



Regulation and Autonomy: Three Historical Case Studies of Tensions Between Higher Education and the Federal Government

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Regulation and Autonomy:
Three Historical Case Studies of Tensions Between Higher Education and the Federal
Government

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of the Graduate School of Education of Harvard University in
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Dedication

I dedicate this dissertation to Dr. Stephen S. Bedi, provost emeritus of Taylor University in Upland, Indiana. His mentorship and friendship have shaped my career beyond measure. His wisdom and example of service will influence any contribution I am fortunate enough to make toward American higher education, and the scholarship thereof.

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I am particularly indebted to Julie's mentorship over the past five years. Without her, I would not have dared to study the history of higher education policy. I sat down in Julie Reuben's course on historical methods in education in September 2014 with only the vaguest ideas of what I wanted to research—and absolutely no idea that my work in that course would be the beginning of my dissertation and trajectory as a scholar. Julie taught me to carefully read historical documents, interpret them in context, and construct compelling arguments about their significance. Her standards are among the most rigorous I have encountered and have helped me to grow as a scholar and writer. She is an intellectual and educator of the highest order, and I will long aspire to emulate her example.

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Table of Contents

Dedication	i
Acknowledgements	ii
Table of Contents	vi
Abstract	vii
Introduction	1
<i>Study One</i> – Divided by Loyalty: The Debate Regarding Loyalty Provisions in the National Defense Education Act of 1958	6
<i>Study Two</i> – Technically Allowed: Federal Scrutiny of Stanford University’s Indirect Cost Expenditures and the Changing Context for Research Universities in the Post-Cold War Era	49
<i>Study Three</i> – Collegial Agent or Federal Cop? Accreditation’s Tenuous Role in Establishing Federal Student Aid Eligibility in the Higher Education Act Amendments of 1992	92
Conclusion	133

Abstract

This dissertation is comprised of three historical studies of regulatory tensions between American higher education and the federal government, focusing on three pillars of twentieth century postsecondary education policy: student aid, research funding, and accountability. The first study analyzes a controversial requirement in the National Defense Education Act of 1958 that student loan beneficiaries swear their loyalty to the government and sign a disclaimer affidavit that they were not involved with subversive organizations. The loyalty provisions debate provides an early account of the innate conflict that arises when federal aims and expectations accompany federal investments into postsecondary institutions that cherish their freedom from government involvement. The second study explores shifting federal rules for the reimbursement of overhead costs associated with federal research in response to accusations that Stanford University fraudulently claimed a number of luxury expenses as allowable indirect costs. The paper details how Stanford's unwillingness to reduce overhead costs and strategy to maximize government reimbursements was unresponsive to a changing economy at the conclusion of the Cold War. The third study analyzes a controversy regarding the role of voluntary accreditation as the eligibility standard for colleges and universities to receive federal student aid during the 1992 Reauthorization of the Higher Education Act. The paper describes the tenuous role of voluntary accreditation as an intermediary between the federal government and higher education institutions, particularly when public

perceptions of higher education wane. Each paper illuminates tensions in the evolving partnership between the federal government and higher education. Together, these analyses pose fundamental questions as to whether the public interest justifies compromises to higher education's autonomy as the federal government and universities became increasingly co-dependent over the last half-century.

Introduction

In 2007, when I enrolled in a master's program in higher education and student affairs, I quickly absorbed the academy's pervasive maxim that autonomy reigns supreme, whether applied to institutions, faculty governance, teaching, or research. Among the manifold threats to that autonomy, the federal government is a favorite adversary—one that unites scholars and administrators. Given the general political persuasion of academics who believe in the power of centralized government to better society, I have always been intrigued by the deeply held skepticism of government's ability to improve higher education. For many, the regulation of other industries, such as finance, healthcare, and energy are entirely appropriate, but government intervention into campus governance is fundamentally intrusive and at odds with learning and discovery. *The Chronicle of Higher Education* or *Inside Higher Ed* are filled with editorials and user comments about regulators' misunderstandings and intrusive policies. I, too, was inculcated into this perspective, and admit that my own bias is to give colleges and universities the benefit of the doubt while approaching regulatory proposals with great caution.

As a new professional, charged with leading learning outcomes assessment and regional accreditation processes on campus, my office was the place that the rubber of federal involvement, through accreditation, met the road of campus governance, culture, and autonomy. I read articles, attended conferences, spoke with other administrators and

faculty—and the consensus was clear—the government didn’t understand *us*. In the midst of that work, I began to wonder how and when the relationship between higher education and the federal government became so tense. How has the relationship changed over time? What were the key events that precipitated regulations and how did higher education leaders react, resist, or compromise? Historically, has regulation and intervention been warranted or capricious?

These questions undergird the three historical studies in this dissertation. Though the cases they explore are not chronologically comprehensive—the first study focuses on the late 1950s and early 1960s while the second two papers investigate events in the early 1990s—they do illuminate three significant pillars of federal higher education policy: student aid, research funding, and accountability. The particular events and analysis in each study connect to the broader trajectory of major issues and controversies that span the chronology of postwar federal higher education policy and resonate with contemporary debates and proposals.

Though these studies are conceptualized as independent projects that draw upon distinct histories, issues, and extant scholarship, they each connect to higher education’s *parastate* function, which education historian Christopher P. Loss defines as an intermediary institution through which the federal government could exercise authority and achieve policy goals. This parastate arrangement allows the government to achieve priorities while being sensitive to an electorate skeptical of centralized governance.¹ Such a relationship to higher education raises important questions about the degree of

¹ Christopher P. Loss, *Between Citizens and the State: The Politics of American Higher Education in the 20th Century*, (Princeton, NJ: Princeton University Press, 2012), 1-16, 156-61. For more on the concept of parastates, see Eldon J. Eisenach, *The Lost Promise of Progressivism* (University Press of Kansas, 1994).

autonomy parastate organizations may retain as their functions become part of the tapestry of public goods and services. As an introduction to these studies, I provide an overview of each of the three studies and how they address key questions and issues regarding higher education's increasing responsibility to advance national interests in service of the federal government in the mid-to-late twentieth century.

The first study, *Dived by Loyalty: The Debate Regarding Loyalty Provisions in the National Defense Act of 1958*, analyzes the controversy surrounding the U.S. Federal Government's first foray into postsecondary student loans. In the wake of Sputnik and in the context of Cold War anxieties, Congress required student loan beneficiaries to swear their loyalty to the government and sign a disclaimer affidavit pledging they had not been involved with subversive organizations. My analysis explains that these concerns of loyalty and subversion within the academy fractured a compromise between liberals who had long advocated for federal student aid programs and conservatives who were willing to fund limited aid in service of national defense. The loyalty provisions debate, overall, provides an early account of the innate conflict that arises when federal aims and expectations accompany federal investments into postsecondary institutions that cherish their freedom from government involvement.

The second study, *Technically Allowed: Investigations into Stanford University's Overhead Expenses and the Changing Context for Research Universities in the Post-Cold War Era*, explores a national controversy during which Congress investigated Stanford's overhead accounting on federal research grants after the university charged luxury expenses, including a yacht and antique furniture, to the government. This study analyzes the investigations as a conflict between the federal government's new fiscal priorities in

the twilight of the Cold War and a research university struggling to maintain the privileges it achieved during the Cold War in a context of declining public trust in higher education.

The third study, *Collegial Agent or Federal Cop? Accreditation's Tenuous Role in Establishing Federal Student Aid Eligibility in the Higher Education Act Amendments of 1992*, analyzes the legislative process leading to the 1992 Reauthorization of the Higher Education Act, with particular focus on accountability and the role of voluntary accreditation as the eligibility standard for colleges and universities to receive federal aid. This study considers why accreditation became a target for legislators who were outraged by escalating student loan default rates in the 1980s and 1990s. In the study, I argue that accreditation's dual loyalty as a quality assurance monitor for federal student aid programs and as protector of institutional autonomy made it a tepid, and sometimes unwilling, regulator of postsecondary institutions, and thus a susceptible target for lawmakers anxious to eliminate fraud and improve student outcomes.

In each of these studies, I attempt to seriously consider the perspectives held by campus leaders, government officials, and the public at large, giving voice to their arguments and concerns regarding the federal government's relationship to American higher education. This analysis required looking beyond defensive rhetoric and political grandstanding, and an attentiveness to the sociopolitical movements and contexts that shaped the higher education-government partnership. Together, these analyses pose a fundamental question about whether the public interest justifies compromises to higher education's autonomy as the federal government and universities became increasingly co-dependent over the last half-century. Exploring that question has softened my own

predisposition to resist government intervention into higher education and prompted me to critically approach the academy's traditional insistence upon autonomy above all else. Across the three studies, there are rarely instances where either government officials or higher education leaders are clearly right or wrong. Instead their arguments foreground a paradox in higher education policy—that both the federal government and higher education institutions largely sought the best interests of the American people at the same time their approaches were constrained by myopic self-interest.

I hope this work pushes higher education leaders, myself included, to be more reflective about our responses to federal lawmakers, media commentators, and the general republic, rather than reify or vindicate entrenched positions that view government intervention and public distrust with indignation. In that same spirit, I would hope that government leaders would be persuaded that higher education's diversity and autonomy can be a great asset to be respected and, when possible, protected, even in view of legitimate oversight concerns. Such openness will be a requirement if higher education and the federal government will productively navigate their increasing codependency in the twenty-first century.

Study One – Divided by Loyalty: The Debate Regarding Loyalty Provisions in the National Defense Education Act of 1958*

Over the last decade, legislators and federal policy-makers have increasingly voiced the idea that higher education holds the key to alleviating economic hardship and improving the position of the US workforce in the global economy. The Department of Education under both presidents Bush and Obama emphasized the need to hold higher education accountable to economic outputs as a return on investment for federal aid. In 2012, the Obama administration proposed a college rating system to link federal aid eligibility to an evaluation of quality and economic outcomes, going so far as to compare the selection of a college to the process of using consumer ratings to purchase a blender. At a point when the nation is consumed with economic recovery and advancement, government discourses construct higher education as subservient to economic interests, and lawmakers are motivated to enact policies intended to hold higher education accountable for economic outcomes.²

* This chapter previously appeared in *History of Education Quarterly* and is included here with permission. For the definitive version, see Brent D. Maher, "Divided by Loyalty: The Debate Regarding the Loyalty Provisions in the National Defense Education Act of 1958," *History of Education Quarterly* 56, no. 2 (May 2016): 301-30.

² Tatiana Suspitsyna, "Higher Education for Economic Advancement and Engaged Citizenship: An Analysis of the U.S. Department of Education Discourse," *Journal of Higher Education* 83, no. 1 (2012), 49–72; and Michael D. Shear, "Colleges Rattled as Obama Seeks Rating System," *New York Times*, May 26, 2014, A1.

Instrumental arguments for higher education, and corresponding efforts to assure the advancement of government interests, are not a recent phenomenon. As a matter of federal policy, they date back at least as far as debates over the Morrill Land Grant Act in the 1850s and 1860s. The notion that higher education should be made to serve instrumental federal purposes became particularly salient in the immediate post-WWII era, however. After the Truman administration sponsored the aspirational *Higher Education for American Democracy* report in 1947, progressive legislators spent the next ten years developing proposals for general aid to primary, secondary, and higher education. In the wake of several failed attempts to pass general aid legislation, Sen. Lister Hill (D-AL) and Rep. Carl Elliott (D-AL) successfully sponsored the National Defense Education Act (NDEA) of 1958, as Wayne Urban has amply documented. This legislation instituted targeted financial support for higher education, including low-interest student loans and graduate fellowships for students studying defense-related disciplines. Because the NDEA was presented as a limited investment in national security amidst the country's anxieties regarding Sputnik and looming Soviet power, moderate conservatives laid aside their reluctance to involve the federal government in education and lent their support to the bill.³

The clever strategy to advocate for higher education as instrumental to national defense in order to pry open the gate to federal funding carried unintended consequences that many inside the academy found objectionable. In the final days of the Senate's deliberation, Sen. Karl Mundt (R-SD) inserted an amendment that required student loan

³ Wayne J. Urban, *More Than Science and Sputnik: The National Defense Education Act of 1958* (Tuscaloosa: University of Alabama Press, 2010), 1–9.

beneficiaries to take an oath of allegiance to the United States and sign a disclaimer affidavit that they were not involved in subversive activities. While conservatives in Congress conceptualized the provision as a method to ensure NDEA beneficiaries served government interests, higher education voices claimed that the loyalty provisions trespassed upon academic freedom. As a result, several colleges and universities refused to participate in the loan program, and many more publicly protested the provisions while reluctantly participating. Sen. John F. Kennedy (D-MA) and other progressives in the Senate responded with attempts to repeal the loyalty provisions, sparking a lively debate about the purposes of federal aid to higher education.

In his in-depth account of the development of the NDEA, Urban discusses the introduction of loyalty provisions into the legislation, but portrays them as almost inadvertent products of the legislative process rather than as direct or intentional concerns of the bill's sponsors. In his analysis, the loyalty provisions were “not a prominent concern in the minds of any of those who developed the legislation, either on the congressional side or in the [Eisenhower] administration.”⁴ Other scholars, such as Barbara Barksdale Clowse, have similarly detailed the political context and legislative procedures that allowed for the provisions to be inserted in the NDEA, but without examining their long-term political influence or consequences. By contrast, in a recent dissertation, John McDonough Botti analyzed objections to the provisions on two campuses (Swarthmore and Haverford), but did not explore broader policy implications of the debate.⁵

⁴ Ibid., 184.

⁵ John McDonough Botti, "The NDEA, Loyalty, and Community: Resistance at Two Liberal Arts Colleges" (PhD diss., University of Maryland, 2014); and Barbara Barksdale Clowse, *Brainpower for the*

Existing treatments of the loyalty oath provisions frame their significance primarily in terms of specific academic freedom issues. Likewise, John Stephan Schwegler's historical study of the loyalty provisions, written prior to the end of the Cold War, argues that the loyalty provision debate is important insofar as it instructs contemporary leaders to remain vigilant against national defense priorities that may subvert educational aims. In contrast, Christopher Loss's influential study of the relationship between higher education and government does not portray the loyalty debates as a significant controversy. In arguing that higher education burgeoned into a parastate—or a governance proxy between the government and the people—Loss argues that the loyalty provisions were unimportant to the vast majority of colleges and universities, who were pleased to comply and accept funds for student aid.

While it is true that most institutions did not voice objection to the loyalty provisions, there is room to consider how the objections of 148 institutions, many of them elite, illuminate the tensions of linking educational institutions to the federal largesse. As will be argued here, the loyalty provisions are an example of the endemic tensions and conflicting priorities that emerge when higher education functions as a parastate.⁶

In this essay, I analyze the antecedents of the NDEA, the development of the legislation, and the resulting debate over the loyalty provisions to argue that the oath and affidavit controversy fractured the partnership between progressives who supported

Cold War: The Sputnik Crisis and National Defense Education Act of 1958 (Westport, CT: Greenwood Press, 1981).

⁶ Christopher P. Loss, *Between Citizens and the State: The Politics of American Higher Education in the 20th Century*, *Politics and Society in Twentieth-Century America* (Princeton, NJ: Princeton University Press, 2012), 1–16, 156–61; and John Stephan Schwegler, "Academic Freedom and the Disclaimer Affidavit of the National Defense Education Act: The Response of Higher Education" (EdD diss., Teachers College Columbia University, 1982), 128–38.

general aid to education and conservatives who supported a short-term investment for defense purposes. Although the details of this fracture seem to be firmly rooted in concerns specific to the Cold War and inconsequential to the development of subsequent federal education policy, a close examination of the arguments illuminates their relevance to long-standing ideological conflicts over the legitimate purposes and likely ramifications of federal aid to education. The loyalty debates are an early example of the innate tensions that emerge when instrumental rationales entangle educational aims and government priorities.

Higher Education on the Federal Agenda

Proposals for federal support of higher education and the accompanying debate regarding the proper level of autonomy extended to higher education did not originate in the NDEA, but were well-founded in postwar education policy considerations. On the heels of the enormously successful Servicemen's Readjustment Act of 1944, President Harry Truman, in 1946, established the President's Commission on Higher Education, chaired by American Council on Education president George F. Zook, to begin a national conversation about broad federal investments in higher education. The Commission's product, *Higher Education for American Democracy*, argued that more Americans needed to attend college in order to increase social mobility and secure the future of democratic values. To accomplish this aim, the report recommended expanded access to college, claiming that approximately half of the American population was capable of completing at least two years of college. The Commission also recommended that students should not pay tuition for the first two years of college in hopes of increasing college enrollment from roughly 2.4 million students in 1947 to 4.6 million in 1960.

Additionally, they proposed that Congress allocate \$120 million to student scholarships that could be utilized to finance either public or private postsecondary education. The proposal also recommended that \$216 million be allocated toward the construction of campus facilities to accommodate an expanded student body.⁷ In December 1948, Truman supported the proposal as a worthy investment in American youth and democracy—“If America is to retain its freedom in a world of conflicting ideologies, we must take steps to assure every American youth the opportunity to receive the highest level of education by which he can profit.”⁸

Despite the Commission’s ambitious proposal for increased federal support for higher education, some voices inside the academy were reticent to lend their endorsement. Some were concerned that their institutions could not handle a rapid enrollment increase, while others objected on philosophical grounds, expressing concerns that federal support would be biased toward public institutions and marginalize private education. The Rockefeller Foundation and the Association of American Universities sponsored a competing commission predominantly composed of private higher education leaders, including Paul Buck, dean of Arts and Sciences at Harvard, to counter the Truman Commission’s recommendations. Whereas the Truman Commission envisioned the university as a social agent capable of addressing workforce requirements along with economic and racial inequalities, the Rockefeller group defended a traditionalist view of

⁷ *Higher Education for American Democracy: A Report of the President's Commission on Higher Education*, (Washington: United States Government Printing Office, 1948); Loss, *Between Citizens and the State*, 118; and Philo A. Hutcheson, "The 1947 President’s Commission on Higher Education and the National Rhetoric on Higher Education Policy," *History of Higher Education Annual* 22, no. 1 (2002), 91–102.

⁸ Alfred D. Simpson, "Financing Higher Education," *Journal of Higher Education* 19, no. 4 (April 1948), 202.

postsecondary education. According to Richard M. Freeland, “The Rockefeller report affirmed many characteristics of higher education that the Zook commission attacked: its relative exclusivity, its emphasis on the development of individuals, and its focus on specialized knowledge.”⁹

Furthermore, leaders of religious and sectarian colleges were concerned that public financing, through student scholarships, would jeopardize their independence and threaten their ability to control the moral framework of the curriculum. Advocates of the report countered that there was no precedent for federal intrusion into institutional liberties, so there was no reason to fear state control of religious educational colleges and universities.¹⁰ However, voices from private higher education successfully opposed Commission-inspired legislation in efforts to curb a vast expansion of funding to public institutions and to prevent the potential of forced racial integration of educational institutions receiving federal funds. Even so, the Truman Report is widely recognized as an important moment in the relationship between higher education and the federal government, since both its rhetoric and proposed policy had a lasting effect upon the eventual expansion of federal aid to both public and private institutions.¹¹

In the period between the Truman Report and the beginnings of the NDEA in 1957, Hill and Elliott were involved in crafting several other attempts to bolster federal support to education. Beginning in 1948, Hill sponsored a bill to increase public support

⁹ Richard M. Freeland, *Academia's Golden Age: Universities in Massachusetts, 1945–1970* (New York: Oxford University Press, 1992), 84.

¹⁰ Hutcheson, "The 1947 President's Commission," 97.

¹¹ Ibid.; and Julie A. Reuben and Linda Perkins, "Introduction: Commemorating the Sixtieth Anniversary of the President's Commission Report, 'Higher Education for Democracy'," *History of Education Quarterly* 47, no. 3 (August 2007), 265–76.

to K–12 education, which ultimately failed because Protestants objected to Catholic schools receiving federal funds. Subsequent efforts to support school funding legislation became more difficult after the Supreme Court's *Brown* decision, when certain members of Congress insisted on making funding contingent upon compliance with the ruling to integrate schools. By 1956, both Hill and Elliott, as Southern Democrats, needed to defend segregation to remain politically viable in Alabama, and thus could not afford to vote in favor of education legislation that ventured into racial territory. The bill did succeed in the Senate, but failed to leave the House Education and Labor Committee, chaired by Rep. Graham Barden, a Democrat from North Carolina who strongly opposed both federal school funding and racial integration in schools.¹²

At the same time, Elliott began drafting a proposal to fund scholarships for college students. In June 1956, Elliott became chair of the House subcommittee of the Education and Labor Committee, which was charged with considering the dire need for improved facilities on college campuses. In the 1957 Congress, Elliott assumed the chair of the Special Education subcommittee, which addressed higher education issues. At this point, a liberal contingent on the committee became capable of overpowering Barden's influence and moving federal education funding legislation out of committee to floor consideration. This development created an opportunity for Elliott to introduce his proposal for college scholarships targeted toward students with financial need. He held the first congressional hearings on student aid in August 1957, during which he

¹² Urban, *More Than Science and Sputnik*, 48–65.

proclaimed that federal aid to college students was an important investment in American democracy, echoing the rhetoric of the Truman Report.¹³

Origins of the NDEA

Urban, in his extensive study of the ideological motivations behind Hill and Elliott, notes that Elliott became skilled at adopting Cold War rhetoric to promote federal investments in education for the sake of national security, even before Sputnik. Once Sputnik launched and heightened American national security anxieties, Elliott crafted his scholarship proposal as a defense bill, realizing that progressive legislation for education would need to be couched in defense language to pass the conservative House Rules Committee, which had a reputation for blocking all progressive legislation. In fact, fears of Soviet superiority created the ideal conditions for both Elliott and Hill to advance educational funding that would, in part, accomplish two central aims of the Truman Commission—to improve college campus facilities and to increase college access for students with financial need as a method for strengthening American democracy. Furthermore, defense issues were of such high priority that they overshadowed the racial and religious concerns that plagued Hill and Elliott’s earlier attempts to guide general educational funding through Congress.¹⁴

Elliott, Hill, and the Eisenhower administration agreed that educational funding would only be possible if it was packaged as a defense bill. Thus, the House Committee on Education and Labor publicized the NDEA as a strategy to leverage the dormant potential of American students in the sciences in order to enhance the nation’s defense

¹³ Ibid.

¹⁴ Ibid.

position. But, despite the bill's tailored focus toward defense-related disciplines, Elliott's ambition was to expand the scholarship or loan programs to students in other disciplines as well, setting the table for an enduring funding relationship between the federal government and students who struggled to afford a college education. Urban claims, "It seems justified to conclude that the Carl Elliott of the period before and after NDEA, dare one say the real Carl Elliott, had much more liberal and liberating educational and social ideas than those he voiced during the debates over the bill's passage."¹⁵

As the House and Senate versions of the NDEA, sponsored by Elliott and Hill, respectively, made their way through committees and to the floors for general debate, they were met with several forms of resistance. First, some conservatives, including Sen. Strom Thurmond (D-SC) expressed skepticism that the education funding would actually make a significant contribution to defense efforts. Others were more generally opposed to education funding, representing a familiar opposition to Elliott and Hill. These legislators articulated concerns about the cost of the funding, its impact on the national debt, and normalizing government provisions for postsecondary education.¹⁶ On August 22, 1958, Thurmond spoke strongly against the NDEA during the Senate debate and summarized many of the dominant opposing arguments. He criticized the bill for having no accountability mechanism to ensure that students used their education in careers that served national defense interests. Additionally, he noted that the word *education* does not appear in the Constitution and that the government should not assume a prerogative to involve itself with educational institutions, especially given the risk of federal control:

¹⁵ Ibid., 65.

¹⁶ Clowse, *Brainpower for the Cold War*, 125–27.

It has been said that there would be Federal aid without Federal control. How do we know that any day, even the day after the bill became law, the Office of Education will not issue a regulation . . . providing that no Federal funds will henceforth go to impacted areas or to vocational schools which practice segregation?¹⁷

Despite Thurmond's objections, the bill passed the senate with 66 votes in favor and 15 opposing. Moderate conservatives were persuaded to support the bill under its national defense aims, likely influenced by President Eisenhower's endorsement.¹⁸ A similar phenomenon occurred in the House on August 23 when Rep. Keith Thompson (R-WY) warned moderates who had once opposed federal support of education but were amenable to the NDEA that they should not abandon their principles on the basis of short-term anxieties. He quite astutely claimed that the bill's proponents were not interested in defense but in establishing a program that would become a long-term commitment to federal education funding.¹⁹ Nonetheless, the bill passed the house on August 23 with 212 votes in favor and 85 opposed. On September 2, President Eisenhower signed the bill into law, still touting it as a short-term investment.²⁰

This strategy of framing educational investment as a limited reaction to national security requirements led to an unlikely partnership between progressives who favored federal funding to education and conservatives who were cautious about federal entanglements with historically autonomous or state-run, institutions. The result was a bill that began to fulfill the aspirations of the Truman Commission roughly a decade after its publication. Some in the media immediately recognized the NDEA as a compromise

¹⁷ 85 Cong. Rec. 19,086 (1958).

¹⁸ Clowse, *Brainpower for the Cold War*, 137.

¹⁹ 85 Cong. Rec., 2nd Sess., 19,596 (1958).

²⁰ Clowse, *Brainpower for the Cold War*, 138.

and a timid step forward for the federal government into the education arena. The *Nation* commented, “The bill does at last crack the ice of resistance to federal aid to education, [but] the crack is so tiny that it must be widened very soon if it is not to freeze solid again.”²¹ David D. Henry, president of the University of Illinois at Urbana-Champaign, echoed the sentiment that the NDEA was a “piecemeal” approach to higher education funding, saying, “It is time that the Congress and the administration consider a proposal which will be of benefit to all institutions and still be within the responsibilities of the Federal Government.”²²

In its final version, the NDEA contained several substantial programs in addition to the landmark student loan program. The bill allocated \$70 million to elementary, secondary, and postsecondary institutions as a matching grant to schools to strengthen science, mathematics, and foreign language programs. The NDEA also offered a thousand graduate fellowships in those defense-related fields. Furthermore, the bill instituted language centers, school guidance programs to counsel students toward further education, and an expansion of the George-Barden Vocational Education Act of 1946.²³

Though Elliott and Hill had hoped to pass a needs-based scholarship program, pressures during negotiations eliminated the scholarships in favor of low-interest student loans. In its first year, the bill appropriated \$47.5 million for student loans and then incrementally increased the amount to \$82.5 million in its fourth year. Eligible students

²¹ Robert A. Divine, *The Sputnik Challenge* (New York: Oxford University Press, 1993), 165.

²² David D. Henry, "The Role of the Federal Government in Higher Education," *Educational Record* 40, no. 3 (July 1959), 197.

²³ United States Senate Committee on Labor and Public Welfare, *The National Defense Education Act of 1958: A Summary and Analysis of the Act* (Washington, DC: Government Printing Office, 1958), 1–2; Urban, *More Than Science and Sputnik*, 2–4.

already accepted to a postsecondary institution could apply for up to \$1,000 per year, but could not exceed \$5,000 cumulatively. The interest rate was set at 3 percent, but the balance did not accrue interest while students were enrolled in college or serving in the armed forces. Students applied directly to their institution for the loans and were selected based upon their financial need, academic standing, and their “superior capacity or preparation in science, mathematics, engineering, or a modern foreign language.”²⁴ Hosting institutions were required to contribute 10 percent of the loan principal, while the federal government funded the remaining 90 percent. Students were allowed ten years to repay NDEA loans, though up to one-half of the loan could be forgiven if students opted to work as teachers after they completed their degrees. The funds were distributed to the states, and then to institutions, based upon a formula that factored in the state’s postsecondary enrollment.²⁵

Loyalty Provisions in the NDEA

Though issues of student loyalty did not surface during the many debates leading up to the final passage of the NDEA, Senator Mundt proposed inserting loyalty provisions during the Senate session on August 13, 1958.²⁶ Mundt had a reputation as a Joseph McCarthy sympathizer and had partnered with Richard Nixon in 1948 to propose a predecessor to the Internal Security Act of 1950, which required members of the

²⁴ *National Defense Education Act of 1958: Hearing before Subcommittees of the Committee on Education and Labor of the House of Representatives, Eighty-sixth Congress, First Session*, (Washington, DC: Government Printing Office, 1959), 3.

