

THE
RESPONSIBILITIES
OF
INDEPENDENCE

—◆—
**Appropriate Accountability
through
Self-Regulation**
—◆—

Final Report of the NAICU Task Force
on Appropriate Accountability:
Regulations, Accreditation, and Assessment
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National Association of Independent Colleges and Universities

NAICU Task Force on Appropriate Accountability: Regulations, Accreditation, and Assessment

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Dear Colleague:

There is an alarming trend toward unprecedented and unwarranted government oversight and control of higher education. This trend is particularly apparent in the regulations that have been promulgated to implement the 1992 amendments to the Higher Education Act (HEA). The potential for increased federalization of higher education—a *de facto* Ministry of Education—is greater than ever.

To address this development, the NAICU Board of Directors established the Task Force on Appropriate Accountability at its November 1993 meeting. The task force was asked to recommend policy statements and to suggest strategies to achieve appropriate forms of accountability for independent colleges and universities, through influence on legislation, regulations, and other public policy initiatives. Philip H. Jordan, Jr., President of Kenyon College chaired the task force, and Carol Fuller of NIICU provided lead staff support.

Attached is the report from that task force entitled "The Responsibilities of Independence: Appropriate Accountability through Self-Regulation." Its purpose is to lay out clearly for ourselves and our public audiences the nature of the independent sector of higher education, the level of regulation already imposed on us, and the basis upon which appropriate accountability can be defined.

This report asserts that the challenge for higher education is to find ways to meet legislative needs for public information while protecting institutional diversity and autonomy. Three principles of appropriate accountability are defined: self-governance, legal and fiscal responsibility, and peer review.

The task force report also provides specific recommendations for action by NAICU, the federal government, state governments, other policy makers, accrediting bodies, and finally and fundamentally, recommendations for colleges and universities.

We have an opportunity to reshape the terms of higher education legislation and regulations as they have developed over the last twenty-five years. I believe that "The Responsibilities of Independence: Appropriate Accountability through Self-Regulation," provides a framework for both theory and action in support of independent higher education in America—its preservation, its protection, and its enhancement. I urge you to join NAICU in the implementation of this very important task force report.

Sincerely

David L. Warren
President

A New Era of Relations between Government and Higher Education

The 1990s are unfolding as a new era in relations among the federal government, state governments, and American colleges and universities. What began as a decade of unmatched international success and mutual support has become a time of uncertainty and suspicion among partners. This has resulted in unprecedented attempts to achieve government oversight and control that threaten the strength and vitality of American higher education.

The strength of American higher education results directly from its diversity. Collectively, the more than 3,000 colleges and universities serve the needs of society by providing educational opportunities for an increasingly diverse population, as well as expanding scientific and technical knowledge, and direct service to local communities and regions.

For independent higher education, the stakes are as high as they were when Daniel Webster made the case for autonomy before the Supreme Court of 1819 in *The Trustees of Dartmouth College v. Woodward*. The majority opinion in that case clearly defined the unique autonomy private colleges and universities have in their relations with government.

This autonomy has been supported by public confidence in higher education and its tradition of self-regulation.

What Brought about This New, Adversarial Relationship?

The call for greater disclosure, government oversight, and control of higher education is, in part, a response to increasing concerns and frustrations resulting from significant structural shifts in our society. Public support for higher education continues to be high, but there is increasing uncertainty about its role in our rapidly changing society. Ironically, the success of American higher education has played a major role in this changed perception.

Americans now view higher education as vital to meeting many of society's needs. Due to sweeping advances in technology, the education offered by the nation's colleges and universities is an essential preparation for many careers in an information-intensive world. A college degree has become a requirement for moving up the economic ladder.

The economic downturn at the close of the 1980s led politicians to worry about economic competitiveness and effective use of scarce resources. Families worried about jobs for the future. Rising college costs stimulated concerns about access, and questions about faculty productivity and undergraduate education.

Fraud and Abuse

Well-publicized cases of fraud and abuse involving federal and state funds, and perceived inadequacies of the system of accreditation, have exacerbated these growing public concerns about higher education. High student loan defaults, and abuses of the Pell Grant program—though largely confined to the for-profit sector of postsecondary education—created pressure for greater oversight and control of all sectors, including nonprofit independent and public colleges and universities. Of 303 postsecondary institutions identified by the U.S. Department of Education with student loan default rates of 30 percent or higher for 1989, 1990, and 1991, 278 (92 percent) were proprietary, seventeen were publically controlled, and only eight were independent institutions. The regulations issued April 29, 1994, do not adequately distinguish between the collegiate sector and those other postsecondary institutions.

