
ENVIRONMENTAL SCANNING REPORT

**Higher Education Accreditation
and Legislation**

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Overview

Colleges and universities in the United States and abroad are governed by a number of regulatory practices designed to ensure their quality and effectiveness. Internally, institutions regulate themselves through practices of governance and policy development, and with assessment, planning, and institutional effectiveness processes. External regulation includes federal and state legislative requirements and policy, and institutional and programmatic accreditation.

Executive Summary

Analysis of recent trends in higher education accreditation and legislation indicate that

- Higher education has traditionally been, through the accreditation process, a self-regulating system. The role of institutional accreditation is changing as federal agencies attempt to address concerns with the accreditation process, and discuss the use of this system as a means to increase regulation via setting of new standards and reporting requirements. Academic institutions are also seeing increased requirements in the area of programmatic accreditation.
- Federal engagement in higher education will likely increase. Both the legislature and government agencies have expressed increasing concern with the ways in which higher education is regulated, in particular the ways in which the academy meets demands for accountability, affordability, and access.
- Higher education is experiencing growing calls for regulation and oversight on the part of federal agencies, including increased reporting requirements which may be a particular challenge. The ongoing reauthorization of the Higher Education Act could yield other legislative requirements, and pending student aid legislation will impact colleges. The outcomes of the 2008 presidential election may also considerably impact discussions about higher education at the federal and state levels.
- Recent legal queries into the relationships between college and university financial aid systems and lenders could lead to significant changes in how financial aid is managed in the United States.

Accreditation in Higher Education

Background

Accreditation is a “process of external quality review created and used by higher education to scrutinize colleges, universities, and programs for quality assurance and quality improvement” (Eaton 2006). Another definition describes some of the key attributes of accreditation: it is a “voluntary process conducted by peers via nongovernmental agencies...to attempt on a periodic basis to hold one another accountable to achieve stated appropriate institutional or program goals [and]...to assess the extent to which the institution or program meets established standards” (Kells 1994). The accreditation of institutions of higher education began in the late nineteenth century as the number and variety of institutions in the nation began to grow. Early accreditation efforts sought to

address issues such as the “transfer of educational credit between institutions, admission to graduate schools, and the determination of equivalent degrees between the United States and Germany,” and to describe differences in types of institutions (Alstete v); later efforts included the development of a common understanding and administration of admission standards (Alstete 7). Accreditation was developed by colleges and universities as a way to regulate themselves, rather than be regulated by oversight from governmental agencies.

Accreditation in the early twenty-first century has evolved significantly from these early years as the number and diversity of higher education institutions continues to grow, but its core mission remains the same – to ensure the quality of the nation’s colleges and universities: “historically, accreditation has been the main mechanism for ensuring accountability and improvement in higher education...accreditation relies on a set of minimum standards for all institutions and then allows institutions to develop their own set of criteria against which they will be judged” (Alstete xi). Scholars note that regional accreditation principles reflect the values of the academy which produced it; “regional accreditation is grounded in traditional academic values of self-regulation, academic integrity, and collective responsibility (Ewell 28). According to Council for Higher Education Accreditation (CHEA) [2006], “U.S. accreditation is built upon a core set of traditional academic values and beliefs:

- Higher education institutions have primary responsibility for academic quality; colleges and universities are the leaders and the key sources of authority in academic matters
- Institutional mission is central to judgments of academic quality
- Institutional autonomy is essential to sustaining and enhancing academic quality
- Academic freedom flourishes in an environment of academic leadership of institutions
- The higher education enterprise and our society thrive on decentralization and diversity of institutional purpose and mission

In addition to its role in assuring quality, accreditation in the United States serves several other important roles: assuring access to federal and state funds, engendering private sector confidence, and easing transfer (Eaton 5). Put simply, to access federal and state funds, such as student financial aid, an institution must be accredited. CHEA describes accreditation’s value in the private sector and in easing transfer of credits: “accreditation status of an institution or program is important to employers when evaluating credentials of job applicants and when deciding to provide tuition support for current employees seeking additional education. Private individuals and foundations look for evidence of accreditation when making decisions about private giving [in terms of transfer of credits], “although accreditation is but one among several factors taken into account by receiving institutions, it is viewed carefully and is considered an important indicator of quality” (Eaton 5).