²⁵ United States Senate Committee on Labor and Public Welfare, *The National Defense Education Act*, Sec. 202.

²⁶ Clowse, *Brainpower for the Cold War*, 131–32; Urban, *More Than Science and Sputnik*, 184–85.

Communist Party to register with the government.²⁷ Mundt continued his efforts to preclude subversives from taking advantage of federal funding, even after McCarthyism had peaked.

The NDEA's loyalty provisions were included in Sec. 1001(f) and required students who participated in the student loan program to file a disclaimer affidavit pledging that they did not believe in nor were they involved with organizations that taught "the overthrow of the United States Government by force or violence or by any illegal or unconstitutional methods."²⁸ Furthermore, loan recipients were required to take an affirmative oath of loyalty to the US government, consistent with the oath taken by elected officials and government employees. The bill already included such requirements for graduate fellowship recipients. This change was added without controversy and mirrored similar federal requirements in the McCarthy era, such as the National Science Foundation Act of 1950, which required the affirmative oath and disclaimer affidavit for grant recipients.²⁹ Unlike the National Science Foundation (NSF) loyalty provisions, however, the NDEA provisions made colleges and universities responsible for administering the affirmative oath and disclaimer affidavit to students receiving NDEA loans. Mundt said that the loyalty provisions should apply to all titles of the NDEA to assure Congress that recipients would be "good Americans and not be people involved in

²⁷ H. B. Kirshen, "The Internal Security Act of 1950," *Bulletin of the American Association of University Professors* 37, no. 2 (July 1951), 260–75.

²⁸ United States Senate Committee on Labor and Public Welfare, *The National Defense Education Act*, Sec. 1001(f), 45.

²⁹ Schwegler, "Academic Freedom," 99–100.

Communist or any other subversive organizations.”³⁰ Senator Hill even commended this amendment, noting that he knew of no objections to the proposal.

Higher Education Responds to the Loyalty Provisions

Within a few months of the bill’s passage, higher education institutions began to voice objections to Sec. 1001(f). These institutions did not oppose the affirmative loyalty oath, but declared that the disclaimer affidavit was especially pernicious to academic freedom. Eight institutions never applied to participate in the loan program because of these provisions: Barnard, Bryn Mawr, Haverford, Mills, Princeton, Swarthmore, Wellesley, and the University of Richmond.³¹ By November 1959, seven other institutions (Amherst, Antioch, Bennington, Goucher, Oberlin, Reed, Sarah Lawrence, and Wilmington) had returned funds initially received through the NDEA loan program after deciding that the disclaimer affidavit was incompatible with free inquiry. Most of these institutions returned modest sums. For example, Bennington returned \$1,534 and Wilmington returned \$7,345. Oberlin, however, received and distributed a substantial sum in student loans and returned \$68,146.³²

The faculty at Haverford was particularly concerned about the vague language in the NDEA concerning the regulation of student belief. They voted to not participate in the NDEA loan program and published a statement in the *AAUP Bulletin*, claiming that experimentation with ideas was intrinsic to the learning process and the loyalty

³⁰ 85 Cong. Rec., 2nd Sess., 17,320 (1958).

³¹ Schwegler, "Academic Freedom."; and "Colleges Oppose U.S. Non-Red Oath: 6 Schools Denounce Pledge as Condition for Student Loan Under '58 Act," *New York Times*, Jan. 22, 1959, 12.

³² "College to Return Aid: Bennington Says It Opposes Oaths Required by U. S.," *New York Times*, May 7, 1959, 66; "A College Rejects Student-Loan Aid," *New York Times*, Oct. 10, 1959, 12; "Oberlin Fights Oath: Quits Student Loan Plan and Returns \$68,146 to U. S.," *New York Times* Nov. 17, 1959, 28.

provisions precluded student exploration. They wrote, “Many students go through a series of divergent yet passionately held convictions while at college. They may defend each strongly, this being one way of testing it. The espousal by some students in discussion or papers of ideas considered subversive outside of the campus must, therefore, be recognized as normal activity in college.”³³

The American Association of University Professors (AAUP) also acted quickly to protest the disclaimer affidavit and became an advocate on behalf of the 148 institutions that would eventually object to the affidavit. President Bentley Glass and Secretary William P. Fidler sent a letter to every member of the 86th Congress outlining their objections on behalf of the higher education community. The AAUP argued that Sec. 1001(f) was too vague to be well-enforced and violated due process laws, that the requirement itself was unconstitutional for offering government benefits contingent upon a disclaimer of belief, and that it signaled a public distrust of colleges and universities.

They wrote:

The Act seems to say to members of the educational community: “You are an important part of American life and you have an admitted real need, but let there be no mistake about the fact that you are a particularly suspect part of the population and will have to pass a special test that other citizens need not take.” This is a prejudgment of the teachers and students of America which we cannot believe the Congress intended to make.³⁴

In December 1959, A. Whitney Griswold, president of Yale, wrote a *New York Times Magazine* editorial advocating for the repeal of the disclaimer affidavit, which was

³³ "Government Security Checks: Statement of the Haverford College Faculty," *AAUP Bulletin* 44, no. 2 (June 1958), 401–02.

³⁴ Bentley Glass and William P. Fidler, "Disclaimer Affidavit Requirement: Association Officers Express Disapproval of Title X, Section 1001 (F) (1) of the National Defense Education Act of 1958," *AAUP Bulletin* 44, no. 4 (Dec. 1958), 771.

stalled in a Senate committee at the time. He found the affidavit objectionable because it ventured into the territory of an individual's "belief and conscience, where definitions are vague and actions become matters of debate."³⁵ Echoing the AAUP, Griswold noted that Congress simultaneously treated higher education as the great hope for the nation immersed in an ideological war and as a suspicious entity requiring ideological monitoring. He especially objected that institutions were required to administer the affidavits to participating students. He also cleverly situated the affidavit requirement in relation to historical religious oaths that prohibited dissension from Puritan beliefs and enforced theological uniformity in American colleges in the eighteenth century. Referring to institutions that objected to the provisions, he said, "They see a consistent use of oaths like the disclaimer affidavit as instruments of coercion, conformism and oppression, which are enemies of learning as much as they are opposites of freedom."³⁶ Ultimately, Griswold's article positioned the disclaimer affidavit as inconsistent with American values and akin to the test oaths of a less-enlightened nation. Griswold anticipated that the NDEA would establish the precedent for the continued relationship between higher education and the federal government and, therefore, insisted that colleges and universities begin the relationship with an ardent commitment to academic principles. He was, of course, correct that the loan program would endure as the basis of the Higher Education Act (HEA) of 1965, with its broadened access to low-interest student loans for the middle class.³⁷

³⁵ A. Whitney Griswold, "Loyalty: An Issue of Academic Freedom," *New York Times Magazine*, Dec. 20, 1959, SM42.

³⁶ Griswold, "Loyalty", 47.

³⁷ Loss, *Between Citizens and the State*, 159; Urban, *More Than Science and Sputnik*, 183–84.

Robert F. Goheen, president of Princeton, wrote to Sen. Harrison Williams (D-NJ) to express his objections to the loyalty provisions and to describe the quandary faced by many institutions. He explained that these institutions strongly supported federal aid to public and private higher education and the expansion of NDEA appropriations, yet philosophical objections to the loyalty oath precluded institutional participation.³⁸ Though Yale, like Princeton, was not participating in the NDEA by 1960, other prominent universities did reluctantly accept NDEA funds and administer student loans. Cornell, for example, was one of many institutions that objected to the provisions but nevertheless participated because they prioritized aid to financially needy students. Harvard accepted the loans for a trial year, but then decided to withdraw from the program and develop an internal student aid strategy to compensate for the lack of NDEA aid revenue. According to Harvard president Nathan Pusey, the Harvard faculty was morally opposed to the loyalty provisions but wanted to ensure that their nonparticipation would not place an undue burden on students struggling to afford their education.³⁹

Though the loyalty provisions arguably affected students more than the administering institutions, few student voices appear in editorials, the *AAUP Bulletin*, or the Congressional Record. Senator Williams read an anonymous student letter from Antioch College on the Senate floor in July 1959. The student had applied for an NDEA loan, but was rejected because Antioch refused to participate in the program. He then requested that Williams work for the repeal of the loyalty provisions so that he could

³⁸ 86 Cong. Rec., 1st Sess. 14,096, (1959).

³⁹ R. H. Eckelberry, "Editorial: The Disclaimer Affidavit," *Journal of Higher Education* 31, no. 3 (March 1960), 159–60.

afford his college education, adding that other beneficiaries of government subsidies, such as farmers, were not required to swear their loyalty or sign disclaimer affidavits.⁴⁰

One of the few other student voices to appear in the Congressional Record was of Douglas Caddy, a student at Georgetown University and chairman of the National Student Committee for the Loyalty Oath. Caddy was a prominent leader of young conservatives who had expressed support for Joseph McCarthy and eventually became a founding leader of Young Americans for Freedom, a conservative advocacy organization.⁴¹ In his testimony, Caddy explained that approximately 88 percent of college students were not affected by objections to the loyalty provisions since their institutions were participating in the program. He also contested the assertion that the loyalty provisions regulated student belief, since application for a loan was entirely voluntary. He finally emphasized the importance of mechanisms during early American history to ensure loyalty. He concluded that a repeal of the disclaimer affidavit would “benefit the Communist conspiracy.”⁴²

Additionally, a handful of voices within the academy rebelled from their colleagues to support the NDEA’s loyalty provisions. John T. Fey, president of the University of Vermont, argued that the disclaimer affidavit was not a violation of academic freedom because free inquiry privileges did not include the liberty to be disloyal.⁴³ Major General E.N. Harmon, president of Norwich University concurred that

⁴⁰ 86 Cong. Rec., 1st Sess., 14,096 (1959).

⁴¹ John A. Andrew, *The Other Side of the Sixties: Young Americans for Freedom and the Rise of Conservative Politics* (New Brunswick, NJ: Rutgers University Press, 1997), 53–74.

⁴² "Second Session at Half Way Point," *Congressional Digest* 39, no. 4 (April 1960), 126.

⁴³ *Ibid.*, 108.

academic freedom did not guarantee the right to say anything one chooses, but rather to promote ideas responsibly and with loyalty. He wrote, “If it had not been for the loyalty of our forefathers to a cause for which they risked everything, including their lives, properties, and reputations, we would not now be enjoying the academic freedom that we have today.”⁴⁴ The presidents of two evangelical colleges, Houghton College and Wheaton College (Illinois) both voiced support for the loyalty provisions as well.⁴⁵

Joseph Costanzo, SJ, a professor of political philosophy at both Fordham and Georgetown, published an essay voicing support for the loyalty provisions. His defense paralleled many of those heard in Congress during the repeal debate—that the NDEA funded higher education for national security purposes so expectations of loyalty were congruent with the bill’s original intent. Costanzo’s argument takes seriously the plain language of the NDEA and the explanations Eisenhower, Hill, and Elliott employed to sell the legislation to Congress: “This government education program is distinguishable from past government programs and from those presently contemplated. The declaration of national emergency is related to the needs for increasing knowledge of the technical sciences which are calculated to relieve the relative deficiencies of our national defense and security.”⁴⁶

Overall, by 1962, when the disclaimer affidavit was finally repealed, thirty-two institutions had refused to participate in the NDEA loan program. Governing boards at an

⁴⁴ "Second Session at Half Way Point," 126.

⁴⁵ 86 Cong. Rec., 1st Sess., 14,075 (1959).

⁴⁶ Joseph F. Costanzo, "Loyalty Oath Affidavit," *University of Detroit Law Journal* 37, no. 5 (June 1960), 721.

additional 116 institutions publicly voiced opposition to the disclaimer affidavit.⁴⁷ From 1959 to 1962, the fervent opposition from within the academy gained traction among progressive legislators and influenced a failed attempt to repeal the provision in 1960, followed by a serendipitous repeal in 1962.

Legislators Respond to Loyalty Provision Objections

Though higher education's objections to the loyalty provisions were initially limited to a few schools, predominantly from the East, their arguments strongly influenced progressive legislators. Senator Kennedy partnered with Sen. Joseph Clark (D-PA) to sponsor the repeal of Sec. 1001(f), which would have struck both the affirmative loyalty oath and the disclaimer affidavit from the NDEA. According to Abram Chayes, staff director of the Democratic Platform Committee in 1960, it was peculiar that Kennedy would be so motivated to assist the academic community in their efforts to eliminate the NDEA's loyalty provisions. Chayes surmised that Kennedy was attempting to offset a perception that he did not take a strong enough initiative against Sen. Joseph McCarthy during his infamous hearings in 1954. Apparently, students in Massachusetts often asked Kennedy about his lack of a record on standing up to McCarthy, and spearheading the repeal of the loyalty provisions was a way for him to establish credibility in advance of his 1960 presidential bid.⁴⁸ In 1959, Kennedy devoted the

⁴⁷ "Disclaimer Affidavit: Non-Participating and Disapproving Colleges and Universities," *AAUP Bulletin* 48, no. 4 (Dec. 1962), 331.

⁴⁸ Abram J. Chayes, "Abram J. Chayes Oral History Interview—JFK #1," in *John F. Kennedy Oral History Collection* (John F. Kennedy Presidential Library, 1964), 53–58, <http://www.jfklibrary.org/Asset-Viewer/Archives/JFKOH-ABJC-01.aspx>.

majority of his time to three initiatives: reforming labor policy, increasing the federal minimum wage, and repealing the NDEA loyalty provisions.⁴⁹

In March 1959, Kennedy published an essay in the *AAUP Bulletin* describing his opposition to the loyalty provisions. He first described the aims of the NDEA as the expansion of education opportunities in light of the “present emergency” and claimed that meeting this objective “requires programs that will give assurances that no student of ability will be denied an opportunity for higher education because of financial need.”⁵⁰ Though his claim overstates the plain language of the NDEA, which was sold as a limited investment in student aid for a discrete purpose, the language of college access for all meritorious students with need is a strong echo of the Truman Report and the general position of educational progressives in the postwar period. Kennedy then wrote, “The loyalty oath has no place in a program designed to encourage education. It is at variance with the declared purpose of this statute; it acts as a barrier to prospective students, and it is distasteful, humiliating, and unworkable to those who must administer it.”⁵¹ He also argued that the language in Sec. 1001(f) was vague and left institutions to their own devices as to what it actually meant to *believe* in the overthrow of the government and that the regulation of belief, rather than subversive actions, was inappropriate. In a campaign speech, he asked who would determine what means of overthrowing the

⁴⁹ James MacGregor Burns, *John Kennedy: A Political Profile* (New York: Harcourt, Brace and World, 1961), 268.

⁵⁰ John Fitzgerald Kennedy, "Loyalty Oath: An Obstacle to Better Education," *AAUP Bulletin* 45, no. 1 (March 1959), 25.

⁵¹ *Ibid.*

government were illegal, going on to joke that “I suspect that there are a few Republicans who may consider it improper, if not illegal, whenever a Democrat wins an election.”⁵²

Finally, Kennedy raised concerns regarding “the grave problems of federal control over the educational process.”⁵³ Taking up the mantle of educational autonomy created an interesting alignment between colleges and universities that were initially cautious of the Truman Commission’s federal funding agenda. One might have expected conservative legislators to take this position, since they expressed such caution toward federal investments and interventions into the education sector. Instead, Kennedy positioned himself as a progressive for expanded educational opportunity *and* the autonomy of institutions that would benefit from that expansion.

In July 1959, Kennedy made similar arguments on the floor of the Senate when the Kennedy-Clark bill (S. 819) to repeal both the affirmative oath and disclaimer affidavit was considered with a 12-3 vote of support from the Senate Labor and Public Welfare Committee. Senator Mundt attempted to amend the bill to include language from the Smith Act, which would have established a criminal penalty for Communists who accepted an NDEA loan. Mundt’s proposal was not accepted, but Sen. Jacob Javits, a moderate Republican from New York, proposed eliminating the disclaimer affidavit and retaining the affirmative oath with the addition of a perjury penalty. The Javits amendment narrowly passed with 46-45 votes. Yet after a vociferous debate, the Senate

⁵² "Education: Loyalty Oath and Disclaimer Affidavit," *Papers of John F. Kennedy. Pre-Presidential Papers. Presidential Campaign Files, 1960* (John F. Kennedy Presidential Library, Undated), 2.

⁵³ Kennedy, "Loyalty Oath," 26.

voted 49-42 to return the bill to committee, where Kennedy believed the bill would eventually die.⁵⁴

Surprisingly, the Kennedy-Clark bill did not die in committee, but was sent for full Senate consideration in June 1960, with the Javits amendment intact. By this point, Eisenhower and Arthur S. Flemming, his Secretary of Health, Education, and Welfare, both endorsed the proposal to retain the affirmative oath and eliminate the disclaimer affidavit because of its deleterious effect on institutional participation in the student loan program.⁵⁵ After a debate that largely echoed the conversation during the previous year, Sen. Winston Prouty (R-VT) successfully amended the bill to plainly exclude members of the Communist party or other organizations that taught the overthrow of the US government from receiving NDEA loans. A student who had been involved with such an organization within the past five years would have been able to disclose the nature of their membership in the loan application. Violators of these new provisions could have been sentenced to a \$10,000 fine or up to five years in prison. With the Prouty amendment, the Kennedy-Clark bill passed the Senate on June 15, 1960. However, the bill suffered the same fate as much of the progressive education legislation in the late 1950s—it failed to pass Barden's tightly controlled House Education and Labor Committee and was never considered by the full House of Representatives.⁵⁶

⁵⁴ Louis Joughin, "Disclaimer Affidavit," *AAUP Bulletin* 45, no. 3 (Sept. 1959), 339–41.

⁵⁵ Griswold, "Loyalty," 18.

⁵⁶ E. W. Kenworthy, "Senate Votes End of Student Oath: Acts to Bar Non-Communist Pledge Opposed by Many Leading Universities," *New York Times*, June 16, 1960, 1; and Schwegler, "Academic Freedom," 116–17.

Senate Debates: 1959–1960

Although the Kennedy-Clark bill failed to become law, the debate it animated drove a wedge between the progressive conception of the NDEA as a first step toward more universal higher education funding and moderate conservatives who favored limited funding to higher education to adequately respond to the Sputnik emergency. Though the debates in 1959 and 1960 were essentially principled arguments regarding free inquiry and patriotism, and though the content of the debate was exclusively related to the NDEA loyalty provisions and their proposed amendments, the arguments were ideologically grounded. Progressives advocated for the repeal of the oath and affidavit because their fundamental assumption was that education funding was for the sake of expanded educational opportunity and production. In contrast, supporters of the loyalty provisions made arguments that were thoroughly faithful to the idea that education, in the context of the NDEA, should be subservient to defense priorities and maintained their skepticism that higher education could appreciably ameliorate defense efforts without some accountability mechanism.

The Case for Repeal

In the debates, proponents of repeal made arguments that positioned higher education as a special American institution requiring freedom of inquiry to strengthen democracy. Though they often claimed that this freedom would ensure America's long-term national security, their arguments rarely acknowledged the NDEA's defense aims and instead focused on protecting the autonomy of educational institutions. Kennedy claimed, "If we are to be faithful to our basic principles of freedom of thought, if we are to encourage the restless minds in our universities to go beyond the frontiers of

knowledge, if we are to remove the inhibitions that might foreclose inquiry, we must resist any attempt to force our students into a preconceived mold.”⁵⁷ Then, like Griswold and many of his allies in the Senate, Kennedy compared the NDEA loyalty provisions to religious tests that limited freedom, promoted conformity, and did little to inspire authentic patriotism. Furthermore, Kennedy expressed concerns that the provisions did little to exclude Communists who would readily perjure themselves to receive a loan, but did actively exclude some of the best students who refused to seek out a loan on the grounds of a principled objection to the affidavit. The majority that endorsed the bill in the Senate Committee on Labor and Public Welfare was also concerned that the NDEA was made less effective because a number of elite college and universities had refused participation in the student loan program.

Sen. Eugene McCarthy (D-MN), a former college professor, echoed that loyalty oaths signaled distrust in citizens and that higher education should be trusted to “govern their own members” in a similar fashion to the medical profession, which does not require such oversight to assure the public of its responsible care for patients. He said, “The academic profession has its goals and responsibilities. The colleges and universities have a common purpose—namely, to help students seek and acquire truth...The student makes an implicit pledge of fidelity to the purposes of a university when he enters...While he is a student, his professional responsibility is the concern of the college.”⁵⁸ Sen. John Sherman Cooper (R-KY) asked his colleagues to “believe that the

⁵⁷ "Second Session at Half Way Point," 113.

⁵⁸ *Ibid.*, 119.

free system of education will win out over conformity—the conformity of communism.”⁵⁹

Additionally, a number of senators opposed the loyalty provisions because of their unfair treatment of students in comparison to other beneficiaries of government funding who were not required to prove they were not disloyal. Picking up the religious test theme, Senator Clark compared the provisions to the Salem Witch Hunt and then claimed the affidavit requirement “designate[d] students as second class citizens.”⁶⁰ Sen. Stephen Young (D-OH) said, “I assert that this requirement is nothing more than an attack on the educated man in our society—an attack on learning and knowledge by those who would keep men in ignorance, in fear, and in intellectual bondage.”⁶¹ Both McCarthy and Kennedy went on to compare the affidavit requirement to the forced allegiance of citizens to Hitler in Nazi Germany.

By and large, the proponents of repeal drew their arguments from the academy, claiming that free inquiry and institutional autonomy were both important to the integrity of higher education and the spirit of democracy. Rather than engaging the debate on defense terms, these senators advocated for a type of relationship between the federal government and educational institutions that they hoped would endure in the form of more permanent general aid to higher education. Like Yale’s Griswold, they maintained a progressive platform of increasing federal support to education for the sake of improving educational opportunity and quality, only giving lip service to the national security aims

⁵⁹ 86 Cong. Rec., 1st Sess., 14,074 (1959).

⁶⁰ *Ibid.*, 14,068.

⁶¹ *Ibid.*, 14,071.

of the NDEA. Thus, their case was predominantly built upon advocacy for the authenticity of uncompelled loyalty and for governmental trust in educational institutions to educate citizens that would contribute to a democratic society.

The Case for Retaining the Provisions

Though some conservatives in the Senate defended the loyalty provisions as a pure matter of patriotism—unable to understand why everyone wouldn't jump at the opportunity to express their loyalty to the United States—most arguments to retain the provisions stemmed from their understanding of the NDEA as primarily a limited defense initiative. Sen. Gordon Allott (R-CO) had originally been convinced to support federal funding under the defensive aim of the NDEA, and even joined Hill as a cosponsor in 1958 and fought for the bill's passage. But Allott could not support the repeal of the loyalty provisions. On the Senate floor he said, "Upon what basis did we fight for that act? We fought for it upon the basis that we had to do something to get these people going, which would contribute to the defense of our country."⁶² He further suggested that students who objected to the loyalty oath or disclaimer affidavit were unfit to receive a loan that was intended to be a defense investment. Like many of his colleagues, Allott viewed the NDEA student loans as a straightforward and voluntary exchange—the government issued a loan and students, as beneficiaries of the loan, pledged their loyalty to the government. Sen. Barry Goldwater (R-AZ) compared this exchange to federal employees who were required to swear the affirmative oath. Elaborating on this theme, Senator Thurmond said:

Remember this. The Government established this program to promote the national defense. No one is required to participate. The

⁶² 86 Cong. Rec., 2nd Sess., 12,663 (1960).

Government stretches out its hand for no one. Instead it is the Government that is sought out by the student. The student asks the Government to finance his education on the grounds that his contribution as an educated man to the total national strength will justify the Government expense involved in educating him.⁶³

Beginning with the first congressional debates of the original NDEA bill, conservatives were skeptical that its programs would effectively serve national defense interests without some type of accountability mechanism. This objection continued into the loyalty provision debates as well. Characterizing his opponents, Thurmond said, “There is an implication in the statements of some educators that the students ought to be absolutely free from all allegiance in order that he might pursue his scholarly inquiry unimpeded by any restrictions or reservations whatsoever.”⁶⁴ Of course, this did not make sense to Thurmond, who conceptualized NDEA loans as a defense program. He probably would have preferred that the original NDEA include some assurance that students who received loans actually put their degrees to use in defense-related fields, but the loyalty provisions were the only part of the NDEA that came remotely close to aligning student beneficiaries with federal priorities.

According to Sen. Bourke Hickenlooper (R-IA) and Sen. Olin Johnston (R-SC), this assurance was entirely necessary because of higher education’s history of promoting subversive thought and activity. Johnston said, “I call the attention of the Senate to a few facts concerning how Communists operate in the colleges. . . . The Communists use the students within the college to further their purpose.”⁶⁵ To Johnston, the affidavit was a

⁶³ Ibid., 12,666–67.

⁶⁴ Ibid., 12,667.

⁶⁵ 86 Cong. Rec. 1st Sess., 14,098 (1959).

method to protect students from buying into the subversive activities looming in the academy. Hickenlooper echoed that he knew of “certain teachers who literally taught subversion of the American system of government, sometimes in a very tactful way.”⁶⁶ Whereas Eugene McCarthy had asked the Senate to trust higher education to prepare students for responsible democratic participation, Johnston and Hickenlooper expressed explicit distrust in colleges and universities to properly cultivate loyal citizens.

Of the Kennedy-Clark bill’s opponents, Thurmond was perhaps the most outspoken and prolific in his comments directed toward the bill’s content and the proposed amendments that surfaced in 1959 and again in 1960. Some of his orations might best be considered political theatrics. For example, he said, “If a person does not love his country, and if he is not willing to take an oath that he will support the Constitution, I say he has no business getting a loan from the Government of the United States. Furthermore, I should like to see him detected, apprehended, and punished, because he is dangerous, and a menace to society.”⁶⁷ Despite this grandstanding, the majority of his arguments were quite logical, grounded in the assumption that the NDEA programs prioritized defense during a national crisis, and were intended as a direct response to the arguments advanced by Kennedy, Clark, and other proponents of repeal. His statement began with a fair and thorough description of opposing viewpoints:

The device of loyalty oaths and affidavits is an invasion of academic freedom: it enforces an odious conformity; it is a tactic of the totalitarian state; it undermines true patriotism; it discriminates against and points a finger of suspicion at the entire education community; it discriminates against the needy student by setting up a “double-standard” within our colleges; and it creates suspicion and animosity between the

⁶⁶ 86 Cong. Rec., 2nd Sess., 12,664 (1960).

⁶⁷ "Second Session at Half Way Point," 118.

