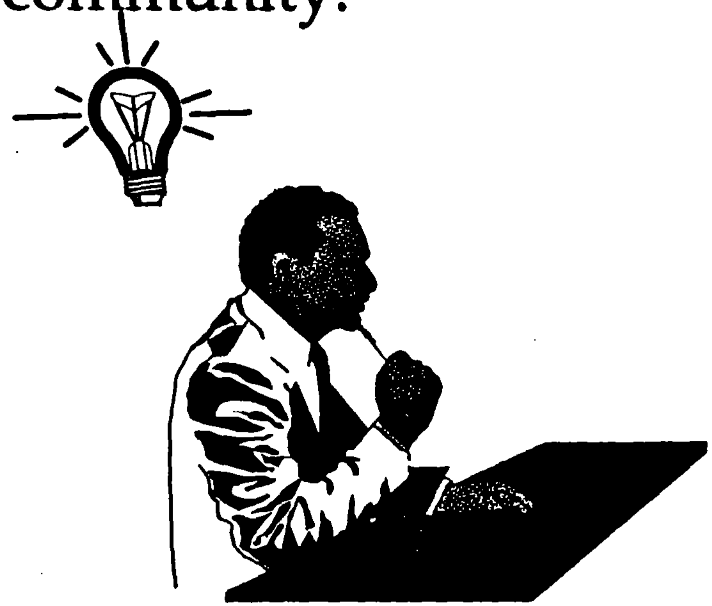
Experimental Sites

Old Way

ED hands down comprehensive, prescriptive regulations.

New Way

Ideas for improvement come from the financial aid community.



IMPROVED GATEKEEPING FOR FEDERAL STUDENT AID PROGRAMS

Background:

Students and taxpayers must be protected from fraud and abuse of Federal student aid funds. Some schools participating in Federal programs are savvy and unscrupulous. Many students have been harmed by these schools, including vocational training programs that failed to provide effective training and schools that closed suddenly because of financial problems. Students frequently borrow money to attend problem schools and are unable to support themselves or repay their student loans after they graduate.

To protect against fraud and abuse, a "gatekeeping" system has evolved over time. Under this system, accrediting agencies, the states, and ED work together to ensure that students and schools are using financial aid funds properly. This system is called the "Triad." Under the 1992 amendments to the Higher Education Act (HEA), the Triad operates as follows:

Accrediting Agencies	States	Dept. of Education
o Review the academic quality of institutions using a system of peer review.	o Provide legal authorization for institutions to operate. o Review schools that meet statutory requirements designed to identify at-risk institutions.	o Certifies that schools have adequate financial and administrative capabilities. o Reviews institutions to ensure compliance with Title IV requirements.

Impact and Criticism of the Triad:

The implementation of the Triad has led to greater integrity in the student aid programs. For example, since fiscal year 1994, ED has made 609 institutions ineligible to participate in these programs because of high loan default rates; the percentage of institutional applications for participation in these Title IV programs that were denied has increased from 16.6 percent in 1990 to 32.8 percent in 1994; and the percentage of institutional applications for reapproval that were denied has increased from 14.7 percent to 22.4 percent for the same period.

However, the postsecondary education community is critical of both the statutory roles that the Triad members play and the regulations implementing the statute. The community argues that the roles of the Triad members overlap, and that the Federal and state roles are overly intrusive. The community also believes that ED's regulations exceed the law, lack due process provisions, and are too expansive. Institutions especially criticize the State Postsecondary Review Entities (SPREs) and their responsibilities as part of the Triad.

Proposal for Burden Reduction:

The Department is attentive to institutional concerns and is committed to reducing burden on institutions and students without jeopardizing accountability for Federal funds. In a speech to introduce President Clinton at the American Council of Education's annual meeting, Secretary Riley announced that ED will work with the community to rethink and revise regulatory and statutory requirements. He promised that controversial SPRE reviews would be eliminated if self-policing mechanisms such as stronger accreditation standards and licensing procedures are established. Under this proposal, ED would ensure the integrity of student aid programs through the licensing and accreditation process while reducing burden on schools. The higher education community responded very favorably to this proposal.