Expanded Government Regulation

Because of the level of federal support for higher education, Congress felt the need to bring the sector under tighter control. Legislators said the current processes for accountability in higher education were not providing students and families with important information about colleges and universities. They demanded assurances that higher education is producing adequate benefits for students and society, a reduction in student loan defaults, and curbs on fraud and abuse.

Three government initiatives have been developed in response to these concerns.

- The 1992 Higher Education Amendments, particularly Part H (Program Integrity), seek greater fiscal responsibility as well as quality assurance for institutions participating in federal student financial aid programs. This legislation imposes new regulation of accreditation, increased state oversight, and more exacting criteria for federal eligibility and certification.
- In an attempt to provide important information to students and their families, the Student Right-to-Know and Campus Security Act has mandated disclosure of graduation rate data, crime statistics, and campus security policies.
- The National Education Goals Panel has adopted a resolution calling for a national sample-based collegiate assessment system to provide information for monitoring national progress toward the National Education Goals.

The concerns that prompted these initiatives are legitimate, but federal regulations that fail to target these specific concerns will be not only ineffective, but counterproductive.

What Is at Stake? Diversity, Independence, and Excellence

Increased regulation is pushing higher education toward centralized control, standardization, and uniformity. Federal and state governments are right to expect that higher education will be vigilant against fraud and abuse, and will provide reliable information for student enrollment decisions. The issue is how public accountability can be improved in a way that allows higher education to meet the challenge of serving a nation undergoing dramatic economic, demographic, and technological changes. Imposing a common template on all institutions through excessively detailed and intrusive regulations will impede progress toward quality, integrity, access, and opportunity in higher education.

An Assault on Institutional Diversity

While many refer to a national “system” of higher education, American higher education is strong precisely because it is *not* a centrally controlled, uniform system. It is strong because the individual institutions emphasize different functions and complement each other by meeting different needs.

The diversity of American colleges and universities collectively makes possible the full range of contributions to society: educating citizens; preparing a work force; increasing scientific and technical knowledge; and enhancing economic productivity. This strength in diversity also allows advancement of scholarly understanding of cultural heritages, insights into social problems, and a setting in which to raise religious, moral, and ethical questions. Educational excellence thrives amid diversity when each college and university clearly defines its own distinctive mission and is then responsible for fulfilling that mission.

The Fundamental Need for Independence

An appropriate model of accountability must recognize the unique legal position of independent colleges and universities. Government authority does not reach into the affairs of independent colleges and universities as it does with public colleges and universities. The distinction between the two sectors must be maintained to preserve the best of higher education in America. The independent sector, because it is free of central control and monolithic purpose, has the flexibility necessary to innovate and to offer distinctive answers to the diverse needs of our population.

The history of independent colleges and universities is a story of myriad individual initiatives, innovation, and experimentation. It is the product of thousands of independent decisions responding to needs and opportunities. These institutions include traditional liberal arts colleges, major research universities, junior colleges, and schools of law, medicine, engineering, business, and other professions. They include church- and faith-related colleges and universities, historically black colleges and universities, and women’s colleges. Their enrollment

ranges from fewer than 100 to more than 30,000 students. These colleges and universities provide students with a choice of size, location, academic program, and institutional mission. Thus they are able to provide a match for each student's educational, social, and cultural needs.

The freedom of students to choose among this diversity of colleges and universities is the key to keeping higher education strong. Student choice is the most demanding, and the most important, regulator for higher education.

There Is a Better Way: Appropriate Accountability

The challenge for higher education is to find ways to meet legitimate needs for public information while preserving and enhancing institutional diversity and autonomy. This will require reducing the *perceived* need for more government oversight and control, by improving the effectiveness of the traditional processes of self-regulation, and exploring the changes that may be needed to achieve appropriate public accountability. A significant part of this task will be to enhance public understanding of higher education: its central values, its contributions to society, and its system of self-regulation.

Audiences for Appropriate Accountability

An appropriate model for accountability will meet the needs of students and their families, the public, public officials, and institutions of higher education, including the distinctive needs of independent colleges and universities. We must clearly identify the different types of information needed to evaluate the effectiveness of federal programs, the progress of higher education, and the status of individual institutions. The appropriate responsibilities of institutions, accrediting agencies, state governments, and the federal government must be defined, taking into account which agent can best address specific issues.