U.S. Government and our educational community. This is a formidable list of charges, all of which I believe are not substantiated.⁶⁸

Thurmond then addressed each of these arguments in turn. First, he claimed that the loyalty provisions did not prohibit a student from free inquiry or the critical consideration of democratic ideas, but since students were willingly applying for and receiving financial aid through a defense program, they needed to be opposed to treason. Thurmond respected academic freedom, but could not abide a definition that protected treasonous activity. Neither could he accept that the loyalty provisions enforced ideological conformity, since students volunteered and were not compelled to participate. He said that the NDEA loans were “a selective extension to a selective group of volunteers for a specific propose.”⁶⁹

In regard to claims that the provisions were tyrannical tools, Thurmond chastised his colleagues for comparing the oath and affidavit to the methods of tyranny employed under Adolf Hitler. “The modest requirements of an oath or an appropriate disclaimer as a qualification for voluntary participation in a Government program geared to the national defense is so obviously right and just and reasonable that any comparison between it and anything remotely connected with Hitler is inexcusable, and ought not to pass unchallenged.”⁷⁰ For Thurmond, an oath of loyalty to a free country was an honorable act that could not be conflated with the evils of Nazi coercion. Then, in response to allegations that the oath and affidavit required “automatic, unthoughtful

⁶⁸ 86 Cong. Rec., 2nd Sess., 12666 (1960).

⁶⁹ *Ibid.*, 12667.

⁷⁰ *Ibid.*

responses to stock questions”⁷¹ from students, Thurmond responded that students should be honored to take the oath, as he and many of his colleagues were when they took their oaths of office. He believed that students were signing up for a defense-related loan and should be happy to pledge their allegiance to the United States. If not, then they were not suited for the program.

Thurmond also took exception to the assertion that higher education was being singled out with the loyalty provisions in a way that other recipients of government subsidies were not. First, he said that NDEA loans were not like other types of government aid because they were targeted toward defense. He even said, plainly, “It is not a general aid to education statute.”⁷² Then, because Kennedy and others often compared college students to farmers who received subsidies without loyalty requirements, Thurmond drew a distinction between farm subsidies that required farmers to offer their crops as collateral and NDEA loans that required no collateral other than fidelity to the purpose for which the loan was granted. Third, he emphasized that education was special, in this instance, because it had the power to shape students’ beliefs. “The student is expected to make an ideological contribution to society. He is expected to contribute to the world of ideals, of concepts, and as such, his philosophy on the one fundamental question of loyalty to his country is legitimate and highly relevant.”⁷³

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

Though the loyalty provisions violate contemporary sensibilities and their advocates are easily portrayed as antagonists hopelessly committed to the McCarthy-inspired Red Scare, supporters of the provisions believed that the oath and affidavit were merely logical outgrowths of a statute with explicit defensive, anti-Communist ambitions. Time and again, Thurmond, Allott, Goldwater, and their allies insisted that the NDEA authorized a limited federal venture into higher education funding for a discrete purpose and that the loyalty provisions were a necessary assurance that that purpose would be achieved. Their arguments stood in stark contrast to the progressive viewpoint of Kennedy, Clark, and Eugene McCarthy, whose resistance to the loyalty provisions was built upon a platform that desired increased federal support to education and concerns that colleges and universities maintain appropriate autonomy from their government. The alliance between progressives and moderate conservatives that Hill and Elliott so carefully constructed to pass the original NDEA fractured during the loyalty oath debates in 1959 and 1960 and demonstrated that education legislation packaged under the guise of other government interests created intolerable tensions between education and government.

The End of the Disclaimer Affidavit

Though the Kennedy-Clark bill failed when the House of Representatives did not consider it in 1960, a serendipitous turn of events led to the elimination of the disclaimer affidavit in 1962. The ire of Congress was raised in 1961 after Edward Yellin was convicted of being a Communist who falsely signed a disclaimer affidavit to receive an NSF grant. In reaction to his perjury, Congress acted to replace the affidavit with more explicit criminal penalties for those who received NSF grants and were convicted of

subversive activity. As the bill proceeded through the House and Senate in 1961, it was amended in the Senate to include the NDEA as well, thus eliminating its disclaimer affidavit requirement, retaining the affirmative oath, and instituting a criminal penalty for convicted subversives. Though it is unknown what prompted the Senate to include the NDEA in the legislation, Griswold's papers do indicate that he made the suggestion to Sen. Wayne Morse (D-OR). President Kennedy enthusiastically signed the bill into the law in October 1962, completing his effort to rid higher education of the disclaimer affidavit burden.⁷⁴

Upon the repeal of the affidavit, the AAUP wasted no time in claiming victory on behalf of the 148 colleges and universities that either did not participate in the NDEA or that formally voiced their objections to the loyalty provisions. However, they did explain to their member institutions that the repeal was the result of a legislative compromise. Though the disclaimer affidavit was indeed removed, there were other stipulations included that still violated the principles of free inquiry. Under the revised NDEA, students could be disqualified for loans or graduate fellowships because of membership in a recognized Communist organization, as determined by the Subversive Activities Control Board. The AAUP saw this as an imperfect improvement, since regulating activity was preferable to the original NDEA's regulation of belief. Furthermore, the revised NDEA granted authority to the Commissioner of Education to revoke a loan or fellowship if he or she determined that it was not in the best interest of the United States government. According to the AAUP, "This provision, in the considered judgment of the

⁷⁴ Schwegler, "Academic Freedom," 123; Herman I. Orentlicher, "Disclaimer Affidavit: A Valediction," *AAUP Bulletin* 48, no. 4 (Dec. 1962): 324–30; and "Exit: College Affidavit," *New York Times*, Oct 18, 1962, 38.

Council, places a heavy responsibility on the Federal agencies charged with its administration for its sound and fair application, and upon the entire academic community for careful and unremitting scrutiny of such administration.”⁷⁵ Finally, graduate fellowship recipients would be required to disclose past criminal convictions, which the AAUP believed could disqualify students who were convicted of crimes related to civil disobedience when advocating for desegregation or expanded civil rights.

While the AAUP was anxious to claim victory in the long-fought loyalty provision debate, the organization acknowledged that the changes in the NDEA program would likely not be sufficient for some institutions. In a letter to the thirty-two colleges that were not participating in the NDEA loan program at the time of the affidavit’s repeal, the AAUP said they would cease the fight for complete elimination of the provisions: “It is our considered judgment also that there is no immediate realistic hope for complete repeal of the disclaimer affidavit requirement; actually, reopening of the matter on the legislative front might result in retrogression rather than improvement.”⁷⁶ Yet not all institutions were ready to declare victory. The Columbia University Student-Faculty Committee Against the National Defense Education Act Amendments wrote a letter to the *New York Times* to contradict an editorial that praised the 1962 revision. The letter stated, “It is logical to punish a subversive for his subversive acts, but we question the logic of punishing him for innocent acts—like applying for aid—because he is a subversive.”⁷⁷ And in regards to the commissioner’s newly vested authority, they wrote,

⁷⁵ Orentlicher, "Disclaimer Affidavit," 327.

⁷⁶ Ibid.

⁷⁷ "Letters to the Times," *New York Times*, Oct 30, 1962, 34.

“The danger to free expression is increased by the necessity for a fellowship holder to anticipate what actions or views may be deemed to oppose the national interest.”⁷⁸

The 1962 repeal of the disclaimer affidavit was a soft victory for the academy and the progressive politicians who supported federal aid to education. Because the elimination of the affidavit had been considered since 1959, the repeal marked a convenient point to end the fight for total autonomy from the loyalty provisions. Ultimately, the 1962 repeal and substitution formed an unsatisfactory denouement that further demonstrated the intrinsic challenges faced when education aid is framed as subservient to disparate government priorities. However, the alliance between national security and education paved the way for progressives to regroup and initiate education legislation that could stand on its own merit, leading up to the HEA of 1965.

Advancing the Progressive Platform: 1961–1965

The pathway to general funding for higher education was not smooth during Kennedy’s presidency. In 1961, Kennedy proposed a college aid bill to fund facility construction on college campuses, many of which were overcrowded with growing enrollments. The bill would have also funded scholarships directly to needy students. Citing the increasing cost of college tuition, Kennedy thought it was unrealistic to ask students and their families to finance a college education exclusively through loans, and he advocated for annual scholarships of \$1,000 to help students who were already borrowing and working their way through school. Meeting a similar fate as general

⁷⁸ Ibid.

student aid legislation in the preceding decade, House Republicans opposed grants to needy students and killed the bill in the House Rules Committee.⁷⁹

In 1962, a revised version of the college aid bill (H.R. 8900) emerged in the House with the student aid provisions excised, though they were retained in the Senate version. Both versions passed their respective chambers in early 1962, but were stalled over church-state controversies. The House version allowed for construction loans to religious institutions while the Senate version contained construction grants that would have been unavailable to sectarian colleges. Public universities supported the grants in the Senate version because laws in over forty states prohibited universities from assuming debt from the federal government. Even Lister Hill, with a strong record of support for general funding to higher education, could not support the House bill's direct funding to religious schools. At the time, he faced a difficult reelection campaign and Protestant Alabamians were opposed to federal funding for Catholic higher education. The controversy of the separation of church and state in the college aid bill reached such furor that it died in the House Rules Committee while awaiting conference.⁸⁰

During this gridlock, the Kennedy administration made another attempt to revise the NDEA to make the loans function like scholarships. According to historian Hugh Davis Graham, "The logic of this legislative ingenuity, which would so dilate the repayment requirements of a loan that it would approximate a de facto federal grant in the guise of a loan under the loan rubric."⁸¹ The administration also planned to eliminate the

⁷⁹ Hugh Davis Graham, *The Uncertain Triumph: Federal Education Policy in the Kennedy and Johnson Years* (Chapel Hill: University of North Carolina Press, 1984), 28–29.

⁸⁰ *Ibid.*, 28–32.

⁸¹ *Ibid.*, 35.

requirement for colleges and universities to contribute 10 percent of the total student loans they offered through the NDEA, expand the disciplines in which students could apply for loans, and increase opportunities for loan forgiveness. The strategy was unsuccessful, however, as its ulterior goal was transparent to Senate Republicans.

Perhaps as a result of the goodwill in Congress following the assassination of President Kennedy in November 1963, Rep. Edith Green (D-OR) and Sen. Wayne Morse (D-OR) were finally successful in passing a version of the college aid bill through the Senate. President Lyndon B. Johnson signed the Higher Education Facilities Act into law on December 16, 1963, allocating \$230 million in grants for higher education facility construction annually for four years and fulfilling Kennedy's ambition to directly fund the expansion of college campuses.⁸² The Johnson administration, with the help of Representative Green, would soon begin work on fulfilling the second half of the progressive agenda of general funding to higher education championed by the late President Kennedy—direct scholarship aid to students who could not afford a college education.

Scholarships to needy students were still controversial in Congress in 1963. Green, in a lecture at the Harvard Graduate School of Education outlined the progressive rationale for higher education funding, arguing against the conservative platform. She criticized those in Congress who were willing to pay for unemployment benefits and adult skills training, but who were unwilling to preempt deficiencies in the American workforce through scholarships for higher education. She said:

⁸² *Ibid.*, 50–52; and *The Higher Education Facilities Act of 1963: H.R. 6143, Introduced by Representative Edith Green (Oregon)*, Research American Enterprise Institute for Public Policy ed. (Washington, DC: American Enterprise Institute for Public Policy Research, 1963), 1–16.

I have heard it argued on the floor of the House of Representatives that a scholarship to a youngster who wishes to attend college to obtain training will destroy, by some alchemy, his or her moral fiber. Yet, inconsistently, some of these members will vote funds for manpower retraining of the unemployed, with outdated skills and little education, whose morale and moral fiber is already damaged by a restricted labor market.⁸³

For Green, higher education access was a critical public policy concern, not a privilege exclusively afforded to those whose parents could pay their tuition. However, the efficacy of arguments against such aid, which had deflated the Truman Commission's ambitions and virtually every other subsequent attempt to pass general scholarship aid through Congress, had also substantially weakened by the time of Green's lecture. President Johnson was handily reelected in 1964, winning the electoral votes of forty-four states. His Great Society platform and war on poverty, in which education legislation played a key role, was ushered in by an increased Democratic majority in both chambers of Congress. Democrats gained two seats in the Senate and forty seats in the House. These majorities allowed the House to pass educational legislation and the Senate to pass the same bills without amendment, avoiding the trap of reconciliation conferences that had torpedoed previous attempts to actualize progressive legislation to fund scholarship aid to college students.⁸⁴

This new context opened the door for the landmark HEA of 1965, which passed through Congress with relatively little controversy. Though Republicans favored tuition tax credits in lieu of scholarship grants, they did not have enough leverage to amend the legislation. The resulting HEA allocated \$70 million annually in Educational Opportunity

⁸³ Edith Green, *Education and the Public Good: The Federal Role in Education*, The Burton Lecture (Cambridge, MA: Distributed for the Graduate School of Education of Harvard University by Harvard University Press, 1964), 13.

⁸⁴ Graham, *The Uncertain Triumph*, 53–83.

Grants for students with financial need and instituted an expansion of the NDEA student loan program for the middle class, where the principal was funded through private lenders and interest was federally subsidized at 3 percent. The bill passed the House, 367 to 62, on August 26, 1965, “after a generally docile debate. The only debate came when Republicans sought to divert the scholarship money to construction of community junior colleges. This was defeated, 88 to 58.”⁸⁵ The Senate considered the bill for one day, on September 2, and passed it with 79 votes. On the floor, the only debate concerned provisions to protect fraternities and sororities that discriminated membership by race, which was prohibited if the organizations received funds or housing directly from a college or university receiving federal dollars.⁸⁶

When Johnson signed the HEA into law on November 8 before an audience at Southwest Texas State College, his alma mater, he proclaimed, “Too many people, for too many years, argued that education and health and human welfare were not the Government's concern. . . . But now, at last, in this year of our Lord, 1965, we have quit talking and started acting.”⁸⁷ The aspirations of the Truman Commission, Lister Hill, Carl Elliott, John F. Kennedy, and other progressives to allocate federal dollars for student aid and campus expansion had been realized, through patience and perseverance, ending a twenty-year debate, eliminating the necessity for packaging student aid as a defense measure, and securing the alliance between the federal government and higher education.

⁸⁵ Majorie Hunter, "College Aid Bill Passed by the House, 367 to 22," *New York Times*, Aug. 27, 1965, 1.

⁸⁶ John D. Morris, "Senate Votes, 79–3, for College Aid Bill: Senate Approves College Aid Bill," *New York Times* Sept. 3, 1965, 1.

⁸⁷ “Lyndon B. Johnson, Remarks at Southwest Texas State College Upon Signing the Higher Education Act of 1965,” November 8, 1965, The American Presidency Project, <http://www.presidency.ucsb.edu/ws/index.php?pid=27356&st=johnson&st1=higher+education>.

Conclusion

At the time the Truman Report was issued in 1947, the political will did not yet exist for supporting a broad federal investment in higher education. Yet Hill and Elliott were able to leverage national anxieties regarding the technological advancement of the Soviet Union in the wake of Sputnik to channel the Truman Commission's aims and lead the federal government into providing low-interest loans and graduate fellowships through the NDEA. To accomplish this feat, Hill and Elliott, with the help of the Eisenhower administration, packaged the education legislation as a short-term solution to expand the number of students earning degrees in defense-related disciplines. This framework was appealing to a conservative platform that had long been reticent to open the floodgates of federal aid to education. As a result, the NDEA passed both the House and Senate with broad and bipartisan support.

While higher education was generally supportive of NDEA funding programs, many institutions strongly objected to Mundt's last-minute addition of an affirmative oath of allegiance and a disclaimer affidavit as requirements for students receiving NDEA loans. John F. Kennedy and other progressive legislators responded to the academy's pleas and proposed a bill to remove the oath and affidavit in 1959. The loyalty provisions were utterly uncontroversial when they were added to the NDEA in 1958, but they ignited a debate in the Senate in 1959 and again in 1960. Though the content of the debate focused on principles of academic freedom and patriotism, arguments were built upon the same two opposing philosophies of federal financial assistance to higher education. The controversy concerning the loyalty provisions has been viewed as a political sidetrack that, while interesting because of its echoes of McCarthyism, was

insignificant to the overall trajectory of federal educational policy in the mid-twentieth century. In fact, the loyalty provision debate exposes the fault lines of compromise between progressives and moderate conservatives in the NDEA and demonstrates that educational funding under the guise of national defense limited educational autonomy and formed a poor precedent for future educational legislation. Finally, the HEA of 1965 emerged as a monumental example of education policy without strings attached to other government priorities.

Contemporary higher education often romanticizes the postwar years as the golden age of higher education, when institutions gained expanded access to government largesse without the cumbersome accountability measures currently imposed as prerequisites to federal aid. Yet the loyalty controversy demonstrates that some legislators were indeed interested in holding higher education accountable to steward federal funds toward national defense priorities. If they couldn't compel the beneficiaries of NDEA loans to serve defense interests post-graduation, then, at the very least, they could ensure that they wouldn't be learning how to use their education to undermine national security. In the Cold War era, concerns about the nation's ideological position on the world stage was of primary concern, and, because of Hill and Elliott's clever strategy to package education aid as a defense bill, education was subjugated to defense interests from 1958 to 1965.

Though the federal government is no longer as interested in supporting higher education as a defense strategy as it was during the Cold War, it is increasingly concerned with higher education's role in advancing the nation's global economic position and long-term viability. Consequently, legislators and the Department of

Education are interested in holding higher education accountable for the production of economic outputs that align with current federal priorities, expecting postsecondary institutions to perform parastate duties in exchange for significant federal funding. This funding relationship continues to illuminate tensions between educational principles and government priorities, raising enduring questions about the proper relationship between a government that expects a return on investment and institutions that prize their historic and highly prized autonomy.

Study Two – Technically Allowed: Federal Scrutiny of Stanford University’s Indirect Cost Expenditures and the Changing Context for Research Universities in the Post-Cold War Era*

“This is a topic even a mother could not love; it is suitable only for masochists and University Presidents, which many believe to be a single species.”⁸⁸ Donald Kennedy, president of Stanford University, mocked the subject of overhead expenses related to sponsored research to begin his address to the 1987 National Institutes of Health (NIH) Annual Symposium. Three years later, his campus would be embroiled in a national controversy over financial mismanagement and excess rooted in the handling of the mundane and technocratic processes of indirect cost accounting, resulting in his resignation. In a period of heightened suspicion toward higher education’s elitism and wasteful spending, Stanford became a national symbol for university excess.⁸⁹

During the 1980s, Stanford operated with a total cost recovery framework that sought reimbursement for all institutional expenses remotely connected to sponsored

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⁸⁸ Donald Kennedy, “Indirect Costs and the Health of Universities,” Oct. 16, 1987, 1, box 8, folder 315, Donald Kennedy Personal Papers, SC0708, Stanford University Archives.

⁸⁹ Barry Bozeman and Derrick M. Anderson, “Public Policy and the Origins of Bureaucratic Red Tape: Implications of the Stanford Yacht Scandal,” *Administration & Society* 48, no. 6 (Aug. 2016), 736–59.

research activities. The institution's indirect cost (IDC) rate, which indicates the amount required on top of funding for direct research expenses, expressed as a percentage of the direct research funding, increased from 58 percent in 1980 to 78 percent in 1991 and was projected to reach 84 percent by 1993.⁹⁰ Under federal rules for sponsored research, a university with a 78 percent IDC recovery rate would be eligible to receive an additional 78 cents for every dollar in the modified total direct costs (direct costs funded with some cost categories excluded). The university could then seek reimbursement for legitimate IDCs in various cost pools, such as the library, utilities, or administration expenses.⁹¹

Stanford's contentious relationship with its Office of Naval Research (ONR) regional representative, Paul Biddle, boiled over and brought national media attention to Stanford's IDC recovery practices and alleged abuses. Scrutiny intensified as Stanford officials vehemently defended the accuracy and allowability of their IDC claims in the press and before Congress, eventually generating enough pressure that Kennedy faced little choice but to offer his resignation. Ultimately, IDC accounting inquiries expanded beyond Stanford, culminating in changes to the federal rules that would limit the overhead recovery potential at universities nationwide.

This essay argues that the investigations of Stanford's IDC practices represent a conflict between a university struggling to maintain the privileges it achieved during

⁹⁰ Marcia Barinaga, "Stanford Erupts over Indirect Costs," *Science* 248, no. 4953 (April 20, 1990), 293; and Donald Kennedy, *Academic Duty* (Cambridge, MA: Harvard University Press, 1997), 166.

⁹¹ Charles A. Goldman, Traci Williams, David M. Adamson and Kathy Rosenblatt, *Paying for University Research Facilities and Administration* (Santa Monica, CA: Science and Technology Policy Institute, Rand Corporation, 2000), 6.

the Cold War and a federal government focused on reducing deficits and reining in excess. Stanford's aggressive approach to IDC recovery was designed to exploit federal rules for overhead reimbursement. When access to federal grants waned in the late 1980s, their overall IDC recovery rate increased to ensure funding for the campus's expansive research programs that developed during the Cold War. The high recovery rate attracted the attention of a zealous and cantankerous contracting officer who was determined to expose Stanford's allegedly fraudulent behavior, despite Stanford's insistence that their practices were within the boundaries of federal rules. When Biddle's efforts failed, he presented his allegations to Rep. John Dingell (D-MI), who initiated a lengthy and intrusive audit of Stanford's federal contracting records. Relentless media coverage of the investigation and Stanford's excessive charges to the federal government confirmed public perceptions that higher education was out of touch, financially irresponsible, and resistant to public accountability. Congress was unconvinced that Stanford's practices were acceptable and it modified IDC reimbursement procedures to limit such behavior in the future. Ultimately, these new rules signaled to Stanford, and similar universities, that their relationship with the federal government had dramatically altered at the close of the Cold War. As sociopolitical contexts changed, and the government embraced new priorities of fiscal responsibility over expanding defense research, universities could no longer rely upon the federal government to be an unqualified ally in their expanding research programs. This controversy illuminates how the federal government, which had depended upon research output in the preceding decades, embraced new concerns, destabilized its

relationship with academic science, and demanded that preeminent research universities likewise adapt.

The Cold War and Stanford's Expanding Research Enterprise

Understanding the controversies surrounding Stanford's IDC accounting in the 1990s requires an examination of how research universities, and Stanford in particular, developed after World War II to meet Cold War demands for defense research. Prior to World War II, the federal government made fragmented investments in academic research, primarily for agricultural and defense purposes. After World War II, American engineer Vannevar Bush, in his article "Science: The Endless Frontier," attempted to convince the American public that the federal government should create a central agency to fund investments in basic research or the discovery of general knowledge without practical goals.⁹² He argued that such research would result in technological advances, economic prosperity, and international superiority.⁹³ Until 1950, approval for the National Science Foundation (NSF) was mired in debate about whether funding decisions should be made democratically or through peer review. The peer review process prevailed, establishing a tacit social contract in which the government allocated funds, trusting a peer review process to disburse grants to researchers, with the

⁹² Vannevar Bush, "Science: The Endless Frontier," *Transactions of the Kansas Academy of Science* (1903-) 48, no. 3 (1945), 231–64; Daniel J. Kevles, "The National Science Foundation and the Debate over Postwar Research Policy, 1942–1945: A

Political Interpretation of Science—The Endless Frontier," *Isis* 68, no. 1 (March 1977), 4–26; and Roger L. Geiger, *Research and Relevant Knowledge: American Research Universities Since World War II* (New York: Oxford University Press, 1993), 14–19.

⁹³ Kevles, "The National Science Foundation," 4–7.

expectation that funded research would yield scientific discoveries to strengthen the economy and national defense.⁹⁴

Under this system, the Department of Defense became the primary supporter of academic science in the 1950s, particularly after the Soviet Union launched Sputnik in 1957 and the United States clamored to gain technological and defense superiority in the Cold War.⁹⁵ Federal funding for university science increased nearly 180 percent between 1958 and 1964, doubling the proportion of defense expenditures in the gross national product. Growth continued into the late 1960s, reaching new funding peaks, even though the rate of growth was slower than the years immediately following Sputnik.⁹⁶

Though many universities benefited from access to federal defense contracts and basic research grants, few were able to harness those funds to expand research programs and infrastructure like Stanford. Science and technology historian Stuart W. Leslie wrote that Stanford was “a benchwarmer in World War II ... [but] used postwar defense contracts to propel itself from a respected regional university into a science and engineering all-star.”⁹⁷ Stanford attracted private funding to expand the faculty, who were then able to attain substantial federal grants and contracts. Accordingly, by 1966,

⁹⁴ David H. Guston and Kenneth Keniston, “The Social Contract for Science,” in *The Fragile Contract: University Science and the Federal Government*, ed. David H. Guston and Kenneth Keniston (Cambridge, MA: MIT Press, 1994), 1–35.

⁹⁵ Stuart W. Leslie, *The Cold War and American Science: The Military-Industrial-Academic Complex at MIT and Stanford* (New York: Columbia University Press, 1993); and Geiger, *Research and Relevant Knowledge*, 173–74.

⁹⁶ Geiger, *Research and Relevant Knowledge*, 173.

⁹⁷ Leslie, *The Cold War and American Science*, 12. For a detailed account of how Stanford administrators orchestrated this rise, see Rebecca S. Lowen, *Creating the Cold War University: The Transformation of Stanford* (Berkeley: University of California Press, 1997).

Stanford had received the third highest total of NSF funds among all universities, surpassed only by MIT and the University of Michigan.⁹⁸ By 1983, Stanford held \$32 million in Department of Defense contracts, representing 23 percent of all federal contracts.⁹⁹ Stanford's expedient growth in defense research helped it become "the exemplar of the Cold War university."¹⁰⁰

With the end of the Cold War, federal spending priorities shifted, and universities like Stanford no longer had access to the defense largesse they had enjoyed during the 1960s. As the Cold War concluded, so did the "golden age" of federal support for academic science— defense efforts during the Cold War had been so successful that:

The essential rationale for the revolution in academic research had finally disappeared. No longer was American science in danger of being eclipsed by the Soviets; no longer was academic science concentrated in just fifteen or twenty universities; and no longer did graduate programs need to be expanded in order to counter the shortage of faculty and researchers.¹⁰¹

According to science policy scholars David H. Guston and Kenneth Keniston, the social contract for academic science deteriorated in the wake of the Cold War because it was not renewed in light of changing public priorities. Public trust in academic science waned and a new research economy emerged that was no longer supported by wide consensus in the public value of scientific research. In the new research economy, funding for academic science was no longer available at the levels with which research universities had become accustomed.¹⁰² At the end of the Cold War, the US economy

⁹⁸ Geiger, *Research and Relevant Knowledge*, 132.

⁹⁹ Leslie, *The Cold War and American Science*, 251.

¹⁰⁰ Lowen, *Creating the Cold War University*, 6.

¹⁰¹ Geiger, *Research and Relevant Knowledge*, 197.

¹⁰² Guston and Keniston, "The Social Contract for Science," 1–33.

contracted and legislators became concerned about budget deficits.¹⁰³ The 1991–92 recession resulted in steep cutbacks in defense funding and job losses in defense-related sectors.¹⁰⁴ Legislators sought to contain budget deficits in this economic climate, and research spending became a “tempting target for budget cutters, waste watchers, and anyone with an underfunded program.”¹⁰⁵ In particular, the availability of ancillary funds that helped research universities grow their research infrastructure declined throughout the 1970s. In 1964, the federal government funded nearly 75 percent of university research expenditures, but that proportion fell to 60 percent by the end of the 1970s. As a result, many universities struggled to fund the costly research operations that had ballooned during the previous decades, including Stanford, which faced budget deficits.¹⁰⁶ As Stanford confronted a relative paucity of federal funds to cover the direct costs of conducting research, the rate by which the institution recouped overhead expenditures from the federal government ballooned to compensate.

Evolving Indirect Cost Regulations

Rules governing reimbursement of IDCs that research universities incurred developed alongside the post-Sputnik expansion of academic science funding and allowed Stanford to increase revenue from IDC reimbursements in subsequent

¹⁰³ Ann Markusen and Joel Yudken, *Dismantling the Cold War Economy* (New York: Basic Books, 1993), 7, 242–43.