To eliminate the need for SPRE reviews, the accreditation process could be strengthened by developing nationwide quality standards, inviting public participation, and focusing on the success of students in obtaining degrees and finding jobs. Accrediting agencies would no longer be required to consider factors relating to regulatory compliance thereby reducing overlap in the responsibilities of the members of the Triad.

ED and the states could also improve the quantity and quality of information available to students so that they are able to make wise choices about their postsecondary education and training. Information provided to students would include information about outcomes, including the percentage of students who graduate and the percentage of students who find jobs in the field. In conjunction with the Administration's proposal for the GI Bill for America's Workers, this information could be provided for vocational programs at One-Stop Career Centers operated by the states. When informed consumers make better choices, low quality institutions would be driven out of business or would be forced to improve their programs.

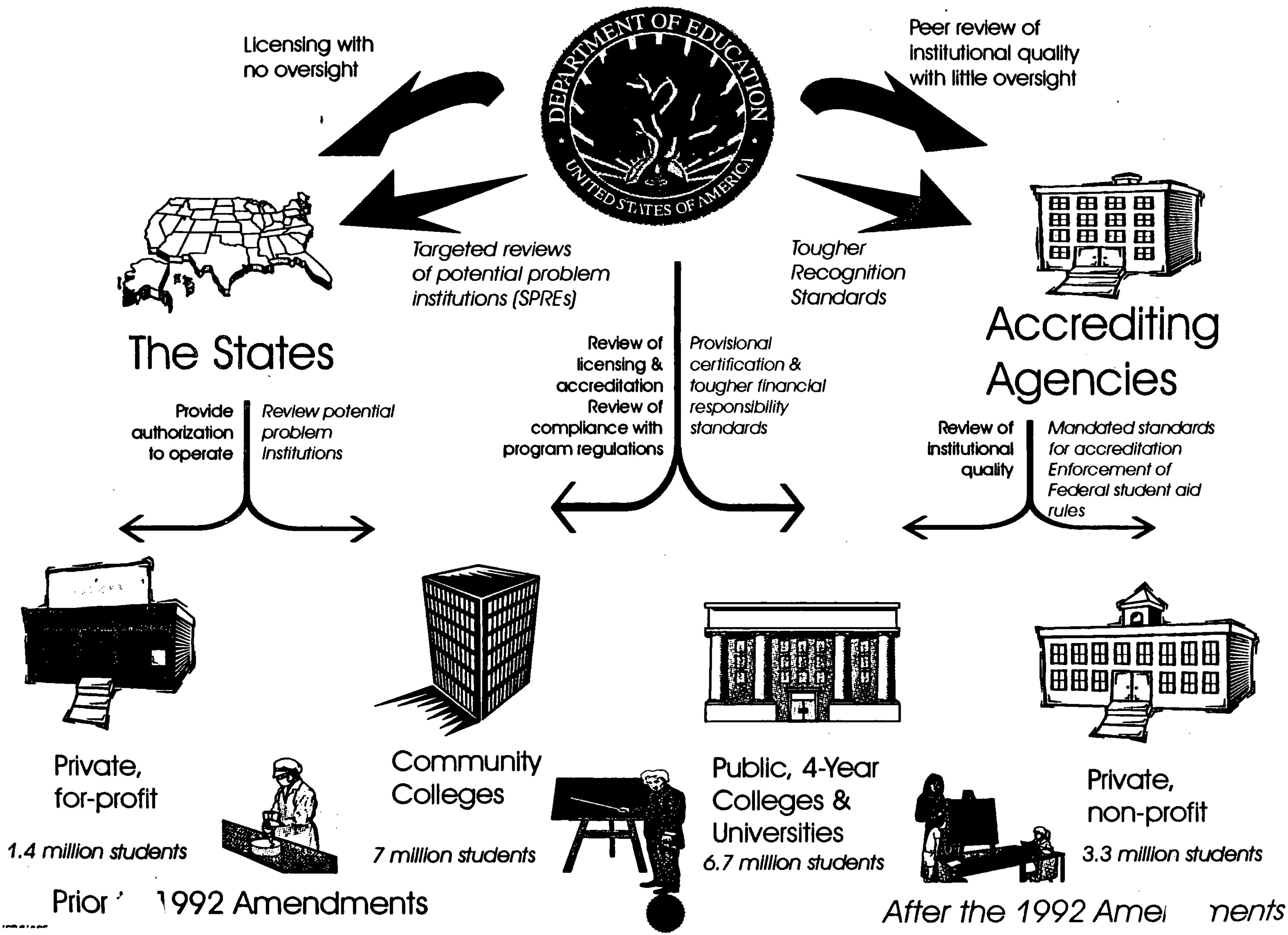
Using incentives to produce stricter self-policing

