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Federal Reliance on Voluntary Accreditation: The Power to Recognize as the Power to Regulate

MATTHEW W. FINKIN*

Introduction

Over the past twenty years, the federal government has relied increasingly on the determinations of private voluntary accrediting agencies as a criterion for eligibility for federal funds in a variety of post secondary education programs.¹ That relationship has recently been subject to some criticism. A report funded by the United States Office of Education concerning post secondary occupational education, issued in 1970, concluded that unless the appropriate agencies make "needed changes in administrative structure, broaden representation, and undertake scientific investigation of their standards and evaluation criteria, a consideration of alternatives [to the current system] should not be ruled out."² In a report the following year, HEW Secretary Richardson called on the Commissioner of Education to institute a formal review of accreditation of health personnel programs and alternatives, explicitly including the possibility of establishing a federally chartered corporation to coordinate national accreditation.³ That same year, a Task Force funded by the Ford Foundation (the Newman Commission) reporting to Secretary Richardson, suggested a reduction in federal reliance on private accreditation.⁴ Its draft second report calls for sweeping changes:

We have thus proposed that HEW distinguish eligibility criteria and procedures from accrediting criteria and procedures, to recognize organizations—including accrediting agencies—willing to apply these criteria as opposed to accreditation standards, establish a commission to hear appeals of eligibility denial, and require institutions to publish SEC-type prospec-

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¹ These are discussed *infra passim*.

² C. WARD, THE STATE OF ACCREDITATION AND EVALUATION OF POST SECONDARY OCCUPATIONAL EDUCATION IN THE UNITED STATES 208 (1970).

³ HEW, REPORT ON LICENSURE AND RELATED HEALTH PERSONNEL CREDENTIALING 72 (1971). The report was mandated by the Health Training Improvement Act of 1970, discussed *infra*.

⁴ HEW, REPORT ON HIGHER EDUCATION 66 (1971).

tuses as a form of consumer information. Thus, we seek not to federalize accreditation, but merely to limit the federal involvement.⁵

In the interim, the Office of Education has moved to revise its criteria pursuant to which private accrediting agencies come to be determinants for eligibility⁶ and has funded a study on *Private Accrediting and Public Funding*, conducted by the Brookings Institution.⁷ Although that assessment is due in August, a progress report indicates a tentative conclusion that " 'accreditation' does not serve adequately to protect the educational consumer or to vouch for the financial or educational integrity of all accredited institutions. . . ." ⁸ Firm proposals will doubtless be made.

Noticeably absent in the debate, at least as it has proceeded thus far, and essential to the development of concrete proposals for altering the current system, is some clear understanding of the limits of the authority of the Office of Education under the current statutory network.⁹ Curiously, no serious questions seem to have been raised within the academic community of the authority of the Commissioner of Education to adopt the proposed revisions in criteria currently under discussion nor have any of the proposals suggested the need for legislative consideration with any specificity.¹⁰ Accordingly, this discussion will treat the question of the

⁵ Newman, *A Preview of the Second Newman Report*, 4 CHANGE 28, 33 (1972).

⁶ U.S. To Require Accreditors to Add Public Members, CHRONICLE OF HIGHER EDUCATION, 2 (October 2, 1972).

⁷ BROOKINGS INSTITUTION PRIVATE ACCREDITING AND PUBLIC FUNDING, FACT SHEET ON A 1972-73 STUDY (December 8, 1972).

⁸ ORLANDS, STUDY OF ACCREDITATION AND PUBLIC FUNDING, FIRST QUARTERLY REPORT 5 (October, 1972).

⁹ "Network" is chosen in lieu of the more customary "framework" or "scheme" for as will appear subsequently a word bearing a sufficiently labyrinthian connotation is essential.

¹⁰ Two staff members of the National Commission on Accrediting have pointed out that the statutory basis seems limited and that further involvement "appears to be based entirely on administrative decision." Dickey & Miller, *Federal Involvement in Nongovernmental Accreditation*, 53 EDUC. REC. 138, 140 (1972). This is reiterated in F. DICKEY & J. MILLER, A CURRENT PERSPECTIVE ON ACCREDITATION 51 (1972). In neither instance is the matter pursued. Harold Seidman points out that the federal role cannot transcend its current statutory authority and that any "efforts by the office [of Education] to expand its role would be subject to challenge on legal and constitutional grounds." Seidman, *Accreditation of Post Secondary Education: Problems in Organization*, in STUDY OF ACCREDITATION IN SELECTED HEALTH EDUCATIONAL PROGRAMS; PART I—STAFF WORKING PAPERS F-1, F-7 (1971). He does not, however, explore the limits of that authority. An Advisory Committee to the National Commission on Accrediting, funded by the Carnegie Corporation, made firm recommendations for Commission action covering the Federal involvement including an exploration of "the constitutionality of use by federal agencies of accreditation by a voluntary agency as a basis for financial support to colleges and universities." THE ROLE AND FUNCTION OF THE NATIONAL COMMISSION ON ACCREDITING 5 (1966). No other issue of the limits of current authority was discussed. Indeed, the Advisory Committee recommended a more expansive role for the National Commission in the decisions of federal agencies. *Id.* Finally, the Executive Director of the Association of American Law Schools has observed that:

... the Office of Education has begun to tighten its procedures in deciding whether or not to add an accrediting agency to its list. Here, we find the Office of Education, in the

government's current authority. Given the breadth of the statutory language concerned, this analysis must perforce rely on legislative intent to the extent discernable as well as on an institutional analysis of the respective roles of the legislative and executive branches in the light of the criticisms leveled at the accreditation system. It would be helpful prior to the requisite emersion in the skein to have some brief acquaintance with the structure and functions of voluntary accreditation.

Structure

There are two types of accreditation: institutional and specialized or program.¹¹ The former is accorded by six regional associations of member institutions each exercising exclusive jurisdiction for a specific geographic area.¹² The origins of the various associations differ but they seem to have been engendered by a common concern for the problems of admissions and the maintenance of minimum academic standards.¹³ The regionals have formed a national Federation of Regional Accrediting Commissions of Higher Education to coordinate their efforts. Each association formulates standards for eligibility for membership, which constitutes the acquisition of institutional accreditation, and determines through committees of visitation whether applicants have conformed to them. In addition, member institutions are themselves periodically re-evaluated, usually at ten-year intervals.

The U.S. Office of Education's Statement of Criteria and Procedures points out that, "regional, or institutional, accreditation applies to the total institution and signifies that the institution as a whole is achieving its objectives satisfactorily."¹⁴ In addition, the Federation of Regional

U.S. government, actively engaged in setting standards for an aspect of education that has traditionally been very free of government regulation.

Cardozo, *Recent Developments in Legal Aspects of Accreditation*, 213 J. AM. MED. ASS'N. 594, 595 (1970). Again, no issue of the authority of the Office to so move was raised.

¹¹ HEW, NATIONALLY RECOGNIZED ACCREDITING AGENCIES AND ASSOCIATIONS, *Criteria and Procedures for Listing by the U.S. Commissioner of Education and Current List 1* (March, 1972) (hereinafter CRITERIA AND PROCEDURES). A brief history of accreditation is provided in W. SELDEN, *ACCREDITATION: A STRUGGLE OVER STANDARDS IN HIGHER EDUCATION* (1960) and an updated bibliography and analysis is supplied in F. DICKEY AND J. MILLER, *A CURRENT PERSPECTIVE ON ACCREDITATION* (1972). C. WARD, *supra* note 2 for accreditation of occupational education programs, and Miller, *Structure of Accreditation of Health Educational Programs in STUDY OF ACCREDITATION OF SELECTED HEALTH EDUCATIONAL PROGRAMS, PART I: STAFF WORKING PAPERS, ACCREDITATION OF HEALTH EDUCATIONAL PROGRAMS, B-1* (1971), for health program accreditation. See also, Cardozo, *Accreditation in Legal Education*, 49 CHI-KENT L. REV. 1 (1972).

¹² They are the Middle States Association of Colleges and Secondary Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Secondary Schools, the Northwest Association of Secondary and Higher Schools, the Southern Association of Colleges and Schools, and the Western Association of Schools and Colleges.

¹³ W. Selden, *supra*, note 11 at 42.

¹⁴ CRITERIA AND PROCEDURES, *supra*, note 11 at 2.

Accrediting Commissions has stated that accreditation does not validate any specialized program offered by the institution.¹⁵

Specialized or program accreditation is performed by a number of organizations which are national in scope, rather than regional, and each of which represent a specialized area, such as architecture, cosmetology, law, practical nursing, teaching, or trade and technical education. A primary purpose of specialized accreditation is to protect the public against professional or occupational incompetence.¹⁶

Such specialized agencies are themselves either membership organizations of professionals or associations of professional schools in the field or some body affiliated with them, although in such instances, the degree of control varies.¹⁷ In the health field particularly, the exponential increase in new sub-professions and semi-professions each with a claim for separate accreditation has produced no small strain on the entire accreditation structure.¹⁸

Overviewing the accrediting system is the National Commission on Accrediting, composed of member institutions and associations of institutions, which undertakes, in effect, to accredit the accrediting agencies.¹⁹ Its early efforts to reduce the status of specialized agencies to that of advisors to the regional associations aborted and it has attempted rather to rationalize the accrediting structure.²⁰

Functions

The U.S. Office of Education lists nine functions performed by voluntary accreditation:

1. Certifying that an institution has met established standards;
2. Assisting prospective students in identifying acceptable institutions;
3. Assisting institutions in determining the acceptability of transfer credits;
4. Helping to identify institutions and programs for the investment of public and private funds;
5. Protecting an institution against harmful internal and external pressures;
6. Creating goals for self-improvement of weaker programs and stimulating a general raising of standards among educational institutions;
7. Involving the faculty and staff comprehensively in institutional evaluation and planning;

¹⁵ Quoted in F. DICKEY & J. MILLER, *supra*, note 11 at 13.

¹⁶ CRITERIA AND PROCEDURES, *supra*, note 11 at 2.

¹⁷ Miller, *supra*, note 11.

¹⁸ Selden, *Expansion of Accreditation of Health Educational Programs*, in STUDY OF ACCREDITATION OF SELECTED HEALTH EDUCATIONAL PROGRAMS, PART I: Staff Working Papers, E-1 (1971).

¹⁹ Note, *The Legal Status of the Educational Accrediting Agency: Problems in Judicial Supervision and Governmental Regulation*, 52 CORNELL L. Q. 104, 105-106 (1966).

²⁰ F. DICKEY & J. MILLER, *supra*, note 11 at 18-21.

8. Establishing criteria for professional certification, licensure, and for upgrading courses offering such preparation; and
9. Providing one basis for determining eligibility for federal assistance.²¹

The Statutory Bases for Federal Recognition of Private Accrediting Agencies

The Beginning—The Korean GI Bill

The enactment of the Veteran's Readjustment Assistance Act of 1952²² established the basic pattern of official federal recognition of private accrediting agencies although federal reliance on the determinations of such bodies antedates its passage.²³ The Act was, in part, a response to the Korean War, but also a reaction to difficulties encountered with its predecessor—the Servicemens' Readjustment Act of 1944.²⁴ The latter provided for approval of education and training institutions (including institutions of higher education) by state approving agencies or by the Administrator of the Veteran's Administration. Serious difficulties were encountered with slipshod state approval of "fly-by-night" and "blind alley" programs,²⁵ although this was not generally a problem in higher education.²⁶ The House select committee investigating the administration of the GI Bill focussed almost entirely on non-collegiate education and recommended further Congressional attention to the strengthening of educational standards and the clarification of respective jurisdiction of Veterans' Administration and state approving agencies.²⁷ The House Committee on Veterans' Affairs produced a draft bill, noted in the subsequent hearings, which would continue the reliance on state approving agencies but would provide that such agencies may approve courses offered by an institution where they have been approved by a nationally recognized accrediting agency. It went on to provide that:

²¹ CRITERIA AND PROCEDURES, *supra*, note 11 at 1.

²² Pub. L. 82-550, 66 Stat. 663 (1952).

²³ E.g., the National Science Foundation Act of 1950, 64 Stat. 149, 81st Cong., 2d Sess. (1950) allowed the foundation to award fellowships for scientific study at accredited institutions of higher education.

²⁴ Pub. L. 78-346, 58 Stat. 284.