¹⁰⁴ Thomas Nadrone, Diane Herz, Earl Mellor, and Steven Hipple, “1992: Job Market in the Doldrums,” *Monthly Labor Review* 116, no. 2 (Feb 1993), 8–9.

¹⁰⁵ Peter Likins and Albert H. Teich, “Indirect Costs and the Government-University Partnership,” in *The Fragile Contract*, 188.

¹⁰⁶ Geiger, *Research and Relevant Knowledge*, 134, 97; and Roger Geiger, “What Happened after Sputnik? Shaping University Research in the United States,” *Minerva* 35, no. 4 (Jan. 1997), 363.

decades when they experienced a decline in federal funding for science. In 1958, the federal Office of Management and Budget (OMB) issued Circular A-21, “Cost Principles for Educational Institutions,” to provide cross-agency guidance and clarity to the reimbursement of direct and indirect research expenditures. Prior to Circular A-21, each granting agency determined their own reimbursement policies and accounting expectations. Circular A-21 defined what expenses were allowable as direct and indirect costs and how universities should calculate and document them.¹⁰⁷

This cost-sharing model differed from total recovery policies that allowed private sector contractors to recoup their direct and indirect expenses in full, as well as a more generous IDC recovery rate (50 percent) for universities up until the end of World War II. Because university-based research was conceived as a partnership that benefited both the government and universities, higher education was to supply infrastructure and administrative funding to support sponsored research. The first reimbursements of IDC rates were a mere 8 percent of total direct research expenditures. Eventually, as the quantity and complexity of sponsored research increased, university leaders convinced Congress that such levels of cost sharing were subsidizing government work with tuition revenue or philanthropy. The IDC rate cap was elevated to 20 percent in 1964 before Congress, in 1965, allowed institutions to negotiate their own IDC recovery rates with federal agencies based upon actual research expenditures. Institutions documented those expenses and negotiated

¹⁰⁷ For more about allowable expenses, see Genevieve J. Knezo, “Indirect Costs for R&D at Higher Education Institutions: Annotated Chronology of Major Federal Policies,” in *CRS Report for Congress* (Washington, DC: Congressional Research Service, 1994); and Goldman, et al., *Paying for University Research Facilities and Administration*.

customized rates with their funding agency (the federal agency supplying the university with the most grant dollars), and these expenses were then verified through external audit.¹⁰⁸ Rates could be predetermined for a number of years or fixed rates could be negotiated with carry-forward, meaning that “any differences between the estimated costs used to establish the fixed rate and actual costs during the period are carried forward to a subsequent period as an adjustment.”¹⁰⁹ Negotiations with funding agencies served to maintain the principle of cost sharing, though less substantially than the previous decade. Institutions were expected to contribute a nontrivial amount by either not claiming certain overhead expenses or agreeing to lower recovery rates.

In the 1980s, IDC policies evolved in several key areas that opened doors for universities to increase recovery. First, Congress lifted the cost-sharing requirement for sponsored research, trusting that other regulations would appropriately restrain IDC rate inflation.¹¹⁰ This change meant that universities no longer needed to document the extent to which they contributed to federally funded research or the eligible IDCs they had voluntarily excluded. Second, the 1982 revision of Circular A-21 allowed institutions to claim interest on financed research facilities as an allowable IDC, whereas previous regulations only allowed for the depreciation and usage costs of such facilities. This regulatory shift opened the door for institutions to make substantial physical plant investments with the assurance that IDC reimbursements could fund a substantial portion

¹⁰⁸ Goldman et al., *Paying for University Research Facilities*, 11–12; Likins and Teich, “Indirect Costs,” 180; and Knezo, “Indirect Costs for R&D,” 1.

¹⁰⁹ Goldman et al., *Paying for University Research Facilities*, 16.

¹¹⁰ Knezo, “Indirect Costs for R&D,” 19.

of their debt service for new facilities. The Department of Health and Human Services identified the allowance of facilities interest as a significant contributor toward increased IDC recovery rates. Finally, the 1982 revisions allowed universities to determine recovery rates through statistical sampling of expenses, particularly for the library and utilities. This change reduced the effort required to document the legitimacy of a recovery rate for each cost pool.¹¹¹

Indirect Cost Recovery at Stanford

Each of these regulatory changes allowed Stanford to negotiate increasing IDC recovery rates, causing both internal and external tensions in the 1980s, years before the controversy surrounding reimbursement for luxury items came to light. During the decade, Stanford's recovery rate climbed 13.4 percentage points, to 74 percent.¹¹² At the time, only Harvard Medical School's rate of 77 percent exceeded Stanford's. Columbia tied Stanford at 74 percent, followed by MIT at 68 percent.¹¹³ Unlike many other elite research universities, Stanford relied heavily upon provisions in Circular A-21 that allowed institutions and their contracting agencies to customize calculation methods and IDC recovery rates within each cost pool, codified in memorandums of understanding (MOUs). For example, one MOU outlined Stanford and the government's agreement to simply reduce reimbursements from one cost pool by 20 percent rather than manually inspect each transaction in that cost pool for unallowable expenditures, such

¹¹¹ Goldman et al., *Paying for University Research Facilities*, 78; and Knezo, "Indirect Costs for R&D," 17.

¹¹² Marcia Barinaga, "John Dingell Takes on Stanford," *Science* 251, no. 4995 (Feb. 15, 1991), 734.

¹¹³ Barinaga, "Stanford Erupts over Indirect Costs," 292.

as entertainment expenses. Stanford negotiated nearly 125 MOUs in the 1980s, while no other institution had more than thirteen MOUs with their contracting agencies.¹¹⁴

At Stanford, the steepest IDC rate increases came shortly after the 1982 revisions to Circular A-21. Escalating rates were attributed to Stanford's proliferation of new and updated research facilities, on which the university could recover interest expenses. In 1990, Provost James Rosse said, "We recognized early that our science facilities had a finite life, and we have been busy replacing them. That has had a big impact on our indirect cost rate." He also explained that philanthropy alone could not support new buildings and that reimbursements for debt service were essential to the campus building strategy.¹¹⁵ In part, Rosse was referring to the Near West campus, a substantial expansion of science facilities planned and built in the 1980s. The facilities were constructed on the assumption that the direct cost base would grow, thus increasing the availability of IDCs. When the grant base did not materialize as projected, the IDC rate rose to compensate.¹¹⁶

By 1990, Stanford projected that its IDC rate would rise to 84 percent within three years. The projection infuriated faculty, who saw the purchasing power of their grants wane as increasing funds were devoted to overhead. Some faculty believed the high rates compromised their ability to obtain new grants, particularly after the NIH announced in 1987 that it would consider an institution's IDC rate in its grant-making decisions.¹¹⁷ "Unless you can find a way to build the buildings and not increase the overhead, just don't build the buildings. . . . We'll have buildings and nobody in them,"

¹¹⁴ Likins and Teich, "Indirect Costs," 187.

¹¹⁵ Barinaga, "Stanford Erupts over Indirect Costs," 293.

¹¹⁶ Barinaga, "Stanford Erupts over Indirect Costs," 293.

¹¹⁷ Barinaga, "Stanford Erupts over Indirect Costs," 293.

said chemistry professor James Collman.¹¹⁸ To protest rising IDC rates, some faculty considered not moving into their new space on the Near West campus.¹¹⁹ Eventually, the administration relented, slowing down its Near West building plans and trimming its operating budget by roughly \$22 million, or 5.7 percent. Still, these cuts didn't prevent the IDC rate from rising to a new record of 78 percent for 1991, among the highest of all research universities.¹²⁰

Rosse contended that Stanford was only recouping legitimate expenses and that IDCs were not viewed as a source of income for the institution.¹²¹ This statement belies other evidence that Stanford officials viewed IDC rules as an opportunity for increased revenue. Stanford's chief accountants, Controller Frank Riddle and Assistant Controller Janet Sweet, gave workshops to university accounting officers on how to fully leverage the rules for cost recovery, garnering Stanford both a reputation for maximal recovery and one of the highest IDC recovery rates in the United States during the 1980s. Riddle told the *Stanford Alumni Magazine* that "compared to a lot of institutions, we have a lot of innovate ways ... to associate costs with research. I don't know if that's 'aggressive' or not."¹²² An anonymous official from another organization told *Science* that "the system is designed to encourage you to get away with murder ... [Stanford] may have not broken the rules, but they pushed the limits."¹²³

¹¹⁸ Barinaga, "Stanford Erupts over Indirect Costs," 292.

¹¹⁹ Joel Shurkin, "Faculty Protest Rising Costs of Doing Research," *Stanford University Campus Report*, Feb. 7, 1990, 8, box 5, Government and Community Relations Records 1977–1997, SC0568, Stanford University Archives (hereafter cited as GCR).

¹²⁰ Barinaga, "Stanford Erupts over Indirect Costs," 294.

¹²¹ Barinaga, "Stanford Erupts over Indirect Costs," 292.

¹²² Rich Jaroslovsky, "Called to Account," *Stanford Magazine* (June 1991), 20.

¹²³ Barinaga, "John Dingell Takes on Stanford," 735.

Tensions concerning IDC recovery rose throughout the 1980s as Stanford's strategy to maximize recovery and expand its physical plant steadily pushed IDC rates to an unprecedented 78 percent. The internal controversy, and the administration's undeterred recovery strategy, set the table for regulatory attention. In early 1990, Roland Ciarnello, a Stanford psychiatrist, told *Science* that "if Stanford and other universities don't self-impose a lowering of their rates ... they might find themselves facing a government-imposed cap ... Some congressman, or somebody at the [the Office of Management and Budget], will say 'starve the bastards at 50%.' That would kill the university. That's nowhere near what the real costs are."¹²⁴ Under the surface of these debates between faculty and the administration, Ciarnello's warning materialized as Biddle, Stanford's new ONR regional representative, left no stone unturned in his scrutiny of the institution's IDC claims.

“Hell on Wheels”

In 1988, Biddle moved from the Defense Contract Audit Agency (DCAA) to Stanford as its ONR regional representative after the previous representative, Robin Simpson, was promoted to director of the ONR office in Monterey, California.¹²⁵ Tensions quickly escalated between Biddle and the Stanford Controller's Office, marking a stark departure from the collegial relationship Stanford had enjoyed with Simpson. Biddle arrived with a mission to find waste in Stanford's IDCs. He described himself to the *Peninsula Times Tribune* as “hell on wheels” and a zealot for

¹²⁴ As cited in Barinaga, “Stanford Erupts over Indirect Costs,” 294.

¹²⁵ Steven Huddart, *Stanford University (A): Indirect Cost Recovery*, Case No. A155a (Palo Alto, CA: Stanford Graduate School of Business, 1994), 6, <https://www.gsb.stanford.edu/faculty-research/case-studies/stanford-university-indirect-cost-recovery>.

uncovering government waste. He said, “I am independent and I have a sense of calling. ... I am the starch in the shorts, the pebbles in the shoes.”¹²⁶ The newspaper also reported that Biddle hoped to “be a sort of grand inquisitor for accounting abuses at universities across the country” once he finished with Stanford.¹²⁷ Though Biddle’s mission was largely self-initiated, his approach embodied the shift from Cold War expansion to deficit sensitivity and the contraction of federal investments characteristic of this period.

In that spirit, after he arrived at Stanford, Biddle began making accusations that overhead rates were too generous and unsupported with proper documentation, testing the patience of his supervisors at the ONR in Monterey. In his testimony to the congressional Subcommittee on Oversight and Investigations, he said that his supervisors, Jack Ducey and Robin Simpson, told him in February 1989, “If you think they’re such damned bad overhead rates, why don’t you detail why they are so bad. So, I just pulled one out, the library study was the thickest folder, and chose that to initiate the documented critiquing of the development of overhead components.”¹²⁸

Biddle’s capricious selection and scrutiny of the library study, performed in 1981 to statistically estimate costs indirectly supporting sponsored research, became a major point of conflict between Biddle and the Controller’s Office. Biddle consistently expressed vague concerns with the study’s methodology, which had been used to support

¹²⁶ Veronique Mistiaen, “‘Hell on Wheels’ Hasn’t Stopped at Stanford,” *Peninsula Times Tribune* (Palo Alto, CA), Aug. 9, 1991, A1.

¹²⁷ Mistiaen, “‘Hell on Wheels’ Hasn’t Stopped at Stanford.”

¹²⁸ Testimony of Paul Biddle in U.S. Congress, House of Representatives, Committee on Energy and Commerce, *Financial Responsibility at Universities: Hearings Before the Subcommittee on Oversight and Investigations*, 102nd Cong., 1st sess., Serial No. 102–33 (Washington, DC: Government Printing Office, 1991), 126.

previous years' negotiated rates without contest. However, he waited sixteen months to provide a detailed critique to the Controller's Office, thus delaying a new study of 1988 library usage and forcing Stanford to request using the outdated 1981 data, which Biddle denied.¹²⁹ In October 1989, Fred Bentley of Stanford's Sponsored Projects Office, and Sweet met with Thomas Dolan, the ONR Director of University Business Affairs to discuss their doubts about Biddle. In addition to concerns regarding Biddle's undefined apprehensions with the 1981 library study, they discussed Biddle's tendencies to work directly with faculty rather than through the Controller's Office, that no final vouchers had been signed to reimburse IDCs since Biddle arrived, and that he was meddling in the DCAA audit process.¹³⁰ Biddle also frustrated Sweet with last-minute requests for documents, some dating back twenty-five years, and made substantial budget requests for additional employees, new phones and computers, and better facilities.¹³¹

Frustrations with Biddle's manner grew to the point that Sweet began bypassing him and communicating directly with Simpson, which only strengthened Biddle's resolve to uncover IDC abuses. On May 11, 1990, Sweet sent Simpson a handwritten note, marked "Off the Record" to follow up on their personal conversation, during which Simpson agreed to force Biddle to retract a memo that accused Stanford of submitting reimbursement vouchers in excess of their allowance. Sweet also complained that she had

¹²⁹ Stanford University Controller's Office, "SU Response to DCAA Audit Report Number 7311-90U43510004 (0353) 'DCAA Review of the SU Library Studies and Related Office of Naval Research Study,' Volume 1: Stanford Response," Nov. 19, 1990, 10-13, box 2, folder 3, GCR ; and "Stanford Concerns with ONR Office: Lunch with Thomas Dolan," Oct. 1989, 1-3, box 4, folder 1, IDC Collection of Janet Sweet, Assistant Controller, GCR, ARCH-1999-172 Additional Records (hereafter cited as Sweet IDC Collection).

¹³⁰ "Stanford Concerns with ONR Office," 2, Sweet IDC Collection.

¹³¹ Janet Sweet to Paul Biddle, memo, May 8, 1989, 1, Sweet IDC Collection.

only received a memo on the process for conducting the library study, but no details as to why the Stanford study was insufficient, adding that she hoped Simpson would allow the extended use of the old study until the matter could be resolved. Finally, Sweet wrote:

I thought [Biddle's] job was to facilitate business between Stanford and the Gov't, not to harass, threaten, intimidate, create unnecessary work. . . . When will it stop so we can begin to rebuild the smoothe [sic] relationship between ONR and SU that has existed to the benefit and credit of both parties for so many years?¹³²

Sweet's wishes to return to the smooth working relationship Stanford enjoyed with Simpson would become the basis for Biddle's suspicion that IDC rates under Simpson were biased. To Biddle, cooperation with the contractor was nearly inseparable from leniency.

In August 1990, Biddle wrote to Simpson, copying Sweet, to complain that Sweet was meddling in the DCAA audit, Simpson was too accommodating to the Stanford Controller's Office during his tenure at the ONR, and that Simpson was undermining his work: "I hope this letter provides opportunity for you to deliberate, discuss and document why or whether you intend to undercut this office by confidences with Stanford entered into by you or others apart, and without awareness of ONRRR-Stanford."¹³³ He also accused Simpson's office of being cozy with Stanford and claimed that Stanford employees had made off-the-record comments of "compromised negotiation" and "special interests accommodated."¹³⁴

¹³² Janet Sweet to Robin Simpson, "Off-the-Record—Not for Further Distribution," May 11, 1990, 3, Sweet IDC Collection.

¹³³ Paul Biddle to Robin Simpson, Aug. 3, 1990, 2, Sweet IDC Collection.

¹³⁴ Biddle to Simpson, Aug. 3, 1990, 2, Sweet IDC Collection.

Sweet responded to Biddle's letter, writing that it was unprecedented for her to have to ask the ONR to intervene in a contracting officer's duties, and she rejected notions of coziness and the ONR's compromised independence, and took personal offense at being mentioned alongside "such distortion and mischaracterization of the facts." She also responded to a portion of Biddle's letter that mentioned he would follow his superior's orders and submit "memos to file" to record disagreements. Sweet accessed these memos through the ONR's Legal Office and wrote:

Given that I am quite familiar with the situations you describe in a number of the memos, which we would not normally have an opportunity to see, I am gravely concerned regarding allegations and assertions which have no basis in fact and in reporting of actual events that stray quite far afield from what actually happened. I am not sure what your motivations are for such memos, but they are disturbing.¹³⁵

Their escalating correspondence, which called each other's integrity into question, left little hope that Stanford could normalize their relationship with the ONR under existing reporting structures.

Biddle met with Frank Riddle, Sweet's supervisor, on August 15, 1990, to share his concerns. Riddle wrote:

I asked him if the problem was really one of interpersonal interface with Janet or others in her office. I told him I was aware of Janet's side of the issues but would like to hear his. He did not respond to the question, but rather shifted the subject to Janet's calling of his supervisors when he would not do what she wanted.¹³⁶

¹³⁵ Janet Sweet to Paul Biddle, Aug. 8, 1990, 1–6, Sweet IDC Collection.

¹³⁶ Frank Riddle's notes on luncheon with Paul Biddle, Aug. 15, 1990, 1, box 5, GCR.

Biddle also mentioned that he had received several whistle-blower reports of IDC recovery fraud and said he was suspicious that “superiors are blocking him from doing his job,” again asserting coziness between Stanford and the ONR. That same day, Biddle met with Kennedy, repeating his concerns that Sweet was “stonewalling” him and that Stanford should be providing broader access to documents than he was receiving. In notes he sent to Rosse and Robert Byer, Vice Provost for Research, Kennedy wrote:

I said, “Look, you need to understand that we want to be very responsive and responsible to our government. I once ran a regulatory agency. . . . I’ve seen it from the other side; I want us to be responsive.” I went on to say that often chemistry or bad impedance match get in the way of people who are trying to represent their institutions fairly.”¹³⁷

Kennedy also suggested that Riddle be designated as Biddle’s new contact person, instead of Sweet, which seemed to please Biddle. At the close of their conversation, Kennedy reported that Biddle claimed Stanford had over-recovered somewhere between \$200 and \$400 million in IDCs since 1982. Kennedy assured him of his “continued interest.”¹³⁸

Breaking News

Prolonged tensions between Biddle and Stanford, and between Biddle and his superior at the ONR, set the stage for Biddle to vent his frustrations to an external audience. Much to Sweet’s dismay, Biddle befriended John Madey, an electrical engineering professor who had left Stanford after the university audited his lab

¹³⁷ Donald Kennedy to Jim Rosse and Bob Byer, memo, “Subject: Conversation with Paul Biddle,” Aug. 15, 1990, 2–3, box 5, GCR.

¹³⁸ Kennedy to Rosse and Byer, memo, Aug. 15, 1990, 4.

because he took advantage of policy loopholes to maximize the portion of his grants available for direct costs.¹³⁹ Biddle conferred with Madey about his suspicions concerning IDC recovery fraud, and Madey connected him with Michigan congressman John Dingell, who, as chair of the Subcommittee on Oversight and Investigations for the Energy and Commerce Committee, had a reputation for cracking down on government waste.¹⁴⁰ Dingell proved to be a receptive audience for Biddle's allegations.

In late August 1990, Stanford officials became aware that *San Jose Mercury News* reporter Jeff Gottlieb had filed a Freedom of Information Act (FOIA) request for documents showing that Biddle had communicated his concerns to Dingell.¹⁴¹ When Stanford received the FOIA documents, they discovered Biddle had relayed allegations of fraud to Dingell's office. On August 20, Kennedy received a letter from Dingell notifying Stanford that an investigation was beginning and requesting access to documents dating back to 1983.¹⁴² In the course of a few weeks, Stanford officials braced themselves as their IDC rate troubles transitioned from internal squabbles and conflict with a rogue contracting officer to a national story that would play out in the press and in Congress.¹⁴³

¹³⁹ "Stanford Concerns with ONR Office," 3; and Stuart Rojstaczer, *Gone for Good: Tales of University Life after the Golden Age* (New York: Oxford University Press, 1999), 108–13.

¹⁴⁰ David Rosenbaum, "Washington at Work; Michigan Democrat Presides as Capital's Grand Inquisitor," *New York Times*, Sept. 30, 1991, A1.

¹⁴¹ Frank Riddle to Eileen Walsh and Rich Kurovsky, memo, "Meeting on Indirect Cost Issue," Aug. 20, 1990, 1, box 5, GCR.

¹⁴² John Dingell to Donald Kennedy, Aug. 20, 1990, 1, box 5, GCR.

¹⁴³ Riddle to Walsh and Kurovsky, "Meeting on Indirect Cost Issue," 1; and Larry Horton to Frank Riddle, Eileen Walsh, and Rich Kurovsky, memo, Aug. 20, 1990, 1, box 5, GCR.

Among the documents sent to Dingell was a March 6, 1990 letter that Biddle wrote, but never sent, to Dolan accusing Stanford of abusing the system, distorting facts, and embarrassing the government. In the letter, he accused Stanford of “leveraging upon their personal access to ONR . . . to affect the scope and content of DCAA fieldwork”¹⁴⁴ Also, the letter claimed that anonymous sources within Stanford believed that some of Stanford’s IDC recovery claims were fraudulent. The letter took particular issue with the extent to which IDC recovery rates relied upon MOUs between Stanford and the ONR. Biddle alleged that the number of MOUs was excessive and allowed Stanford to over-recover indirect expenses.¹⁴⁵

Though Stanford officials were familiar with Biddle’s claims, they had not anticipated that he would share them publicly or attract congressional attention. Larry Horton, Stanford’s Associate Vice President for Public Affairs, led efforts to arrange for the story to break in the media. On August 27, Horton’s office prepared an internal document weighing the benefits of issuing a press release to preempt Gottlieb’s story in the *Mercury News*. Among the reasons to act preemptively, the document listed, “We know all the facts, and have answers to even the toughest questions,” “Pull the rug from under *SJ Mercury* / Gottlieb,” and “Helps contain the negative publicity and fallout that will *inevitably* be produced by release of this information [emphasis in the original].”¹⁴⁶ Yet the document acknowledged that a reason not to act preemptively was that Stanford may not know all the facts. Additionally, the document listed strategies for managing Biddle:

¹⁴⁴ *Stanford News*, “Stanford and Federal Government to Review Indirect Costs on Federal Research Grants and Contracts,” Sept. 12, 1990, 30, box 5, GCR.

¹⁴⁵ Paul Biddle to Thomas Dolan, March 6, 1990, *SU Campus Report*, Sept. 12, 1990, 8, box 5, GCR; and Huddart, *Stanford University (A)*, 3.

¹⁴⁶ Office of Public Affairs, Stanford University, “Indirect Cost Issue,” n.d., 1, box 5, GCR.

The unpredictable Biddle could detonate when he is thrust into the media's limelight. (Expect his wild charges and claims to become wilder if he feels he is being hung out to dry; some people will believe him). ... How aggressive do we get with him? How do we describe him? What is our official position toward him over the short and long term, especially as his personality conflicts with our people will become known? [emphasis in the original]¹⁴⁷

Confident that Stanford could answer the tough questions and contain Biddle, Kennedy released a preemptive press release on September 12 that explained Biddle's unsubstantiated allegations of over-recovery and Stanford's internal audit to test those claims. The statement minimized the potential severity of the controversy:

That indirect costs are being subject to scrutiny is not itself remarkable. Few subjects are as complex and have aroused as much concern on and off campus. ... I emphasize that Stanford's staff responsible for indirect cost matters enjoy excellent reputations in their professional and widespread confidence here at Stanford.¹⁴⁸

When Gottlieb published his story in the *Mercury News* a few days later, he wrote, "Rosse, who is second in command, downplayed the situation. 'We don't regard it as an enormous crisis.'" ¹⁴⁹

In addition to the press release, Kennedy made several attempts to portray the investigation as normative to internal audiences. Kennedy sent a letter to trustees and addressed the faculty senate, reiterating that Biddle's accusations were unfounded and the Dingell investigation not of serious concern. He explained to the faculty that their public protests of high IDC rates were partially to blame for the scrutiny, which likely did not endear them to his cause. Additionally, he said, "For auditors to question costs and for contractors to respond is also normal stuff, and at this moment we know of

¹⁴⁷ Office of Public Affairs, "Indirect Cost Issue," 1-2.

¹⁴⁸ Donald Kennedy, "Statement on Indirect Costs," SU News Service, Sept. 12, 1990, 1, box 5, GCR.

¹⁴⁹ Jeff Gottlieb, "Probe Costs Stanford Big Bucks," *San Jose Mercury News*, Sept. 15, 1990, 1.

nothing to lead us to believe that we are dealing with anything other than normal stuff.”¹⁵⁰ To the trustees, he wrote that Stanford had no information to suggest that they over-recovered \$200 million and that merely following federal guidelines sometimes looks salacious to the press. As an example, he wrote, “Some recovery of costs associated with providing staff health and recreation facilities is allowed. In your morning newspaper, this becomes ‘tennis courts for faculty.’ So we need to be prepared for some bad press.”¹⁵¹ Though he recognized the reality of sensationalized headlines, he believed that he could “minimize the damage.”¹⁵² These statements attempted to assure campus constituencies that allegations were blown out of proportion and shouldn’t cause great consternation.

Kennedy’s activism to discredit Biddle at the ONR and lobby friends in Congress intimated that he was more concerned with the potential consequences of the controversy than his press releases and speeches would otherwise indicate. Stanford officials leveraged their contacts to gain support at the ONR, the DCAA, and in Congress. Riddle relayed Stanford’s concerns directly to Simpson, writing that Biddle’s “accusations are coming from a person who neither participated in or appears to understand the development of the MOUs at Stanford.”¹⁵³ He went on to assert that Biddle’s behavior had so damaged the working relationship between

¹⁵⁰ Donald Kennedy, “Statement to the Stanford Faculty Senate on Various Reviews of Indirect Costs Recovery,” Sept. 27, 1990, 3–7, box 5, GCR.

¹⁵¹ Donald Kennedy to the Stanford Board of Trustees, Sept. 25, 1990, 2, box 5, GCR.

¹⁵² Kennedy to the Stanford Board of Trustees, Sept. 25, 1990, 2.

¹⁵³ Frank Riddle to Robin Simpson, “Negotiation concerns in relation to FOIA disclosures on the memoranda written since 1988 representative at Stanford through 30 May 1990,” Aug. 29, 1990, box 5, GCR, 1.

Stanford and the ONR that he could no longer participate in “a fair and equitable negotiation.”¹⁵⁴ Riddle took a similar approach when he called Joseph Riden, the branch manager of the DCAA. Summarizing their phone call in a memo, Riddle confirmed that Riden found Stanford officials to be cooperative with government audits. Riddle also appealed for some discretion in their working relationship going forward. “We will no doubt continue to have our differences of opinion and differences over needed documentation levels, but we can have those disagreements without ‘trial by press release.’”¹⁵⁵ Riddle also emphasized that Riden had no reason to believe that MOUs could be rescinded retroactively in order to influence Stanford’s IDC recovery rates for years still awaiting audit.