At the American Council of Education on February 14, 1995, Secretary Riley challenged the higher education community to increase the effectiveness of its self-policing activities, such as accreditation and licensing, and promised that controversial SPRE (State Postsecondary Review Entities) reviews would be eliminated if they succeed. The accreditation process could be strengthened by developing improved quality standards, inviting public participation in oversight, and focusing on success of students in obtaining degrees and finding jobs. In addition to the elimination of SPREs, the Department is wondering whether there are "carrots" that could be offered to postsecondary institutions or groups to propel the improvement process.

- Are there incentives that could further encourage postsecondary institutions to achieve improved student aid program performance? For example, would schools work together to lower their collective loan default rates, or to provide complete, verifiable data on graduates' job placement and income, if success earned them lower administrative costs, or reduced regulatory or reporting requirements? Are there results for which the federal government would otherwise have to spend money, on greater technical assistance, inspection, and enforcement, such that savings could be shared with institutions? The vehicles for these efforts could be existing accrediting organizations or new groupings formed by subject or degree type.

- Are there student aid advantages that schools could "earn" for their students that could in turn give high-performing institutions an edge in competing for students in the competitive student recruitment market? For example, schools with the best financial management records might be able to offer students lower loan origination fees, reflecting lower federal processing costs. Students would understand both the immediate financial advantage and the statement about the institution's reliability.

Gatekeeping & Oversight of Postsecondary Institutions



"ZERO-BASED" REVIEW OF STUDENT FINANCIAL AID REGULATIONS

The Higher Education Act, as amended (HEA), will be before the Congress for reauthorization in 1997. Whereas the First Morrill Act (1862, as amended through 1991) and the Second Morrill Act (1890, as amended through 1991) together total only 6 pages and the HEA as enacted in 1965 totals only 52 pages, the HEA (as amended) now totals over 600 pages. Correspondingly, the regulations implementing the HEA have grown as well, not only in length but also in complexity.

In anticipation of this reauthorization, the Department plans to conduct a "zero-based" review of all current HEA Title IV student financial aid regulations. This process will build upon the selective review of such regulations conducted by intra-departmental teams in ED in fall 1994 prior to the publication of several final student aid program regulations in late November and early December. This fall 1994 regulatory review led to significant burden reduction for postsecondary education institutions and increased flexibility for schools and students. However, numerous opportunities exist for substantially more extensive ED simplification of its postsecondary education program regulations.

The proposed "zero-based" review has two objectives:

* to "reinvent" the Title IV student aid program regulations in a manner consistent with the new ED principles for regulating; and

* to identify through this process a range of legislative proposals that could be addressed in the HEA reauthorization.

This review has enormous potential for making the student aid processes easier for millions of families, as well as for the 8,000 or so institutions eligible to participate in the federal student aid programs. It should generate recommendations for improvements not only through statutory and regulatory streamlining but also through new approaches to accomplishing program goals (e.g., expanded responsibility for student aid offices, smarter use of technology, shared data across programs), deletion of program requirements, simplification, and coordination across programs.

This "zero-based" review will be led by ED's Office of Postsecondary Education, in close collaboration with OMB and the Department's Office of the General Counsel, Office of the Chief Financial Officer, Office of the Inspector General, and Office of the Under Secretary.