²⁵ See *Hearings Before the House Select Committee to Investigate Educational and Training Programs Under GI Bill*, 81st Cong., 2nd Sess. (1951) and H.R. REP. No. 3253, 81st Cong. 2nd Sess. (1951). As the Acting Comptroller General reported to the Senate Committee on Labor and Public Welfare, "Experience under the existing program shows that State approval of educational institutions has in many instances been no more than a 'rubber stamp' process." *Hearings Before the House Committee on Veterans' Affairs*, 82nd Cong., 2nd Sess. 1104 (1952).

²⁶ ADMINISTRATION OF VETERANS' AFFAIRS & THE DIRECTOR OF THE BUREAU OF THE BUDGET, REPORT RELATIVE TO THE ORIGINAL SOUND INTENTS OF THE SERVICEMANS' READJUSTMENT ACT, H.R. Doc. No. 466, 81st Cong., 2nd Sess. 6 (1950), H.R. REP. No. 3253, 81st Cong., 2nd Sess. 9 (1951).

²⁷ H.R. REP. No. 3253, 81st Cong., 2nd Sess. 29 (1951).

For the purposes of this Act the Administrator [of Veterans' Affairs] shall publish a list of nationally recognized accrediting agencies and associations which he determines to be reliable authority as to the quality of training offered. . . .²⁸

It also provided detailed requirements for state approving agencies to utilize in approving non-accredited courses. A number of bills were introduced containing identical language.²⁹ Others had been introduced constituting variations on the original GI Bill without these accreditation provisions.³⁰

In the course of the hearings in the house a number of organizations urged that a role be provided the Office of Education in the administration of the statute.³¹ The National Education Association entered a vigorous endorsement³² and a more subdued one was given by the president of Union College on behalf of the American Council on Education, observing:

At the present moment I can say that our policy has always been to endorse the program which the Office of Education has followed throughout its history of being nondictatorial, but of seeking to bring about cooperation among the various State organizations. Their policy has been one of advice and council [sic] of reserve and of general help to the agencies rather than of attempting to dictate from Washington . . .³³

The American Legion would have preferred to give veto authority over approval to the Veterans' Administration³⁴ as would the Bureau of the Budget³⁵ but the representatives of both AMVETS³⁶ and the Veterans of

²⁸ *Hearings Before the House Committee on Veterans' Affairs on Educational and Training and Other Benefits for Veterans Serving on or after June 27, 1950*, 82nd Cong., 2nd Sess. 1011 (1952).

²⁹ H.R. 6425; H.R. 6426; H.R. 6427; H.R. 6428; H.R. 6362 and H.R. 6474, 82nd Cong., 2nd Sess. (1952).

³⁰ H.R. 5040, 82nd Cong., 1st Sess. (1951), H.R. 5038, 82nd Cong., 1st Sess. (1951).

³¹ Notably the National Veterans' Education Association, *Hearings*, *supra* note 28 at 1174, and the National Council of Chief State School Officers. *Id.* at 1682.

³²

"The United States Office of Education is the one Federal agency that has long-established channels and experience in dealing with educational institutions. American education at all levels is accustomed to working with the Office of Education and has complete confidence in the professional ability and integrity of the agency. Thus, the National Education Association believes that the delegation to the United States Office of Education of administrative responsibility for an educational program of the type and scope now being considered by the veterans' committee would be a major safeguard against abuses of the law by educational institutions of questionable status."

Letter from the Executive Secretary, National Education Association. *Id.* at 1195.

³³ *Id.* at 1577.

³⁴ *Id.* at 1474.

³⁵ *Id.* at 1435-1436.

³⁶ *Id.* at 1544.

Foreign Wars³⁷ favored some role for the Office of Education, the former explicitly rejecting a veto authority for the VA.

The Commissioner of Education opined that control of education should remain a state responsibility and that "modest supervisory responsibility" be given his office as the agency of government having well-established relationships with the educational establishments in the States.³⁸ He envisioned that role as being more one of persuasion than control and suggested that separate categories be established with differing controls for programs "administered by accredited colleges and universities" as opposed to the others embraced by such omnibus legislation.³⁹ Accordingly, the Commissioner was requested to submit a draft bill embodying his thinking. Under it, each state would designate a state Veterans' Education Commission composed of persons "broadly representative of the public interest, the principal educational agency of the state government, and of the several educational and training interests involved. . . ." ⁴⁰ Each commission should develop a state plan embodying acceptable standards and procedures for approving institutions including, however, a proscription of discrimination based on race or national origin. It would approve or disapprove institutions on the basis of inspections and objective findings of fact and establish procedures for considering appeals from those decisions. The Commissioner of Education would have authority to approve or disapprove the state plans so submitted and if none were submitted or if the state were operating in violation of its plan the Commissioner would have the authority to undertake the functions of the state commission.⁴¹

After the hearings, the committee staff held conferences with interested government agencies on sixteen occasions in an effort to draft legislation reflecting the suggestions made in the hearings.⁴² The bill reported out would have allowed the Commissioner of Education to approve courses where the state failed to designate a state approving agency and would have continued the provisions on accreditation embodied in the Committee's earlier draft, save that the Commissioner of Education rather than the Veterans' Administrator would have been given responsibility for designating nationally recognized accrediting agencies and publishing the list of those so found.⁴³ The Office's proposed statutory function in developing

³⁷ *Id.* at 1510.

³⁸ *Id.* at 1354, 1356.

³⁹ *Id.* at 1355. He had earlier noted that the degree of abuse is in "direct ratio to the degree that established and accredited institutions of education have been involved." *Id.* at 1353.

⁴⁰ §302(a) (1) of the Commissioner's proposed Veterans' Education Act of 1952. *Id.* at 1555-1556.

⁴¹ *Id.* at 1556-1557.

⁴² H.R. REP. No. 1943, 82nd Cong., 2nd Sess. 24 (1952), 98 CONG. REC. 6378 (1952) (remarks of Representative Rankin introducing the bill).

⁴³ H.R. REP. No. 1943, *supra*, note 42.

cooperative agreements between the VA and State approving agencies, reviewing their operations and giving technical assistance to them, was hailed by the Federal Security Agency, of which the Office of Education was then a part, as "potentially the most useful for the program"⁴⁴ and was vigorously opposed by the Veterans' Administration.⁴⁵ On this, the committee observed:

It is to be emphasized that the contemplated function of the Office of Education is of a professional character only and it is not the intent of this subsection to give any veto to the Office of Education or to interfere fundamentally with the administrative authority vested in the Administrator of Veterans' Affairs.⁴⁶

Interestingly, the VA did approve the accreditation provision.⁴⁷

In conference, the VA retained the course approval authority which the House bill had given the Commissioner, but the latter's role in accreditation was retained.⁴⁸ Large issues loomed in the Congressional debates and the matter of accreditation was touched if at all only tangentially.⁴⁹ Some stress was placed, however, on the reduction in "red tape" resulting from a simplified administrative scheme of the act.⁵⁰

As enacted, the Korean GI Bill required states to designate State approving agencies and if they failed to do so the VA Administrator would assume those functions. It authorized the State approving agencies to approve courses offered by an institution when they "have been accredited and approved by a nationally recognized accrediting agency or association"⁵¹ and provided that the Commissioner of Education "shall publish a list of nationally recognized accrediting agencies and associations which he determines to be reliable authority as to the quality of training offered by an educational institution. . . ."⁵² It also authorized state approval of non-accredited courses after the submission of requisite information and an investigation that statutory standards are met.⁵³ These included

⁴⁴ *Id.* at 97-98.

⁴⁵ *Id.* at 111-112.

⁴⁶ *Id.* at 35.

⁴⁷ *Id.* at 110.

⁴⁸ H.R. REP. NO. 2481, 82nd Cong., 2nd Sess. (1952).

⁴⁹ Senator Hill pointed out that the measure "prescribes better and higher standards which schools must meet," 98 CONG. REC. 8414 (1952) but in response to an inquiry from Senator Bridges as to who is to decide the standards he made no square reference to private accreditation. *Id.*

⁵⁰ 98 CONG. REC. 6395 (1952) (remarks of Representative Teague), 98 CONG. REC. 6641 (1952) (remarks of Representative Donohue), 98 CONG. REC. 6638 (1952) (NEA position on reduction of administrative expenses put in record by Representative Rankin) and 98 CONG. REC. 6640 (1952) (analysis of American Council on Education focusing on reduced costs put in record by Representative Rankin).

⁵¹ The Veterans' Readjustment Assistance Act of 1952, Pub. L. 82-550, §253 (1952).

⁵² *Id.*

⁵³ *Id.* at §254.

inter alia adequate space and personnel, adequate educational experience and qualifications of administration and faculty, compliance with local fire, building and sanitation codes, good reputation, financial stability and instruction consistent in quality, content, and length with similar courses in public schools and other private schools with recognized standards.

On September 17, 1952, the Commissioner of Education published the criteria, developed after "consultation with an advisory group of educators," for recognition as a national accrediting agency.⁵⁴ These required *inter alia* that: the scope of the organization be national or regional (i.e., encompassing several states); it serve a definite need; it perform no function that might prejudice its independent judgment; it make available to the public current information on its standards, operations and accredited programs or institutions; it only accredit institutions which are found on examination to meet pre-established standards; it has some experience in accrediting; and, it has gained general acceptance of its criteria and decisions. In addition, five procedural requirements were set out concerning the acquisition of information, use of qualified visitors, financial stability and re-evaluation. Recognition was conditioned on the assurance that accreditation will not be conditioned on the payment of any sum apart from any reasonable charges it might have, not exceeding the actual cost of accreditation.

The established criteria seem to fall well within the statutory authorization. Congress had been assured of the reliability of the standards and determinations of accrediting associations⁵⁵ and was concerned for the

⁵⁴ 17 Fed. Reg. 8929 (1952) (error corrected at 17 Fed. Reg. 8994 (1952)). Attached was a list of the six regional associations and 22 specialized agencies recognized pursuant to the criteria.

⁵⁵ Note the following colloquy between Representative Teague, who had chaired the earlier House investigation into abuses of the GI Bill and was a sponsor of H.R. 6425 *supra*, note 29, and Mr. Sam Coile, Assistant Administrator for Vocational Rehabilitation of the Veterans' Administration, in *Hearings Before the House Committee on Veterans' Affairs*, *supra* note 28 at 1331-32:

Mr. Teague: Mr. Coile, would you tell us a little about nonaccredited courses and the approval of nonaccredited courses?

Mr. Coile: You refer to institutions of higher learning?

Mr. Teague: Yes.

Mr. Coile: Well of course, the accrediting associations establish high standards in regard to courses of instruction that are provided by the members that are accredited by the associations. I think that is a very fine safeguard in respect to institutions of higher learning.

Mr. Teague: What about nonaccredited courses?

Mr. Coile: Nonaccredited courses in colleges?

Mr. Teague: In colleges, public, private, profit and nonprofit.

* * *

Mr. Coile: I think the law ought to contain minimum safeguards. . . .

Mr. Teague: Do you believe that nonaccredited courses should be consistent with the quality and content and length of similar courses?

Mr. Coile: I see no reason for them to be lower in their standards. . . .

quality of education and training offered.⁵⁶ On the other hand, a serious problem of federal control of education seemed to be presented as well as a dispute between federal agencies.⁵⁷ There seems to have been a consensus, however, that these provisions imported no danger of federal control.⁵⁸ One of the few remarks explicitly directed to the accreditation provision came from the representative of the National Council of Chief State School Officers, who observed:

This section makes a magnificent contribution toward insuring that veterans shall receive accredited courses. It substitutes objective professional judgments of professional quality for discretionary judgments of a federal administrator.⁵⁹

Moreover, the cost-conscious Congress was concerned for administrative expenses⁶⁰ and reliance on private agencies would reduce the cost of government carrying out individual inspections and evaluations⁶¹ particularly in a sector that had provided little real problem in the past.

In sum, what seems to have been established was essentially a structure intended to minimize federal involvement and upon which state agencies and federal authorities could rely. Indeed, the language of the statute clearly assumed that there *were* recognized national accrediting agencies who were responsible authorities on the quality of education offered. Equally, the Commissioner's criteria seem simply to be built on what was sound practice among the accrediting organizations themselves.

Expansion of Reliance and the Refinement of Alternatives

National Defense Education Act. Section 103(b) of the National Defense Education Act of 1958⁶² defined an institution of higher education for the purpose of the Act as an institution which (1) admitted only secondary school graduates or the equivalent, (2) was legally authorized to

⁵⁶ As the Deputy Administrator had written to the Chairman of the House Committee, "To simplify administration and eliminate abuses, educational institutions should be required to demonstrate the quality and worth of their courses before they become eligible to participate in this program." *Id.* at 114.