Structure & Process

Accreditation is a voluntary process that takes place at both institutional and programmatic levels. Institutional accreditation – which reviews the institution as a whole – is granted by one of six regional accrediting bodies in the nation. These bodies are:

- Middle States Association of Colleges and Schools, Middle States Commission on Higher Education¹
- New England Association of Schools and Colleges: (1) Commission on Institutions of Higher Education and (2) Commission on Technical and Career Institutions
- North Central Association of Colleges and Schools, The Higher Learning Commission
- Northwest Commission on Colleges and Universities
- Southern Association of Colleges and Schools Commission on Colleges
- Western Association of Schools and Colleges: (1) Accrediting Commission for Community and Junior Colleges and (2) Accrediting Commission for Senior Colleges and Universities

These groups are member-based organizations. Institutional accrediting agencies also exist for faith-based institutions and private, for-profit, career-based institutions. Though specific standards for each of the regional accrediting bodies differ, there are many general areas on which they agree. Institutions must exhibit evidence of quality, including student achievement, faculty, services and academic support for students, and financial capacity (Fact Sheet #5, 1). Typically, the accreditation process follows several key steps: self study, peer review, site visit, judgment by the accrediting organization, and periodic external review (Eaton 6-7). Accreditation is an ongoing process, “the initial earning of accreditation is not entry to indefinite accreditation status. Periodic review is a fact of life for accredited institutions and programs” (Eaton 6).

Programmatic accreditation is that which takes place at the academic program level. This specialized accreditation evaluates “individual programs for compliance with quantitative program-specific standards that are independent of institutional mission and goals” (Baker 4). Generally, programmatic accreditation follows many of the same steps of institutional accreditation.

Accreditors themselves must undergo periodic internal review and are subject to periodic external review in order to achieve *recognition*. The recognition process is carried out by one of several bodies: another private organization, the Council for Higher Education Accreditation (CHEA), or the U.S. Department of Education. CHEA describes *recognition* standards that accreditors must demonstrate. They must advance academic quality, demonstrate accountability, encourage purposeful and needed improvement, employ appropriate and fair procedures in decision making, continually reassess accreditation practices, and sustain fiscal stability (Eaton 8).

Concerns & Challenges in Accreditation

Accreditation in higher education is facing challenges both from changes in the higher education landscape and increasing public and governmental scrutiny. Growth in online programming and international programming have forced accreditors to adapt their standards; accreditors are also working to help the public scrutinize institutions that may in fact be diploma mills. Growing emphasis on assessment in education, moving from the No Child Left Behind Act at the K-12 level to federal demands for increased accountability in higher education, has many practical implications for the accreditation process and higher education institutions practices. Federal dialogue about the role

¹ The University of Scranton’s regional accreditor is the Middle States Association of Colleges and Schools. For specific standards of accreditation, see: *Characteristics of Excellence in Higher Education (2006)*. Available from PAIRO.

of accreditation remains a key issue for the U.S. Department of Education, in particular the Department's *Commission on the Future of Higher Education*.

Pressure has been put on the accreditation industry to look critically at its own methods. The accreditation process has been criticized over the years with respect to its "cost, cumbersome structure, lack of in-depth evaluation for many institutions involved, unfairness of standards, and the perception that it is primarily self-serving" (Ewell, 1994, 2001; Dill, 1998). Alstete describes other concerns, including the "cost in personnel time" required of institutions, and that the "accreditation process is also sometimes seen as discouraging innovation and ignoring an institution's distinctive goals and markets served" (18). An issue paper prepared for the U.S. Secretary of Education's *Commission on the Future of Higher Education* describes some broad concerns related to accreditation:

- Global competitiveness and quality – *concerns with the ability of our higher education system to keep pace with competitors and aggressively maintain high quality standards*
- Accountability – *growing demand for public accountability places various pressures on accreditation, particularly the demand for evidence of assessment outcomes and other indicators of success*
- Changing structure of higher education – *new types of educational institutions and changing delivery methods, review of evidence required by changing accreditation standards may be beyond the ability and expertise of the traditional volunteer-based peer review process to effectively review*
- Transparency – *some view the accreditation process as complex and difficult to understand*
- Value and affordability – *institutions face growing pressure to increase affordability, resources are shrinking, costs are rising; accreditation is one of these costs, and accreditors are viewed by some as a way to protect institutions from public scrutiny*

Recent trends in federal oversight of education may pose a significant challenge to the independent role of accreditation in higher education: "given the increasingly strident accountability pressures at both the state and federal level, accreditation is the only buffer between institutional autonomy and government control" (Wergin 2005). Recent proposals by the U.S. Department of Education, asserting the value of higher education, advise some changes to the accreditation process. Regarding college cost and affordability, the report² of the *Commission on the Future of Higher Education* recommends that accreditation agencies be required to "act in a more timely manner to accredit new institutions and new programs at existing institutions, while focusing on results and quality rather than dictating, for example, processes, inputs, and governance, which perpetuates current models and impedes innovation" (*A Test of Leadership* 21).