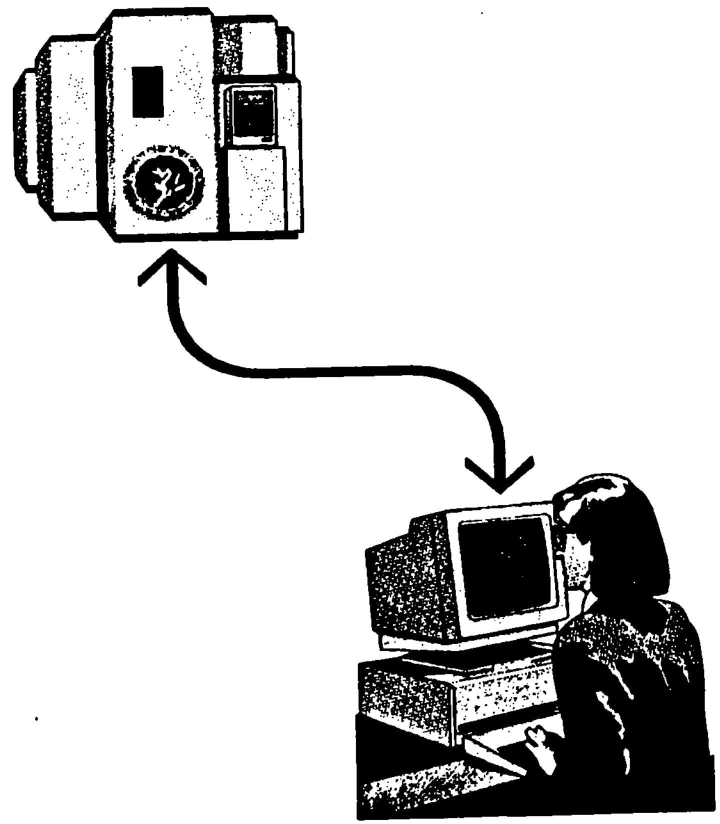
Eliminate Paper
Student Aid Reports (SARs)

Old Way

5 million paper SARs!

New Way

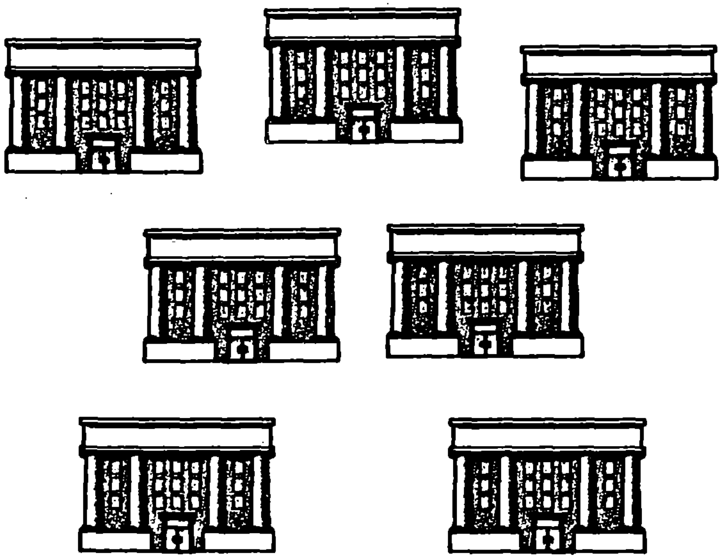
No more paper SARs!



Eliminate Required Cash Reserve to Cover Tuition Refunds

Old Way

7,300 schools were required to have reserve funds.



New Way

Performance-based criteria used to identify schools needing reserve funds.

Flexibility in Managing Student Accounts

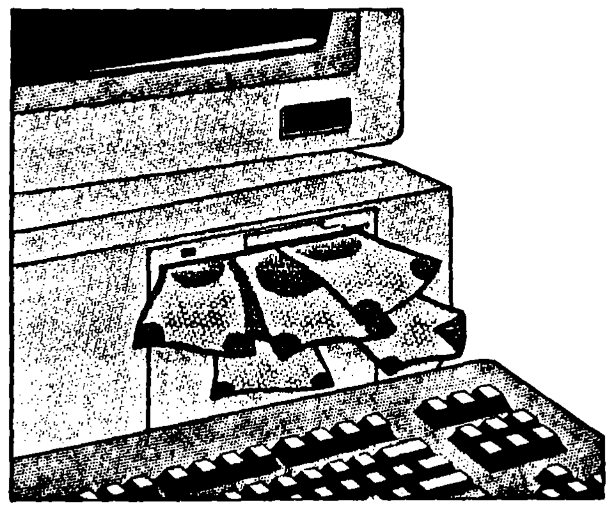
Old Way

All 7,300 schools manage accounts the same way.