⁵⁷ It is relevant to note that the VA did not apparently see itself as threatened by the Office of Education's authority over recognition of accrediting agencies as it did by the statutory right of that office to coordinate and advise on state programs. *Supra* note 45. See also the testimony of the Assistant Administrator for Legislation of the Veterans' Administration, Hearings, *supra* note 28.

⁵⁸ Statement of the President of Rutgers University on behalf of the Association of Land Grant Colleges and Universities. *Id.* at 1612.

⁵⁹ *Id.* at 1684.

⁶⁰ *Supra* note 50.

⁶¹ The Bureau of the Budget's Examiner for Veterans' Affairs had urged that the new program "should, to the maximum extent possible, be self-administering." Hearings, *supra* note 28 at 1433.

⁶² 20 U.S.C., §§401 et seq. (1970), 72 Stat. 1580 (1958).

offer a program of post secondary education in the state, (3) provided a program of education leading to a bachelor's degree or not less than a two-year program which provides credit acceptable for such a degree, (4) was a public or other non-profit institution, and (5) was accredited by "a nationally recognized accrediting agency or association or, if not so accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited." It reiterated *verbatim* the authorization for the Commissioner of Education to publish a list of "nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of training offered" found in the Korean GI Bill.

The Act, a product of concern for the quality of American education and the production of a larger number of technologically trained personnel, was given considerable impetus by the launching of the Sputnik satellite by the Soviet Union.⁶³ It had nevertheless to contend with a vigorous opposition based on the threat of federal control over education put, perhaps, most strongly by Representative Johansen:

By adopting this legislation you will give the greatest encouragement ever given by any Congress to that small but solid and utterly ruthless core of unblinding, unblushing, brazen advocates of definite, deliberate, all-out Federal control of education.⁶⁴

Proponents of the measure stressed shortage of trained personnel⁶⁵ and argued that limitations on federal authority were workable.⁶⁶ During the hearings a number of spokesmen observed that the GI Bill had not resulted in federal control,⁶⁷ and it was widely urged that a limitation of institutional eligibility for student loans and scholarships to accredited

⁶³ H.R. REP. NO. 2157, 85th Cong., 2nd Sess. (1958). S. REP. NO. 2242, 85th Cong., 2nd Sess. (1958).

⁶⁴ 104 CONG. REC. 16726 (1958). *Id.* at 16567-8 (remarks of Rep. Allen); *id.* at 16569 (remarks of Rep. Landrum); *id.* at 16576-7 (remarks of Rep. Dawson); *id.* at 16582-3 (remarks of Rep. Berry); *id.* at 16683 (remarks of Rep. Abbott); *id.* at 16686-8 (remarks of Rep. Beamer); *id.* at 16691-2 (remarks of Rep. Garin); *id.* at 16720 (remarks of Rep. Passman); *id.* at 16737 (remarks of Rep. Jensen); *id.* at 16738-9 (remarks of Rep. Thomas); *id.* at 16694-7 (remarks of Rep. Brownson); *id.* at 16697 (remarks of Rep. Alger); and *id.* at 17328 (remarks of Sen. Lauche).

⁶⁵ 104 CONG. REC. 16586-7 (1958) (remarks of Rep. Addonizio); *id.* at 16587-8 (remarks of Rep. Ashley); *id.* at 16588-9 (remarks of Rep. Haskell); and *id.* at 16689-91 (remarks of Rep. McGovern).

⁶⁶ *Id.* at 16590 (remarks of Rep. Frelinghuysen); *id.* at 16684 (remarks of Rep. Philben); *id.* at 16742 (remarks of Rep. Robison); and *id.* at 17330 (remarks of Sen. Johnson.)

⁶⁷ *Hearings Before a Subcommittee of the House Committee on Education and Labor on Bills Relating to a Federal Scholarship and Loan Program*, at 695 (remarks of HEW Secretary Folsom); at 68-69 (remarks of the Commissioner of Education); at 403 (remarks of the President of the Utah Congress of Parents and Teachers); at 349 (remarks of the President of Huron College); at 652 (remarks of the President Southern Oregon College). 85th Cong. 1st Sess. (1958).

institutions would accomplish the purposes of the Act.⁶⁸ Moreover, though not without variation many of the bills introduced relied at least to some extent on private accreditation, although not all would have included the publication requirement.⁶⁹

It should also be noted that the language reported out by the House⁷⁰ and adopted in the final bill containing these definitional requirements,⁷¹ did occasion some dispute largely concerning the exclusion of proprietary (for profit) institutions and the exclusion of programs not creditable toward a baccalaureate. The former excluded proprietary schools of business⁷² some of which were accredited by an association recognized by the Office of Education pursuant to the Korean GI Bill. The latter affected accredited technical education, credits for which were nevertheless non-transferable toward a bachelor's degree⁷³ as well as hospital schools of nursing⁷⁴ and university extension education.⁷⁵ Thus, in the course of

⁶⁸ *Id.* at 667, 2035 (statement of the American Council on Education), *id.* at 1663 (statement of the American Association of Land-Grant Colleges and State Universities and the State Universities Association), *id.* at 1799, 1807 (remarks of the U.S. National Student Association). See Also *Hearings Before Senate Committee on Labor and Public Welfare on Science and Education for National Defense*, at 257 (remarks of the Commissioner of Education) and at 421 (remarks of American Council on Education), 85th Cong., 2nd Sess. (1958).

⁶⁹ H.R. 10381, 85th Cong., 2nd Sess. (1958), sponsored by the Committee chairman, while adopting much of the language of §103(b) omitted reference to any authority in the Office of Education to publish a list of recognized agencies but would give the Commissioner authority to "approve" such agencies. S. 2505, 85th Cong., 1st Sess. (1957) would, like the National Science Foundation Act, simply require accreditation without further reference. However, S. 1727, 85th Cong., 1st Sess. (1957), sponsored by Sen. Javits defined an institution of higher education as a public or private non-profit college or university wholly without reference to accreditation. Similarly, Sen. Humphrey's bill, S. 869, 85th Cong. 1st Sess. (1957) eliminated any reference to accreditation. S. 3157, 85th Cong., 2nd Sess. (1958) sponsored by Sen. Flanders listed the six regional associations in the bill and explicitly required accreditation by one of them thereby precluding any role for the Commissioner. Other variations were presented. S. 1237, 85th Cong., 1st Sess. (1957) would require the "advice" of appropriate accrediting agencies. S. 2917, 85th Cong., 2nd Sess. (1958) relied on a state determination of whether an institution was eligible. S. 2967, 85th Cong., 2nd Sess. (1958) required that institutions be accredited but went on to provide that publicly operated institutions shall be deemed to be accredited and in all other cases "accreditation shall be determined by the Commissioner of Education."

⁷⁰ *Supra*, note 63.

⁷¹ H.R. REP. NO. 2689, 85th Cong., 2nd Sess. (1958).

⁷² See the statement of the South Dakota Business School Association, *Hearings, supra* note 67, at 340. Statement of the National Association and Council of Business Schools, *Hearings Before the Senate Committee on Labor and Public Welfare, supra* note 68, at 1332-1335. It also affected proprietary technical training, see testimony on behalf of the Electronic Technical Institute, *Hearings, supra* note 67 at 1904.

⁷³ Statement on behalf of the Coordinating Committee on Scientific and Engineering Technicians, *Hearings supra* note 67 at 1447, *Senate Hearings supra* note 68 at 640-641, 645. Statement of National Society of Professional Engineers, *Hearings Before the Senate Committee on Labor and Public Welfare, supra* note 68 at 629, 635.

⁷⁴ See Statement by the Washington Hospital Center, *Hearings supra* note 67 at 1300, *Senate Hearings supra* note 68 at 853 supported by the American Hospital Association, *Hear-*

testimony and interrogation on these issues some features of the accreditation system were developed⁷⁶ as well as criticism of it. One witness, the owner of a proprietary school for medical secretarial training⁷⁷ appearing on behalf of a number of interested parties,⁷⁸ challenged the "country club policies"⁷⁹ of regional accrediting agencies and called for the abolition of "discrimination being practiced through accreditation" including the elimination of federal reliance on accreditation and a full investigation of the Office of Education.⁸⁰ In the course of his testimony, the Committee's understanding of the ministerial character of the federal reliance on accreditation was underlined.⁸¹

Relatedly, Senator Allott observed, during his questioning of President Caldwell of the University of Arkansas, that some colleges scarcely deserve to be rated as secondary schools.⁸² In response, President Caldwell relied on accreditation as an index of quality.⁸³ No further issue was made nor

ings *supra* note 67 at 1301. The inclusion of hospital schools of nursing was opposed by the American Nurses' Association, *Hearings, supra* note 67 at 1846, *Senate Hearings, supra* note 68 at 1311-1312.

⁷⁶ Statement of American Association of Land-Grant Colleges and State Universities, *Hearings supra* note 67 at 1587, 1597, *Senate Hearings supra* note 68 at 700-702.

⁷⁷ The standards and principles of the Engineers Council for Professional Development for the accreditation of technical institutes was introduced in the *Senate Hearings, supra* note 68 at 646-655, and the accreditation of proprietary business schools was discussed in the *Hearings, supra* note 67 at 1605-1606. In addition, the REPORT OF THE WORKING COMMITTEE FOR THE DEVELOPMENT OF SUPPORTING TECHNICAL PERSONNEL OF THE PRESIDENT'S COMMITTEE ON SCIENTISTS AND ENGINEERS was introduced in the *Hearings supra* note 67 at 1463-1473 and the *Senate Hearings, supra* 68, at 663-672, urging that such technical training be eligible for regional accreditation.

⁷⁸ Mr. Claude E. Yates of the Zweegman School for Medical Secretaries, *Hearings, supra* note 67 at 596.

⁷⁹ California Council of Business Schools, Western Region of the Accrediting Commission for Business Schools, National Association and Council of Business Schools, and non-affiliated private, specialized schools in California. *Id.*

⁸⁰ *Id.* at 609.

⁸¹ *Id.* at 599-600.

⁸²

Mr. Elliott [chairman of the subcommittee]: What does the United States Office of Education base its accreditation on? Is it not on what the local accrediting agencies do?

Mr. Yates: But the local accrediting agencies do not extend that privilege to all recognized worthy institutions.

Mr. Elliott: However, all the Office of Education is doing is just saying that a particular school has not been accredited by the local accrediting agency. Is that all they are [sic] saying?

Mr. Yates: That is right.

Id. at 597

⁸³ *Senate Hearings, supra* note 68 at 715.

⁸⁴

Mr. Caldwell: But our institutions gain accreditation, that is, gain authority to grant a recognized degree through membership in what we call the regional accrediting associations. In addition to the regional accrediting associations which accredit institutions to offer their bachelor's degree and so on and the master's and doctor of philosophy. We

was the reliance on accreditation raised in the Congressional debate save perhaps inferentially by the defendants of the measure who disclaimed that federal control would result.⁸⁴

In sum, it seems beyond question that NDEA's section 103(b) was built squarely on the foundation laid by the Korean GI Bill. Congressional consideration of the reliance system, minimal as it was, nevertheless tends to support a view of the Office of Education's role as fundamentally ministerial. Indeed the "three letter" escape allowance for nonaccredited institutions reduced the federal role provided under the earlier act for the approval of nonaccredited courses. Interestingly, the publication authorization was seemingly taken from the earlier statute without a reconsideration of the use of the word "training" as opposed to "education", a term more appropriate to an act no longer concerned with on-the-job or on-the-farm vocational preparation.

Higher Education Facilities Act of 1963. Unlike its predecessors the Higher Education Facilities Act⁸⁵ was acknowledged as an aid-to-education measure as opposed to a catch-up for veterans or an emergency defense action and as such had a thorny path in Congress. The vagaries of various of its titles are not relevant here. Suffice it to note that the basic definition of an eligible "institution of higher education" in both the House and Senate versions was based on the language of NDEA. In addition to the requirements set out in Section 103(b) of NDEA, the House Committee's bill added the provision that for certain two year technical and semi-professional training, if the Commissioner determined there was no nationally recognized accrediting agency qualified to accredit the institution, the Commissioner of Education would appoint an advisory committee composed of persons specially qualified to evaluate the training provided by the institution. This committee would prescribe the requisite standards, content, scope and quality and would also determine whether particular

have accrediting associations in many of the professional fields, fields of medicine and law and social work or whatever it might be.

* * *

Sen. Allott: The point I am getting at is, is it possible that our accrediting agencies are not really doing the job that should be done. Who elects the accrediting agency?

* * *

Mr. Caldwell: An accrediting agency is representative of the practitioners in the field and the educators in the field.