Stanford officials also made preparations for the scrutiny of Dingell’s investigation. Kennedy and Horton drove to San Jose on August 28 to meet with Rep. Don Edwards (D-CA), a Stanford alum, to build support for Stanford’s position in Congress.¹⁵⁶ Kennedy also initiated conversations with Stuart Eizenstat, an attorney from Powell, Goldstein, Frazer & Murphy in Washington, DC, who had represented the Association of American Universities in IDC matters. In a letter to Kennedy summarizing their conversation, Eizenstat wrote:

We have significant experience in dealing with O&I Subcommittee investigations. . . . Working with the O&I Subcommittee is a unique situation, as you have heard from many quarters, but I feel that I do have a very good working relationship with both Chairman Dingell and with Mike Barrett, the Subcommittee Staff Director. . . . In our experience, the most effective

¹⁵⁴ Riddle to Simpson, “Negotiation concerns,” 2.

¹⁵⁵ Frank Riddle to Joseph Riden, “Confirmation of Our Discussion on Friday, September 14, 1990,” Sept. 17, 1990, 1, box 5, GCR.

¹⁵⁶ Larry Horton, “Meeting with Congressman Don Edwards”, Aug. 28, 1990, 1, box 5, GCR; and Marcus E. Howard, “Don Edwards, Who Championed Civil Rights During 32 Years in Congress, Dies at 100,” *Los Angeles Times*, Oct. 3, 2015, B6.

representative in these situations have the ability to integrate relevant substantive and legal expertise with political expertise.”¹⁵⁷

Both the meeting with Representative Edwards and the engagement of Eizenstat’s firm suggest that Stanford officials did not approach the investigation as “normal stuff” and actually believed that vindication would not come without outside assistance.

When Biddle’s relationship with both Stanford and his ONR superior became untenable, he made his concerns public and instigated congressional investigation and media attention. As a result, Stanford prepared a public relations strategy to project confidence in the institution’s accounting records and to pledge calm cooperation with government inquiries, even as university officials primed themselves to weather a great deal of negative press and cultivated contacts with access to Dingell’s subcommittee. These strategies to emphasize the integrity of their IDC practices and discredit Biddle would not serve them well, as the investigation uncovered valid accounting errors and Kennedy’s staff was summoned to Washington.

A Seventy-Two-Foot Problem Called Victoria

As the General Accounting Office (GAO) investigation commenced in September 1990, both the findings and continued sparring with Biddle kept Stanford officials in turmoil. In December, the GAO investigators learned that Stanford had charged \$184,286 in depreciation for their seventy-two-foot yacht, the *Victoria*, to an IDC pool. Horton initially denied that Stanford charged the yacht to the government, but eventually admitted that the charges were a “mistake, an honest human error” and pledged to repay

¹⁵⁷ Stuart E. Eizenstat to Donald Kennedy, Sept. 8, 1990, 1–2, box 5, GCR.

the government.¹⁵⁸ Aside from the yacht, the IDC pools also contained a number of other lavish items, most in the administrative pool that covered a portion of expenses for Herbert Hoover House, the historic home of President Hoover, which was Kennedy's residence and a campus event space that Stanford maintained as a historical site with period decor and furnishings. Items for Hoover House included \$6,000 cedar closets, \$2,000 for fresh flowers every month, \$7,000 for extra-large bed sheets, Voltaire chairs at \$1,500 each, and over \$45,000 for a Lake Tahoe retreat.¹⁵⁹ The cost pools also contained expenses for a reception for Kennedy and his new wife, hosted by the Board of Trustees. Unlike the yacht, Stanford did not initially offer to repay the government for those expenses, claiming that they were allowable in the cost pools under Circular A-21 and negotiated MOUs.¹⁶⁰

While the news stories of improper expenses raged on, Biddle and Sweet continued to clash on campus. Biddle was angry that the Controller's Office was becoming less responsive to his requests, which Sweet attributed to the demands of the GAO investigation." Biddle said that the "explanation of pressures on staff time does ring a bit hollow."¹⁶¹ He continued:

Get timely, Janet! Give some focus to the requests of your administrative contracting officer as regards his negotiating role and his responsibility to provide information to other agencies of Federal government. . . . Janet, you spew forth so much spin to events that I would be hard pressed to keep up with specification of exceptions to events you portray.¹⁶²

¹⁵⁸ "Stanford Admits Charging Taxpayers for Yacht Costs," *Wall Street Journal*, Dec. 6, 1990, n.p.; and Paul Biddle to Donald Kennedy, Dec. 12, 1990, 3, box 5, GCR.

¹⁵⁹ Douglas Frantz, "U.S. Questioning Millions in Stanford Research Bills," *Los Angeles Times*, Dec. 14, 1990, A1; and *Financial Responsibility*, 3-4, 184-215.

¹⁶⁰ "Stanford Admits Charging Taxpayers for Yacht Costs."

¹⁶¹ Paul Biddle to Janet Sweet, Oct. 24, 1990, 2, Sweet IDC Collection.

¹⁶² Biddle to Sweet, Oct. 24, 1990, 2, Sweet IDC Collection.

He dared Sweet to again contact his superiors to have his words retracted. She responded, disputing the accusations of untimely responses and flatly denying she had asked Biddle's superiors to retract his letter, which, of course, she had when she contacted Simpson the previous May.¹⁶³ Additionally, Riddle responded to Biddle to confront the tone of his correspondence:

I am concerned about the unprofessional, vituperative tone of your letter. We feel it is very important to have civil, professional working relationships between Stanford and the government representative we deal with. Your letter seems to indicate that you do not choose to deal with my staff in such a manner.¹⁶⁴

Riddle's plea did not tame Biddle's tactics. In December, Biddle refused to approve IDC reimbursements, unilaterally claiming that the MOU's were no longer valid in the eyes of the ONR and that he could reduce Stanford's current IDC recovery rate, perhaps by as much as 20 percentage points.¹⁶⁵ Turning his attention to Kennedy, Biddle wrote a nine-page letter detailing many complaints and a renewed pledge to be tough on Stanford. He claimed that Stanford was sending false information to the press and that campus press releases were riddled with misinformation:

Each time I observe in the media that Larry Horton, you, or the Controller's Office speak to the confidence and reliance by Stanford and the Government that is reposed in the University's accounting systems, staff, and internal controls, I wince. . . . For ten years there has been no operative internal audit function on the University's part that would be recognizable as an internal audit effort in any other major defense contractor.¹⁶⁶

¹⁶³ Janet Sweet to Paul Biddle, Nov. 9, 1990, 1, Sweet IDC Collection; and Sweet to Simpson, "Off-the-Record," May 11, 1990, 3, Sweet IDC Collection.

¹⁶⁴ Frank Riddle to Paul Biddle, Nov. 9, 1990, 1, 9, Sweet IDC Collection.

¹⁶⁵ Paul Biddle to Frank Riddle, "Return of Stanford Vouchers," Nov. 30, 1990, 1, Sweet IDC Collection.

¹⁶⁶ Paul Biddle to Donald Kennedy, Dec. 12, 1990, 3, Sweet IDC Collection.

Biddle notified Kennedy that he would be a tougher representative of taxpayers' interest, writing:

Shame on Government for not pushing harder, but give us our due, we are now working harder and smarter ... one must be pushy, confrontational, aggressive and knowledgeable of what to ask for. ... Rest assured that a more conservative stance in regards to the taxpayer's dollar will be operating in this office.¹⁶⁷

Biddle's cantankerous rhetoric, which stemmed from his personal aspirations to reduce Stanford's IDC rate rather than an official ONR mandate, only served to diminish his credibility with Stanford officials, who came to view him as a lone zealot rather than a contracting officer with legitimate concerns deserving legitimate responses. Stanford's relationship with Biddle had devolved beyond repair, as he refused to acknowledge the validity of Stanford's preexisting agreements with the ONR.

Interpersonal conflicts with Biddle influenced Stanford officials' preparation for the Dingell hearing. Because Biddle refused to honor the MOUs or sign IDC reimbursement vouchers, Kennedy, Riddle, Sweet, and Horton felt as though Stanford was a victim, particularly since their accounting practices had been perfectly acceptable to Biddle's predecessor. From their perspective, a rogue ONR agent on a mission to find faults in Stanford's cost pools created a public relations nightmare, exhausted the institution's audit and accounting departments, and threatened to unilaterally make deep cuts to its IDC recovery potential. This defensiveness was apparent to others as Kennedy readied for the hearing. Marshall Smith, the Dean of Stanford's School of Education, met with several contacts in Washington in January 1991, leading up to the hearing. He reported that Kennedy was not well received when

¹⁶⁷ Biddle to Kennedy, Dec. 12, 1990, 8–10.

he had similar meetings. According to Smith, Sen. Edward Kennedy's (D-MA) chief education aide said that Donald Kennedy was overly defensive and that attempts to justify luxurious expenditures would not serve Stanford well.¹⁶⁸ The warning did not cause Stanford officials to reconsider their defensive approach, which ultimately would not succeed in weathering the continued barrage of sensational headlines and a congressional subcommittee with little patience for complaints about onerous government inquiries into wasted taxpayer dollars.

In the Hot Seat

On March 13, 1991, Dingell's subcommittee heard testimony from officials of both the ONR and Stanford, asking how both organizations allowed the mismanagement of overhead costs to persist. Dingell's opening statement framed the subcommittee's inquiry with a disclaimer:

The Chair wants it clear that the subcommittee is not examining Government research policy ... [or] policy towards upgrading university research infrastructure. ... This investigation is not an attack upon science... this committee has worked very hard to see to it that research is vigorously and adequately supported.¹⁶⁹

He went on to explain the nature of IDCs and the particular problems at Stanford, lauding Biddle's "lonely battle for months with his own intransigent Navy bureaucracy" and lambasting Stanford for luxurious expenditures, a lack of proper financial controls, and attempts to manipulate charges to "circumvent Government regulations."¹⁷⁰ Dingell's

¹⁶⁸ Marshall S. Smith to Donald Kennedy, Bob Freelan, and Bill Massy, Jan. 19, 1991, 2, Sweet IDC Collection.

¹⁶⁹ *Financial Responsibility*, 1–2, 5.

¹⁷⁰ *Financial Responsibility*, 3–7.

statement focused the hearing squarely on IDC issues and explicitly avoided discussion regarding the value or costs of the research directly funded with federal dollars.

Milton J. Socolar, the special assistant to the comptroller general for the GAO, testified first. He shared the results of the GAO inquiry conducted at the subcommittee's request, testifying that Stanford had a particularly aggressive strategy for recouping IDCs, and that MOUs were unsupported with proper data, signed without government review, and used to recover more costs than typically allowed.¹⁷¹ Yet when Rear Admiral William C. Miller testified on behalf of the ONR, he said that Biddle's claims that Stanford over-recovered \$200 million were unsubstantiated by the inspector general's investigation, though some degree of over-recovery was probable since audits were not closed on fiscal years 1981–89.¹⁷² The subcommittee scrutinized Miller, with Simpson and Biddle sitting at his side, inquiring how MOUs could be signed without proper review. Simpson, in particular, was aggressively questioned for forcing Biddle to retract his letter and for otherwise frustrating his efforts to confront Stanford's IDC practices.¹⁷³ The unanimous opinion of the bipartisan subcommittee was that Biddle's strong-willed and assertive stewardship of taxpayer dollars was praiseworthy and that Simpson had neglected Biddle's concerns.¹⁷⁴ By the time Kennedy, Riddle, and Sweet were sworn in, they had been sharply criticized by each member of the subcommittee,

¹⁷¹ *Financial Responsibility*, 55.

¹⁷² *Financial Responsibility*, 104.

¹⁷³ *Financial Responsibility*, 111–38.

¹⁷⁴ After the hearing, Robin Simpson was terminated from his ONR post, though he appealed and was eventually reinstated. For more on Simpson's termination and reinstatement, see Kennedy, *Academic Duty*, 173–75.

the GAO, and the ONR. Their strategy to vindicate Stanford, and academic research on the whole, would prove more difficult than anticipated.

In his opening sentences, Kennedy hedged responsibility for over-recovery, stating that Stanford's accounting issues stemmed, in part, "from Government rules that may no longer match the reality of public expectation," but also from some deficiencies in Stanford's procedures.¹⁷⁵ But before addressing those problems, Kennedy took the opportunity to lecture the subcommittee on the history and importance of academic research overall and at Stanford in particular. He recounted the grand success of federal investments in academic science following World War II, arguing that similar investments would be required to maintain the country's "unquestioned preeminence in basic scientific research and higher education."¹⁷⁶ Then, as if the very notion of IDC recovery was at stake, he testified that, "universities could simply not afford to do the research the government wants done" without IDC recovery.¹⁷⁷ He explained, in meticulous detail, how IDCs are calculated, claimed, and recovered, emphasizing that full cost recovery was an entitlement under current rules. He further asserted that, even though a total cost recovery model was allowed, Stanford actually shared in the costs of conducting research because certain government grants do not reimburse overhead. "Stanford voluntarily forgoes many items of costs through waivers and agreements with the government," he claimed. While Kennedy's statement was accurate, averring that Stanford was actually exercising generosity to the government in its IDC recovery

¹⁷⁵ Testimony of Donald Kennedy, *Financial Responsibility*, 136, 144–45.

¹⁷⁶ Kennedy, *Financial Responsibility*, 146.

¹⁷⁷ Kennedy, *Financial Responsibility*, 148.

practices was an insensitive tactic to alleviate concerns over the *Victoria* and other luxury items that captivated the subcommittee's attention.

In regard to specific IDC allegations, Kennedy explained that “in the course of logging in nearly three million transactions that go through 17,000 accounts in our system each year, we have also found we made some mistakes.”¹⁷⁸ Here, he admitted the depreciation on the *Victoria* and other charges for athletic equipment were mistakes and had been redressed. But he defended other luxury expenses as allowable under government rules. “These expenditures,” he argued, “were evaluated individually for their appropriateness as university expenditures, but not separately evaluated . . . for their appropriateness as government reimbursable expenditures. Our working assumption has been that such items found to be appropriate university expenditures would also be appropriate for government cost accounting purposes.”¹⁷⁹ Kennedy then emphasized that such expenses were legal, continually repeating the phrase, “technically allowable.”¹⁸⁰ William T. Keevan, Stanford's consultant from Arthur Andersen & Company, also testified that expenses such as linens and flowers met the criteria for allowability because the university determined them to be both prudent and necessary for university operations.¹⁸¹ But Kennedy reported that Stanford withdrew those expenses as a result of the GAO investigation, recognizing that the allowability of expenditures was in direct tension with their effect on Stanford's credibility: “We withdrew those costs, even though they were technically allowable because I wasn't comfortable with them, because I don't think they

¹⁷⁸ Kennedy, *Financial Responsibility*, 156.

¹⁷⁹ Kennedy, *Financial Responsibility*, 158.

¹⁸⁰ Kennedy, *Financial Responsibility*, 184–85, 199.

¹⁸¹ Testimony of William T. Keevan, *Financial Responsibility*, 167.

contributed to public credibility and because I felt we'd be better off without them, so we took them out."¹⁸² While Kennedy's words were likely intended to display a spirit of cooperation and a recognition that some expenses were difficult to defend, the skeptical subcommittee viewed the withdrawn expenses as too little too late. The expenses had only been withdrawn after the investigation had begun and seemingly to ward off further negative press.

Additionally, Kennedy's emphasis on the investigation's burden on his staff counteracted his attempts to appear responsive and cooperative before the subcommittee. In response to the subcommittee's request for details and intimations that Stanford was unresponsive to government requests, Kennedy complained of the excessive effort required for Stanford to respond to government requests, investigations, and audits. In addition to their normal staff, Kennedy said they added "half a dozen temporaries, and they are, at my discretion, spending full time responding to DCAA requests for audits. We have 3,700 DCAA requests. We are behind on responding to them. No one in that shop ... is doing anything but servicing DCAA and GAO auditors, nothing."¹⁸³

Dingell was unsympathetic to their complaints, particularly when Riddle and Sweet were unable to provide specific details about items in the cost pool, how much money was paid back to the government, and when it was returned:

You folks have been complaining here today about being Adam's Apple-deep in Government auditors who have been around requesting papers and asking for information and looking into all the events that are associated with this, and yet you come before us and express the greatest surprise that

¹⁸² Kennedy, *Financial Responsibility*, 199.

¹⁸³ Kennedy, *Financial Responsibility*, 195.

we are asking about boats and yachts and depreciation and when money was paid back and all these other questions.¹⁸⁴

Some of the questions that subcommittee members levied were of such granular nature that Stanford officials would not have had satisfactory answers at the ready, such as the exact dates of returned funds or the number of cars in the IDC pool. But such questions were exactly the point for subcommittee members who seemed determined to make the hearing an embarrassment for Stanford. In his 2017 memoir, Kennedy wrote, “Up against determined congressional legislators, one doesn’t really have a chance to say ‘that’s an unfair accusation’—even when the chairman is deliberately misrepresenting reality.”¹⁸⁵ While Stanford officials were surely prepared for such treatment, their insistence on the allowability of scrutinized expenses did not convince the subcommittee that Stanford was ready and willing to change.

When subcommittee members suggested that Stanford needed a more sophisticated accounting system for IDC expenditures and more rigorous controls to ensure that unallowable costs were excluded, Kennedy initially conceded that improvements could be made to increase accuracy. But Riddle later defended the system and claimed that it was normal for other similar research universities.¹⁸⁶ Keevan, whom Stanford had contracted to help improve its accounting functions, told the subcommittee that a more advanced system, such as those typically adopted by defense contracting firms, would be costly to Stanford and would be passed on to the

¹⁸⁴ *Financial Responsibility*, 201.

¹⁸⁵ Donald Kennedy, *A Place in the Sun: A Memoir* (Palo Alto, CA: Stanford University Libraries, 2017), 153.

¹⁸⁶ Kennedy, *A Place in the Sun*, 198.

government as legitimate IDCs.¹⁸⁷ This caveat did not sit well with committee members, who interpreted it as dismissive and indicative of Stanford's resolve to continue business as usual.¹⁸⁸

Kennedy's pedantic and comprehensive exposition of the purpose of academic science and IDC recovery, imbued with Cold War-era assumptions of expanded support for basic research, was misaligned with Dingell's statement that the hearing aimed to illuminate inappropriate IDC expenditures, not challenge IDC recovery policies. The refrain of "technically allowable" to reinforce that Stanford acted within the boundaries of the rules was not received as a sincere apology or resolution to eliminate such expenses in the future, nor did it pacify public outrage toward the substance of those expenditures. Finally, insinuations that government inquiries were a burden and claims that a more exacting accounting system would increase the cost passed on to the government did not bolster Stanford's esteem among the subcommittee. Conversely, it contributed to perceptions that Stanford was elite, entitled, and tone-deaf to public concerns, a theme that echoed in the media for several months.

On the Front Page

Though reporters in the Bay Area covered Stanford's IDC practices frequently in 1990 and early 1991, with occasional stories surfacing in national outlets, national press coverage escalated after the Dingell hearing, most notably with a prime-time television story on ABC's *20/20* on March 15, 1991. Reporter Stone Phillips interviewed both

¹⁸⁷ Kennedy, *A Place in the Sun*, 167–68.

¹⁸⁸ Kennedy, *A Place in the Sun*, 201–203, 213–14.

Biddle and Kennedy, portraying Biddle as a tenacious and righteous defender of taxpayers' interests and Kennedy as the president of an institution adorned in government-funded luxury. Biddle said the yacht charges were not an isolated mistake but an indicator of systemic problems. He also claimed that allocating expenses to the government was a black-and-white process: "You don't have entertainment and you don't have liquor [in the cost pools]. ... The law says they're not allowable."¹⁸⁹ The segment did not explain that Circular A-21 allowed universities to seek reimbursement for a negotiated portion of the total cost pool, including costs indirectly related to research along with costs unassociated with research. Such arrangements, which Stanford and the ONR codified in MOUs, simplified accounting so the university did not have to sort through millions of transactions individually.¹⁹⁰ And while Kennedy gave an extensive interview to Phillips in January, his perspective received very little screen time when the program aired.¹⁹¹ In the aired excerpts, Kennedy explained, as he did to Congress, that many of the expenses receiving publicity were allowed, including expenses for Hoover House, because events in the house partially supported research.¹⁹²

However, attempts to clarify the narratives and nuance accusations with technical explanations of Circular A-21 and IDC mechanisms proved insufficient to overcome the negative press and public appetite for scandal. Media coverage of the Stanford investigation continued to stress Stanford's extravagance and recalcitrance,

¹⁸⁹ "Episode 1111," aired March 15, 1991, on ABC, 20/20 Transcripts, 1, folder 2, box 13, GCR.

¹⁹⁰ Likins and Teich, "Indirect Costs," 184–88.

¹⁹¹ Stanford University Office of Public Affairs, "ABC's 20/20 Interview with Donald Kennedy," Jan. 30, 1991, 1–22, folder 2, box 13, GCR.

¹⁹² "Episode 1111," 20/20 Transcripts, 8.

exploiting national dissatisfaction with higher education. Newspaper headlines berated Stanford for the stark luxury of expenses charged to the government, tapping into public attitudes toward higher education. Such headlines included, “Stanford’s Image: It’s One of a Greedy School that Sees the Government as a Reservoir to Be Tapped,” “Turning Labs into Cedar Chest,” “U.S. Funds Used for Wedding,” “Sleaze Knows No Class,” and “Top Scientist Pays for University High Life.”¹⁹³ An editorial cartoon pictured Kennedy and his wife (a Stanford attorney) in bed, with the caption: “A Federally Subsidized Stanford Research Facility.”¹⁹⁴

Kennedy believed those stories to be unfair and mischaracterizations of how IDC recovery actually operated. In his opinion, “The triangular trade among congressional investigators, a ‘whistleblower’ with a personal agenda, and the selectively fed media had a powerful impact on public opinion and frightened federal agencies into some hasty and unfortunate decisions.”¹⁹⁵ Kennedy’s grievances garnered little sympathy from the public or the faculty, who eventually convinced him to resign. In Kennedy’s book *Academic Duty*, he discussed the IDC controversy at length—admitting that the lesson of that difficult period was “that universities have to earn public trust and not simply count on it

¹⁹³ 106 Keith Harlow, Hammond Brodie, and Leslie Banner, *The Research University Presidency in the Late Twentieth Century: A Life Cycle/Case History Approach* (Westport, CT: Praeger Publishers, 2005), 121; Jeff Gottlieb, “Stanford’s Image: It’s One of a Greedy School that Sees the Government as a Reservoir to Be Tapped,” *San Jose Mercury*, March 17, 1991, 6C; “Turning Labs into Cedar Chests,” *Newsweek* 117, no. 5 (Feb. 4, 1991), 70; Robert J. Samuelson, “Turning Labs into Cedar Chests,” *Newsweek* 117, no. 13 (April 1, 1991), 45; and “Top Scientist Pays for University High Life,” *New Scientist* 131 no. 1781 (Aug. 10, 1991), 14.

¹⁹⁴ Karen Grassmuck, “How Donald and Robin Kennedy Handle All That Negative, Often Nasty, Publicity,” *Chronicle of Higher Education* 37, no. 35 (May 15, 1991), A27.

¹⁹⁵ Kennedy, *Academic Duty*, 175.

because they are doing things for society.”¹⁹⁶ He acknowledged that universities operated in a new environment that was less willing to give them the benefit of the doubt.

Kennedy was correct that declining public trust fostered a new and challenging environment for universities—anti-elite and anti-university discourses surged in the late 1980s and early 1990s. Despite long-running concerns about K-12 schooling in America, higher education was largely shielded from public disillusionment until the 1980s, when “quite unexpectedly, there erupted a whole succession of government reports, best-selling books, and articles critical of the nation’s colleges and universities.”¹⁹⁷ Escalating tuition had drawn negative attention for years, but new reports claimed that college graduates were functionally illiterate, tenure caused faculty to become unproductive and uninterested in teaching, and leftist ideologies had taken over the curriculum in ways that subverted traditional American values.¹⁹⁸ In addition to these more general critiques of higher education, academic science suffered its own crisis in public support. By the early 1990s, the public believed “that academic scientists [had] become arrogant and self-indulgent, rejecting legitimate oversight of the use of public money, claiming ‘entitlement’ to ever escalating funding, and [were] unwilling to share responsibility for dealing with the growing deficits, trade imbalances, and other economic ills of their country.”¹⁹⁹ As education historian Christopher J. Lucas notes,

¹⁹⁶ Kennedy, *Academic Duty*, 174.

¹⁹⁷ Christopher J. Lucas, *Crisis in the Academy: Rethinking Higher Education in America* (New York: St. Martin’s Press, 1996), x.

¹⁹⁸ Lucas, *Crisis in the Academy*, ix-xi, 204–206; and Stephen H. Balch, “Political Correctness or Public Choice?,” *Educational Record* 73, no. 1 (1992), 21.

¹⁹⁹ Guston and Keniston, “The Social Contract for Science,” 3.

higher education could no longer enjoy the benefit of the doubt in the public sphere.²⁰⁰

Robert Rosenzweig, president of the Association of American Universities during the early 1990s, contextualized Stanford's IDC troubles in this stream of public hostility.²⁰¹

Likewise, former Stanford professor Stuart Rojstaczer's reflections on his academic career at Stanford in the post-golden age of the research university connects a rising public outrage with more austere approaches to university research funding.²⁰²

Dingell's strategy to aggressively confront greed and waste played to this skepticism toward elite institutions. In the subcommittee hearing, he employed rhetoric to emphasize Stanford's elitism. Describing Stanford's IDC pools, Dingell chided, "Charges were made for refinishing an antique grand piano, the purchase of antiques, and over \$1,000 a month for laundry charges at a French laundry. I'm Polish and I have my laundry done at a Chinese laundry."²⁰³ Such pithy criticisms served to align the subcommittee with the average American and concerns that leaders of elite institutions were using government funds to live in luxury. Stanford's responses to this criticism, in which they voluntarily withdrew embarrassing expenditures while steadfastly insisting upon their technical allowability, did not assuage Dingell's concerns but rather reinforced that Stanford's priorities were out of sync with public expectations.

Overall, the investigation, hearing, and press coverage had a tangible impact on Stanford's IDC recovery potential. The ONR inspector general determined that there

²⁰⁰ Lucas, *Crisis in the Academy*, ix.

²⁰¹ Robert M. Rosenzweig, *The Political University: Policy, Politics, and Presidential Leadership in the American Research University* (Baltimore, MD: Johns Hopkins University Press, 2001), 40–45.

²⁰² Rojstaczer, *Gone for Good*, 106–18.

²⁰³ *Financial Responsibility*, 4.

was no evidence to support Biddle's claim that Stanford over-recovered \$200 million,²⁰⁴ but the DCAA determined that the MOUs were not sufficiently supported with evidence and recommended that Stanford's IDC rate be decreased to 52 percent.²⁰⁵ In April, the ONR cut the rate from 78 percent to 55.5 percent without entering into the normal negotiation process, causing an estimated \$28 million reduction in revenue.²⁰⁶ In response to these changing IDC recovery conditions and continued negative press, Stanford faculty began calling for Kennedy's resignation. In a faculty senate meeting, political science professor John Manley asked Kennedy to step down, but Kennedy refused. Then a May 1991 poll revealed that almost half of the respondents were unhappy with Kennedy's leadership and one-third believed he should resign. In July 1991, Kennedy announced his resignation, effective July 1992, admitting that his association with the IDC controversy would frustrate efforts to solve those problems.²⁰⁷ According to the *Los Angeles Times*, "Kennedy said he accepted responsibility for the spending problems, but not the blame, which he attributed to faulty accounting."²⁰⁸ Riddle resigned several months later, in September 1991, citing similar reasons.²⁰⁹ Stanford's many attempts to counter sensationalized media

²⁰⁴ Biddle was undeterred and filed a *qui tam* suit, which allowed whistle-blowers to share financial rewards resulting from findings of fraud. Stanford attempted, and failed, to have Biddle removed as their ONR regional representative, citing the suit as a conflict of interest. The suit was eventually dismissed. See Bozeman and Anderson, "Public Policy and the Origins of Bureaucratic Red Tape," 13.