The Commission's report also suggests the "creation of a consumer-friendly information database on higher education with useful, reliable information on institutions, coupled with a search engine to enable students, parents, policymakers and others to weigh and rank comparative institutional performance" (21). Likely building on the existing IPEDS data collection and dissemination databases, such data collection will have a considerable impact on the amount and kind of information institutions will be required to gather, monitor, and report. Other groups are increasing data collection and dissemination as well. In September 2007, the National Association of Independent Colleges and Universities (NAICU) launched its U-CAN Consumer Information Project, a database designed to supply prospective students with information about colleges and universities

² Commonly referred to as the Spellings report.

(<http://www.ucas-network.org/>). The Spellings report emphasizes the need for institutions to enhance their student learning outcomes assessment functions, and lays the groundwork for an increased role in monitoring these activities and their results through accreditation and other functions.

A recent American Council on Education (ACE) brief expresses concern related to these proposed regulations of the higher education, namely that the proposed regulations would drive higher education toward a one-size fits all model of academic quality; the Department of Education will assume a greater role in dictating academic policies; the proposed regulations are vague in critical areas, leaving them open to Department of Education interpretation; and that the accreditation process would move from an open and collegial activity to a closed/adversarial process aimed at ensuring campuses are complying with external mandates (2007). Given pressures for increasing public accountability for higher education, it is likely that at least some of these recommendations and others suggested by the *Commission on the Future of Higher Education* will impact current accreditation processes, and may open the door to greater regulation of higher education at the federal and state levels.

Legislation in Higher Education

Federal Legislation

Several key historical policy movements, including the Morrill Land-Grant act of the 19th century, the GI Bill of the twentieth century, and the development of the community college enterprise, have had a major impact on the structure of higher education as we know it. These “major phases in the growth of higher education have extended access to new groups in society. It is in the past several decades, however, that equal opportunity has become a centerpiece of public policy toward higher education. A principal expression of this goal has been the growth of need-based student assistance” (Gladieux). It is through this avenue the government has increasingly leveraged its interests through conversations of affordability and access.

Traditionally, higher education has been viewed as an area of state (as opposed to federal) responsibility, as “historically, states have always provided the legal framework within both public and private institutions operat[e]” (McGuinness 200); however, each state has its own distinct system for regarding higher education. But the federal government also wields a wide share of influence: “The framers of the U.S. Constitution lodged no specific responsibility for education with the national government; yet, the federal influence on American colleges and universities has been enduring and pervasive. From the sponsorship of land-grant colleges in the nineteenth century to the underwriting of student loans and university-based research and development in the twentieth century, the federal government has actively and extensively supported higher education to serve a variety of national purposes” (Gladieux et al 163). By creating and monitoring policy related to the disbursement of funds for both research activities and student aid, both federal and state governments have a strong, if indirect, say in how the overall academic enterprise functions: “states retain the fundamental responsibility for higher education, primarily through provision of operating support for public systems...The federal role is to provide particular kinds of support to meet perceived national objectives, generally without distinguishing between public and nonpublic higher education” (166).

Federal aid generally goes directly to institutions, bypassing state funnels, as was more common practice in the nineteenth century. The federal area “tends to emphasize a strict separation between the government’s role as ‘overseer’ of the ‘public interest’ and the institutional role of providing services” (McGuinness 200), while states play the role of overseer and service provider (200). Most states require some kind of performance reporting mechanism to be in place, and data collected is often directly tied to funding and budgeting decisions. Recent calls for increased data collection (above and beyond the current government-mandated IPEDS data collection requirement) at the federal level may be a sign that the federal government is moving in this direction.

For most of its life span, the higher education community in the United States has itself been “the primary adjudicator of quality in American colleges and universities. More often than not, judgments relating to quality were informed intuitive perceptions of institutional reputation and resources rather than from explicit evidence of achievement of intentions and implied outcomes. More recently, however, higher education’s role as sole arbiter of institutional effectiveness has eroded, due, in part, to a decrease in public confidence regarding the ability of colleges and universities to authenticate the achievement of results” (Baker 3). Higher education is viewed as an increasingly insular community, one that is perceived to be reluctant to shine a critical light on itself; institutions and their accrediting commissions are called on to defend that “the tradition of peer review accurately and fairly assesses whether the public is getting its money’s worth – a hard sell to skeptics who see ‘peer review’ as little more than an attempt by insiders to keep the academy safe from public scrutiny” (Wergin 35).