Id. at 715-716

⁸⁴ As Senator Johnson put it, "We were looking for a way through which help would be extended without the control of Federal bureaucracy. And in this bill, I believe we have found it." 104 CONG. REC. 17330 (1958). See particularly the statements of Senators Allott and Yarborough, both conferees, in support of the measure. *Id.* at 19079-80, 19085 respectively. The only voice speaking directly to this issue was Rep. Whitten who argued that educational deficiencies were themselves the products of the policies of the accrediting associations. *Id.* at 16740.

⁸⁵ Pub. L. 88-204, 77 Stat. 363 (1963).

institutions were in conformity.⁸⁶ Both the House and Senate versions would have provided for eligibility where the Commissioner found sufficient assurance that accreditation requirements would be satisfied upon completion of the project for which assistance is sought.⁸⁷ The conference accepted the House addition for two year technical education⁸⁸ and thus the final text contained a substantial addition to the Commissioner's authority to act independent of private accrediting agencies.⁸⁹ The question however, is whether additional authority was envisaged with respect to existing accrediting agencies.

It should be noted that the opponents of broad federal aid to education

⁸⁶ H.R. REP. No. 310, 88th Cong., 1st Sess. 2, 18 (1963).

⁸⁷ S. REP. No. 557, 88th Cong., 1st Sess. 21 (1963).

⁸⁸ H.R. REP. No. 884, 88th Cong., 1st Sess. 14 (1963).

⁸⁹ The complex definition of an institution of higher education provided in that section is worth noting in its entirety:

The term "institution of higher education" means an educational institution in any State which—

(1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized within such State to provide a program of education beyond high school;

(3) provides an educational program for which it awards a bachelor's degree, or provides not less than a two-year program which is acceptable for full credit toward such a degree, or offers a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(4) is a public or other nonprofit institution; and

(5) is accredited by a nationally recognized accrediting agency or association listed by the Commissioner pursuant to this paragraph or, if not so accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited: *Provided, however,* That in the case of an institution offering a two-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge, if the Commissioner determines there is no nationally recognized accrediting agency or association qualified to accredit such institutions, he shall...appoint an advisory committee, composed of persons specially qualified to evaluate training provided by such institutions, which shall prescribe the standards of content, scope, and quality which must be met in order to qualify such institutions for assistance under this Act and shall also determine whether particular institutions meet such standards: *Provided, however,* That the requirements of this clause (5) shall be deemed to be satisfied in the case of an institution applying for assistance under this Act, if the Commissioner determines that there is satisfactory assurance that upon completion of the project for which such assistance is requested, or upon completion of that project, and others under construction or planned and to be commenced within a reasonable time, the institution will meet such requirements; and for the purposes of this paragraph the Commissioner shall publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of education or training offered.

programs seemingly saw nothing inconsistent in reliance on private accreditation for more narrowly framed measures. Senator Goldwater, for example, dissented from the Senate report.⁹⁰ However, he sponsored his own Educational Opportunities Act⁹¹ which provided *inter alia* for accreditation or acceptance of credits for transfer as a requirement for eligibility (omitting the publication requirement) and allowing a tax deduction for higher education expenses. The latter provision's definitional section would have required accreditation "by a recognized national or regional accrediting agency"—presumably allowing the Internal Revenue Service to determine accreditation status.⁹² Interestingly, after strong opposition to comprehensive federal aid was expressed by the presidents of three private institutions⁹³ who favored a tax credit system, Senator Morse instructed the Committee staff to draft a bill embodying their suggestions. The resultant proposal ostensibly designed to curtail federal involvement nevertheless retained accreditation by a nationally recognized accrediting agency as a definitional element of institutional eligibility.⁹⁴

As with consideration of the NDEA, a variety of measures of varying purposes were introduced, some like Senator Goldwater's relied on accreditation without reference to the authority of the Commissioner to recognize accrediting agencies.⁹⁵ Others tended to track the earlier statute⁹⁶ and others ignored accreditation altogether.⁹⁷ As with consideration of the NDEA the effectiveness of an earlier law, (in that case the Korean GI Bill and in this case the NDEA) was relied on as evidence of federal assistance without federal control,⁹⁸ and evidence of accreditation policies and

⁹⁰ *supra* note 87 at 24-27.

⁹¹ S. 181, 88th Cong., 1st Sess. (1963).

⁹² Apparently Senator Goldwater did not see this as involving federal control or multiplying federal bureaucracy. *Hearings Before the Subcommittee on Education of the Senate Committee on Labor and Public Welfare*, 88th Cong., 1st Sess., 278-279, 286 (1963) (testimony of Sen. Goldwater).

⁹³ Rockford College, *id.* at 1127-1129; Earlham College, *id.* at 1130-1134; Stetson University, *id.* at 1135-1139.

⁹⁴ *Id.* at 1141.

⁹⁵ S. 390, 88th Cong., 1st Sess. (1963), S. 1115, 88th Cong., 1st Sess. (1963).

⁹⁶ S. 500, 88th Cong., 1st Sess. (1963) (sponsored by Sen. Javits), S. 580, 88th Cong., 1st Sess. (1963) (sponsored by Sen. Morse).

⁹⁷ S. 389, 88th Cong., 1st Sess. (1963) (sponsored by Sen. Humphrey would rely on an IRS determination of nonprofit educational status under the Internal Revenue Code).

⁹⁸ See e.g., *Hearings, supra* note 92 at 738 (remarks of Sen. Gruening). A precursor, the College Academic Facilities Act of 1962, H.R. 8900, 87th Cong., 2nd Sess. (1962) died in conference the previous year. 108 CONG. REC. 20152-53 (1962). Its definition section was largely tracked in the instant measure save for the special treatment for two-year technical training. Of it, Rep. Green observed in response to a question of Rep. Vanik, "We were reminded of some of the experience, however, which we had under the GI Bill. We felt we had to have some form of accreditation. I think most of us will agree that there were many fly-by-night institutions set up under that program" *Id.* at 1156.

practices, in this instance largely relating to technical and semi-professional education, was introduced.⁹⁹

The picture that emerges simply reinforces the previously held assumption by Congress that the role of the Office of Education with respect to voluntary accreditation was to be essentially ministerial. Indeed, the grant of authority for the Commissioner to engage in accreditation where no nationally recognized agency was to be found or to allow eligibility to non-accredited institutions was chosen in explicit contradistinction to the notion of authority to regulate the internal affairs of such agencies.

Health Professions Educational Assistance Act of 1963. The Health Professions Educational Assistance Act of 1963,¹⁰⁰ a response to the demand for the production of a greater number of professional health personnel,¹⁰¹ provided for construction grants for health teaching facilities to be approved by the Surgeon General. It defined an eligible applicant as a non-profit institution in one of a number of enumerated health professions and required that it be accredited by a recognized body or bodies approved for such purposes by the Commissioner of Education. It deemed as accredited, however, any institution for which the Commissioner found, after consultation with the appropriate accrediting body or bodies, there to be a reasonable assurance of meeting accreditation standards after completion of the facility. The authorization to publish a list of recognized accrediting agencies was curiously omitted.¹⁰²

Much of the attention in committee focused on the eligibility of various health disciplines and the testimony almost invariably dwelt, albeit briefly in many cases, on the mere fact of accreditation.¹⁰³ In one instance concern

⁹⁹ REPORT OF AN ADVISORY GROUP ON HIGHER EDUCATION TO THE HOUSE COMMITTEE ON EDUCATION AND LABOR. *Id.* at 1549-1559. *Hearings Before the House Committee on Education and Labor*, 88th Cong., 1st Sess. 1000-1001 (1963) (testimony of the National Society of Professional Engineers). The Council for the Advancement of Small Colleges had specifically urged the enactment of the credit transferability standard as of benefit to its unaccredited members. *Hearings*, *supra* note 92 at 1858, 1869.

¹⁰⁰ Pub. L. 88-129, 77 Stat. 164 (1963).

¹⁰¹ S. REP. NO. 485, 88th Cong., 1st Sess. (1963), H.R. REP. NO. 109, 88th Cong., 1st Sess. (1963).

¹⁰² Most of the measures introduced are curiously neglectful of that provision given the contemporaneity of the Higher Education Facilities Act. *See* H.R. 180, 88th Cong., 1st Sess. (1963), H.R. 3182, 88th Cong., 1st Sess. (1963), and H.R. 2527, 88th Cong., 1st Sess. (1963). At least one, H.R. 3180, 88th Cong., 1st Sess. (1963) would give authority to recognize accrediting agencies to the Surgeon General. In the debate on the floor of the House, Rep. Quie argued that it was an aid to education measure which should be administered by the Commissioner of Education. 109 CONG. REC. 6935 (1963). He objected to the fragmentation of educational assistance programs and offered an amendment containing *inter alia* the now customary publication authorization which did not pass. *Id.* at 6840-41, 6884.

¹⁰³ *Hearings Before the House Committee on Interstate and Foreign Commerce on Health Professions Educational Assistance*, 88th Cong., 1st Sess. (1963). *Id.* at 182 (testimony of American Dental Association); *id.* at 335-36 (testimony of Association of American Medical Colleges) and *id.* at 317. (testimony of American Association of Colleges of Pharmacy) *Hearings Before*

was expressed by a member of the House committee for the need of an accrediting agency, explicitly harkening back to the Korean GI Bill.¹⁰⁴ In another, a witness objected to the accreditation policies of the American Medical Association with respect to colleges for chiropractors and other practitioners of drugless healing.¹⁰⁵ He urged that the bill be amended to provide explicit additional directives to the Commissioner of Education¹⁰⁶ but his urging was not followed. It was only upon the appearance of the representatives of the American Medical Association that anything proximate to an issue of the appropriate status of accreditation was raised,¹⁰⁷ to be discontinued as briefly as it had commenced.¹⁰⁸

Although the publication requirement was omitted from this legislation, its enactment is relevant to this discussion for it sheds some light on what the Congress understood the function of accreditation to be,¹⁰⁹ and the almost total inattention to the role of the Office of Education as well as the omission of the publication requirement is evidence that the Office's function in accreditation was considered (if at all) purely ministerial.

NDEA Amendments of 1964. Following in the wake of the hearings

the Subcommittee on Health, Senate Committee on Labor and Public Welfare, 88th Cong., 1st Sess. (1963). *Id.* at 223 (statement of the American Optometric Association) and *id.* at 206 (testimony of the American Podiatry Association).

¹⁰⁴ Representative Cunningham stated in his questioning of HEW Secretary Celebrezze concerning schools of podiatry:

I have nothing against foot doctors, but I am just wondering whether there is any accrediting agency that would make a determination or a judgment as to which of these schools might be properly run and managed. When we had the GI Bill, we had, in my opinion, a lot of schools that sprang up overnight that got rich quick with no great deal of supervision, and I was wondering if there is any accrediting agency for podiatry.

House Hearings, *supra* note 103 at 63.

¹⁰⁵ *Id.* at 237 (testimony on behalf of the American Health Federation).

¹⁰⁶ The amendment would have provided:

It is the intent of Congress that reasonable and fair standards for accreditation shall be set up by the Commissioner of Education to accredit chiropractic, and other drugless healing schools, and the Commissioner will take extra safeguards to prevent unfair accreditation requirements by which the standards of one recognized health profession are imposed on another.

Id. at 238.

¹⁰⁷ Rep. Rogers inquired of the status of AMA accreditation and upon being informed it was "voluntary" observed, "You are saying, in effect, that they do not have to be accredited; that it is voluntary. That is like telling a man he does not have to work; he can starve to death." *Id.* at 288.

¹⁰⁸ *Id.* at 289.

