

Senate Health, Education, Labor, and Pensions Committee

**TESTIMONY ON THE HISTORY AND CURRENT EFFECTIVENESS
OF THE HIGHER EDUCATION “TRIAD”**

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Chairman Harkin, Ranking Member Alexander, and members of the Committee: I am Paul Lingenfelter, and I have been CEO/President of the association of State Higher Education Executive Officers (SHEEO), based in Boulder, Colorado from 2000 until this week. George Pernsteiner, formerly Chancellor of the Oregon University System, has succeeded me at SHEEO effective September 16th. Earlier in my career, beginning in 1968, I was employed by the University of Michigan, the Illinois Board of Higher Education, and the John D. and Catherine T. MacArthur Foundation.

I am honored to have this opportunity to outline the history and evolution of the “triad” of state governments, the federal government, and voluntary accreditation and to comment on the effectiveness of the triad’s role in the oversight of Title IV federal financial assistance. While I am indebted to all of my employers and colleagues over the years, I represent no one but myself today.

HISTORY AND EVOLUTION OF THE TRIAD

Of the members of the triad, the states have the longest history and role in higher education. Massachusetts chartered Harvard in 1650, and other early colleges were chartered by the colonies, the King of England, or the newly formed state governments after the Revolution. Several of our most distinguished private universities received direct funding from the colonies at their founding.

The continuing role of the states in the triad is based first of all on their role in providing the legal authority to grant an academic degree. Buttressed by a considerable body of case law, Alan L. Contreras asserts that a degree is valid only if properly granted by an entity with legal authority to do so. Legal authority in the United States must come from the Congress, a recognized sovereign Indian tribe, or a state government. (Alan Contreras, “The legal basis for degree-granting authority in the United States,” SHEEO: 2009) (<http://www.sheeo.org/sites/default/files/publications/Contreras2009-10-LegalDegreeGranting.pdf>)

Congress has granted degree granting authority to the military academies and a few other institutions, a small number of colleges are chartered by Indian tribes, but the vast majority (more than 98 percent) of U.S. degree-granting institutions are authorized by the states. State authorization comes in three basic forms, public institutions owned or operated by the states or a subdivision of the state, nonpublic institutions given formal state authorization to offer degrees, and schools authorized by a *de facto* delegation of state authority to a religious body through “religious exemption” statutes.

As a practical matter degree authorization decisions generally are made when an institution commences operations in a state. State laws may also require approval for specific programs and for new programs developed over time. Commonly, long established private institutions are exempted from the requirement for state approval of new degree programs.

The states also play a role in consumer protection. They have the power to act in situations involving fraud or misrepresentation, and they may revoke degree granting authority for cause. As part of their role in consumer protection, many states have created procedures to retain academic records for students when an institution goes out of business. They also develop and supervise plans to enable students to complete degree programs whenever an institution becomes incapable of providing instruction.

While the role of the states in higher education has the longest history and remains critically important, the federal government has played an enormously significant role in expanding educational opportunity and achievement in the United States. The Morrill Act of 1862 was the first step, providing grants to the states for land grant universities, which expanded both the academic purview and the scope of public higher education. (The Morrill Act was one of three revolutionary actions of Lincoln's Congress to expand opportunity and prosperity by investing in higher education, infrastructure (the Intercontinental Railroad), and economic opportunity (the Homestead Act.))

In the quarter century after World War II the federal government took several significant actions that greatly increased the capacity and contributions of higher education in the United States. First, the Truman Commission articulated a vision for widespread higher educational opportunity, far beyond the imagination of many educators at that time. Then the GI Bill made higher education accessible to WWII veterans, enrollments surged, and the knowledge and skill of the U.S. workforce grew dramatically. Congress' post war commitments to research and development, the National Defense Education Act of 1958 (in response to Sputnik) and the Higher Education Act of 1965 (repeatedly reauthorized) have led to a robust partnership between the states and the federal government in public support of higher education. Importantly this public support has been supplemented with substantial private and philanthropic commitments.

The primary roles of the states have been four: 1) to provide direct appropriations for institutional operations and student assistance; 2) to invest in capital facilities; 3) to provide operational governance and oversight of public colleges and universities; and 4) to provide consumer protection/degree authorization of non-public institutions. In addition to supporting public higher education, on a smaller scale states have also assisted non-public institutions with student assistance and some direct support. The federal government's role has included Title IV student grants and loan programs, veterans educational assistance programs, and substantial investments in research and development, especially peer reviewed R&D.