No choice!

New Way

Each schools has choice in managing student accounts with enhanced opportunities to use new technology.



United States Department of Education
Student Financial Assistance Programs

REGULATORY SUMMARY
November/December 1994

The Department of Education recently published a number of important regulatory packages related to the Federal student aid programs, implementing the Higher Education Amendments of 1992 and the Student Loan Reform Act of 1993. Many of the provisions contained in these packages reduce burden and provide increased simplicity and flexibility for schools and students. Included in the regulatory packages are provisions that:

Eliminate the requirement that all 7,300 schools that participate in the Federal student aid programs establish a cash reserve fund to cover tuition refunds. The Department instead will use performance-based criteria, thus relieving schools with good refund processing histories from the obligation.

Simplify the process by which hundreds of thousands of student aid applicants verify to their schools the information provided on original financial aid applications.

Permit one parent rather than two to sign financial aid application and verification forms.

Allow students and schools flexibility to manage student accounts to help budget funds and to enhance opportunities to use new technologies such as Smart Cards and Electronic Funds Transfer.

Eliminate the requirement for every school to apply for a full institutional recertification if the school adds additional off-campus programs.

Provide flexibility for schools to assist part-time and other non-traditional students in meeting satisfactory academic progress requirements.

Provide that, for affected schools, compliance audits are due six months after the end of the school's fiscal year rather than four months as previously required.

Consistent with partnership initiatives, rely upon states and accrediting agencies to monitor and enforce institutional eligibility requirements that otherwise overlap or are duplicative. For example, states and accrediting agencies, not the Department, would monitor student withdrawal rates.

Simplify the description of the refund process and make other substantive changes, including allowing schools to use shorter periods of time for calculating unpaid charges and reinstating the concept of approved leaves of absence.

Provide schools with flexibility to develop alternative approaches to the requirements for entrance counseling under the Federal Direct Loan Program.

Increase the overaward threshold to $300 for all three campus-based programs, eliminating the need for schools to make small adjustments to financial aid packages.

Provide flexibility for schools to determine which jobs provide service to the community in meeting the five percent community service expenditure requirement of the Federal Work Study allocation.

Eliminate the requirement that schools actually disburse at least five percent of their funding in the campus-based programs to non-traditional students. Instead, if applicable, institutions are able to meet the statutory requirement by offering the funds to such students. This change will also eliminate certain data collection requirements from the annual Fiscal Operations Report.

Allow a Federal Perkins Loan borrower to elect to repay his or her loan by means of electronic funds transfer from the borrower's bank account and allow institutions to provide a statement of account only once each year.

Reduce burden on schools by expanding the types of media which schools can use to store Federal financial aid information.

IMPLEMENTATION OF CUSTOMER-FRIENDLY DIRECT LOAN PROGRAM

The Administration's fiscal year 1996 budget proposes 100 percent implementation of the Federal Direct Loan Program by academic year 1997-98. In phasing in this program, ED will minimize the burden of Title IV student aid program regulations, consistent with program integrity, institutional accountability, and student benefits. This regulatory review will be incorporated in the Department's "zero-based" review of all student financial aid regulations, but those regulations specifically applying to the Direct Loan Program will be a distinct and separate focus.

The Direct Loan Program has several design characteristics that facilitate this regulatory simplification and burden reduction:

* The process of obtaining a loan is simpler for student and parent borrowers. The do not submit a separate loan application to a bank. Instead, they comnplete the Free Application for Federal Student Aid and, upon loan approval, sign a promissory note.