²⁰⁵ Bozeman and Anderson, "Public Policy and the Origins of Bureaucratic Red Tape," 13.

²⁰⁶ Bill Workman, "Stanford Controller Quits in Wake of Billing Scandal: Third Key Official to Resign in June," *San Francisco Chronicle*, Sept. 7, 1991, A9.

²⁰⁷ Bill Workman, "Stanford's President to Resign," *San Francisco Chronicle*, July 30, 1991, A1.

²⁰⁸ Larry Gordon, "Kennedy's Resignation from Stanford Called Sad, Necessary," *Los Angeles Times*, July 31, 1991, A20.

²⁰⁹ Workman, "Stanford Controller Quits in Wake of Billing Scandal," A9.

coverage were ultimately unsuccessful in swaying public opinion, with national ramifications for academic science.

Beyond Stanford

Kennedy's resignation did not curtail federal scrutiny of IDC practices, either at Stanford or at other private research institutions with high overhead recovery rates. Investigations and audits continued at Stanford until 1994, when Stanford settled with the Navy for \$1.2 million and the ONR ended investigations into the university's IDC pools.²¹⁰ Because of the Dingell hearing and investigation, other research universities tightened their IDC controls to avoid similar scrutiny and publicity. Some institutions, including Harvard, MIT, and Cal Tech, opted to voluntarily refund the government for items in their cost pools as a precautionary measure.²¹¹ Dingell's subcommittee requested that the ONR audit all forty-one universities for which it was the responsible agency, and the Department of Health and Human Services followed suit with audits at twenty research universities. The subcommittee held a second hearing on May 9, 1991, with government auditors, which revealed luxurious and embarrassing IDCs at several universities, including Dartmouth, Duke, MIT, Johns Hopkins, and Cornell.²¹²

In response to the hearings, Rep. Henry Waxman (D-CA) initiated legislation to cap IDC rates, though the OMB issued new rules to preempt the bill, placing a 26 percent cap on reimbursement for administrative costs. However, Congress continued to attempt to cut federal expenditures on IDCs in order to fund other legislation or reduce

²¹⁰ David Folkenflik, "What Happened to Stanford's Expense Scandal?," *Baltimore Sun*, Nov. 20, 1994, 4F.

²¹¹ Bozeman and Anderson, "Public Policy and the Origins of Bureaucratic Red Tape," 13–14.

²¹² *Financial Responsibility*, 281–93, 361–420.

the federal budget deficit throughout the 1990s.²¹³ In 1991, the OMB issued a revision to Circular A-21 that directly accounted for the issues raised during the Stanford investigation. In addition to the cap on administrative reimbursements, “alcoholic beverages; entertainment; alumni activities; housing and personal expenses of officers; defense and prosecution of criminal and civil proceedings, claims, appeals, and patent infringements; and trustees’ travel” all became unallowable IDC expenses.²¹⁴

Universities could continue to claim their debt-service expenses, but only for buildings that were used exclusively for federal research. In 1993, another update to Circular A-21 required institutions to explain the accounting procedures and controls governing their IDC practices. Kennedy commented, “The accounting rules established as a result of that controversial episode more closely resemble product-procurement regulations in the Department of Defense than the procedures that have traditionally been applied to basic research in not-for-profit institutions.”²¹⁵ By 2005, the Council on Governmental Relations estimated that the cap on administrative overhead was, on average, causing research universities to under-recover \$5 million in indirect expenses and spend about \$2 million on compliance processes.²¹⁶ Cumulatively, these changes and enduring scrutiny of IDC recovery practices affected total cost recovery practices associated with federally sponsored university research.

²¹³ Likins and Teich, “Indirect Costs,” 190.

²¹⁴ Goldman et al., *Paying for University Research*, 79.

²¹⁵ Kennedy, *Academic Duty*, 167.

²¹⁶ Jeffrey Brainard, “The Ghosts of Stanford: Have Federal Constraints on Reimbursing Overhead for Research Grants Gone Too Far,” *Chronicle of Higher Education*, Aug. 5, 2005, A16.

Conclusion

At the close of the Cold War, federal funding for academic science decreased, affecting Stanford's ability to maintain expansive research programs and infrastructure. To replace some of that funding, the university adopted an aggressive strategy to maximize IDC recovery, pushing its recovery rate upward throughout the 1980s. This tactic had invited the scrutiny from Biddle, Stanford's contracting officer, who embarked on a self-appointed mission to uncover waste and decrease the university's IDC rate. When Stanford officials appealed to the ONR to curb Biddle's efforts, he accused Stanford and the ONR of having a cozy relationship that allowed the university to over-recover \$200 million. In a period of increased sensitivity to budget deficits, Biddle's accusations spawned a congressional investigation. During a hearing, congressional members perceived Stanford officials as arrogant and insensitive to public concerns. Additionally, media coverage that exposed luxurious items in Stanford's IDC pools generated a public backlash in a cultural context of rising animus toward the ivory tower. To the chagrin of Kennedy and his colleagues in higher education, the public was uninterested in the details of IDC recovery and simply could not accept the impropriety of tax dollars funding lavish amenities. Public outrage and heightened attention to budget deficits in a contracting economy led to changes in federal rules that hurt university budgets nationwide and further strained the research partnership between the federal government and higher education.

The idea that shifting government priorities and public attitudes could threaten the stability of university-government research is a stark departure from the great public optimism in American institutions that had supported substantial government

investments in academic research after World War II.²¹⁷ During the Cold War, public funding for academic research was viewed as an essential component of securing the country's economic prosperity and security.²¹⁸ By the 1970s, public investments in academic research were so intricately entangled with universities' purposes, organizational structures, and financial models that institutions became reliant upon government support.²¹⁹ The contraction of defense spending at the close of the Cold War presented a new vulnerability to the long-standing and mutually prosperous social contract between the federal government and academic science. In such a context, universities must adapt to new political climates and attend to public perceptions in order to reinvigorate this social contract. Guston and Keniston suggest that academic scientists strategize to communicate the relevance of basic research to emerging national priorities, such as economic competition, to increase public confidence.²²⁰ The Stanford IDC controversy highlights that a lack of public confidence in the substance and salience of research is only one dimension of a weakened social contract. Stanford's insistence that its IDC recovery practices were allowable served to confirm, rather than alleviate, perceptions that higher education was intransigent to change and impervious to accountability. In order for the social contract to thrive, universities must not only convince Congress and the broader public that academic science fulfills a critical national purpose but also demonstrate that they can self-regulate in the service of public interests.

²¹⁷ Bruce L. R. Smith and Joseph J. Karlesky, *The State of Academic Science: The Universities in the Nation's Research Effort* (New Rochelle, NY: Change Magazine Press, 1977), 12–26.

²¹⁸ Christopher P. Loss, *Between Citizens and the State: The Politics of American Higher Education in the 20th Century* (Princeton, NJ: Princeton University Press, 2012), 156–60.

²¹⁹ Smith and Karlesky, *The State of Academic Science*, 162–78.

²²⁰ Guston and Keniston, "The Social Contract for Science," 28–33.

***Study Three – Collegial Agent or Federal Cop? Accreditation’s Tenuous Role in
Establishing Federal Student Aid Eligibility in the Higher Education Act
Amendments of 1992***

In October 2015, Secretary of Education Arne Duncan, lambasted postsecondary accreditation agencies, calling them “the watchdogs that don’t bark” as he led his department to tighten controls on college accreditors.²²¹ The federal government perceived that accrediting bodies were more invested in protecting their member institutions than providing rigorous quality assurance for the government’s extensive investment in federal student aid programs. Additionally, government officials became increasingly frustrated with low postsecondary graduation and job placement rates and news reports of fraudulent institutions. In response, the Obama administration took executive action, including a new requirement for accreditors to publicly disclose their reasons for placing a college or university on probation. A year later, the Department of Education terminated its recognition of a leading accreditor of for-profit schools. Undersecretary of Education Ted Mitchell said that the accreditor had exhibited “such wide and deep failure that they simply [could not] be entrusted with making determinations” in the public interest.²²²

²²¹ Doug Lederman, “Upping the Pressure on Accreditors,” *Inside Higher Ed*, Oct. 20, 2015, <https://www.insidehighered.com/news/2015/10/20/obama-administration-plans-executive-action-higher-education-accreditation>.

²²² Paul Fain, “Accreditor on Life Support,” *Inside Higher Ed*, Jun. 24, 2016, <https://www.insidehighered.com/news/2016/06/24/federal-panel-votes-terminate-acics-and-tightens->

Other officials criticized accrediting bodies for impeding innovations that could lower college costs. For example, Sen. Marco Rubio (R-FL) said that accreditors were like “cartels” that prevented new institution-types from competing in the higher education market.²²³ Higher education leaders contested these perspectives, but were no less critical of accreditation’s ability to provide quality assurance. Carol Geary Schneider, president of the American Association of Colleges and Universities, said: “To their detriment, . . . accreditors’ published quality assurance standards still largely ignore this broad consensus on learning outcomes. Instead, the regional accreditors and their institutional members are keeping their goals for higher learning to themselves, hidden behind an accreditation smokescreen labeled ‘institutional autonomy.’”²²⁴ This protectionist stance, she claimed, invited undue scrutiny and proposals for measuring the benefits of college exclusively with economic indicators.

While such skepticism of postsecondary accreditation surged during the Obama administration, the critiques were not novel. Accreditation’s first major regulatory challenge came during the George H.W. Bush presidency and under the leadership of Education Secretary Lamar Alexander. In 1991, House and Senate subcommittees began to draft the 1992 reauthorization of the Higher Education Act (HEA) of 1965, the landmark bill that created the federal government’s student aid programs, also referred to

[screws-other-accreditors](https://www.insidehighered.com/quicktakes/2016/12/13/education-secretary-drops-recognition-accreditor); and “Education Secretary Drops Recognition of Accreditor,” *Inside Higher Ed*, <https://www.insidehighered.com/quicktakes/2016/12/13/education-secretary-drops-recognition-accreditor>.

²²³ Doug Lederman, “Learning, Not Wages,” *Inside Higher Ed*, Dec. 3, 2015, <https://www.insidehighered.com/news/2015/12/03/critique-urges-accreditors-promote-common-set-learning-outcomes>.

²²⁴ Carol Geary Schneider, “Policy Priorities for Accreditation Put Quality Learning at Risk: A Message from AAC&U President Carol Geary Schneider,” Dec. 2, 2015, <https://www.aacu.org/about/statements/2015/accreditation>.

as Title IV programs. In the first draft of the 1992 reauthorization, accreditation's role was all but erased. Whereas voluntary accrediting bodies had served as the gateway for individual institutions to become eligible to receive students' federal financial aid dollars, the draft legislation eliminated that role and instead delegated it directly to state oversight entities and the federal government. Similar to the concerns that prompted the Obama administration's executive actions in 2015, Congressional members became frustrated with escalating student loan default rates and news reports of some institutions' fraudulent practices. Accreditation, as the presumptive protector of the federal government's significant investment in student aid, became the target of great scrutiny. Eventually, the Congress compromised and re-inserted voluntary accreditation into the legislation, though with less autonomy than it had previously been allowed. The final 1992 reauthorization outlined specific criteria for accreditors to use in their approval of colleges and universities and expanded the role of the federal and state governments in determining Title IV eligibility.²²⁵

In this essay, I argue that legislators targeted voluntary accreditation during their consideration of the 1992 HEA Reauthorization because accrediting bodies performed a precarious and intermediary role in the regulatory framework designed to hold postsecondary education accountable to public interests. In support of this claim, I frame this regulatory system in terms of principal-agent theory (PAT) and demonstrate that the position of accrediting bodies as both agents of the federal government and as principals governing higher education institutions divided their allegiance and inhibited their

²²⁵ Harland G. Bloland, *Creating the Council for Higher Education Accreditation (CHEA)* (Phoenix, AZ: The American Council on Education and the Oryx Press, 2001), 39-41.

responsiveness to an unprecedented crisis in higher education's performance. The eventual compromise that preserved accreditation's eligibility role tightened governmental controls on accrediting bodies and higher education institutions while also preserving the traditional autonomy of colleges and universities. However, those controls did not entirely mitigate concerns regarding higher education's accountability to federal interests and priorities. The evolution and resolution of the 1992 reauthorization reveal how higher education's indefatigable resistance to direct regulatory intervention frustrates the federal government's attempts to ensure its investment in student aid is stewarded appropriately and advances public interests.

Accreditation and Federal Student Aid Programs

Though accreditation had functioned as an eligibility gateway for postsecondary institutions to receive federal student financial aid dollars since the 1950s, accrediting bodies were not originally designed to monitor quality on behalf of the government or taxpayers. In the late nineteenth century, regional accrediting bodies were created to clarify the requisite attributes of a college or university at a time when new institutions and institution-types were forming at a rapid pace. Accreditation initially focused on objective and quantitative standards, such as the size of library collections and the proportion of faculty with terminal degrees. However, by the late 1930s, regional accrediting agencies (six organizations that accredited largely public and private colleges and universities) adopted principles and processes to evaluate member institutions based upon their unique goals and objectives, rather than universal and objective standards for all institutions. This approach allowed the accrediting bodies to include a wider array of institution types and motivate those institutions to strive for quality improvement rather

than meeting arbitrary minimum standards.²²⁶ The original purpose to serve member institutions, foster improvement, and help institutions advance their own missions would eventually conflict with new oversight responsibilities as accreditation serendipitously assumed a pseudo-governmental function in the nation's developing student aid programs in the mid-twentieth Century.

The Veterans' Readjustment Assistance Act of 1952, which reauthorized the Serviceman's Readjustment Act of 1944 (colloquially known as the GI Bill), assigned a new and central role to voluntary accreditation in the administration of the government's college aid program for veterans. The original bill relied upon states to issue lists of approved postsecondary institutions in order to help the Department of Veterans Affairs determine institutional eligibility to receive veterans' tuition benefits. States, however, were not equipped to evaluate the quality of institutions within their borders and often approved institutions without a rigorous approval process. During this period, the number of vocational colleges in the U.S. nearly tripled, some exploiting the minimalist approval process to gain easy access to GIs' educational benefits. News of fraudulent institutions soon spread to Washington. A 1952 House investigation concluded that many of these technical and vocational schools, most of which were unaccredited, offered little education or training and received windfall profits from veterans' benefits. To mitigate abuses of the GI Bill's educational program, Congress designated that only accredited institutions would be eligible to receive veterans' educational benefits, since accrediting bodies had long assessed the quality of member institutions through accepted standards,

²²⁶ Fred F. Harclerod, *Accreditation: History, Process, and Problems* (Washington, D.C.: American Association for Higher Education, 1980), 10, 30; and Robert Kelchen, *Higher Education Accountability* (Baltimore, MD: Johns Hopkins University Press, 2018), 38.

peer-review, and periodic on-site reviews. The 1952 bill also required the Commissioner of Education to issue a list of approving accrediting agencies as an additional centralized quality control measure.²²⁷

The role of accrediting agencies in determining institutional eligibility continued as Congress expanded college aid programs in two significant bills, the National Defense Education Act (NDEA) of 1958 and the Higher Education Act (HEA) of 1965. Title IV of the HEA created a national student loan program along with grant aid for students with financial need. The scope of these programs, in terms of federal expenditures and the number of students availing themselves of federal college aid, dwarfed the GI Bill's educational benefits or the NDEA's limited loan programs for students studying the sciences or education.²²⁸ The HEA established a "program integrity triad" between the federal government, state governments, and voluntary accrediting bodies to ensure the integrity of Title IV programs. Under this arrangement, postsecondary institutions were eligible to receive Title IV funds if they were licensed to operate in their state and accredited with a voluntary accrediting agency. The federal role in the triad was to review and recognize accrediting agencies that would be approved to certify postsecondary institutions.²²⁹ Consequently, accrediting bodies assumed a great deal of responsibility for evaluating postsecondary institutions in the federal aid eligibility equation and expanded

²²⁷ David Whitman, "Truman, Eisenhower, and the First GI Bill Scandal," *The Century Foundation*, Jan. 24, 2017, <https://tcf.org/content/report/truman-eisenhower-first-gi-bill-scandal/?agreed=1>; Harclerod, *Accreditation: History, Process, and Problems*, 33; Kelchen, *Higher Education Accountability*, 42-43; and Charles M. Chambers, "Federal Government and Accreditation," in *Understanding Accreditation*, ed. Kenneth E. Young, et al. (San Francisco: Jossey-Bass, 1983), 238-39.

²²⁸ Lawrence E. Gladieux and Thomas R. Wolanin, *Congress and the Colleges: The National Politics of Higher Education* (Lexington, MA.: Lexington Books, 1976), 1-32.

²²⁹ Chambers, "Federal Government and Accreditation," 233-69.

their memberships to include junior colleges and vocational and technical schools. Charles M. Chambers, Vice President for the Council on Postsecondary Accreditation (COPA), wrote that, “Congress, in essence converted the accrediting bodies into quasi-governmental bodies by virtue of the large support it authorized. . . . Accreditation was not that well understood, but the postsecondary education community seemed to have much faith in it.”²³⁰ This quasi-governmental role transformed accreditation from a truly voluntary activity into a practical necessity for postsecondary institutions that wanted to receive student aid funds. Theodore Marchese, editor for *Change Magazine*, commented that accreditation struggled with its role as both “collegial agent” and “federal cop” to postsecondary institutions.²³¹ That struggle would eventually pose significant problems as the government’s reliance upon accreditation as an intermediary regulator developed over the next several decades.

Principal-Agent Theory and Accreditation

Principal-agent theory (PAT), which was first developed in economics and political science, provides an appropriate framework to understand the unique role of private accreditation agencies that performed a critical gateway function for federal student aid programs, and the challenges associated with serving the interests of both the federal government and their member institutions.²³² In many ways the principal-agent relationship parallels the parastate concept, where higher education serves as an

²³⁰ Ibid., 251.

²³¹ Theodore J. Marchese, "Editorial: Regional Accreditation (II)," *Change* 24, no. 2 (1992), 4.

²³² For seminal texts on PAT from economics and political science, see Stephen A. Ross, "The Economic Theory of Agency: The Principal's Problem," *The American Economic Review* 63, no. 2 (1973), 134-39; and Michael C. Jensen and William H. Meckling, "Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure," *Journal of Financial Economics* 3, no. 4 (1976), 305-60.

intermediary institution through which the federal government could exercise authority and achieve policy goals without exerting centralized control over those intermediaries.²³³ However, PAT provides a more nuanced exploration of the dynamics between institutions in these political arrangements. PAT explains the relationship between principal institutions that delegate authority or responsibility to agent institutions or individuals and assumes such relationships are marked by goal conflicts. These conflicts occur when the aims of principal and agent institutions diverge from one another. Principals often employ incentives, regulations, or contracts to constrain these divergences and ensure that agents adopt congruent goals or act within the boundaries of the principal's interests. The *agency problem* develops when agents act outside of the principal's interests because they either are relying upon their access to better information or are prioritizing their own goals over the goals of the principal, which PAT refers to as *shirking*.²³⁴ In worst case scenarios, the agency problem can be construed as fraud, as in the case of the technical schools that emerged to take advantage of GIs' educational benefits in the 1950s. A less nefarious example of the agency problem would be a university that embraces a goal of pursuing academic prestige over the government's intentions for higher education to produce economic outcomes, and thus shift resources to improve their standing on national rankings rather than toward programs to train students in field with high employment needs.

²³³ Christopher P. Loss, *Between Citizens and the State: The Politics of American Higher Education in the 20th Century*, (Princeton, NJ: Princeton University Press, 2012), 1-16, 156-61.

²³⁴ Jussi Kivistö and Inga Zalyevska, "Agency Theory as a Framework for Higher Education Governance," in *The Palgrave International Handbook of Higher Education Policy and Governance*, ed. Jeroen Huisman, et al. (London: Palgrave Macmillan UK, 2015), 132-36.

There is much precedent to explore higher education policy issues through the lens of the principal-agent relationship.²³⁵ For example, historian Robert Kelchen's extensive history of accountability in higher education analyzes the principal-agent relationships between various authorities and postsecondary institutions, but devotes little attention to the unique intermediary role of accrediting bodies within the principal-agent chain of Title IV eligibility and accountability.²³⁶ However, principal-agent theorists have examined the role of intermediary organizations within the realm of science policy, in which the federal government is the principal, semi-private funding agencies such as the National Science Foundation are agents, and universities and academic scientists are influential third parties that shape the principal-agent relationship.²³⁷ Political scientist Dietmar Braun contends that this triadic structure improves the efficiency of principal-agent relationships because it improves communication and responsiveness even though it allows a third party to wield significant influence within the system, sometimes with adverse consequences. In the example of academic science, the foundations distribute funds to accomplish government aims, but scientists exert influence on which projects are funded.²³⁸ Braun explains that agents "become entangled in the social world" of these

²³⁵ For an overview of higher education scholarship using PAT, see: Jason E. Lane, "Agency Theory in Higher Education Organizations," in *The Organization of Higher Education: Managing Colleges for a New Era*, ed. Michael N. Bastedo (Balltimore, MD: JHU Press, 2012), 278-303; and Jason E. Lane and Jussi A. Kivisto, "Interests, Information, and Incentives in Higher Education: Principal-Agent Theory and Its Potential Applications to the Study of Higher Education Governance," in *Higher Education*, ed. John C. Smart (Dordrecht: Springer Netherlands, 2008), 141-79.

²³⁶ Kelchen, *Higher Education Accountability*, 12-13.

²³⁷ Dietmar Braun, "Who Governs Intermediary Agencies? Principal-Agent Relations in Research Policy-Making," *Journal of Public Policy* 13, no. 2 (1993), 135-62. For more on general principal-agent relationships in academic science policy, see David H. Guston, *Between Politics and Science: Assuring the Integrity and Productivity of Reseach* (Cambridge University Press, 2000).

²³⁸ Braun, "Who Governs Intermediary Agencies?," 136, 40.

third parties which can lead to behaviors that might be considered shirking, but are more likely the result of intimate knowledge and some degree of loyalty to that third party.²³⁹

The structures of federal accountability parallel the triadic structure of academic science, where private accrediting agencies function as agents of the federal government and postsecondary institutions act as influential third-parties, or sub-agents. Under the Title IV program, independent accrediting agencies were delegated authority to determine which institutions were of sufficient quality to receive federal student aid dollars while those same institutions were involved in the agency's governance. Accrediting agency boards were composed of higher education professionals and their processes for verifying and monitoring institutional quality relied on peer-review, where administrators and faculty from one institution reviewed another.²⁴⁰ Unlike Braun's example of science funding, where the government founded intermediary funding agencies, accrediting bodies were more independent from government control. They were private and self-funded organizations that pre-existed the government's need to certify institutions to receive federal dollars. The government's certification system evolved, somewhat serendipitously, to maintain a balance and reduce goal conflicts between federal interests and the autonomy of higher education to define and monitor quality, and it faced little scrutiny until the stressors of escalating student loan default rates and fraudulent behaviors were introduced and precipitated debates leading up to the 1992 reauthorization. Braun's explanation of shirking in academic science also resonates with accreditation's position in the program integrity triad, where divergences in interests

²³⁹ Ibid., 152.

²⁴⁰ Matthew W. Finkin, *Federal Reliance on Educational Accreditation: The Scope of Administrative Discretion* (Washington, DC: Council on Postsecondary Accreditation, 1978), 2-16.

between the federal government and accrediting agencies may be less explained by outright defiance or opportunism, and more attributable to a complex network of independent relationships that were designed to assure quality while minimizing government intervention and maximizing higher education's autonomy. In 1986, Glenn Dumke, former Chancellor of the California State University system, predicted that institutions' third-party influence on accreditation would threaten its federal function. He wrote,

The paradox here is that college and university presidents, staunchly defending "local autonomy" against inroads of accreditation and keeping that process weak in so doing, are by the very act inviting government takeover. As resentful as they are of tightened accreditation standards, their resentment will be as nothing compared with their feelings when licensing replaces accreditation, federal standards replace voluntary ones, and state commissions control the curriculum.²⁴¹

Dumke's warning was prescient—these principal-agent tensions in the government-accreditation relationship remained largely dormant until the late 1980s, when news of widespread fraud and skyrocketing student loan default rates caused government officials to accuse accreditation of shirking's its responsibilities and question whether a self-regulatory enterprise could reliably serve that purpose in the future.

A Crisis in Performance and Perception

By the early 1990s, escalating student loan defaults and the resulting budget deficits captured legislators' attention and precipitated a close examination of the program integrity triad's ability to reduce or eliminate shirking behaviors and align the goals of postsecondary institutions with the goals of Title IV programs. In 1989, the

²⁴¹ Glenn Dumke, "Accreditation of Schools: Why It Must Be Improved," *Education Digest* 52 (Dec. 1986), 18.

government estimated that student loan recipients would default on over \$1.8 billion in loans, roughly 37% of the guaranteed student loan program (GSLP) budget. The national loan default rate in 1989 was nearly eight times higher than the rate in 1981.²⁴² Among the defaults in 1987, a disproportionate number of those students attended proprietary trade schools, an industry that vastly expanded after the 1972 Amendments to the HEA, which allowed proprietary institutions to participate in Title IV programs for the first time.²⁴³ In 1987, the national student loan default rate was 17%, and 33% among for-profit institutions compared to 7% at public and private four-year institutions.²⁴⁴ In 1990, proprietary institutions were responsible for 44% of loan defaults, though only 22% of all student loans were given to students attending those schools.²⁴⁵ While some argued that the government's shift away from need-based grants to loans placed a hardship on needy students who would be least able to repay, the default problem was more often attributed to poor educational quality or outright fraud at propriety schools.²⁴⁶ *The New York Times* reported, "that many schools are more interested in harvesting financial aid dollars than in helping students, and that the schools often use dishonest recruiting techniques, admit unqualified students and provide them with inadequate teachers and equipment."²⁴⁷ In some cases, trade schools employed commissioned admission staff to recruit the

²⁴² Julie Johnson, "U.S. Sets Tough Penalties for Student Loan Defaults," *New York Times*, Jun. 2, 1989, A10.

²⁴³ By 1985, proprietary schools accounted for roughly half of all U.S. postsecondary institutions. For a comprehensive history of proprietary institutions and their controversial practices, see A. J. Angulo, *Diploma Mills: How for-Profit Colleges Stiffed Students, Taxpayers, and the American Dream* (Baltimore, MD: Johns Hopkins University Press, 2016), 86-87, 93.

²⁴⁴ "Flashcard," *New York Times*, Nov 5, 1989, EDUC 19.

²⁴⁵ Jason DeParle, "Trade Schools: Defaults and Broken Promises," *New York Times*, Aug. 8, 1990, B6.

²⁴⁶ Johnson, "U.S. Sets Tough Penalties for Student Loan Defaults," A10.