The third leg of the "triad," higher education accreditation, was created by educators as a means of establishing credible distinctions among different types of institutions (colleges and secondary schools, initially) and identifying those institutions that meet the academic community's standards of quality. The

New England Association of Colleges and Secondary Schools was founded in 1885, and by 1923 when the Western Association was founded, the entire nation was covered by six “regional accreditors.” (A nice summary of higher education accreditation prepared by the New America Foundation can be found at: http://pnpi.newamerica.net/spotlight/higher_education_accreditation. Other extensive information on accreditation can be found at www.chea.org, the site of the Council for Higher Education Accreditation.)

Increasingly accreditors describe their mission as both assuring quality and advancing continuous improvement in higher education. They persuasively argue the merits of professional self-regulation and voluntary participation to meet these needs in the accreditation process.

While states and accreditors were surely aware of each other before WWII, the explicit relationship between accreditors and government was created when the federal government began making significant investments in higher education. In the Veterans Readjustment Act of 1952 (the Korean G.I. Bill) the U.S. Commissioner of Education was directed to publish a list of nationally recognized accrediting agencies and associations as a reliable authority on the quality of educational institutions. Subsequently, as we all know, accreditation by a nationally recognized accreditor has become a condition of institutional eligibility for participation in Title IV. The Department of Education, advised by the National Advisory Committee on Institutional Quality and Integrity (NACIQI), has the power to recognize or withhold recognition from accreditors.

In some respects the “triad” was created when three relatively independent actors with different powers, commitments, constituencies, roles, and responsibilities found themselves in deeply interdependent relationships. It is unsurprising that these relationships are not always comfortable, and that many people find the current effectiveness of the triad unsatisfactory.

EFFECTIVENESS OF THE TRIAD – WHY CHANGES ARE NEEDED, WHAT COULD BE BETTER, AND HOW?

While I believe the fundamental structure and functions of the triad are sound and indispensable, all of the actors in the triad must make adjustments in order to address new demands and take advantage of new opportunities in higher education. The competitive global economy and advancing educational attainment around the world have raised the stakes for individuals and our country, and the means of generating educational attainment have become increasingly creative and diversified.

In his first address to Congress in February 2009, President Obama said that the nation’s goal must for every American to complete high school and then obtain some kind of postsecondary education, a degree or certificate. This is not simply the President’s goal; it is widely shared across our nation. The unprecedented enrollment demand for higher education since the turn of the century, proves that the President was simply saying what most people already know.

That said, the needs of our employers and our economy will not be met by more graduates at a lower standard of quality, or even more graduates at the current levels of quality. Employers tell us we need

more graduates who have sophisticated technical skills, who can solve complex problems, and who can communicate effectively with a wide range of people. This isn't just a matter of accumulating knowledge; we need more people who both have knowledge and who have the skills to use what they know to become economically self-sufficient and fully productive members of our communities.

It is obvious we cannot have a strong economy without adequate investments in education, but we have no resources to waste. Somehow the nation must meet a wide range of economic challenges – creating jobs, financing pensions, providing health care (more efficiently), rebuilding infrastructure, national defense, protecting our environment, and more – while we help Americans acquire the knowledge and skills they need to be successful individually and keep our nation strong. We cannot afford to waste student potential, and we can't afford educational programs that are not cost effective.

These needs are widely recognized, but you will hear different opinions about what members of the triad should do about them. With an open mind and due regard for other perspectives, let me add my thoughts to the conversation.

The States

I'll begin with the states. The states generally have focused on their traditional roles, supporting and governing public colleges and universities and conferring degree-granting authority to non-public institutions. These are the problems with the traditional state roles:

1. These roles are focused on institutions, not students, which means they focus primarily on inputs not the outcomes of higher education;
2. The states which have not developed much capacity for overseeing non-public institutions (often the states served primarily by public institutions) are very attractive sites for non-public institutions seeking to avoid careful oversight;
3. Existing institutions sometimes mobilize their political resources to oppose conferring degree granting authority on potentially competing institutions, whether they are new or existing institutions seeking new programs;
4. State review of institutions in some cases overlaps with the requirements of accreditation in reviewing faculty, curriculum, facilities, etc. This is not entirely avoidable, because new institutions need state authority to operate and a track record before they are eligible to apply for accreditation. Nevertheless, unnecessary duplication between state regulation and accreditation is burdensome and wasteful; and
5. When an institution offers instruction in more than one state (an increasingly common practice in distance education), that institution must seek approval in all the states whose laws give them authority over such programs. State rules and procedures differ, and institutions offering instruction in many states bear substantial, and unjustifiable regulatory burdens. In addition, many states are now incapable of adequately regulating all the institutions offering instruction in their territory.