¹⁰⁹ A major issue did concern the eligibility of institutions which had racially discriminatory policies. Sen. Javits proposed an amendment prohibiting discrimination, pointing out that 6 of 87 accredited medical schools refused to admit Negroes and that 32 of 243 nursing schools listed by the National League for Nursing bore an indication on the list that they refused to admit Negroes. 109 CONG. REC. 16826 (1963). Interestingly, Rep. Rogers had asked Secretary Celebrezze whether the accreditation agencies would revoke the accreditation of an institution if it practiced an abuse of any kind—the Secretary assumed, inaccurately, that it would. *House Hearings*, *supra* note 103 at 48–50.

held for the proposed 1963 legislation, these amendments¹¹⁰ extended the student loan provisions of the NDEA to otherwise ineligible but accredited non-profit business schools and technical institutes.¹¹¹ The House version would have extended coverage to all schools of nursing.¹¹² The Senate bill contained no such provision and the compromise eliminated the House's extension of eligibility to diploma (*i.e.*, hospital) schools of nursing, while retaining the provision for collegiate and associate degree programs. Inasmuch as these were required to be accredited and were defined as awarding a baccalaureate or graduate degree or an associate degree following a two year program respectively, the conference report made clear that this "did not intend to make changes in existing laws. The inclusion of the definition is merely to insure continuation of existing administrative practice."¹¹³ The opposition focused again on federal control and the expansion of educational programs in the name of national defense.¹¹⁴

Nurse Training Act of 1964. The failure to deal with hospital schools of nursing under the 1964 NDEA amendments was corrected by the passage of the Nurse Training Act of 1964,¹¹⁵ itself modeled in part on the Health Professions Educational Assistance Act.¹¹⁶ Accordingly, it required that all three categories of nurse training (collegiate, associate and diploma) be accredited by a recognized body or bodies approved for such purpose by the Commissioner of Education, but it allowed an unaccredited institution to be deemed accredited if the Commissioner found, after consultation with the appropriate accrediting agency or agencies, that there was reasonable assurance the program would meet accreditation standards. The latter alternative for hospital schools of nursing was added by the Senate Committee which conceived of one purpose of the Act as enabling many of the large number of unaccredited nursing schools to meet accreditation standards.¹¹⁷ It was strongly opposed by the American Hospital Association

¹¹⁰ Pub. L. 88-665, 77 Stat. 1100 (1964).

¹¹¹ S. REP. NO. 1275, 88th Cong., 2nd Sess. (1964). The President of the United Business Schools Association (a product of the merger in 1962 of the National Association and Council of Business Schools and the American Association of Business Schools), informed the House Committee that following the passage of the Korean GI Bill, the Accrediting Commission for Business Schools, affiliated with his organization, was founded and was recognized by the Office of Education in 1956. He explained that, "The accrediting commission was organized specifically for schools for whom there was no other avenue of accreditation." *Hearings Before the Subcommittee on Education, House Committee on Education and Labor*, 88th Cong., 1st and 2nd Sess. 510-511 (1964).

¹¹² H.R. REP. NO. 1629, 88th Cong., 2nd Sess. (1964).

¹¹³ H.R. REP. NO. 1916, 88th Cong., 2nd Sess. 14 (1964).

¹¹⁴ S. REP. NO. 1275, *supra* note 111 at 78 (individual views of Senators Goldwater and Tower), H.R. REP. NO. 1639, *supra* note 111 at 53 (individual views of Representatives Godell and Quie), 110 CONG. REC. 17700 (1964) (views of Sens. Tower and Goldwater).

¹¹⁵ Amendments to the Public Health Service Act, PUB. L.-88-581, 78 Stat. 908 (1964).

¹¹⁶ 110 CONG. REC. 16435 (1964) (remarks of Rep. Roberts in introducing the bill).

¹¹⁷ S. REP. NO. 1378, 88th Cong., 2nd Sess. 4, 7-8 (1964). This also represented the ad-

which urged that state approval of hospital schools of nursing should suffice.¹¹⁸ It was favored with equal vigor by both the American Nurses Association¹¹⁹ and the National League for Nursing,¹²⁰ the accrediting agency recognized by the Commissioner of Education. The NLN had argued the importance of accreditation as a guarantee of quality, likening it to a trademark as a "seal of excellence." Both organizations nevertheless also favored the "reasonable assurance" test for as yet unaccredited programs. It seems clear that the passage of the Act represented a congressional policy highly deferential to specialized nursing accreditation;¹²¹ it was a policy to be sharply buffeted in but a short period.¹²²

Higher Education Act of 1965. This omnibus legislation¹²³ built considerably on the reliance-recognition system. In addition to announcing a policy favorable to the attainment of accreditation in the provision of assistance for library resources¹²⁴ and applying the accreditation-reasonable

ministration's policy. *Hearings Before the Subcommittee on Public Health and Safety of the House Committee on Interstate and Foreign Commerce on the Nurse Training Act*, 88th Cong., 2nd Sess. (1964) (testimony of Special Assistant to the Secretary, HEW).

¹¹⁸ *Hearings Before House Subcommittee, supra* note 117 at 73, 81, 84. *Hearings Before the Subcommittee on Health, Senate Committee on Labor and Public Welfare on Nurse and Graduate Public Health Training*, 88th Cong., 2nd Sess. 63-64 (1964) (remarks on behalf of the American Hospital Association). H.R. 5062, 88th Cong., 1st Sess. (1963) and H.R. 5248, 88th Cong., 1st Sess. (1963) proposed reliance on state approval.

¹¹⁹ *Hearings Before the House Subcommittee, supra* note 117 at 100. *Hearings Before the Senate Subcommittee, supra* note 118 at 57.

¹²⁰ *Hearings Before the House Subcommittee, supra* note 117 at 127-128. *Hearings Before the Senate Subcommittee, supra* note 118 at 66-70.

¹²¹ Rep. Roberts remarks are noteworthy: "There are a number of schools of nursing today which qualify for national accreditation, but have not done so because there is no incentive for them to do so. If we are to have a Federal program of assistance to schools of nursing, it seems reasonable to require that the schools meet certain minimum standards, and this is provided for in the bill." 110 CONG. REC. 16436 (1964).

¹²² See discussion *infra* at pp. 363-368.

¹²³ Pub. L. 89-329, 79 Stat. 1219 (1965).

¹²⁴ The definitional section, to be discussed *infra*, defined an institution of higher education in part in terms of accreditation. Accordingly, §206 provided that an institution "shall be deemed to have been accredited by a nationally recognized accrediting agency or association if the Commissioner determines that there is satisfactory assurance that upon acquisition of the library resources . . . or . . . other library resources planned to be acquired within a reasonable period of time, the institution will meet the accreditation standards of such agency or association." Reliance on accreditation did not pass entirely unchallenged. The Commissioner of Education pointed out to the Senate Committee that 50% of four year institutions and 82% of two year institutions fall below "accepted minimum standards in the number of volumes in their libraries." *Hearings Before the Subcommittee on Education, Senate Committee on Labor and Public Welfare on Higher Education Act of 1965*, 89th Cong., 1st Sess. 100 (1965). When Senator Clark asked the source of the standard and was informed it was the American Library Association the Senator remarked:

... this would be the pressure group in the public schools, the library association—those with probably the greatest and most estimable motives in the world are nonetheless promoting the objectives of their own association, and you and the Secretary are accepting those standards.

Id. at 150. The ALA's standards were put in the record. *Id.* at 136-150.

assurance test as part of the definition of a "developing institution" for eligibility for special assistance,¹²⁵ it provided an institutional definition for the purposes of reduced-interest student loan insurance¹²⁶ and amended the definitional section of the NDEA¹²⁷ building on the Higher Education Facilities Act. The major addition was the eligibility of any public or nonprofit collegiate or associate degree school of nursing or any other school providing not less than a one year program preparing students for gainful employment in a recognized occupation. A "satisfactory assurance" test for non-accredited institution was added as was the possibility of direct federal accreditation where the Commissioner determined there to be no nationally recognized accrediting agency or association qualified to accredit schools in a particular category. Both provisions and the final definitional section provided for the publication of a list of such nationally recognized agencies which the Commissioner determined to "be reliable authority as to the quality of training offered."¹²⁸

Congressional debate on the accreditation aspects was minimal¹²⁹ inasmuch as these were viewed as technical matters to be built on or compared with the Higher Education Facilities Act.¹³⁰ It is clear that the desirability of accreditation played a significant role in the thinking on library resources¹³¹ and developing institutions.¹³² Moreover, representatives of various vocational and occupational schools had urged the broadening of eligibility for reduced interest student loan guarantees¹³³ which the Senate¹³⁴ and eventually the House¹³⁵ accepted as including unaccredited schools which in the Commissioner's judgment could become accredited in a reasonable time, collegiate and associate degree

¹²⁵ Pub. L. 89-329, §302(a) (1) (B) defined a developing institution as *inter alia* one which "is accredited by a nationally recognized accrediting agency or association determined by the Commissioner to be reliable authority as to the quality of training offered or is, according to such an agency or association, making reasonable progress toward accreditation. . ."

¹²⁶ *Id.* at §435.

¹²⁷ *Id.* at §461.

¹²⁸ *Id.* at §801(a).

¹²⁹ Apart from a brief equation of accreditation with quality, 111 CONG. REC. 21904 (1965) (remarks of Rep. Fogarty) and the need to upgrade developing institutions in terms of accreditation status, *id.* at 21908 (remarks of Rep. Tunney).

¹³⁰ *Senate Hearings, supra* note 124 at 96 (remarks of Sen. Javits); *Hearings Before the Subcommittee on Education of the House Committee on Education and Labor on the Higher Education Act of 1965*, 89th Cong., 1st Sess. 135 (remarks of the Commissioner of Education).

¹³¹ S. REP. NO. 673, 89th Cong., 1st Sess. 25 (1965).

¹³² *Id.* at 31. H.R. REP. NO. 621, 89th Cong., 1st Sess. 16 (1965).

¹³³ *House Hearings, supra* note 130 at 505-508, 520 (remarks of the President of the Draughton School of Business). *Senate Hearings supra* note 124 at 972 (remarks on behalf of the National Council of Technical Schools); *id.* at 982-983 (remarks on behalf of the Home Study Council).

¹³⁴ *Supra* note 131.

¹³⁵ H.R. REP. NO. 1178, 89th Cong., 1st Sess. 66 (1965).

schools of nursing and occupational schools offering not less than a one-year program.

The warmth of the legislative policy toward accreditation¹³⁶ was not apparently chilled by the vigor of challenges raised in the hearing. The American Personnel and Guidance Association and the American Vocational Association called for a study of the problems of accrediting vocational and technical schools¹³⁷ and the American School Counselor Association encouraged strengthening the Commissioner's authority "in determining nationally recognized accrediting agencies in business, technical and trade institutions" pointing out that counselors have had "considerable difficulty knowing in many cases, the adequacy of the training advertised."¹³⁸ Most critical was the American Association of Junior Colleges which called attention to the "entire matter of accreditation."¹³⁹ Particularly vexing to the junior colleges was the problem of multiple accreditation by regional and specialized accrediting agencies particularly in view of difficulties encountered under the Nurse Training Act.¹⁴⁰ It urged that "a study of specialized accreditation be undertaken by the U.S. Commissioner of Education and the National Commission on Accrediting for the Guidance of Congress in drafting legislation."¹⁴¹ Congress was to call for a similar report five years later.¹⁴²

Additional 1965 Legislation. Three other pieces of legislation enacted in 1965 should be briefly noted: The National Student Vocational Loan Act of 1965,¹⁴³ directed to non-postsecondary education, nevertheless provided a set of qualifying indicia if accreditation was not available, including state and ultimately federal accreditation, and authorized the Com-

¹³⁶ Interestingly, it was argued to the Senate Committee that the creation of the alternative of federal accreditation where no voluntary agency existed would "provoke" the creation of a private accrediting body. *Senate Hearings, supra* note 124 at 1069 (remarks on behalf of the United Business Schools Association). This seems justified. Indeed the Associate Commissioner for Higher Education pointed out to the House Committee that the alternative of accreditation through an advisory committee established in the Higher Education Facilities Act (and followed here) had resulted in a greater willingness in regional accrediting agencies to grant provisional accreditation and the Commissioner pointed out that he had not appointed an advisory committee under that Act. *House Hearings, supra* note 130, at 136.

¹³⁷ *Id.* at 839, 847.

¹³⁸ *House Hearings, supra*, note 130, at 603.

¹³⁹ *Senate Hearings, supra* note 124, at 1120.

¹⁴⁰ A lengthy statement including a list of meetings with interested agencies, resolutions of the AAJC and the Office of Education's own list of recognized agencies was submitted. *Id.* at 1120-1122.

¹⁴¹ *Id.* at 1126. Senator Yarborough informed the AAJC representative that the matter would be called to the attention of the Office of Education to make a preliminary study. *Id.* at 1120.

¹⁴² See discussion *infra* at 367-368.

¹⁴³ Pub. L. 89-287, 79 Stat. 1037. The vocational student loan program was initially part of the proposed Higher Education Act but the House Committee decided to sever it, and the Senate Committee agreed. S. REP. No. 755, 89th Cong., 1st Sess. 1-2 (1965).

missioner to publish a list of both voluntary and state accrediting agencies. As in the Korean GI Bill the definition was clearly geared to the exclusion of "fly-by-night" vocational training.¹⁴⁴

The State Technical Services Act of 1965,¹⁴⁵ intended to effectuate a greater dissemination of science and technology¹⁴⁶ while relying on private accrediting agencies, nevertheless held open the possibility of federal accreditation. It authorized the publication of a list of both accrediting agencies and those institutions which the Commissioner found qualified following an evaluation by an advisory committee appointed by him.