Students and their families need:

- access to reliable information for meaningful choice among colleges and universities
- access through institutional, federal, and state financial aid programs to the full range of institutions
- standards for health and safety

The public needs:

- clear information about higher education and its self-regulatory mechanisms
- information about the benefits of higher education to individuals and to society

Public officials need:

- compliance with local, state, and federal laws
- accounting for proper use of public funds
- simple, clearly targeted, enforceable mechanisms to control fraud and abuse
- national or state sample-based information about the status and progress of the various sectors of higher education to evaluate how well government programs are accomplishing their objectives

Higher education needs:

- an accreditation system that ensures quality, promotes improvement, and provides appropriate public information
- academic freedom to fulfill basic functions of teaching and learning
- freedom from excessive and ineffective regulations and reporting requirements that divert resources and distort the operation of institutions
- incentives and support for innovation and sound management
- a relationship with the federal government based on partnership, cooperation, and shared goals

Independent colleges and universities need:

- recognition and support for the integrity of independence to preserve the diversity that is the source of the unequalled strength of U.S. higher education
- recognition and support for the responsibility of institutional boards of trustees to define missions, develop policy, manage resources, and govern the institution

Principles of Appropriate Accountability

The demands for accountability must be balanced by an equal commitment to maintain the integrity, enhance the diversity and promote the vitality of the rich array of colleges and universities in both the independent and the public sectors of higher education. Appropriate accountability is defined in terms of three basic principles.

1. *Self-Governance.* The capacity of higher education to meet the complex, fundamental, and rapidly changing needs of a dynamic society requires the freedom for colleges and universities to define for themselves their mission, clientele, educational philosophy, curriculum, faculty selection policies, assessment strategies, pricing policies and priorities in the allocation of resources. Appropriate accountability respects and protects the freedom and autonomy of the governing boards of colleges and universities to make these policy decisions.

Regulations that impinge upon these essential freedoms compromise the integrity, excellence, and diversity of higher education.

2. *Legal and Fiscal Responsibility.* Those who make the laws and provide public funds for higher education have the right and the responsibility to ensure compliance with the laws, and the proper expenditure of those funds.

Appropriate accountability limits the proper role of local, state, and federal governments to enforce compliance with the laws of that jurisdiction and to develop and enforce those regulations necessary to insure proper expenditure of funds provided to colleges and universities by governmental agencies.

3. *Peer Review.* Judgments about the quality of higher education and about whether the learning resources, personnel, institutional policies and fiscal resources are appropriate to the stated mission of colleges and universities, can be made most wisely by those with expertise and experience in higher education. But they must be made in a way that provides appropriate information about the quality and integrity of higher education to those publics with a legitimate interest in the outcomes of higher education.

The Essential Role of Self-Regulation

Higher education's self-regulatory process relies on a variety of mechanisms. Colleges and universities are responsible for fulfilling their missions and informing students and their families, alumni and friends, donors, foundations, the academy, and their communities (including faith communities). Their boards of trustees have legal responsibility for the best use of resources to achieve each institution's goals and objectives in accordance with its mission.

As higher education institutions, colleges and universities are responsible for their educational, research, and service functions. As corporations licensed by the state, their officers and trustees are responsible for fiscal integrity. As employers, they have particular legal and contractual obligations. They are responsible for the proper use of public funds (most of which are administered by institutions on behalf of the students, who are the direct beneficiaries).

The accreditation process has been the mechanism for judgments about institutional quality. It has been designed to provide standards without standardization. Outcomes are evaluated within the context of mission and the circumstances of each institution. Judgments about quality of diverse institutions requires many indicators and measures, both quantitative and qualitative. The process relies on peer review because evaluations are based on informed judgment, not formulas. In this way, accreditation deals with the complexity of the enterprise. However, its processes and outcomes have been largely invisible to the public, and higher education has been reluctant to apply negative sanctions to problem institutions. Public confidence in accreditation will require better communication about the process and its results. These self-regulatory processes have served higher edu-

cation well. But they have been inward-focused. Higher education institutions, individually and collectively, should look outward as well.

What Must Be Done?