How should the states respond to the demands of changing conditions? I offer the following suggestions:

First, all states should develop the ability to provide effective student/consumer protections for their citizens enrolled in higher education. Clear standards for institutional practices should be developed, well-publicized, and required for operating authorization and accreditation. Institutional review procedures should be the first recourse for students with complaints, but states should be available as a “court of last resort” when complaints are not resolved at the institutional level. In the hopefully rare cases when substantial numbers of complaints occur and cannot be resolved, the states have the legal powers for taking firm corrective or punitive action appropriate to the circumstances.

Second, states should not duplicate the academic quality review procedures of accreditors. As I will suggest below, the academic standards of accreditors should be consistent and accreditors should be sufficiently rigorous in upholding them, so that states can confidently defer to voluntary accreditation for assuring the adequacy of academic quality. To make such trust feasible, accreditors and states should regularly share information about institutional performance issues that are legitimate matters for mutual concern.

Third, the variation among states in their ability to meet their responsibilities in the triad should be reduced and eliminated as far as possible. The triad is not working effectively if it does not work in a reasonably consistent manner in every state and for every accreditor.

Fourth, states should resist the temptation or political pressure to base regulatory decisions about one institution on the interests of other institutions in reducing competition. Within the public sector (just as within the private sector), it would be irrational not to avoid unnecessary duplication of programs within a single system. But part of the vibrancy, creativity, and effectiveness of American higher education comes from competition among institutions. Public subsidies should not be used wastefully, but excessive regulation or politically motivated regulation will be just as wasteful as the absence of rational regulation and planning.

Fifth and finally, states should harmonize their practices and create the means for reciprocal authorization when institutions operate in more than one state. The recently developed State Authorization Reciprocity Agreement is such an approach in distance education. The principle of this agreement is simple: To participate in the agreement, a state must establish and implement effective consumer protection and quality assurance mechanisms worthy of the confidence and trust of other states. Institutions whose “home” is in such a state, once authorized by that state, will be automatically authorized to offer instruction in every other participating state. And continuing participation in the Agreement requires satisfactory performance.

Accrediting Associations

The diversity of American higher is evident in the diversity of our accreditors – regional, national, and specialized, with short and long histories, and with few and many institutional members. Our system works through voluntary peer review and professional self-regulation, and it is difficult to imagine that any approach without these components could provide the essential depth and breadth of expertise that accreditation brings to the work of quality assurance and institutional improvement.

The “owners” of accrediting associations are its institutional members, and these principles have been promulgated as their core values:

- Institutions, not government, should be the primary authority on academic matters and have the primary responsibility for ensuring the quality of academic programs;
- An institution’s mission is central to judging the quality of its academic program;
- To maintain and improve academic quality, institutional autonomy is paramount;
- The American system of higher education has grown and thrived due to the decentralization and diversity of the system; and
- Academic freedom thrives under the academic leadership of institutions of higher education.

These values emphasizing institutional autonomy might suggest that institutions and accreditors will normally be on the same page, and concomitantly, that accreditors and government might rarely work well together. The reality, however, is more complex.

Accreditation standards over time have evolved to become, in some cases, quite complex and challenging. Input standards (quality of facilities, quality and quantity of academic faculty and library resources, etc.) initially were examined to establish qualification for accreditation and degree granting authority. Over time additional process standards have been developed, including standards for governance, for self-study related to an accreditation review, and more recently for establishing student learning goals and assessing outcomes.

It is common for institutions to complain about accreditation procedures and standards, especially the breath and complexity of self-study requirements. College and university administrators tell stories of faculty holding them “hostage” to the requirements of specialized accreditors in order to achieve preferential treatment on staffing or facilities. And it is evident that accrediting associations have proliferated because some institutions were shopping for, or determined to create a better deal.

While accreditors frequently worry about governmental intrusion, and I’ve heard them complain about governmental demands for more transparency, I’ve not heard many serious proposals from accreditors for de-coupling Title IV eligibility from accreditation. The current accreditation industry in the United States would undoubtedly look very different without this linkage.

Rather than spending more time on the many complex issues involved in accreditation, I will focus on just a few issues where I believe accreditation could be a more effective and helpful member of the triad.

1. **Achieve Greater Transparency.** It is frequently asserted that absolute, or near absolute confidentiality of accreditation reports and observations is essential to preserve candor in accreditation reviews. The potential that information might be provided to states or the federal government would have a chilling effect on the process, it is claimed. Moreover, accreditors express fear of civil liability if they reveal information that could be damaging to the credibility and financial viability of an institution. These are legitimate concerns, but when taken to an extreme they make the process of quality assurance an empty exercise.