Interestingly, a provision of Medicare¹⁴⁷ dealing with hospitals deemed an institution to have met a set of extensive definitional requirements if it was accredited by the Joint Commission on Accrediting and also authorized the Secretary of HEW to treat the requirements as met if he found that accreditation by the American Osteopathic Association "or any other national accreditation body provides reasonable assurance" that the enumerated statutory standards would be met.

1968 Legislation. Two pieces of legislation in 1968 should be noted. The Higher Education Amendments of 1968¹⁴⁸ reiterated the requirement of accreditation in the establishment of eligibility for fellowships for public service with the wrinkle of requiring approval and authorizing publication of a list of such agencies by the Secretary rather than the Commissioner. Interestingly, while the aid to graduate education provisions of that legislation was viewed as curbing the "disturbing trend toward conformity" and the "headlong process of professionalization"¹⁴⁹ no similar concern or interest seems to have been generated concerning the accreditation language.¹⁵⁰

The Vocational Education Amendments of 1968¹⁵¹ added a definitional section for a "private vocational training institution" to the Vocational Education Act of 1963 largely tracking the definitional section discussed previously of the National Student Vocational Loan Act of 1965, allowing alternatively for State and Federal accreditation in the event no nationally

¹⁴⁴ "It was the determined intent, however, that the 'fly-by-night' institutions of the post-World War II era be explicitly eliminated from eligibility." S. REP. NO. 758, *supra* note__at 12. H.R. REP. NO. 308, 89th Cong., 1st Sess. (1965) noted that the House subcommittee "devoted a majority of its attention" to the problem of institutional eligibility and reiterates the Senate Committee's concern for the fly-by-night experience. *Id.* at 9. Appendix 9 of that report listed the Office of Education's list of recognized accrediting agencies. 111 CONG. REC. 14122 (1965) (remarks of Rep. Meeds regarding the exclusion of "fly-by-night" schools).

¹⁴⁵ Pub. L. 98-182, 79 Stat. 679.

¹⁴⁶ S. REP. NO. 421, 89th Cong., 1st Sess. (1965).

¹⁴⁷ Social Security Amendments of 1965, 79 Stat. 286.

¹⁴⁸ Pub. L. 90-575, 82 Stat. 1014.

¹⁴⁹ S. REP. NO. 1387, 90th Cong., 2d. Sess. 53 (1968).

¹⁵⁰ The Conference report, H.R. REP. NO. 1938, 90th Cong., 2d. Sess. (1968) lacks any attention to this matter.

¹⁵¹ Pub. L. 90-576, 82 Stat. 1064.

recognized private accrediting agency was found to exist. The provision originated in the House¹⁵² and was accepted by the Senate without dispute.¹⁵³

Education Amendments of 1972. The now traditional reliance on private accreditation was continued in three portions of the Higher Education Amendments of 1972.¹⁵⁴ In providing emergency assistance to institutions of higher education, the definitional section required accreditation or "satisfactory assurance", or credit transferability in lieu thereof, and authorized publication of a list in the now traditional language. Second, it amended the Higher Education Act of 1965 to include accredited collegiate and associate degree schools of nursing and defined "accredited" as meaning accredited "by a recognized body or bodies approved for such purpose by the Commissioner." It also added a definitional section dealing with proprietary institutions of higher education which required *inter alia* accreditation by a body approved by the Commissioner, and it reiterated the publication authorization for the purposes of that section. Third, it added a new definitional section to include community colleges, requiring either accreditation by a nationally recognized accrediting agency or association or the attainment of a recognized pre-accreditation status from such agency or credit transferability. No reference to the Commissioner or a publication requirement was referred to in this amendment.

It appears that these provisions did not warrant particular comment by the relevant committees¹⁵⁵ nor during the course of the hearings was any attention paid either to these provisions in particular or to the accreditation-reliance system in general.¹⁵⁶ Although the chairman of the Newman Commission testified before both bodies¹⁵⁷ on the criticism levelled against the higher education system in the Commission's report, its comments on accreditation was nowhere alluded to. Interestingly, Secretary Richardson did observe to the Senate Committee:

Career ladders are so encumbered with requirements for certificates and credentials that "doing time" in school has become nearly the only avenue to advancement. Accrediting bodies have come to protect the professional views of guilds more aggressively than the changing needs and interests of consumers.¹⁵⁸

¹⁵² H.R. REP. NO. 1647, 90th Cong., 2d Sess. 27, 51 (1968).

¹⁵³ H.R. REP. NO. 1938, 90th Cong., 2d Sess. 46 (1968).

¹⁵⁴ Pub. L. 92-318, 86 Stat. 235.

¹⁵⁵ S. REP. NO. 604, 92nd Cong., 2d Sess. (1972). S. REP. NO. 798, 92nd Cong., 2nd Sess. (1972) (Conference).

¹⁵⁶ *Hearings on Higher Education Amendments of 1971 Before the Special Subcommittee on Education, House Committee on Education and Labor, 92nd Cong., 1st Sess. (1971), Hearings on Education Amendments of 1971 Before Subcommittee on Education, Senate Committee on Labor and Public Welfare, 92nd Cong., 1st Sess. (1971).*

¹⁵⁷ *House Hearings*, *id.* at 743-773, *Senate Hearings*, *id.* at 2461-2469.

¹⁵⁸ *Senate Hearings*, *id.* at 697.

This statement, however, was delivered in testimony relating to the proposed National Foundation for Higher Education which the Secretary envisaged as encouraging innovation; it had no reference to the accreditation requirements of this or any predecessor legislation.

The Challenge to Specialized Accreditation

Health Professions Educational Assistance Amendments of 1965. The conflict between generalized regional accreditation and specialized program accreditation complained of by the junior college association¹⁵⁹ and earlier by the American Hospital Association¹⁶⁰ came to the fore in a House proposed amendment to the Nurse Training Act which would have deleted the requirement of accreditation of collegiate and associate schools of nursing by a body recognized by the Commissioner (or reasonable assurance) and substituted approval by a regional association or a State approval agency.¹⁶¹ The House Committee noted that a number of junior colleges were troubled by the delay and expense of multiple accreditation and were concerned about an increased reliance on specialized accreditation.¹⁶² It concluded that the demand for manpower and the reliability of regional or state accreditation outweighed any claim to greater quality in the current system and that the accreditation provisions could be "modified" without impairing the goals of the Act.¹⁶³ In the debate in the House opponents pointed out that the amendment was inserted at the last minute in executive session and that no hearings had been held on the proposal.¹⁶⁴ They stressed that the measure was, in effect, an attack on the accrediting policies of the National League for Nursing, recognized by the Commissioner as the sole agency for accreditation of all nursing programs and put up a stout defense of the League's work.¹⁶⁵ Interestingly, the American Hospital Association had seemingly altered its position¹⁶⁶ and the amendment was also opposed by the Office of Education.¹⁶⁷ Proponents argued, in effect, that too many worthy programs were not being accredited¹⁶⁸ in the

¹⁵⁹ *Supra* note 137.

¹⁶⁰ *Supra* note 118.

¹⁶¹ H.R. REP. NO. 781, 89th Cong., 1st Sess. (1965).

¹⁶² *Id.* at 20.

¹⁶³ *Id.* at 21.

¹⁶⁴ 111 CONG. REC. 22402 (1965) (remarks of Rep. Cohelan), *id.* at 22454, 22468 (remarks of Rep. Cunningham).

¹⁶⁵ *Id.* at 22402 (remarks of Rep. Cohelan), *id.* at 22394 (remarks of Rep. Vanik), *id.* at 22453 (remarks of Rep. Cunningham), *id.* at 22457 (remarks of Rep. King), *id.* at 22460 (remarks of Rep. Redlin), *id.* (remarks of Rep. Carter).

¹⁶⁶ *Id.* at 22455-56 (letter from American Hospital Association).

¹⁶⁷ *Id.* at 22456 (statement of the Office of Education).

¹⁶⁸ The Senate report pointed out that of 131 junior college nursing programs, only 3 had been fully accredited and 32 granted "reasonable assurance" of accreditation. S. REP. NO. 789, 89th Cong., 1st Sess. (1965).

face of a critical demand for trained manpower and questioned the repose of governmental authority in private groups, apparently without observing any inconsistency insofar as regional accreditation is concerned.¹⁶⁹

By prior agreement no amendment to this section was to be offered and the debate in the House was for the information of the Senate.¹⁷⁰ The Senate Committee on Labor and Public Welfare struck the amendment but inserted a substitute defining an eligible program as one accredited by a body recognized for such purpose by the Commissioner "or a program accredited for the purpose of this Act" by the Commissioner.¹⁷¹ It was explained that HEW Under-Secretary Cohen would hold meetings with various interested groups and would propose further legislation if needed.¹⁷² Although HEW vigorously opposed the measure¹⁷³ the compromise was acceptable to the House advocates who had been assured that junior colleges would be adequately taken care of¹⁷⁴ and thus the authority of the Commissioner explicitly to accredit nursing programs became law. At no point, however, did the debate focus on the amendment to the definitional section of the 1963 Act which allowed an unaccredited institution, not eligible for accreditation due to insufficient time of operation, to be eligible for grants if the Commissioner in consultation with the Surgeon General and the appropriate accrediting body found there was "reasonable ground to expect" the school will meet accreditation standards within a reasonable period after the grant.¹⁷⁵

Allied Health Professions Personnel Training Act of 1966. The House

¹⁶⁹ Representative Moss put it, "I do not know why the Government of the United States should require a private group to spell out the standards..." 111 CONG. REC. 22461 (1965). Representative Rogers of Florida, the amendment's sponsor, noted, "...I do not think we ought to make these junior colleges go to a private organization—a private organization—to get their clearance before tax dollars are given to the nursing schools and students..." *Id.* at 22462. Representative Griffin stated that, "In my view, the interpretation placed on the present law by the Commissioner of Education, requiring accreditation by this private organization, is unduly restrictive and not in the public interest." *Id.* at 22463.

¹⁷⁰ *Id.* at 22398.

¹⁷¹ S. REP. NO. 1378, *supra* note 117 at 7. The Committee observed that it was not its intent to encourage federal accreditation of nursing schools on a "massive scale" but it did conclude that some excellent programs were not accredited which should be eligible. *Id.*

¹⁷² *Id.* See also 111 CONG. REC. 22645 (1965) (remarks of Sen. Hill).

¹⁷³ In a letter to the Committee, Under-Secretary Cohen pointed out that regional and state accreditation relate to the school as a whole and not to any specialized program. Accordingly, he questioned the impact on quality. In addition, he pointed out that,

... under existing law there is no restriction on the accrediting body or bodies which the Commissioner of Education may recognize for the purposes of this act. If he should find, therefore, that accrediting bodies other than the National League for Nursing have developed accrediting or approval programs that give attention to the quality of nurse education programs in colleges or junior colleges he could recognize these additional bodies for accreditation purposes.

S. REP. NO. 1378 *supra* note 117 at 17.

¹⁷⁴ 111 CONG. REC. 26496, 26497 (1965) (remarks of Reps. Rogers and Moss).

¹⁷⁵ 79 Stat. 1054.

reported measure was intended to expand the eligibility of allied health programs in junior colleges.¹⁷⁶ It would have amended the definition of an eligible institution for reduced interest student loan insurance under the Higher Education Act of 1965 by including schools of health and diploma schools of nursing and by expanding the definition of "accredited" to include nursing schools otherwise ineligible for accreditation but for which the Commissioner found, in consultation with the accreditation agency, that there was reasonable assurance that accreditation standards would be met.¹⁷⁷ It would also have expanded the definition of a "training center for allied health professions" to include a division of a junior college, college or university which offers certain allied health programs and *inter alia* was or was in a college which was accredited by a body or bodies approved by the Commissioner or, if a junior college, was regionally accredited or there was "satisfactory assurance" afforded the accrediting agency to the Surgeon General that "reasonable progress is being made toward accreditation by such junior college."¹⁷⁸

The Senate Committee rejected the amendment to the Higher Education Act but with minor technical alteration accepted the latter provision.¹⁷⁹ For those to whom multiple accreditation was undesirable, the language was viewed as a step forward¹⁸⁰ and it became law.¹⁸¹ Interestingly, the acceptance of regional accreditation in the statute seems to foreclose, at least for the purposes of this Act, any opportunity for the Commissioner of Education to disapprove of any of those organizations under any revision of his criteria for recognizing as responsible such agencies. It posed, as will be noted later, another factor to be weighted in arriving at a conclusion as to the degree of latitude possessed by the Commissioner to alter these criteria. As in all the hearings discussed but particularly noteworthy here in view of the *statutory* reliance on regional accreditation, no testimony or statement was presented on behalf of any regional accrediting association.