The role of governmental oversight of higher education appears to be changing in several ways. One critical piece of legislation before Congress is the Higher Education Act (HEA), a massive law first enacted in 1965 that regulates many aspect of U.S. higher education, including student aid. The law has been extended several times in recent years through various bills (1992, 1998, 2003, 2005), and the Act’s reauthorization continues to take incremental steps. In September 2007, the President signed The College Cost Reduction and Access Act into law; according to summary from the American Council on Education, “the legislation cuts subsidies to lenders who participate in the federal student loan program and uses the savings to boost Pell Grants, cut the interest rate on student loans and expand repayment options for students...the bill makes the largest changes to the FFEL program since its establishment [in 1965]” (2007). In November 2007, the U.S. House of Representatives released a bill to extent the Act. Some key elements in the legislation address proposed controls and reporting requirements regarding college costs and pricing, and accreditation issues.

Wergin describes the federal government’s increasing scrutiny of accreditation via its continual revisiting of the HEA: “Congress has been increasingly assertive over the years in specifying what accreditation standards should be. The 1992 extension of the Higher Education Act contained a checklist of items that must be included in any evaluation, such as mission, curriculum, resources, and so forth. Six years later the extension focused on the need for greater attention to student learning outcomes” (35). Other key issues in the HEA debate include access and affordability, topics also being debated under the *Commission on the Future of Higher Education*, a panel charged in 2005 by U.S. Secretary of Education Margaret Spellings to focus on four key areas in higher education: accessibility, affordability, accountability, and quality³ (Schray 1). These themes have played a

³ A series of issue papers were commissioned by the chairman of the Commission on the Future of Education on a variety of higher education issues. These papers are available at <http://www.ed.gov/about/bdscomm/list/hiedfuture/reports.html>

recurring role in dialogue about the state of U.S. higher education for the last several decades. Now with momentum from significant changes to education policy as evidenced by the *No Child* act, these themes may see increased policy discussions than in previous years.

Affordability and access are key themes in current federal legislation debates, including those taking place within the 2008 presidential campaigns. Democratic frontrunners, including Senators Hillary Clinton and Barack Obama and former senator John Edwards, are marshalling Democrats behind access and affordability reform (Jaschik). One particular target is the student loan industry, which has been under pressure due to growing concerns over its complex, "Byzantine" nature (Scott 42), and ethics issues. In recent months, federal review of the student loan industry has been strong, led by U.S. Senator Andrew Cuomo of New York. Some college and university student loan officials have lost their jobs as a result of this inquiry, amidst claims that they have accepted payments or gifts from student loan companies (Paley & Birnbaum). The Spellings' Commission proposes widespread changes to the lending industry, including the consolidation of programs and the replacement of the lengthy FAFSA form with a simpler application (*A Test of Leadership* 3).

Recent Department of Education communications describe the agency's continued focus on performance standards for higher education, in particular, evidence describing how well institutions are meeting student learning outcomes. Accrediting bodies themselves also emphasize the importance of this kind of assessment throughout their accreditation standards, and have voiced collective concerns about the relationship between assessment and accreditation, including the perceived low degree to which institutions have "internalized the importance of assessing student learning outcomes," and the extent to which accreditors can effectively "[evaluate] the quality of student learning itself" (Wergin 2005). Forming an appropriate and effective role for addressing the assessment of student learning in the accreditation process is an important issue for both groups.

Some critics of the Spellings Commission assert that the governmental push for accountability in higher education amounts essentially to its "federalization...that by 'accountable' [Commission leader Charles Miller] really means 'less autonomous' and 'more easily regulated by the federal government.'" [Miller's] critique of the accrediting system, for example, conjures a 'solution' that replaces self-policing with federal oversight" (Bowen). Other national groups, such as the Modern Language Association and the Association of American Colleges and Universities, criticized the report. Regardless of roadblocks the Commission faces in implementing its findings, it does not appear that they plan to soften their demands related to accreditation reform (Basken). But they may not need to. One year after the report was released, some are acknowledging that higher education has been "keenly aware for some time of virtually all the deficiencies identified by the Spellings commission" (O'Neil). And higher education institutions seem to be "recognizing common ground;" standardized testing is on the rise, Web sites such as the U-CAN project are posting performance-related data, and the passing of the Cost Reduction and Access Act is pushing legislation to address concerns regarding financial aid (Basken, September 2007). Part of the proposed HEA reauthorization suggests the creation of a college tuition watch list, which is designed to identify institutions who raise their tuition above certain averages (Jaschik 11/15/2007).