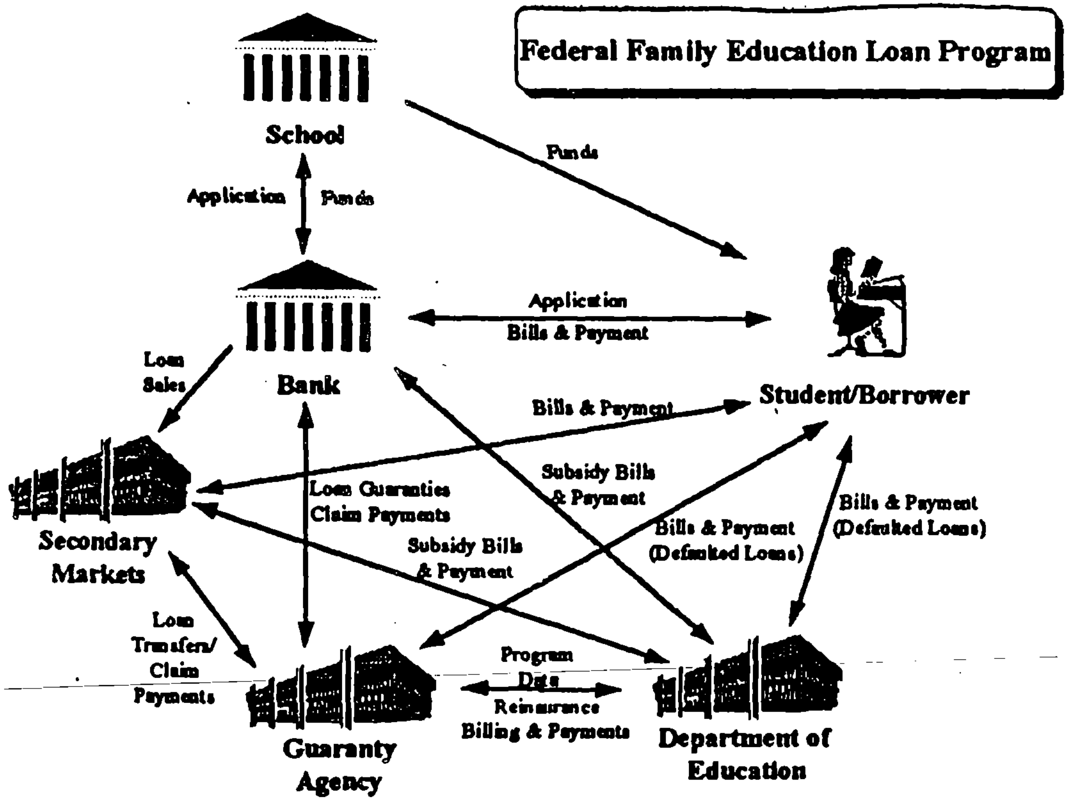
* Because borrowing is directly from the federal government, direct loans arenever sold. Borrowers make a single loan payment to the same (privately-contracted) loan servicer for the life of their loans. For borrowers, it is "one-stop shopping" from loan application to payback.