I believe it would be helpful if accreditors could be provided reasonable protection from liability for providing information that is relevant to the public purposes related to Title IV eligibility. It might also be helpful if accreditors and governments could agree that information potentially calling into question an institution's viability could, for a reasonable period of time, be held confidential while the institution has an opportunity to take corrective action. I believe such a procedure is used by the Federal Reserve when it identifies issues in assessing the strength of financial institutions.

There should be rules of engagement, appropriate confidentiality, and fairness, but I don't believe the triad can be effective if the members can only work together in the dark.

- 2. Agree on coherent, meaningful standards for the knowledge and skill signified by an academic degree.** The primacy of professional judgment in defining academic quality is beyond question. But the primacy of academic judgment does not rule out the potential for agreement on coherent standards. I would neither propose nor favor creating a national Ministry of Education in the United States, but it would be good for the United States if our academic community would do for us, what academics in other countries have done for them – created a framework for degree qualifications which define the knowledge and skills signified by the degree. While these frameworks in other countries have been created with the support and encouragement of governments, they are the work of academic professionals.

In many professional fields accreditors have already defined what a degree holder should know and be able to do. Similar standards of student achievement should be provided as the benchmarks every institution uses in assessing the effectiveness of its academic programs. A good start on such a framework, the Degree Qualifications Profile, has been developed in the United States. It would advance education in the United States if accreditors would come together voluntarily in support of this or a similar set of standards.

- 3. Focus Title IV accreditation more intensively on student learning and student success.** It is commonly suggested that the institutional mission, seemingly regardless of what it may be, should be the basis for assessing academic quality. I think that premise has some limits.

I was recently contacted by a headhunter looking for a president who, and I quote “will be ultimately accountable for successfully overseeing a shift away from an enrollment / admissions-centric model to a model focused on student outcomes.” It is evident that the mission of this institution previously has been incidentally student learning, and primarily student recruitment. It seems to me that accreditation for Title IV eligibility should be based on institutions accepting the challenge of producing legitimate degrees based on meaningful standards and achieving a reasonable rate of completion among the students it admits.

It is vitally important the colleges and universities in the United States successfully educate

many more first generation students, low-income students, and students who may not have been well prepared in high school. The most valuable institutions will be those who learn how to serve such students well. We have plenty of institutions who can do a good job with very bright, well-prepared students. But we cannot afford to serve disadvantaged students poorly. Serving them poorly is both an injustice and a waste of money

Accreditors sometimes address other issues that go beyond the core issue for Title IV: successfully graduating most of its students with the knowledge and skills required for a legitimate degree. Without denying the importance of other issues, I don't believe they should be material in determining Title IV eligibility; they should be addressed outside the reciprocal responsibilities of the triad. Successfully graduating students with legitimate degrees should be the foundational standard for Title IV eligibility.

Many institutions can easily demonstrate that they meet this core standard; such institutions should not be required to do more for Title IV eligibility.

The Federal Government

The mission of the federal government in the triad is not that of accreditors, to assure and advance academic quality, nor is it exactly like that of the states, to provide education and assure consumer protection. The mission of the federal government is to work effectively with accreditors and the states to assure the integrity and cost-effectiveness of the federal programs that assist students enrolled in higher education.

This is not an easy responsibility given the diversity of practices and standards within the states and the accrediting community discussed above. But as we work together to address these issues, I can think of ways the federal government might help make the partnership more effective.

First, the current federal standards for accreditation reflect the long history of input standards, process standards, and outcome standards that have accumulated in the field. The most serious problems with the integrity and cost effectiveness of federal programs in my experience are related to substandard rates of retention and completion, compounded by inadequate learning outcomes. If the community can improve the tools we have to measure these outcomes and our ability to improve performance, perhaps the accreditation process and the rules for federal recognition could become leaner and more efficient.

Second, the federal government has tools and resources for auditing institutional performance and financial stability that exceed the capabilities of the states or accreditors. Perhaps knowledge from these tools can be shared more effectively and routinely.

In addition, the federal government has, with some controversy, sought other ways of contributing to the integrity and cost effectiveness of federal programs. Loan default rates are relevant, enrollment retention and graduation rates are relevant, and employment after graduation is relevant. In order to develop and make effective use of such accountability tools, we need to find a way of dealing with some complicated data and analytical problems. I think these challenges are solvable, and meeting them should be a priority. Stronger partnerships, with the sharing of information available to each partner, could make the triad more effective.

Chairman Harkin and Ranking Member Alexander, members of the committee, this concludes my testimony. Thank you for the invitation and your attention. I'd be pleased to respond to questions or comments.