

Self Regulation - Government Regulation Relationship

History and Future

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Questions to Address

1. What are the key features of the accreditation-government relationship?
2. What major changes, if any, have occurred over time?
3. What is the effect of government regulation on higher education?
4. What are the likely consequences if there were no federal oversight of accreditation?



“What follows is a cautionary tale. It is the story of how voluntary associations, that quintessential American phenomenon, were employed to bring some sort of order to higher education—and to keep government at arm’s length. It is a story of how government came to rely upon these associations, and of how, over time, that reliance assimilated—or seduced—them into government regulation. It ends, roughly a century after it all began, with these originally autonomous associations becoming extensions of the State.”

Matthew W. Finkin

Albert J. Harno Professor of Law, University of Illinois

The Unfolding Tendency in the Federal Relationship to Private Accreditation in Higher Education, 1995

History of Accreditation - Federal Relationship

- Ministerial - Up to 1965
- Quasi-Regulation - 1965 - 1992
- Federal Oversight - 1992 - present

History - Ministerial Phase

- Origins of Accreditation
 - Early and Recurring Themes
 - Struggle over Standards - Institutional Autonomy, Mission, External Measures, Student Achievement
 - Specialized and Professional Accreditation
 - Who Accredits the Accreditors?

History - Ministerial Phase

- U.S. Office of Education
- Early Skirmish - 1911
- Directories and Lists
- Key Assumption - Nationally recognized accrediting agencies readily discernible
- No Regulatory Consequences

History - Quasi-Regulation

- G.I. Bill of 1952, National Defense Education Act of 1958, other legislation
- HEA of 1965
- Money and Value Enter; Regulatory Consequences
- But, Reliance on Recognized Agencies Obviates Federal Control
- New Institutions, New Agencies?
- What is Recognition?

History - Quasi-Regulation

- 1968-69 - OE Accreditation & Institutional Eligibility Staff
- From Reliance to the Public Interest
- Periodic Revisions of Recognition Criteria
 - Public Representatives
 - Ethical Practices at Accredited Institutions
 - Experimentation and Innovation
 - Assessment of Student Achievement
- Complaint and Compliance

History - Federal Oversight

- 1992 Reauthorization
- Soaring Default Rates, Fraud and Abuse, Poor Educational Quality
- Battles at National Advisory Committee
- Reliance on Accreditation Challenged
 - Views of Accrediting Agencies
 - House Bill - Title IV and Accreditation Decoupled
 - Senate "Compromise" Prevails
- SPREs

History - Federal Oversight

- Themes
 - Gatekeeping- Program Integrity Triad
 - Increased Oversight Responsibilities, Monitoring, Effectiveness
 - Overlap, Coordination, Integration
 - Primary Role of USDE, Federal Requirements
- Neg Reg - 1993-94
 - Implementation of Themes
 - Pushing the Envelope - e.g., Content of Standards, Substantive Changes, Information sharing, Prebaccalaureate Vocational Education
 - USDE v. Accreditors
 - Failure of Neg Reg
 - Final Regulations
 - Reconstitution of NACIQI

History - Federal Oversight

- 1998 Reauthorization - Fine Tuning
 - Student Achievement Emphasized
 - Distance Education Arrives
 - From Approval Back to Recognition, Removal of Unannounced Visit Requirement
 - But, 12-Month Rule
- Neg Reg - 1999
 - Consensus Achieved
 - Additional Clarifications - Validity and Reliability, Site Visits

History - Federal Oversight

- Spellings Commission and Neg Reg - 2007
 - Statutory Authority and Framework
 - Due Process, Substantive Change, Monitoring, Recognition Process, Public Disclosure
 - Student Achievement
 - Transfer of Credit
 - No Consensus; Congressional Intervention
- 2008 Reauthorization

Accrediting Agency Recognition 101

- Structure
- Standards
- Procedures
- Recognition Process

Accrediting Agency Recognition 101

- Structure
 - Link to Title IV or Other Federal Programs
 - Separate and Independent of Related Trade or Professional Associations - 4 Indicia, including Public Members
 - Administrative and Fiscal Capabilities - Includes Conflict of Interest Controls

Accrediting Agency Recognition 101

- Standards
 - 10 Subjects
 - Primacy of Student Achievement - Quantitative Measures
 - Title IV Compliance
 - What is a “reasonable” standard?
 - Elaboration?

Accrediting Agency Recognition 101

- Procedures
 - Monitoring
 - Enforcement - Time Frames for Compliance
 - Substantive Change
 - Branching, Change of Ownership, Teachouts
 - Public Disclosure
 - Complaints
 - "Due Process"
 - Information Sharing with ED, States, Other Accrediting Agencies

Accrediting Agency Recognition 101

- Recognition process
 - Accrediting the Accreditors, Plus
 - NACIQI - Independent Evaluation, Public Hearings
 - Third Party Comments
 - Adverse Recommendations and Appeals
 - LS&Ts

Key Features

- Cog in Title IV System
- Another Regulator
- Provider of Accountability - Student Achievement, Institutional Integrity
- USDE as Overseer - Few Checks Except Political

The Future

- 2008 Reauthorization
 - Student Achievement Standard Modified
 - No Regulatory Elaboration of Standards
 - Due Process elaborated
 - Transfer of Credit
 - Distance Education
 - NACIQI Reconstituted, Operation Specified
- Neg Reg -- 2009

The Future

- Retrenchment from Federal Oversight
- Risks to Accreditation
 - Dependency on Gatekeeping Role
 - \$83 Billion - Demands for Accountability
 - 50+ Years of History - Persistent Themes of Need for Quality Assurance re Student Achievement, Institutional Integrity, Stewardship of Public Funding
 - Concerns re Economic Competitiveness, Workforce Preparation, Changing Student Demographics and Characteristics Will Accentuate
 - What Does Accreditation Tell Public, Policymakers?

The Future

- Question is Not Regulation v. Deregulation, But What Kind of Regulation
- If Not Accreditation



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