²⁴⁷ DeParle, "Trade Schools," B6.

unemployed and homeless into programs that were virtually non-existent. The Elkins Institute of Technology bussed homeless students from around Texas into Houston, helped them sign up for federal student loans, and then turned them back on the street without ever offering an educational program. Such stories were widely covered in major newspapers across the U.S. in 1989 and 1990, generating negative attention for proprietary institutions and the integrity of Title IV programs.²⁴⁸

In response to these troubling accounts, the Senate Permanent Subcommittee on Investigations, chaired by Sen. Sam Nunn (D-GA), initiated an investigation in October 1989 into possible abuses of Title IV programs. The subcommittee issued a report, “Abuses in Federal Student Aid Programs,” with unanimous and bipartisan consent in May 1991, the same month Congress began subcommittee consideration to reauthorize the HEA.²⁴⁹ Nunn’s committee concluded that:

despite the acknowledged contributions of the well-intended, competent, and honest individuals and institutions comprising the large majority of [Student Loan Program] participations, unscrupulous, inept, and dishonest elements among them have flourished throughout the 1980s. The latter have done so by exploiting both the ready availability of billions of dollars of guaranteed student loans and the weak and inattentive system responsible for them, leaving hundreds of thousands of students with little or no training, no jobs, and significant debts that they cannot possibly repay. While those responsible have reaped huge profits, the American taxpayer has been left to pick up the tab for the billions of dollars in attendant losses.²⁵⁰

²⁴⁸ David Whitman, “When President George H. W. Bush “Cracked Down” on Abuses at For-Profit Colleges,” *The Century Foundation*, Mar 9 2017, <https://tcf.org/content/report/president-george-h-w-bush-cracked-abuses-profit-colleges>; and Nancy Stancill, “Signed Up, Sold Out: Recruiting for Trade Schools – Promises Mislead the Jobless,” *Houston Chronicle*, Jun. 11, 1989, A1.

²⁴⁹ U.S. Congress, Senate, *102 S. 1150 Introduced in the Senate*, 102nd Cong. 1st sess., May 17 1991, 1-10.

²⁵⁰ U.S. Congress, Senate, *Abuses in Federal Aid Programs*, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, 102nd Cong., 1st Sess., S. Rep. 102-58, May 23 (Legislative Day, Apr 25), 1991, 6.

During the investigation, representatives from the proprietary institutions and their accrediting bodies claimed that a relatively small number of bad actors were responsible for fraudulent behavior and the loan default problem. The subcommittee found that a few institutions had particularly egregious track records—eight institutions were responsible for nearly 10% of the defaults among the 2,200 institutions accredited by seven agencies that exclusively accredited proprietary institutions. Yet, most of those institutions still had default rates above 20%, which the subcommittee interpreted as an indicator of pervasive quality issues and potential fraud. The President of the Massachusetts Higher Education Assistance Corporation, an organization that guaranteed student loans, told the subcommittee that he “used to buy the rhetoric that there were just a few bad apples, but then [he] discovered there were orchards of bad apples.”²⁵¹ The subcommittee found that proprietary institutions acted in several ways to circumvent rules and maximize revenue. First, they opened branch campuses to avoid a rule that an institution needed to operate for two years before it could become eligible to receive Title IV funds. Second, the institutions would misreport or needlessly extend the length of courses so that they would meet Title IV course length requirements. Finally, many institutions did not provide refunds, or only provided them after a long delay, in violation of program regulations. The prevalence of poorly-performing institutions in the proprietary sector drew attention to the intermediary agents designated to protect the government or principal’s interests: state licensing agents and voluntary accreditation.²⁵²

²⁵¹ Ibid., 10.

²⁵² Ibid., 10-15.

The Nunn Report criticized the role states played in licensing institutions as part of the Title IV eligibility triad. Among the 50 states, processes varied widely in rigor and quality and the licensing agencies were often understaffed or underfunded. Some states required review of postsecondary institutions by a state board or agency while others simply required institutions to complete a form to obtain licensure. Furthermore, states had little incentive to increase the rigor of their review because they were not responsible for Title IV funds and state politicians may have been susceptible to political pressures from institutions in their districts.²⁵³

Though the Nunn Report presented an unfavorable view of state licensure processes, voluntary accreditation was their primary target of the triad. Ironically, accreditation was the original solution to scrutinize fraudulent schools using GI educational benefits in the early 1950s, but was perceived as a significant cause of the problem in the late 80s and early 90s. The subcommittee viewed accrediting agencies as particularly susceptible to shirking behaviors because of their structural loyalty to their member institutions, particularly in accrediting agencies for proprietary institutions. They claimed that the concept of self-regulation, which relied upon educators to act in good faith, was misaligned with the for-profit sector where institutional leaders might have prioritized profit maximization over educational quality. Additionally, they criticized accrediting agencies' reluctance to monitor the appropriate use of Title IV funds as part of their review process. The subcommittee wrote that accreditors "argue that they are not regulatory agencies and that they lack both the expertise and resources to perform

²⁵³ Ibid., 13-15.

policing functions in the student financial aid arena.”²⁵⁴ From the subcommittee’s perspective, accreditation’s stance against Title IV monitoring opened the door to unscrupulous behaviors among their member institutions. The report identified several problematic policies among accrediting agencies. They found that accreditation could be bought when proprietary institutions acquired another accredited school, that institutions could jump to another accreditor if their accrediting agency increased scrutiny, that accreditor policies often allowed for the rapid expansion of branch campuses, and that site visits were not of sufficient rigor to identify issues of educational quality.²⁵⁵ These findings tarnished accreditation’s reputation as Congress initiated hearings on the HEA reauthorization in 1991.

Congressional Hearings on Program Integrity

Even prior to the publication of the Nunn Report, House and Senate subcommittees anticipated making bold changes to the HEA in the reauthorization. In the Summer 1990 issue of *The Educational Record*, House and Senate staffers wrote that substantial changes were needed to Title IV programs. In the article, they contested State University of New York Chancellor D. Bruce Johnstone’s, claim that “the system might look a little funny, at least to the first-time observer. But it is *not*...fundamentally broken. Let us fix it up. But let us not begin with the assumption that anything short of radical restructuring will represent a failure.”²⁵⁶ David Evans, staff director for the Senate Subcommittee on Education, Arts, and Humanities replied, “We are going to try to be

²⁵⁴ Ibid., 17.

²⁵⁵ Ibid., 17-19.

²⁵⁶ D. Bruce Johnstone, David V. Evans, and Richard T. Jerue, "Reauthorization: What's Important What's Not," *The Educational Record* 71, no. 3 (1990): 33.

bold in our actions. We do not simply intend to tinker with details.”²⁵⁷ Rick Jerue, staff director for the House Subcommittee on Postsecondary Education agreed, chastising higher education for protecting the status quo: “Decisions tend to be made on the basis of the lowest common denominator—consensus decisions by which no one wins or loses, and everybody stays about where they are. If those are the kinds of recommendations the higher education community produces next year, they will not be of much benefit to Congress.”²⁵⁸ Congress’s frustrations with higher education and aspirations to make substantial changes to HEA programs were bolstered as the Nunn Report was issued and revealed a crisis in loan defaults and fraudulent behavior.

The Nunn Report findings became a significant backdrop as House and Senate subcommittees began holding hearings in 1991. Throughout May 1991, the Subcommittee on Education, Arts, and Humanities of the Senate Committee on Labor and Human Resources held hearings on the reauthorization. On May 17, they heard testimony about the loan default crisis and accreditation. During the hearing, Donald L. Nolan, deputy director of higher and continuing education for New York advocated for an increase in state responsibility for Title IV program eligibility, arguing that states could exercise closer oversight than the Federal Government and that it would be more “appropriate if the primary oversight responsibilities for Federal programs were placed in the hands of the public governmental bodies rather than with private, nongovernmental accrediting agencies that have in the past avoided a regulatory role.”²⁵⁹ Stephen J. Blair,

²⁵⁷ Ibid., 32.

²⁵⁸ Ibid., 34.

²⁵⁹ U.S. Congress, Senate, Subcommittee on Education, Arts, and Labor of the Committee on Labor and Human Resources, *Examining Proposed Legislation Authorizing Funds for the Higher Education Act, Part 2*, 102nd Cong., 1st sess., May 17, 1991, 994.

president of the National Association of Trade and Technical Schools (NATTS), an accreditor of proprietary institutions, countered that his organization was making efforts to reduce loan defaults, including revoking the accreditation of poorly-performing schools. He testified that 13% of NATTS's member institutions had lost their accreditation, though NATTS often found themselves fighting those decisions in court at great expense—they spent over \$1 million in legal fees to defend nineteen decisions to revoke trade schools' accreditation.²⁶⁰

The House Subcommittee on Postsecondary Education of the Committee on Education and Labor held similar hearings on the reauthorization. The subcommittee chair, Rep. William D. Ford (D-MI) reacted to the Nunn Report findings in his opening statement: “We must restore and reinforce public confidence in Federal student aid. Indeed, restoring public confidence in the programs is an absolute precondition for accomplishing the other goals of the subcommittee for this authorization, goals such as renewing the commitment to grant assistance and extending Federal aid to middle income and working families.”²⁶¹ Some subcommittee members, such as Rep. Maxine Waters (D-CA), thought the best way to restore public confidence was to preclude proprietary institutions from participating in Title IV programs or change their certification criteria or process, but Ford refused to entertain proposals that would create an elitist and multi-tiered system with differential treatment for particular institutional types. He attended a

²⁶⁰ Ibid., 1000-01.

²⁶¹ U.S. Congress, House, Subcommittee on Postsecondary Education, Committee on Education and Labor, *Hearings on the Reauthorization of the Higher Education Act of 1965: Program Integrity*, 102nd Congress, 1st sess., May 21, 29, 30 1991, 1.

trade school as a young man and believe they served a critical purpose in the nation's postsecondary educational landscape.²⁶²

Other subcommittee members specifically identified accreditation as the problem that needed to be addressed to solve the program integrity crisis.²⁶³ Rep. Bart Gordon (D-TN) agreed that accreditation had “developed a good old boy system” that protected institutional interests rather than the federal government or student borrowers, citing one agency with a board member representing a school with a 53 percent loan default rate.²⁶⁴ Yet, Gordon acknowledged that the use of accreditation as an eligibility standard was designed to prevent government intrusion into university governance:

When the American people decide to make me Education Czar of this country, who can write the rules and regulations without consultation with anybody else and with no due process to anybody involved, I'll take care of these problems. Short of giving up all you would have to give up to give me that kind of power, you've got to expect something less than a perfect system. And you've got to make a trade-off—how much Federal dictating do you want to do against how much freedom you want to take away from people. And it's tough. Now, those of us who were here when this legislation originally passed had to reassure our opposition that we would not empower Washington to do too much. And we filled the legislation up with thou-shalt-nots for Secretaries of Education. And now people come in and say, “Why doesn't the Secretary of Education decide what is and what is not a good school?” I've never met a Secretary of Education that I would trust with that kind of power. And that's our problem.²⁶⁵

A Government Account Office official, Lawrence Thompson, echoed these concerns, saying, “experience shows that these organizations have their own goals and objectives,

²⁶² Jason DeParle, “Trade Schools Near Success as They Lobby for Survival,” *New York Times*, Mar. 25 1992, A1, 22; and Whitman, “When President George H. W. Bush.”

²⁶³ U.S. Congress, *Hearings on the Reauthorization of the Higher Education Act of 1965: Program Integrity*, 2.

²⁶⁴ *Ibid.*, 64-65.

²⁶⁵ *Ibid.*

and do not necessarily act in the government's interest."²⁶⁶ These perspectives on the problem illustrate the principal-agent problem for Title IV program integrity—it's undesirable for the government to exercise complete control over postsecondary institutions, yet some better system was needed to align the goals and interests of accrediting agencies with the goals of the HEA and expectations of student borrowers, rather than the interests of their member institutions.

Several witnesses testified that the secretary of education's process for approving accrediting agencies was part of the eligibility equation that needed strengthening to protect government and student interests. The inspector general for the DOE, James B. Thomas, Jr. noted, from the Nunn Report findings, that the DOE's "recognition process did not include adequate research and analysis to assure that only reliable agencies were recognized by the Secretary."²⁶⁷ To address this problem, Elizabeth Imholz, director of the Consumer and Employment Unit of the South Brooklyn Legal Services argued that the HEA reauthorization should include specific criteria for the DOE to evaluate accrediting agencies. She advocated that accrediting bodies be required to conduct unannounced site visits, evaluate each branch campus separately, and to demonstrate that their decision-making committees were independent from the schools they reviewed.²⁶⁸

The next witness, Joe McCormick, executive director of the Texas Guaranteed Student Loan Corporation, changed the tenor of the conversation about accreditation—rather than suggesting new criteria or improved recognition processes for accrediting

²⁶⁶ Ibid., 301-02.

²⁶⁷ Ibid., 256.

²⁶⁸ Ibid., 141.

agencies, he recommended eliminating them altogether from the Title IV eligibility equation. He said,

School eligibility requirements should be strengthened and separated from the accreditation process. The federal government should establish its own independent standards for eligibility based on financial soundness and proven labor market demand for the occupations for which the students are being trained. In approving schools for eligibility, the Department of Education can work with State Occupational Information Coordinating Councils to determine state specific labor market needs and/or set criteria to meet national work force goals. By taking accrediting agencies out of the loop, the federal government can assert its proper authority in approving schools for Title IV student aid.²⁶⁹

When Rep. Thomas Coleman (R-MO) asked him to elaborate, McCormick explained that accreditation should maintain its historical purpose of evaluating the quality of the curriculum, but that it was ill-suited to certify institutions for Title IV programs. Furthermore, he recommended that the federal government should establish firm eligibility criteria that would be applied to all postsecondary institutions—public, private, and proprietary. Coleman then asked whether he would have more confidence in an increased state role in the certification process. McCormick agreed that would be an acceptable solution as long as the states received clear guidelines from the federal government.²⁷⁰

Thurston Manning, the outgoing president of COPA responded that accreditation had not asked to be the gatekeeper for federal aid eligibility. He said,

“If there was a viable alternative... I suspect that a great many of the accrediting organizations would say we are primarily a non-governmental activity and we will proceed along the lines that we have historically proceeded. At the moment, we do not see a viable alternative. The States, I think, are simply not going to do it. You have 52 plus jurisdictions, and to suppose that [they] are all suddenly, after years and years of doing nothing, they’re going to leap forward and come

²⁶⁹ Ibid., 379.

²⁷⁰ Ibid., 422-23.

ahead. I think it's unrealistic. I think accreditation is a useful and important competent [sic, component?] and should be retained.²⁷¹

But, when Coleman asked whether accrediting agencies would be open to explicit Federal criteria for approved agencies, Manning said they would not, and claimed that accrediting bodies were unprepared to “deal with the details of Federal programs.”²⁷²

Manning's response that accreditation was too important to eliminate, but not equipped to serve government interests, did not impress the subcommittee. Ford and Coleman were puzzled that Manning was reluctant to say that accreditation could help reduce student loan defaults and instances of fraud. Ford said, “I've seen over and over again people with ideas about how we magically decide what is and what is not a good school. And I was very interested when I came back to hear your response that you don't know how to define that either and you wouldn't recommend that your voluntary agencies try to do it.”²⁷³ Dismayed with the Manning's reluctance to view accreditation as a responsible agent of the government, Coleman expressed enthusiasm for McCormick's suggestions to eliminate voluntary accreditation from the triad and accused accrediting agencies of abdicating their program integrity role. Overall, the subcommittee was unimpressed with the potential to address the integrity issues of Title IV programs through additional requirements to accrediting agencies.

The first legislative proposal to emerge from these hearings began to address program integrity issues with an increased state role and tighter standards for approved accreditors. In June 1991, subcommittee members Rep. William Goodling (R-PA) and

²⁷¹ Ibid., 423.

²⁷² Ibid.

²⁷³ Ibid., 427.

Rep. Nita Lowey (D-NY) sponsored the Integrity in Higher Education Act (distinct from the HEA reauthorization), which proposed two reforms to the Title IV program integrity triad, as a starting point for discussions about solving the loan default crisis. First, the act proposed the creation of State Postsecondary Approving Agencies, at the federal government's expense, to establish state standards, which would be approved by the secretary of education, to determine Title IV eligibility. The legislation would have also created the option for multiple states to form one agency to approve institutions in those states. Second, the draft legislation proposed that the secretary of education be required to establish standards for all approved accrediting agencies. Under this plan, accreditation would continue to operate as part of the triad, but with explicit DOE requirements and alongside an expanded state role.²⁷⁴

Higher education leaders, particularly those from accrediting agencies, were not pleased with the proposals in Goodling and Lowey's bill. Randall Barton, vice president of advancement at Northwest College wrote to Rep. John Miller (R-WA) to express his dissatisfaction with the draft legislation and to explain why it would ultimately be unproductive. He claimed the state oversight agencies would be both redundant with accreditation and much costlier, since the Federal government would pay for the creation of the agencies and voluntary accreditation was funded by member institutions. He didn't oppose the requirement for the secretary to establish accrediting agency standards, but thought that the state oversight "super-authorities" would "destroy the cooperative and

²⁷⁴ *Integrity in Higher Education Act of 1991*, HR 2716, 102nd Cong., 1st sess., *Congressional Record* 137, pt. 11: 15690-91. Note: this act was eventually subsumed within the 1992 HEA reauthorization.

collaborative relationship between all agencies concerned with higher education.”²⁷⁵

Others were concerned that the legislation would diminish the role of accreditation and create unnecessary state bureaucracies. Richard Rosser, President of the National Association of Independent Colleges told the *Chronicle of Higher Education* that “there are serious concerns about the implications of this bill for the peer-review process we've used successfully for so many years in higher education,” and the proposal unfairly targeted all postsecondary institutions when the default problems were most prevalent in a small number of proprietary institutions.²⁷⁶

Proponents of accreditation began to mobilize and suggest alternatives to the Goodling proposal. In a letter to Leland Myers, the director of federal regulations for California Community Colleges, John Petersen, executive director of the Accrediting Commission for Community and Junior Colleges, blamed COPA for the “badly-flawed bill.”²⁷⁷ He claimed that COPA had “been asleep at the wheel” under Manning’s leadership, though expressed some optimism at the lobbying efforts under the new leadership of its new president, Kenneth Perrin. Instead of weakening accreditation, Petersen argued for the retention of accreditation as the primary eligibility standard and for the government to provide liability protections to prevent costly litigation when schools with revoked accreditation sued to regain eligibility status. He also recommended that the DOE take more responsibility for monitoring financial metrics: “The warning,

²⁷⁵ Randall K. Barton to Rep. John Miller, “Re: Goodling Bill HR 27167,” Sep. 19, 1991, 1-2, Box 93, Council on Postsecondary Accreditation (COPA) records, Hoover Institution, Palo Alto, CA (hereafter cited as COPA Collection).

²⁷⁶ Thomas J. DeLoughry, “House Panel Wants U.S. to Overhaul Student Assistance,” *Chronicle of Higher Education* 38, no. 3 (Sep. 11, 1991), A33.

²⁷⁷ John C. Petersen to Leland Myers, “Subject: Federal/State Standards for the Enforcement of Institutional Integrity,” Sep. 12, 1991, 1, Box 93, COPA Collection.

followed by termination of eligibility, for institutions with excessive default rates is not an unreasonable way to address possible abuse. [DOE] functionaries are more attuned to monitoring compliance than are accrediting agencies. I suggest that [DOE] can do that for fewer public dollars than would be spent on fifty state agencies.”²⁷⁸ This proposal conceded that some financial oversight may be necessary, but strongly opposed the complexity and inefficiency of new state oversight agencies.

As this debate continued, the subcommittee conducted additional hearings regarding program integrity and accreditation. In July 1991, the subcommittee invited McCormick to testify again during a hearing in Houston. During his testimony, McCormick elaborated upon his recommendations to remove accreditation from the eligibility equation and establish federal eligibility criteria for states licensing bodies to implement. He recommended a number of criteria, all substantively different than voluntary accrediting agencies’ standards which focused upon the fulfillment of unique institutional missions and curricula. McCormick suggested that institutions, be required to submit financial audits, debt to net worth ratios, assets to liabilities ratios, and evidence that their programs would prepare students to find employment in fields with genuine market needs.²⁷⁹ Additionally, he recommended the HEA legislation require proprietary school owners to submit financial statements. He testified that, “Some of our reviews uncovered fraudulently designed levels of corporate ownership, designed to hide the true owner’s identity until such time the school finally declared bankruptcy and walked away

²⁷⁸ Ibid.

²⁷⁹ U.S. Congress, House, Subcommittee on Postsecondary Education, Committee on Education and Labor, *Hearings on the Reauthorization of the Higher Education Act of 1965: Houston, TX*, 102nd Congress, 1st sess., Jul. 22, 1991, 166-70.

with the money.”²⁸⁰ These recommendations served as an attractive alternative to voluntary accreditation’s standards, which the subcommittee viewed as unresponsive to fraudulent institutions, out of control default rates, and the general best interests of student borrowers.

Draft Reauthorizations in the House and Senate

McCormick’s recommendations took hold as the subcommittee prepared a draft of the HEA authorization in October 1991, which unlike Goodling and Lowey’s bill, eliminated, rather than modified, accreditation’s role in Title IV eligibility. The subcommittee seized on the idea that accreditation was more interested in serving the interests of higher education institutions than ensuring those institutions met their Title IV responsibilities. Rather than institute new mechanisms to incentivize accrediting agencies to rebalance their interests, they instead delegated certification to another agent: state oversight agencies. These agencies would still serve as intermediary organizations between the federal government and postsecondary institutions, but would ostensibly be more independent than accrediting agencies and have goals that would be more congruent with the Federal government’s objectives for the HEA reauthorization.²⁸¹

This development alarmed higher education leaders who saw the removal of accreditation as a significant threat to their autonomy. Frank Mensel, a vice president at the American Association of Community and Junior Colleges told *The Chronicle of Higher Education* that, “Once this policy starts, you feel as if it’s the nose of the camel

²⁸⁰ Ibid., 169.

²⁸¹ Thomas J. DeLoughry, “Colleges See Threat to Autonomy in Plan for State Review Agencies,” *Chronicle of Higher Education* 38, no. 7 (Oct. 9, 1991), A1, 33.

coming under the tent.”²⁸² The bill was particularly worrisome to public institutions, many of which operated in states with constitutional provisions to prevent state interference. For example, the California constitution explicitly granted autonomy to the University of California (UC) system. Paul Sweet, director of federal-government relations for the UC system said that Congress “could double the Pell Grant and give them to every student and provide faculty salary increases in this bill, and yet this provision would make it impossible to support the bill.”²⁸³ Subcommittee members responded with several concessions to appease public institutions that feared increased state control. The subcommittee amended the draft so that most institutions would only be subject to a limited state review unless they met certain criteria that targeted proprietary institutions, such as having loan default rates in excess of twenty-five percent, receiving more than two-thirds of revenue from federal student aid, or changing ownership. Additionally, the subcommittee added language to prohibit state agencies from wielding “planning, policy, coordinating, supervisory, budgeting, or administrative powers over any postsecondary institution.”²⁸⁴ Chairman Ford, referring to his home state of Michigan, said, “It would not be in my interest in a state that's fiercely proud of its academic independence to mess that up.”²⁸⁵ Even with these concessions, higher education groups protested any additional state oversight and lobbied for the reinstatement of accreditation as the primary means to achieve eligibility. Richard

²⁸² Ibid., A33.

²⁸³ Ibid.

²⁸⁴ Thomas J. DeLoughry, “Colleges’ Anxiety Eased Somewhat on Plan to Give State Agencies More Oversight,” *Chronicle of Higher Education* 38, no. 8 (Oct. 16, 1991), A41.

²⁸⁵ Ibid., A43.

Morrill, the president of the Southern Association of Colleges and Schools (the regional accrediting body in the southeast) wrote to all college presidents in his region, asking them to contact their congressional representatives to advocate for the inclusion of accreditation in the triad.²⁸⁶ Blair, who testified at the Senate subcommittee the previous May, led the National Association of Trade and Technical Schools to initiate a \$1 million per year lobbying campaign, including donating to political candidates and political action committees, hiring former Capitol Hill aides to leverage their connections, taking members of Congress on tours of top-performing trade schools, and organizing trade school students to write thousands of postcards to Congress asking them not to take away their federal student aid.²⁸⁷

These higher education leaders were initially unable to persuade the subcommittee, which voted to move the bill to full committee consideration. The bill was debated for two days in the House Education and Labor Committee, which eventually voted 26-14 in favor of the bill, though only one Republican joined Democrats to support the legislation. The omission of accreditation garnered little controversy in that debate, however. Instead, the committee debate centered around the Democrats' proposal to undo the previous decade's shift from grants to loans and make Pell Grants an entitlement for all students, a provision that would eventually clash with the Senate's approach to reauthorization.²⁸⁸

²⁸⁶ Ibid.; and James T. Rogers to Charles Saunders, Jun. 28, 1991, 1-3, Box 93, COPA Collection.

²⁸⁷ DeParle, "Trade Schools Near Success," A1, 22.

²⁸⁸ Ibid.; and Thomas J. DeLoughry, "Lawmakers Clash Over 2 Versions of Education Bill," *Chronicle of Higher Education* 38, no. 10 (Oct. 30, 1991), A1, 27.

By the end of October, the Senate subcommittee developed its own version of the HEA reauthorization, which was viewed as less ambitious and maintained accreditation in the program integrity triad, though it included more stringent standards related to the federal, state, and accrediting agency roles in Title IV eligibility. The Senate subcommittee opposed the Pell Grant entitlement in an effort to reduce costs—their bill would have costed \$2.6 billion less than the House version. As both versions moved toward floor votes in their respective chambers, Sec. Alexander notified Congress that the Bush Administration would veto any final bill that included the Pell Grant entitlement. Alexander also opposed the wholesale elimination of accreditation from the triad, though he supported different eligibility processes for vocational schools, including increased state oversight in lieu of voluntary accreditation. Ford continued to oppose measures that created differential standards or processes for proprietary institutions and successfully blocked such proposals from being included in the bill.²⁸⁹ As the reauthorization process progressed, the more conservative Senate version appeared to have greater momentum than the ambitious House bill.²⁹⁰

By December 1991, it became apparent to the House subcommittee that their ambitious reauthorization bill would not pass in the full House. Consequently, they considered a number of compromises to make the bill more palatable, particularly to some Democrats who were unhappy with the large spending increases associated with the Pell Grant entitlement provision.²⁹¹ One such compromise was to maintain the role of

²⁸⁹ DeParle, “Trade Schools Near Success,” A22; and Whitman, “When President George H. W. Bush.”

²⁹⁰ DeLoughry, “Lawmakers Clash,” A1, 27.

²⁹¹ Thomas J. DeLoughry, “Key Members of House Set to Compromise on College-Aid Provisions,” *Chronicle of Higher Education* 38, no. 17 (Dec. 18, 1991), A29; and “Campaign to Guarantee Pell Grants to All Who Qualify Ends in Defeat,” *Chronicle of Higher Education* 38, no. 29 (Mar. 25, 1992), A23, 26.

accrediting agencies in the triad while adding standards for recognition by the secretary of education, though Rep. Gordon and Rep. Marge Roukema (R-NJ) protested with several failed amendments to again eliminate accreditation from the triad and tighten controls on trade schools. The revised version, which paralleled the Senate's draft, was intended to garner greater support from college officials, and therefore other members of the House. Though neither version of the bill was finalized, higher education leaders grew more confident that their efforts to retain accreditation as an eligibility requirement would be successful. Blair proclaimed that higher education had "won the war" and that the pathway to a final bill would be characterized by only "minor skirmishes."²⁹² The Senate approved their version on February 21, with 93-1 voting in favor. The House passed their bill with 365 votes in favor and 3 votes in opposition on March 26.²⁹³ Both versions retained accreditation in the triad as the House and Senate proceeded toward reconciliation in June.