Health Manpower Act of 1968. An attempt had been made the prior year to delete the authority of the Commissioner to accredit schools of nursing directly under the Nurse Training Act as amended by the Health Profession Educational Assistance Amendments of 1965.¹⁸² Under-Secretary Cohen favored the deletion of that authority on the assumption that the

¹⁷⁶ H.R. REP. NO. 1628, 89th Cong., 2d Sess. 17-18 (1966).

¹⁷⁷ *Id.* at 29, 72-73.

¹⁷⁸ *Id.* at 51.

¹⁷⁹ S. REP. NO. 1722, 89th Cong., 2d Sess. 35-36 (1966).

¹⁸⁰ 112 CONG. REC. 13998 (1966) (remarks of Rep. Horton), *Hearings on Allied Health Personnel Training Act of 1966 Before the House Committee on Interstate and Foreign Commerce*, 89th Cong., 2d Sess. 36 (1966) (remarks of Rep. Rogers), *Hearings on Health Professions Personnel Before the Subcommittee on Employment and Manpower, Senate Committee on Labor and Public Welfare*, 89th Cong., 2d Sess. 151-152 (remarks of Sen. Yarborough).

¹⁸¹ Pub. L. 89-751, 80 Stat. 1222.

¹⁸² H.R. 6418, 90th Cong., 1st Sess. (1967).

various institutional and accrediting agencies would arrive at a solution.¹⁸³ The situation was fully detailed in the House Committee's report which observed of the accreditation reliance system:

In general, this method of determining eligibility of institutions and programs for Federal assistance has worked extremely well; however, it must be recognized that *as a practical matter* the requirement that an institution or program be accredited by a private nongovernmental group to qualify for assistance permits that private nongovernmental group to be in a position to determine, in accordance with its own standards and procedures, eligibility of other groups or institutions to receive Federal aid, and thereby *to a degree constitutes* a delegation of legislative power to a private organization.¹⁸⁴

In view of the absence of agreement by the interested parties it was decided to let matters stand pending consideration the following year. HEW concurred.¹⁸⁵ Thus the dispute was renewed in the consideration of the Health Manpower Act.

The administration favored a measure deleting the Commissioner's authority and allowing him to rely on state accreditation.¹⁸⁶ Such reliance was opposed by the American Nurses Association¹⁸⁷ and the National League for Nursing.¹⁸⁸ It was rejected by the Senate Committee which approved, as an alternative reliance on the accreditation of the institution with which the program was affiliated.¹⁸⁹ Many the same arguments were raised in the House Committee¹⁹⁰ which again reviewed the history of the dispute noting:

As this committee pointed out in its report accompanying H.R. 6418 last year (H. Rept. 538, 89th Cong.) [sic], the provisions of existing law per-

¹⁸³ *Hearings on the Partnership for Health Amendments of 1967, Before the House Committee on Interstate and Foreign Commerce*, 90th Cong., 1st Sess. 35 (1967).

¹⁸⁴ H.R. REP. No. 538, 90th Cong., 1st Sess. 34 (1967) (emphasis added).

¹⁸⁵ *Hearings on the Partnership for Health Amendments of 1967 Before the Subcommittee on Health, Senate Committee on Labor and Public Welfare*, 90th Cong., 1st Sess. 74 (1967) (remarks of Under-Secretary Cohen).

¹⁸⁶ *Hearings on Health Manpower Act Before the Subcommittee on Health, Senate Committee on Labor and Public Welfare*, 90th Cong., 2d Sess. 51 (1968) (testimony of Assistant Secretary for Health and Scientific Affairs, HEW). S. REP. No. 1307, 90th Cong., 2d Sess. 9 (1968). The Assistant Secretary pointed out that the Commissioner had not exercised his authority to accredit "because of our deep reservations about this kind of Federal involvement in education." *Hearings*, *supra* at 82-83.

¹⁸⁷ *Hearings supra* note 186 at 116-119.

¹⁸⁸ *Id.* at 124. It pointed to the availability of "reasonable assurance" in lieu of full accreditation but Senator Yarborough noted that, "You did not give reasonable assurance until we said, 'We think the Secretary of HEW [sic] ought to accredit them.'" *Id.* at 125.

¹⁸⁹ S. REP. No. 1307, *supra* note 186 at 9.

¹⁹⁰ *Hearings on the Health Manpower Act of 1968 Before the Subcommittee on Public Health and Welfare, House Committee on Interstate and Foreign Commerce*, 90th Cong., 2d Sess. (1968).

mitting a private organization to determine, in accordance with its own standards, eligibility of other institutions to receive Federal funds, constitutes a delegation of legislative power by the Congress to a single private organization. The committee feels that additional organizations should be designated as accredited bodies for purposes of the act, and has amended the bill correspondingly.¹⁹¹

Accordingly it accepted suggestions of reliance on either state or institutional accreditation in addition to special program accreditation:

The Commissioner would be required to publish a list of nationally recognized accrediting bodies, and State agencies, which he determines to be reliable authority as to the quality of training offered. The committee expects that this list will include the National League for Nursing, the Joint Commission on the Accreditation of Hospitals and the appropriate regional educational agencies that are nationally recognized as accreditation authorities.¹⁹²

The Congressional debate reflected, as in a sense did the House Committee report, the conflict between the demand for a greater number of trained personnel¹⁹³ against the claim of quality in specialized accreditation.¹⁹⁴ The Act opted for more "liberalized" standards¹⁹⁵ by allowing reliance on state and institutional accreditation.¹⁹⁶

Health Training Improvements Act of 1970. In a somewhat different context, Senator Javits sponsored a bill in 1969 which would have created an advisory group to study health personnel licensure and certification.¹⁹⁷ His concern was reiterated in the context of considering the Health Training Improvements Act, and he was assured by the Assistant Secretary for Health and Scientific Affairs, HEW, that the Department was in the process of studying the matter.¹⁹⁸ Nevertheless, the Committee reported out the bill with the requirement that the Secretary of HEW report on certification

¹⁹¹ H.R. REP. NO. 1634, 90th Cong., 2d Sess. 36 (1968).

¹⁹² *Id.*

¹⁹³ *Id.* at 36-37. 114 CONG. REC. 24773 (1968) (remarks of Rep. Jarman); *id.* at 24774 (remarks of Rep. Springer); *id.* at 24775 (remarks of Rep. Dwyer); *id.* at 24775 (remarks of Rep. Montgomery); *id.* at 24778 (remarks of Rep. Rogers); *id.* at 24775-76 (remarks of Rep. May).

¹⁹⁴ 114 CONG. REC. 24776-77 (1968) (remarks of Rep. Vanik); *id.* at 24782 (remarks of Rep. Van Deerlin)

¹⁹⁵ *Supra* note 193, (Remarks of Rep. Jarman).

¹⁹⁶ Pub. L. 90-490, 82 Stat. 773. The publication requirement was also retained.

¹⁹⁷ S. 2753, 91st Cong., 1st Sess. (1969).

¹⁹⁸ *Hearings on the Health Training Improvements Act of 1970 Before the Subcommittee on Health, Senate Committee on Labor and Public Welfare*, 91st Cong., 2d Sess. 128 (1970). The Assistant Secretary pointed out that, "The challenge in this field is to balance the protection of the patient against unskilled personnel, on the one hand, and assurance of an adequate quantity of health manpower to provide the service the public needs and expects, on the other." *Id.* at 127-128.

and licensure¹⁹⁹ that eventually found its way into the Act;²⁰⁰ a portion of the Secretary's report was noted at the outset.²⁰¹

Administration of the Authority to Recognize

Revision of Criteria for Recognition—1969

It was pointed out earlier²⁰² that the Commissioner's criteria announced in 1952 seem to reflect what was the then sound practice of the relatively few voluntary accrediting agencies, as a standard to guide future recognition decisions. In 1968, however, the Office of Education established an Accreditation and Institutional Eligibility Staff (AIES) within the Bureau of Higher Education and an Advisory Committee on Accreditation and Institutional Eligibility.²⁰³ The latter, composed of persons outside the government, was created to assist the Commissioner in recognizing accrediting agencies²⁰⁴ and on broad policy matters. The AIES, itself composed of four units, was introduced to administer the program, serve as liaison with accrediting agencies, review procedures and the like.²⁰⁵ It was responsible for the development of the revised criteria adopted by the Commissioner in 1969.²⁰⁶

The revision accepted *verbatim* a significant portion of its predecessor. Considerably amplified, however, were the procedural aspects of the required accreditation process. For example, its predecessor required only the use of "qualified examiners" to visit an institution, inspect its courses, resources, facilities, and personnel, and prepare written reports and recommendations for use of the reviewing body to be conducted under impartial and objective conditions. The revision required the use of "experienced and qualified examiners" with a scope of inquiry extending into administrative practices and services. It required adequate consultation during the visit with faculty, administration and students. It required that a copy of the report be furnished the institution's chief executive and that he have an opportunity to comment prior to taking action. It required, further, that

¹⁹⁹ S. REP. NO. 91-1002, 91st Cong., 2d Sess. 2, 10 (1970). A portion of the report was discussed in the text accompanying note 3, *supra*.

²⁰⁰ 116 CONG. REC. 36886-87 (1970) (report of the House conferees). Pub. L. 91-519, 84 Stat. 1342.

²⁰¹ *Supra*, note 3.

²⁰² *Supra*.

²⁰³ See Pugsley, Accreditation Policy Unit-USOE: Origins, Activities, and Current Perspectives, address of the Chief, Accreditation Policy Unit, AIES, USOE, before the 33rd Annual Convention of American Medical Technologists (July 21, 1971) and Proffitt, The U.S. Office of Education, Accreditation and the Public Interest, sponsored by the USOE and the Nat'l Comm. on Accrediting (November 6, 1970). See Also Dickey & Miller, *Federal Involvement in Nongovernmental Accreditation*, 53 EDUC. REC. 138 (1972).

²⁰⁴ Pugsley reports that the Committee has met 8 times since its establishment and has reviewed 41 petitions concerning recognition. Pugsley, *supra* note 203 at 8.

²⁰⁵ Proffitt, *supra* note 203.

²⁰⁶ 34 Fed. Reg. 643-644 (1969).

the agency evaluate the report in the presence of a member of the team and that it provide an internal avenue of appeal of its decisions.²⁰⁷

Two novel provisions, however, were not entirely of a procedural character. First, the revision required that the organization "encourage and give staff guidance for institutional or program self-study prior to accreditation."²⁰⁸ Second, that the organization had "demonstrated its capability and willingness to enforce ethical practices among institutions and educational programs accredited by it."²⁰⁹

The Director of the Accreditation and Institutional Eligibility Staff has spoken of the new criteria as including "a concern that a recognized accrediting agency shall manifest an awareness of its responsibility to the public interest, as opposed to parochial education or professional interest. . . ." ²¹⁰

Criticism of the Accreditation System and the Proposed Revisions in Criteria

As the Introduction observed, increasing scrutiny (and criticism) has been directed to private accreditation. The most common criticisms seem to fall in two groups: those which fault the accrediting agencies for what they could do but have failed to do and those which find a more basic flaw which the existing structure may seemingly be incapable of correcting. The former claim such defects as the failure to evaluate scientifically the soundness of their standards,²¹¹ failure to disseminate information useful to the "consumer,"²¹² failure to update standards and policies,²¹³ and, failure to be open about internal proceedings.²¹⁴ The latter would assert that accrediting agencies function like trade monopolies exercising coercive power in their own, not the public interest.²¹⁵ The result is an homogenization of education, a perseverance in the status quo. Specialized accreditation comes in for particular criticism because the possibility of a conflict of interest arises when the professional group controlling accreditation may

²⁰⁷ Compare 17 Fed. Reg. 8929 (1959) (error corrected 17 Fed. Reg. 8994 (1952)) with 34 Fed. Reg. 643 (1969). The verbatim inclusions were, *inter alia*, that the agency or association be national or regional in scope, serve a definite need, perform no inconsistent function, make available certain information (with some modification), have an adequate organization and effective procedures (amplified in greater detail than in the earlier statement), and have gained general acceptance by institution, practitioners, etc.