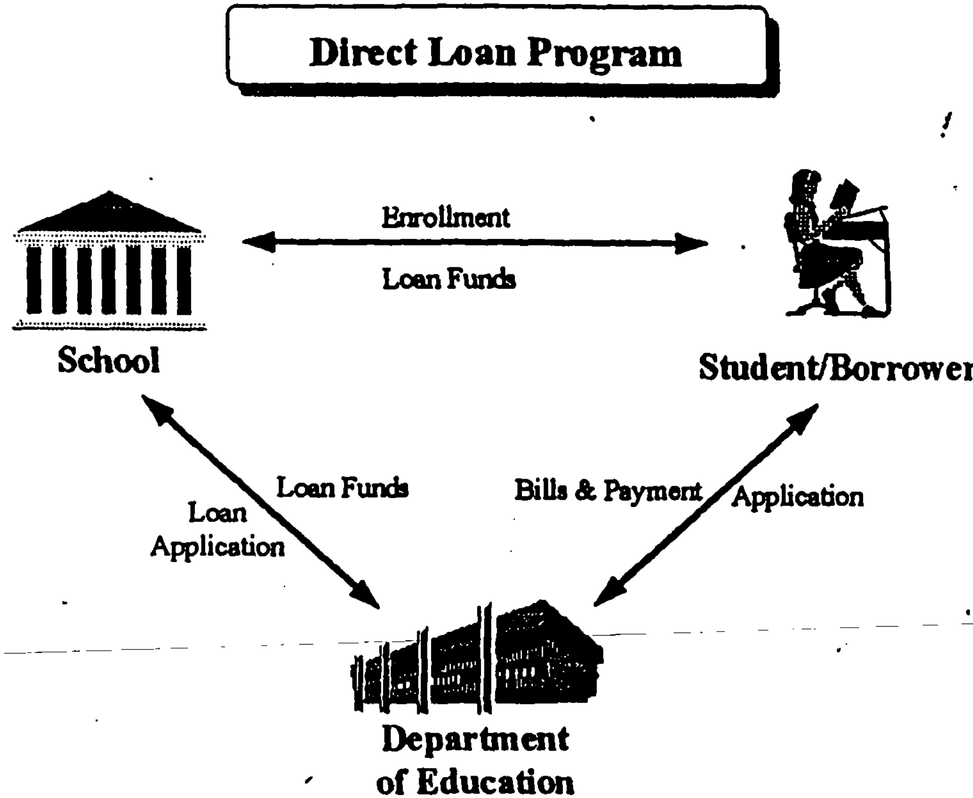
* Students don't wait in lines to cash bank checks. Schols receive loan funds for students electronicaly from the federal government and can credit student accounts directly.

* Students do not borrow from banks. The federal government raises sthe loan funds through its regular Treasury bill acutions, and the federal government is the recipient of loan repayments. There are no middlemen.

* Schools do not process loan checks from multiple lenders. Electronic funds transfers from a single source, the federal government, mean less processing time at the school, so there is more time for schoolos to help students. Schools also experience an improved cash flow.

* Borrowers have more flexible repayment options with their Direct Loan Program Individual Education Accounts (IEAs). They also can change repayment plans as their financial and personal situation changes.


Federal Family Education Loan Program
School
Funds
Application
Funds
Bank
Application
Bills & Payment
Student/Borrower
Loan Sales
Bills & Payment
Secondary Markets
Loan Guaranties
Claim Payments
Subsidy Bills & Payment
Subsidy Bills & Payment
Bills & Payment (Defaulted Loans)
Bills & Payment (Defaulted Loans)
Loan Transfers/ Claim Payments
Program Data
Reinsurance
Billing & Payments
Guaranty Agency
Department of Education


Direct Loan Program
Enrollment
Loan Funds
School
Student/Borrower
Loan Funds
Loan Application
Bills & Payment
Application
Department of Education

MASTER CALENDAR CHANGE FOR FEDERAL STUDENT AID PROGRAMS

With respect to the HEA Title IV student aid programs, ED operates under a statutory "master calendar" provision (section 482(c)) that prohibits regulations published in final form in the **Federal Register** after December 1 of any year from becoming effective until the second award year following publication. (For example, such a regulation published in final form on December 2, 1995, does not become effective until the 1997-98 award year.) This provision of the law is understandable from the perspective of providing postsecondary education institutions enough lead time to implement new student aid regulations. However, the master calendar provision presents the Secretary and these institutions with an unsatisfactory result when both agree that a new ED rule would provide regulatory relief, reduce burden, simplify processes, or otherwise assist students, families, and institutions.

ED proposes to amend the HEA to allow the Secretary to inform schools that they would have the **choice** to implement specific rules finalized after December 1 either immediately, including the possibility of retroactively applying them for the current award year, or for the upcoming award year, and not wait until the second award year as they now would have to do under the master calendar.

A statutory change is required to make this change. If ED sought to implement this master calendar change through regulation or other rulemaking, institutions have indicated they would not be prepared to respond to it for fear they would be held to the prior standard by program reviewers or the Department's Office of the Inspector General. The Congress and other ED constituencies also would view ED as trying to do an end-run around the master calendar rule if a statutory change were not proposed.