Blair was correct that accrediting agencies had successfully avoided their worst-case scenario of elimination from the triad, thanks to a successful lobbying campaign involving COPA, proprietary accrediting agencies, and many college presidents.²⁹⁴ However, higher education leaders were less successful in navigating the minor skirmishes as the two bills were reconciled, which resulted in a compromise for accreditation. The versions approved in both chambers included new standards for the

²⁹² DeParle, "Trade Schools Near Success," A21; DeLoughry, "Key Members of House," A29; and 102nd Cong. Rec., 2nd Sess., (1992) 7102-299.

²⁹³ Thomas J. DeLoughry, "Senate Approves Massive Legislation for Higher Education," *Chronicle of Higher Education* 38, no. 26 (Mar. 4, 1992), A27; and 102nd Cong. Rec., 2nd Sess., 7299 (1992).

²⁹⁴ Kenneth L. Perrin, "Accreditation at the Crossroads: President's Address to the Membership," Apr. 6, 1993, 5, Box 93, COPA Alert, COPA Collection.

secretary to consider in approving accrediting agencies, the establishment of state oversight agencies with new eligibility responsibilities, and financial responsibility standards targeted toward low-performing proprietary institutions. The American Council on Education (ACE) supported the establishment of state oversight agencies, but objected to the House bill's standards that would trigger more substantive state reviews of some individual institutions. The ACE's position represented an unlikely coalition between two- and four-year public and private institutions and proprietary schools to oppose expanded state oversight. The proposed financial triggers, intended to target the lowest-performing proprietary institutions would have inevitably trapped community colleges, lower-tier publics, and struggling private colleges into expanded and onerous state oversight. The ACE wrote, "We oppose the House provision establishing a cohort default rate of 25% as a criterion for state review.... This provision...would automatically place in review hundreds of reputable institutions serving low-income, academically at-risk populations."²⁹⁵ Instead, they suggested that the 25% cohort default rate standard only be applied when institutions relied upon Title IV aid for more than two-thirds of their operating revenue and had more than two-thirds of their students receiving federal aid.²⁹⁶ The recommendation did not prevail. When the Senate and House approved the conference reports, the 25% default rate standard was unchanged. The Senate approved the conference report on June 30, 1992 by voice vote and the House followed suit on July 8 with broad bi-partisan support, 419 voted to approve the reauthorization with only

²⁹⁵ American Council on Education, Division of Governmental Relations, "Recommendations for HEA Reauthorization" May 1, 1992, 6, Box 1898, Reauthorization 1992, American Council on Education Collection, Hoover Institution, Palo Alto, CA.

²⁹⁶ Ibid.

seven nay votes.²⁹⁷ President George H.W. Bush signed the 1992 Amendments to the HEA into law on July 23.

Program Integrity in the Final 1992 Amendments

Though accreditation remained a key part of the program integrity triad in the final 1992 Amendments, the law included a number of new rules to monitor program quality and further align the goals of postsecondary institutions and their accrediting agencies with the goals of Title IV programs. Under the new law, state oversight agencies, funded by the federal government, would certify all postsecondary institutions using criteria that were previously the exclusive domain of voluntary accreditation. The state agencies would be required to monitor financial viability and determine whether institutions were making course and program information available to students, assessing student achievement, enforcing academic policies, and meeting safety standards. For programs or courses that were explicitly designed to help students gain employment, the state agencies also were required to examine whether those programs and courses provided “the student with quality training and useful employment in recognized occupations in the State.”²⁹⁸ Not only did these requirements venture into the traditional territory of accreditation, they marked the first time Title IV eligibility was linked to an evaluation of whether programs were meeting state employment needs.

In addition to expanded state oversight, the reauthorized HEA established the first federal criteria for the secretary of education to determine which accrediting agencies provided reliable quality assurances for Title IV programs. In order to be approved under

²⁹⁷ 102nd Cong. Rec., 2nd Sess., 17008, 18254-95 (1992).

²⁹⁸ *Higher Education Amendments of 1992*. Public Law 102-325, *U.S. Statutes at Large* 106 (1992), 639.

these new requirements, accrediting agencies needed to have voluntary membership and be independent from trade organizations, which was intended to prevent accreditors of proprietary schools from bending to the wills of their member institutions. Additionally, they needed to evaluate member institutions' curricula, faculty, facilities and equipment, financial viability, student services, recruitment practices, the academic calendar, grading policies, marketing, program length, the reasonableness of tuition in relation to program length and subject, student outcomes including job placement rates, student loan default rates, and compliance with Title IV program responsibilities. The law also instituted new specifications for accrediting site visits—accrediting agencies would be required to conduct at least one unannounced site visit to vocational schools and visit new branch campuses in their first six months of operations. To prevent institutions from jumping accreditation agencies when they faced sanctions or potential loss of accreditation, Congress also prohibited certification for Title IV programs if an institution held accreditation from more than one accrediting agency or if their accreditation had been withdrawn within the previous two years.²⁹⁹ The new structures and responsibilities in the program integrity triad may have not been the ambitious reorganization that the House subcommittee believed was necessary to reduce goals conflicts between postsecondary institutions and Federal student aid programs, but the law instituted mechanisms to exert greater controls on those accrediting agencies and schools prone to shirk their responsibilities to both students and the government.

²⁹⁹ Ibid., 641-47.

A Lukewarm Victory for Accreditation

Overall, higher education leaders claimed the final 1992 Amendments as a victory since they avoided the removal of accreditation's role in the program integrity triad. In an address to the COPA membership in April 1993, Perrin said that "None of us, however, should take much solace from the successful outcome of this gigantic lobbying effort. It was literally a hollow political victory. We did not change one member of Congress' mind about accreditation. Hence, the perception in Washington remains that we are an old boy's network concerned more about protecting the trade association than the public."³⁰⁰ In particular, accreditation officials viewed the state oversight structure and criteria to approve accrediting agencies as an encroachment into higher education's tradition of autonomy and self-regulation. Bernard Fryshman of the Association for Rabbinical and Talmudic Schools described accrediting agencies as "partially wounded" by the HEA bill because of the new criteria governing their federal recognition, particularly requirements that they act as regulators on behalf of Title IV programs rather than organizations that fostered quality improvement through peer review.³⁰¹ COPA official Marianne Phelps said she had "difficulty with accrediting bodies acting the role of policeman."³⁰² In a meeting of the COPA self-study task force charged with re-imagining COPA and the role of voluntary accreditation in 1992, William Dorrill, president of Longwood College in Virginia, echoed Phelps's sentiment, arguing that

³⁰⁰ Perrin, "Accreditation at the Crossroads." 5.

³⁰¹ Bernard Fryshman to the COPA Community, "Re: Action by Regional Groups," Feb. 10, 1993, 5, Box 99, COPA Collection.

³⁰¹ *Ibid.*, 6.

³⁰² Marianne Phelps to Kenneth Perrin, undated, 1, Box 99, COPA Collection.

accrediting agencies were unprepared to police student aid programs.³⁰³ However, Stanley Ikenberry of the University of Illinois countered that accreditation's expanding regulatory role was not necessarily disastrous:

We talk as if it were a binary choice between government on the one hand and voluntary accreditation on the other. And of course, it is not. Government is already heavily involved in this process...It seems to me, to look at this issue not so much as keeping government out, but the role of voluntary accreditation as a way of interfacing with these other forces, and moderating these other forces. It seems to me that the issue of keeping government out is no longer an option, if it ever was an option, it's certainly no longer an option. The question is, how do you moderate?³⁰⁴

Ikenberry not only viewed accreditation as an intermediary between postsecondary institutions and the federal government, but also argued that that intermediary position offered value to higher education by buffering them from direct federal intrusion. Furthermore, his call for accreditation to moderate government intervention signals that accrediting agencies had explicit interests in advocating for their member institutions and influencing the federal government's goals and enforcement mechanisms. According to Ikenberry, accreditation's intermediary position was a desirable feature of the accountability system, rather than a defect, because accreditation served as both a principal to postsecondary institutions and as an agent of the federal government, they were able to frustrate the principal's efforts to directly regulate their member schools.

Even if accreditation leaders could have tolerated increased federal involvement in their practices for reviewing institutions, they were not optimistic about the future of government-accreditation relations. Perrin warned the COPA membership that many

³⁰³ "The Council on Postsecondary Accreditation 1992 Self-Study," May 21-22, 1992, 8-9, Box 93, COPA Collection.

³⁰⁴ *Ibid.*, 11.

presidents only lobbied Congress to keep accreditation in the triad because they feared the alternative of state certification without peer review would be more intrusive than accreditation. He said, "I am not optimistic that, even with the help of college presidents, we can withstand another attack like the one we just experienced. It can no longer be business as usual for any of us! The time has come for us to take charge of the future and critically re-think and possibly recreate accreditation."³⁰⁵ COPA ultimately proved unable to lead dramatic change among their members. Instead, COPA was blamed for not lobbying more aggressively to keep government out of accreditation and to limit the role of states in the triad. Robert Glidden, provost of Florida State University and a member of the COPA self-study task force, called the 1992 reauthorization a "fiasco," writing that "COPA was ineffective at telling the story of accreditation on Capitol Hill."³⁰⁶

Additionally, when the DOE released their implementation regulations for the new criteria to recognize accrediting agencies, higher education leaders believed them to be far more intrusive than the law warranted.³⁰⁷ In 1993, COPA dissolved because accrediting agencies believed the organization's reputation was irreparably damaged in the wake of reauthorization. The organization had also been plagued with long-simmering conflicts between the regional accrediting agencies that accredited the vast majority of colleges and universities and the accrediting agencies that accredited proprietary and trade schools.³⁰⁸ COPA's dissolution left accreditation without a significant voice on Capitol Hill until 1995 when accrediting agencies regrouped to

³⁰⁵ Ibid., 6.

³⁰⁶ Robert Glidden, "Accreditation at a Crossroads," *The Educational Record* 77, no. 4 (1996): 23.

³⁰⁷ Bloland, *Creating the Council for Higher Education Accreditation*, 42.

³⁰⁸ Ibid., 41-42; Glidden, "Accreditation at a Crossroads," 22-23.

establish the Council on Higher Education Accreditation (CHEA), which continues to serve an umbrella organization and lobbying voice for voluntary accreditation.³⁰⁹ Higher education leaders did, however, claim one victory in those intervening years, though quite by accident. Budget-conscious Republicans took control of both the House and Senate in 1995 and introduced the *Contract with America* to reduce the federal deficit and to roll back regulations. The state oversight agencies funded by the federal government became an easy target and Congress eliminated them in March 1995.³¹⁰ Judith Eaton, president of CHEA, commented that the failed implementation of state oversight agencies restored balance to the program integrity triad—Title IV eligibility once again rested primarily on the shoulders of accrediting agencies. But the restored status quo did little to ensure the long-term stability of accreditation’s role in the triad. In anticipation of the subsequent HEA reauthorization in 1998, Glidden warned accreditation leaders that they were at a crossroads—the change that Perrin had called for in 1993 had not materialized and Congress continued to have the same concerns about the reliability of peer review accreditation that motivated the Nunn Report and congressional hearings in 1991 and 1992.³¹¹

Conclusion

Accreditation’s role in the program integrity triad attracted great scrutiny as Congress took notice of escalating student loan default rates and drafted the 1992 Amendments to the HEA. The concepts of PAT, particularly goal conflicts and shirking,

³⁰⁹ Bloland, *Creating the Council for Higher Education Accreditation*, 41-42, 94-185.

³¹⁰ Whitman, “When President George H. W. Bush.”

³¹¹ Glidden, “Accreditation at a Crossroads,” 22-24; and Paul L. Gaston, *Higher Education Accreditation: How It’s Changing, Why It Must* (Sterling, VA: Stylus Publishing, LLC., 2013), 22.

explain why accreditation's future was so tenuous during the reauthorization process. Accreditation's obligations to both oversee postsecondary institutions' compliance with Title IV responsibilities and assist those institutions in fulfilling their unique missions and improving educational quality divided its priorities and weakened its ability to fully succeed on either dimension. Specifically, Congress perceived accrediting agencies to be resistant to their oversight role and overly protective of outright fraudulent institutions that deceived students and exploited the availability of Title IV funds to make profits. Higher education and accreditation leaders were troubled when the House version of the reauthorization completely eliminated accreditation from the Title IV eligibility equation and proposed replacing it with new state oversight agencies. These leaders feared the proposal would result in greater government control of higher education, including public, private, and proprietary institutions. Ultimately, they were able to lobby Congress to accept the Senate's proposal to maintain accreditation's role in the triad alongside the establishment of state oversight agencies. However, the final reauthorization was a compromise to accreditation's independence—the bill instituted new criteria for the DOE's recognition of accrediting agencies. These criteria were intended to reduce goal conflicts between the government and accrediting bodies, but accrediting agencies viewed them as an encroachment into accreditation's tradition of relying upon the higher education community to establish the substance and structure of accreditation processes.

The compromises in the final reauthorization did not resolve the principal-agent problem between the federal government and accreditation and was ultimately unsatisfying to both enterprises. Higher education leaders were dissatisfied with new federal restrictions on accrediting agencies and Congress was disappointed that Title IV

eligibility continued to rely on a self-regulatory system that seemed to be uninterested in monitoring compliance with student aid program responsibilities.

In 1994, scholar Peter Ewell warned that higher education's near obsession with autonomy, which motivated their responses to the 1992 Amendments, was damaging public perceptions and inviting further government intervention to ensure alignment between the goals of postsecondary institutions and the intents of the Title IV programs that funded nearly \$38 billion in student aid.³¹² According to Ewell, the absolute opposition to government accountability efforts reinforced Congressional beliefs that higher education was intransigent to change and uninterested in serving public interests. He wrote,

Indeed, as I listen closely to growing frustrations about higher education expressed by public policy leaders, what seems to bother them most is our perceived hypocrisy. Here is an enterprise, they say, that never shrinks from offering penetrating critical analyses of most other social institutions—together with countless suggestions about how they should change—without being able or willing to do so itself. The resulting critique of higher education is in this way as much ethical as it is based on performance, and we ignore it at our peril.³¹³

Ewell's admonition directly confronted accreditation's approach to the 1992 Amendments, where higher education leaders lobbied to limit state oversight and maintain the role of accreditation in the program integrity triad without any additional standards or restrictions. When members of the House and Senate subcommittees questioned accrediting agencies over escalating student loan default rates and the conspicuous fraud at some proprietary institutions, they responded with claims that such

³¹² The College Board, "Trends in Student Aid 2015," *Trends in Higher Education Series*, 2015, 12, <https://trends.collegeboard.org/sites/default/files/trends-student-aid-web-final-508-2.pdf>; and Peter T. Ewell, "Accountability and the Future of Self-Regulation," *Change* 26, no. 6 (1994), 25-29.

³¹³ *Ibid.*, 28.

problems were outside the scope of accreditation and they could not be reasonably expected to police institutions' Title IV responsibilities. In principal-agent terms, accreditation was shirking its responsibility as an agent of the federal government, not out of malice, or even intransigence, but from a conviction that higher education should be self-governed and self-regulated. A concerted lobbying campaign succeeded in maintaining a Title IV eligibility process that fundamentally depended on self-regulation, even if it emerged in a slightly weakened state, but did little to address the underlying concerns stemming from accreditation's cardinal goal conflict—the dual allegiance to be a “collegial agent” and protector of autonomy for their member institutions and simultaneously a “cop” for the federal government.

Consequently, voluntary accreditation's role in the program integrity triad has been and continues to be challenged, as the government's investment in student aid increased from \$29 billion in 1991 to 142 billion in 2011 (in 2011 dollars).³¹⁴ Accreditation's role was again questioned during the 1998 HEA reauthorization proceedings.³¹⁵ In the early 2000s, scathing reports were issued to criticize accreditation's protection of institutional autonomy. The Commission on the Future of Higher Education, a group convened in 2005 under the leadership of Education Secretary Margaret Spellings, determined that accreditation was too loyal to member institutions to be an effective protector of public interests.³¹⁶ Like the original House subcommittee proposal for the 1992 reauthorization, similar calls to decouple accreditation from federal

³¹⁴ The College Board, “Trends in Student Aid 2012,” *Trends in Higher Education Series*, 2012, 12, <https://trends.collegeboard.org/sites/default/files/student-aid-2012-full-report.pdf>.

³¹⁵ Glidden, “Accreditation at a Crossroads,” 22-23.

³¹⁶ Gaston, *Higher Education Accreditation*, 86-88.

student aid resurfaced in 2010 in a report from the Center for College Affordability and Productivity, provocatively titled, *The Inmates Running the Asylum*. These calls for substantive changes paved the way for Sec. Duncan to again propose eliminating accreditation from the triad in 2015. Lobbying efforts for the status quo have been successful at avoiding that outcome thus far. Yet, little ground has been made to gain public confidence in a self-regulatory system that higher education leaders prize for its intermediary role in the triad which buffers postsecondary institutions from direct government intervention. Unrelenting advocacy for autonomy depletes policymakers' confidence in the integrity of Title IV programs and spawns continuing threats to eliminate accreditation from the triad. This debate, first animated during the 1992 reauthorization, continues to raise important questions about what entities should have the authority to determine and enforce standards of quality and protect the public interests in a complex postsecondary landscape. Furthermore, the failure of the 1992 Amendments to resolve concerns about Title IV program integrity should cause higher education leaders to consider the implications of vigorously defending autonomy and the possibility that the public confidence gained through compromise may better serve higher education's interests in the long term.

Conclusion

Each of the three studies in this dissertation illuminate a particular event in the evolving, and sometimes adversarial, partnership between the federal government and postsecondary education. While each paper presents an argument about the historical interpretation and meaning of particular policy events, they together explore higher education's defensive stance toward increased government intervention while the federal government made substantial investments in student aid and research throughout the mid-20th century. Higher education's parastate function generated growth for American postsecondary education, in terms of institutional growth, student access, and academic science. But that relationship has been, at times, uneasy. Those moments of conflict or controversy foreground the differing values and priorities of the federal government and postsecondary institutions, prompting scholars, administrators, and lawmakers to consider when policy compromises are justified to serve the public interest and ensure the continued vibrancy of American higher education. In this conclusion, I outline some of the lessons gleaned from each study and then discuss the role of public perception in the relationship between higher education and the federal government as a theme that traverses the three cases, with some intentionally provocative implications.

Lessons from the Three Studies

In the first study, the controversy surrounding the loyalty provisions in the National Defense Education Act (NDEA) of 1958 demonstrates how the federal

government's motivations and priorities for funding higher education programs can differ from higher education's values and the conflict that results. In an early era of federal involvement in higher education, colleges and universities embraced the prospect of federal aid for students studying the natural sciences, mathematics, education, and foreign languages because it would promote growth and, in part, achieve aspirations to increase access to college in the spirit of the Truman Commission's landmark 1947 report. Yet, many of these institutions believed that the NDEA's loyalty oath and affidavit requirements were untenable because they violated a cardinal principle of academic freedom. For some members of Congress, the loyalty provisions merely provided some assurance that students receiving federal aid would be inclined to serve national defense interests, which was the explicit intent of the legislation. Though the loyalty provisions were largely an artifact of the Cold War and Red Scare, this case highlights a constant tension in the evolving relationship between the federal government and higher education—the federal largesse is not a value-neutral ally to higher education. Higher education leaders and those who advocate for them in Washington and state capitols should carefully evaluate the potential ramifications and required compromises when they embrace government priorities, particularly when those priorities confront central tenets of the university such as academic freedom unencumbered by government control.

The same defense interests that motivated the NDEA generated new and extensive federal investments in academic science, which allowed universities like Stanford to vastly expand their research capabilities during the Cold War. The second study of Stanford's indirect cost controversy, demonstrates how universities that depend upon access to federal funds to sustain massive research operations must proactively

adapt as sociopolitical contexts shift. Stanford's unwillingness to reduce overhead costs and strategy to maximize indirect cost reimbursement from the federal government was both tone deaf to public concerns regarding institutional improprieties and unresponsive to a changing economy for sponsored research at the conclusion of the Cold War.

Ultimately, the investigation of Stanford's indirect cost recovery resulted in changed rules for all research universities which suddenly placed new limits on the amount and type of expense for which they could seek reimbursement. In this case, we learn that universities may not self-regulate their practices to align with emerging federal or social interests. In these cases, the government may intervene to realign higher education's parastate functions with the state's broader aims, perhaps to the great embarrassment of some unfortunate institutions and their leaders.

The third study explores considerations of how to ameliorate the student loan default crisis of the late 1980s and early 1990s as Congress considered reauthorizing the Higher Education of Act of 1965. Frustrated with the limited efficacy of voluntary accreditation's regulatory role, the House draft of the reauthorization legislation removed accreditation from the certification process by which postsecondary institutions could become eligible to receive students' federal aid funds, replacing accreditation with new state oversight agencies. Higher education leaders and lobbyists rallied to reinsert accreditation into the certification process, arguing that self-regulatory nature of accreditation was necessary to preserve institutional autonomy. They were unsuccessful, however, in avoiding the constitution of new state oversight agencies and expanded state reviews of institutions falling below certain financial criteria. Though traditional colleges and universities forged a remarkable alliance with proprietary institutions, who faced the

most intense scrutiny, to preserve accreditation's role in the certification process, they did not assuage Congress's skepticism of postsecondary education's ability to self-regulate in the public interest. Consequently, accreditation continued to face legislative threats in subsequent decades. The 1992 reauthorization debate and resolution reveal that higher education's insistence on autonomy from regulation successfully evaded significant regulatory intrusion, but at some cost in public confidence.

The Role of Public Perception

In different ways, the controversies in each case grapple with public perceptions of and trust in American higher education. The NDEA's loyalty oaths originated from a public perception, rooted in the Red Scare and McCarthyism, that universities were hot beds of communism and would corrupt students. Stanford's struggles to resolve the indirect cost recovery dispute was mired by negative press coverage which seized upon a national appetite for sensational stories of excess and elitism in higher education. Finally, the proposal to eliminate accreditation from the certification process in the 1992 HEA reauthorization emerged from salacious news reports of widespread fraud in trade schools across the country. In all three cases, higher education institutions may have met the requirements of the law, yet somehow failed to meet the expectations of legislators and the broader public. Higher education leaders and lobbyists can assume the confidence of neither. For decades, higher education has suffered from news reports that it costs too much, offers too little value, is too liberal, is not accessible to those who need it most, and out of touch with the country's economic priorities. Yet, each study highlights a higher education community that is more concerned with protecting the boundaries of its

autonomy, particularly in relation to free inquiry and self-regulation, than initiating substantive changes that would turn public opinion in their favor.

Peter Ewell called autonomy one of higher education's *frontier values*. He wrote that higher education operates with "the complete conviction that we can and should pursue our own self-actualizing goals as an enterprise, free of the 'unhealthy' influences of external market and political forces. In the past, we have consistently upheld the proposition that society's interests are served by advancing our own."³¹⁷ Ewell recognized that this conviction posed a threat to public trust in the academy. In addition to the saga of the 1992 reauthorization, Ewell may have had in mind a chorus of higher education leaders throughout the 1970s and 80s who vociferously opposed federal regulations and the bureaucratic mazes they spawned.³¹⁸ In that period, new laws regulating scientific research and reporting, workplace safety, student privacy, and employment and hiring policies prompted severe reactions from the academy. Harvard sociologist Nathan Glazer said such regulations were an "illegitimate expansion of governmental power" and an "unnecessary intrusion into the workings of autonomous institutions"³¹⁹ Paul Seabury, political science professor at the University of California Berkeley, said federal regulation would "spasmodically obliterate the dynamic diversity

³¹⁷ Ewell, "Accountability and the Future of Self-Regulation," 28.

³¹⁸ Richard M. Freeland, *Academia's Golden Age: Universities in Massachusetts, 1945-1970* (New York: Oxford University Press, 1992), 382; and Lawrence E. Gladieux, Arthur M. Hauptman, and Laura Greene Knapp, "The Federal Government and Higher Education," in *Public Policy and Higher Education*, ed. Lester F. Goodchild, Lovell, Cheryl D., Hines, Edward R., Gill, Judith I., ASHE Reader Series (Needham Heights, MA: Simon & Schuster Custom Publishing, 1997), 121.

³¹⁹ Nathan Glazer, "Regulating Business and Regulating the Universities: One Problem or Two?", in *Bureaucrats and Brainpower: Government Regulation of Universities*, ed. Paul Seabury (San Francisco, CA.: Institute for Contemporary Studies, 1979), 139.

of higher education.”³²⁰ Contemporary voices continue to echo these early denunciations of the federal government’s intervention into university affairs. Lawrence Bush, a sociologist at Michigan State University, claims that federal regulation of the university operates much like State Socialism, placing control of institutions in the “hands of largely unaccountable bureaucrats.”³²¹

These warnings and prognostications of higher education’s grim over-regulated future represent the entrenched opposition to an increasing federal role, even as it became highly dependent upon the federal government throughout the mid-twentieth century. I contend that unwavering fidelity to this anti-regulatory stance does not actually serve the high aims of American postsecondary education or impress a wary public. Rather, this position impedes, and perhaps precludes, open and rational dialogue about how to best navigate the federal partnership with higher education. I do not mean to imply that higher education leaders should blindly accept regulatory proposals in order to convince the general public that they are able to change. Instead, I advocate for a posture of openness and reflexivity as the higher education community engages in the complex work of forging new policy, seeking ways that higher education can assure the public of its quality, and nudge a diverse postsecondary landscape to make good on its promises. Harvard President Derek Bok, who was no fan of government regulations of higher education, wrote that, “educators often lack the objectivity and experience to balance their academic concerns against the separate interests that affect other groups in the society. Hence, public officials can properly consider whether or not to intervene, and

³²⁰ Paul Seabury, "The Advent of the Academic Bureaucrat," *ibid.*, 23.

³²¹ Lawrence Busch, *The Knowledge for Sale: The Neoliberal Takeover of Higher Education* (Cambridge, MA: MIT Press, 2017), 32-26, 132-34.

while we may attack their decisions as unwise, we cannot regard their actions as inherently wrong or illegitimate.”³²² This more generous approach is necessarily risky—it may require higher education leaders, institutions, or sectors to admit that changes in federal rules may promote better behavior and better outcomes, even as they generate more work to demonstrate compliance.

In the introduction of this dissertation, I pledged to question my own assumptions and previewed that some of them had shifted as a result of the scholarship presented here. Hours spent reading Congressional transcripts, letters, articles, and private notes of individuals on all sides of the debates explicated here did not always change my mind, but it challenged, even required, me to sympathize with alternative viewpoints and understand how they believed their arguments and policy proposals to serve the public good. The events in each case in this dissertation can easily become simplistic heuristics for government’s overreach into higher education’s affairs, but settling for those explanations does little justice to the multiplicity of views represented in the debates. The loyalty oaths were not just a distracting echo of McCarthyism. Stanford was not just a victim of a vindictive contracting officer and self-serving legislators. And accreditation was not just attacked in the 1992 HEA reauthorization process because of a few bad apple institutions. In all three instances, higher education leaders contended with adversaries that held some valid viewpoints and, in their own ways, sought higher education’s best interests. Those of us who study, revere, and devote our lives to higher education should resist the temptation to see such controversies in reductive thumbnail views and challenge ourselves to seek a deeper, more complex, more humanizing

³²² Derek Bok, "The Federal Government and the University," *Public Interest*, no. 58 (1980), 96.

understanding of higher education's now seemingly permanent partnership with the federal government. These histories offer no prescription for the regulatory debates ahead, but rather call us to approach them with the same critical open-mindedness with which we aspire to approach all scholarly endeavors.