²⁰⁸ 34 Fed. Reg. 643, no. 5 (1969).

²⁰⁹ *Id.* at no. 12.

²¹⁰ Proffitt, *supra* note 203.

²¹¹ C. WARD, *supra* note 2.

²¹² Koerner, *Who Benefits From Accreditation: Special Interests or the Public?* Address in Seminar: *Accreditation and the Public Interest*, sponsored by the USOE and the Nat'l Comm on Accrediting (Nov. 6, 1970).

²¹³ Pugsley, *supra* note 203.

²¹⁴ *Id.*, Koerner, *supra* note 212; Newman, *supra* note 5, HEW REPORT, *supra* note 4.

²¹⁵ See Note 3, *supra*, Koerner, *supra* note 212.

have an economic interest in lowering the production of trained personnel.²¹⁶ By far the most frequently raised question in both institutional and specialized accreditation is the lack of "accountability."²¹⁷

In response, seemingly, to some of these criticisms the Office of Education has commenced circulating for discussion within the accrediting community, a proposal for a second revision in recognition criteria. Tentatively, this includes provisions requiring a greater responsiveness to the public interest as in requiring "public representatives" on the governing boards of recognized accrediting agencies²¹⁸ and greater public availability of information concerning its processes. The requirement that such agencies require accredited institutions to observe "ethical practices" would also be strengthened. In addition the encouragement of institutional experimentation and innovation would be required.²¹⁹

Authority to Recognize as Authority to Regulate

The Expansive View

It appears that with the creation of the Accreditation and Institutional Eligibility Staff, the Office of Education has begun to read its authority under the various statutes far more expansively than heretofore. Its authority so to do has nowhere been challenged; thus the legal underpinnings for the Office's action are not entirely clear. However, the outline of a legal justification for the move is not difficult to propose. The argument would first point out that under each of the statutes the Office of Education is given authority to determine the reliability of accrediting agencies in the exercise of its discretion as an expert administrative agency. In addition, a substantial amount of public funds is involved under these various programs, estimated at five billion dollars in fiscal year 1972.²²⁰ Thus accrediting agencies should be viewed as delegates of governmental authority. As Secretary Richardson has put it:

Legislation passed during the past 20 years has consistently deferred to accreditation as the primary base criterion for Federal funding. Furthermore, there has been a continuing acceptance of accreditation as a standard

²¹⁶ C. WARD, *supra* note 2, Selden, *Dilemmas of Accreditation of Health Educational Programs*, in STAFF WORKING PAPERS PART II: STUDY OF ACCREDITATION IN SELECTED HEALTH EDUCATIONAL PROGRAMS G-1 (1972).

²¹⁷ *Id.* See also the second draft of the Newman Report and the editorial, *Accrediting Accreditors*, The Evening Star, Washington, D.C., Sept. 5, 1972.

²¹⁸ *Supra* note 6. This was one of the explicit recommendations of the first Newman Report, *supra* note 4. The nation has been suggested elsewhere in Selden, *Professional Associations—Their Primary Functions*, 45 N.Y.S. BAR. J. 26, 28 (1973).

²¹⁹ *Id.*

²²⁰ A figure quoted in F. DICKY & J. MILLER, *A CURRENT PERSPECTIVE ON ACCREDITATION* (1972).

for evaluation by both Congress and the general public without a full understanding of its concepts or an adequate appraisal of its compatibility with legislative intent.

With the allocation of significant amounts of public funds to students and to institutions through the eligibility for funding status provided by accrediting associations, accreditation carries with it the burdensome responsibility of public trust. Accrediting associations are functioning today in a quasi-governmental role, and their activities relate closely to the public interest.²²¹

Indeed, the argument would point out that many students of accreditation have accepted the proposition that accreditation functions in the public interest²²² and, it could be asserted, that a key committee of the House in fashioning some of this legislation viewed accreditation in just that light.²²³

Moreover, the creation of AIES and the revision of recognition criteria antedates the continuation of congressional reliance on the recognition system as found most recently in the Higher Education Amendments of 1972 and thus congressional approval of the more expansive view is fairly to be implied.

Finally, the argument would conclude by noting that education has assumed an increasingly more important role in American society and that the accreditation system must be made responsive to these altered circumstances. As the Director of AIES has observed:

...accrediting bodies are performing an increasingly important societal role—a role in service of the broader society rather than one solely in service of the narrower educational community. And if the Federal government is going to be justified in continuing strong reliance upon private accreditation, the accrediting associations will need to more explicitly recognize their obligation to protect the public interest. We, in the Office of Education, believe that this situation offers many challenges and fruitful opportunities—along with a few pitfalls—for the Nation's accrediting bodies, and we look forward to working cooperatively and constructively on these matters in the future.²²⁴

Thus as accreditation becomes a determinant for eligibility for federal funds the voluntarism of traditional accreditation simply evaporates as a practical matter and it becomes the responsibility of the federal government to assure adherence to standards reflecting the public interest. Congress, it would be concluded, did not intend to deprive the executive branch of authority to assure adequate accommodation with the public interest as a condition of extending voluntary recognition to a private ac-

²²¹ HEW REPORT, *supra* note 3 at 14.

²²² C. WARD, *supra* note 2.

²²³ *Supra* notes 184, 191, 192.

²²⁴ Proffitt, *supra* note 203.

crediting agency and the determination of "reliability" is a sufficiently broad standard for the expert administrative agency to adopt recognition criteria requiring such an accommodation.

Appealing as this line of reasoning may be to those who regard tighter federal standards favorably, it does suffer from a basic, indeed fatal, infirmity—it finds no support in the statutes from which the Commissioner derives his authority.

The Limited View

A Textual Analysis. Under all the statutes bearing a publication authorization, the federal role is limited to determining that a nationally recognized agency is a reliable authority as to the quality of education or training offered. This, it was noted earlier, assumes the existence of such nationally recognized bodies, that are recognized initially not by the Commissioner but by the related academic or educational community. Thus the criteria established by the Commissioner require acceptance of these bodies. Most important, the Commissioner's determination is limited to the agency's reliability concerning the *quality* of the program undergoing accreditation. While it is arguable that palpably every facet of institutional life conceivably touched on by the accreditation process may have some ultimate bearing on the quality of the program, it is clear that the recognition authority of the Commissioner is limited to accreditation standards directly connected with program quality.

This distinction is perhaps illustrated in the listing of nine functions of accreditation, noted in the Introduction,²²⁵ only one of which directly relates to the current program quality—certification that pre-established standards have been met. It may be helpful to an institution to engage in a self-study and indeed such an engagement seems to be comprehended in two of the functions listed by the Commissioner—creating goals for self-improvement and involving faculty and staff in institutional evaluation and planning. However, helpful these institutional practices are, it is clear from the Commissioner's list that neither directly concerns the first function of accreditation—certification that pre-existing standards have been attained.

Legislative Intent

It is curious that Secretary Richardson should point out that there has not been an adequate appraisal of the compatibility of the accreditation system with legislative intent in creating the recognition-reliance system, while the Office of Education has perforce proceeded on the assumption that its authority is fully consistent with that intent. Further, each of the

²²⁵ Text accompanying note 21, *supra*.

relevant statutes has concerned large issues of public policy and save for the dispute on specialized or generalized accreditation in health training, little congressional attention has been devoted to the accreditation issue. Nevertheless, the legislative histories are, however slender, relatively clear.

The Korean GI bill established a facility upon which state and federal authorities could rely. The Federal role was viewed as ministerial, simply relying on the consensus in the academic community of the reliability of the agency. In addition, the need for protection from fly-by-night institutions has continued to be a factor, if perhaps no longer the predominant one, that justifies use of the accreditation-reliance system and necessarily colors the government's role with respect to those agencies.²²⁶ Later enactments, however, saw in accreditation more of an affirmative testimonial to institutional quality than a protection from entrepreneurial abuse. Thus the achievement of accreditation was itself made a desirable institutional goal for federal purposes.²²⁷

Moreover, the enactment of alternatives to accreditation—through the credit transferability route, through giving reasonable assurance for as yet unaccredited institutions or through obtaining state or federal accreditation for institutions lacking a nationally recognized accrediting agency—cannot reasonably support a notion of an implied power to regulate in the public interest such as might be made were no alternatives provided. Congress was clearly aware, however, the impact that the existence of these alternatives would have on the accrediting agencies.²²⁸

Further, the Congressional response to the specialized-generalized accreditation dispute lends further support to the position arguing a limited federal role. It must be pointed out that the House report on the abortive Partnership for Health Amendments of 1967 did not conclude (as the Committee's report the following year seems to imply), that reliance on accreditation "constitutes a delegation of legislative power"²²⁹ but rather that "as a practical matter" it had that effect "to a degree."²³⁰ Moreover, the committee's reaction was not to provide greater federal authority over the policies of such bodies but simply to add additional accrediting agencies to remedy an apparent imbalance. As we observed earlier, without the testimony of any regional accrediting association in the hearings, the Health Manpower Act seemingly recognized those agencies as *per se* reliable. This raises the interesting question of whether the Commissioner has any authority to deny recognition, through a revision in criteria, to

²²⁶ This includes the 1972 amendments, *e.g.* remarks of Rep. Green concerning the need for accreditation of proprietary institutions "to avoid the situation that appeared after World War II in the GI bill." *Hearings Before the House Subcommittee*, *supra* note 156, at 684.

²²⁷ *Supra* notes 131, 132.

²²⁸ *Supra* note 136.

²²⁹ *Supra* note 191.

²³⁰ *Supra* note 184.

a non-complying regional association, at least for the purposes of that Act. On this point it should be noted that the Commissioner has not published separate lists for each of the acts authorizing publication and the single list published simply refers to the Korean GI bill and later enactments.

In sum, the legislative histories do not support the notion of accrediting agencies as delegates of Federal authority.²³¹ The history more reasonably suggests the continuing reliance on the existing accrediting systems as a facility much like the use of a rating system of a trade association as part of the specifications in a government contract.

Conclusions

Scope of the Commissioner's Authority

This study has suggested that the role of the Office of Education in recognizing accrediting agencies is limited by the terms and intent of the legislation to a determination based largely on acceptance in the academic community of the organization's reliability in matters of educational quality. It has also suggested that the Commissioner has misconstrued that function as a more general one of policing the internal policies of these agencies as a condition of federal recognition to bring them in compliance with the Commissioner's notions of what is in the public interest. Somewhat earlier it was noted that at least a portion of the 1969 revised criteria is not directed to whether the agency is reliable in ascertaining adherence to predetermined standards. This trend is accelerated in the proposed revision now being circulated, particularly with respect to the requirement of public memberships on accreditation governing boards and the encouragement of innovation.

The Need for Congressional Consideration

While the Office of Education now seeks to make accrediting agencies responsive to the public interest "as opposed to parochial educational or

²³¹ The re-enactment argument is simply weightless inasmuch as the record is clear that the relevant committees never considered the accreditation-reliance system at the time of the 1972 amendments. *Supra* note 156. Interestingly, it appears that the General Counsel's Office of HEW prepared and made available a memorandum of June 19, 1970 concerning the delegation issue in the recognition-reliance system. In it the Office relies on the independent role of private accrediting agencies as minimizing any constitutional problem.

... private agencies undertake to accredit schools for many reasons other than Federal aid eligibility. Accreditation is generally considered to be the single most reliable indicator of institutional quality in higher education, and private accrediting agencies play a broad role—apart from the role placed upon them by the statutory provisions noted above—in maintaining and improving educational standards. *The Federal-aid statutes merely take cognizance of this well-established system.*

(Emphasis added.)

This study concludes that the emphasized language of the General Counsel's memorandum is accurate.

professional interest”²³² the legislative histories make it abundantly clear that the system of federal reliance was based on those agencies functioning precisely in the “service of the narrower educational community.”²³³ Thus any alteration in the system so established requires congressional action.

Moreover, the conflict between claims of professional expertise and public accountability in eligibility for federal funds is squarely a matter for legislative treatment. It was this kind of issue in health training that resulted in the demonopolization of specialized accreditation. Whether or not one agrees with the balance struck it is clearly the role of Congress to strike it. Thus from an institutional perspective, whatever one’s conclusions of the desirability of the current recognition-reliance system, one is justified in registering *dubitante* when an administrative agency seeks, without legislative authorization, to protect an ill-defined “public interest.” It would, however, be premature to suggest the content of such further legislation. That must await the detailed findings of the Brookings study as illuminated by discussion of them, and, hopefully, by Congressional hearings.

²³² Proffitt, quote accompanying note 210.

²³³ Proffitt, quote accompanying note 224.