Government and higher education must work together to develop a system of appropriate accountability that responds to legitimate public needs for information while enhancing institutional diversity and creativity. A comprehensive strategy for change will be needed, based on the principles of appropriate accountability: self-governance, legal and fiscal responsibility, and peer review. Each participant in the discussion will play an important role in a comprehensive strategy for change.

The essential ingredients of self-regulation include:

- a strengthened accreditation process that results in appropriate but tough sanctions for institutions that fail to meet appropriate standards
- adequate visibility and accountability to those publics that have an interest in higher education
- a process to ensure appropriate information is available to permit meaningful choice

Recommendations for NAICU

NAICU must play a leadership role in defining and promoting the concept of appropriate accountability. To that end:

- NAICU urges its members to join the NAICU leadership in working to strengthen the accreditation process to develop a process of meaningful self-regulation.
- NAICU urges its member presidents to participate actively in the public policy debates on appropriate accountability, on the basis of the three principles noted above.
- In particular, NAICU institutions should be vigilant in complying with existing laws and regulations, while insisting that federal and state agencies limit their role to ensuring compliance with existing laws and proper expenditures of public funds.
- NAICU urges its members to continue to develop effective institutional assessment programs. We must demonstrate that we see the need for effective assessment strategies, but that effective strategies must be defined by each institution in accordance with its mission.
- NAICU must provide leadership to the higher education community's efforts to address issues of national goals and standards in ways that make it

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clear that NAICU supports high standards, but not approaches to standards that would result in standardization or mandating a national approach to curriculum.

- NAICU will help its members understand the requirements and implications of new federal laws and regulations and develop strategies for responsible compliance.
- NAICU must play a leadership role in educating the media, and influencing public opinion, regarding the essential characteristics of the independent sector of higher education and NAICU's proposals for appropriate accountability.

Recommendations for the Federal Government

- Respect institutional diversity through legislation drafted appropriately for the different sectors of higher education.
- Conduct public debate about Part H of the 1992 Higher Education Amendments.
- Limit new regulations to the scope of the statute, narrowly construed, and reflecting the intent of Congress.
- Correct problems in existing regulations, including lack of organization, overlap, redundancies, and conflicts.
- Reform the regulatory process, to distinguish between procedural controls and monitoring progress toward national goals.
- Implement Presidential Executive Order Number 12866, to “reinvent” government, and review current government procedures.

Recommendations for State Governments

- Use existing legislation effectively to control fraud and abuse.
- Implement the State Postsecondary Review provisions with the least intrusive process, ensuring due process and promoting improvement.
- Reduce overlap and duplicative reporting requirements.
- Support the diversity of colleges and universities. This will promote access, opportunity, and quality.

Recommendations for Other Policymakers

- Adopt an approach to accountability that responds to legitimate needs for information and supports institutional diversity. This approach will delineate appropriate roles for state governments, the federal government, and the process of self-governance.

Recommendations for Accrediting Bodies

- Work with the higher education community to develop a strengthened accreditation process, and accept new areas of responsibility necessary to help meet the needs for public accountability.

Recommendations for Colleges and Universities

- Continue to develop effective self-assessment processes.
- Participate in strengthening self-regulation.

Conclusion

The higher education community has collective and institutional responsibilities for achieving an enhanced system of self-regulation as the core of an appropriate model of accountability.

Institutions have the responsibility to identify their missions and the means by which they will seek to determine how well they are accomplishing their goals. They also have the responsibility to identify their constituencies. By developing ongoing self-study processes to serve the institution's need for information, rather than episodic, externally imposed processes, we can create more meaningful information with less burden.

We must clearly identify the information required for different purposes—students and policymakers need different kinds of information. Students need comparable and meaningful data about individual institutions that must be presented so that they and their families can understand the range of choices available to them. For example, students must know why institutions with different missions and circumstances can be expected to have different graduation rates. Policymakers require aggregate, collective information about the status and progress of higher education. An effective approach to accountability must provide useful information to both of these audiences.

Higher education must demonstrate its collective commitment to access, fiscal responsibility, integrity in its operations, and a continuous focus on academic quality. Strengthening the accreditation process will require collective attention to standards of quality as well as the need to enhance public understanding. We must take responsibility for identifying the appropriate measures of institutional quality and effectiveness, and the appropriate indicators to evaluate the state of higher education and its contributions to society. In doing so, our actions will reflect the title of this document: *The Responsibilities of Independence: Appropriate Accountability through Self-Regulation*.