State Legislation

State governments influence and regulate higher education in several ways, primarily, as with their federal counterpart through funding. Public institutions which receive direct support from their respective states, also experience heightened regulation. But it is clear that this relationship is changing. As competition for public dollars increases, colleges and universities and legislators are engaging in dialogues about privatization – institutions seem satisfied to accept less funding, if they are granted more autonomy. Though some states indicate that appropriations have remained strong for higher education, increasing college costs are quickly outpacing funding dollars. As these and other challenges grow, they are “compounded by the perceived instability and inconsistency in the states’ governing structures, leadership, and mandates. Already-tight budget cycles, shortened further by legislative logjams, make rational planning on campuses challenging...continual political changes lead to repeated policy shifts or no clear direction” (Rewriting the Rules, 3). The academy’s perceived resistance to change in face of increasing demands for public accountability and changing educational needs may yield to greater frustration with higher education, which could translate to slow response to higher education issues on the part of state legislatures.

A recent survey of legislators from all fifty states confirm that states are paying close attention to the same focal points as the federal administration: access, affordability, and accountability. Legislators view higher education as a system with great social benefits, “contributing to the economic well being of their citizens and their states” (*Challenges & Opportunities* 9). Legislators identify funding as the key challenge to higher education agendas in their states (v), and indicate that higher education administrators themselves are their first choice resource for information to inform policy decisions; lobbyists and voters are less likely sought for information (5).

In the commonwealth of Pennsylvania, the Department of Education (PDE) holds authority over degree offerings by colleges, universities, and seminaries. The Department also has some responsibilities for approvals of new institutions and various aspects of institutional change, such as changes to mission or expansion. The state has responsibility for the administration of the Act 101 program, which supports some institutions through dollars earmarked for certain student services programs. Public and community colleges experience more extensive oversight than do private institutions, largely due to their closer relationship to state funding processes.

Key Legislation ⁴

The Campus Legal Information Clearinghouse summarizes the large number of laws affecting colleges and universities⁵. Among these, the Higher Education Act governs the distribution of student loans and other higher education policies; other pieces of legislation with extensive impact on higher education include the Health Insurance Portability and Accountability Act (HIPAA), the Family Education Rights and Privacy Act (FERPA), the Americans with Disabilities Act (ADA), the Cleary Act, and the USA PATRIOT Act. A brief overview of each of these laws:

- FERPA: protects the confidentiality of student and alumni education records (with exceptions) and mandates student access to their own records (with exceptions). Any

⁴ Although it does not directly apply to non profit higher education institutions, the Sarbanes-Oxley Act (SOX) has encouraged many to adapt their accounting and auditing standards and practices.

⁵ See <http://counsel.cua.edu/fedlaw/A-Z.cfm>

institution that receives federal funds must adhere to FERPA. Recently, college and university interpretations of FERPA have come under scrutiny in the wake of the fatal shootings at Virginia Tech (Leavitt et al).

- HIPAA: outlines privacy standards related to health insurance coverage. Institutions have designed internal policies governing appropriate access to and use of records; those with academic programs in health care fields need to take steps to ensure students' familiarity with the law.
- ADA: prohibits discrimination on the basis of disability for employment, federal services and programs, commercial facilities, public facilities, transportation, and communication.
- Clery Act: The Clery Act, also known as the Awareness and Campus Security Act of 1990 requires public and private institutions who accept federal aid to disclose security and crime data and information on an annual basis. The act also requires schools to maintain a public crime log and to release timely warnings when a threat is perceived to students and employees. Current pending legislation addresses amendments to this act that will develop emergency response and disclosure, in specific circumstances, of certain student information.
- USA PATRIOT Act: enhances the ability of authorities to access previously private information, including educational records kept by colleges and universities, and library, internet, and telephone records.

Conclusion

Higher education is perhaps subject to greater public scrutiny now than ever before in its history. Demands for greater accountability are driving changes in higher education legislation and accreditation activities, increasing the role of student outcomes assessment and its data partner, performance reporting. Recent focus on student access has yielded significant changes to the financial aid landscape, and dialogue about the oversight of higher education continues.

Resources:

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