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Accreditation Under Fire: How Striking a Balance Between Accreditor Accountability and Autonomy Can Strengthen Educational Quality

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Comments

Accreditation Under Fire: How Striking a Balance Between Accreditor Accountability and Autonomy Can Strengthen Educational Quality

Tyler J. Bischoff*

> *"[H]igher education in the United States has grown to become a vast enterprise comprising some 4,500 different colleges and universities, more than 20 million students, 1.4 million faculty members, and aggregate annual expenditures exceeding 400 billion dollars."*[1]

INTRODUCTION

The higher education system in the United States is often perceived as one of the most comprehensive and prestigious systems in the world.[2] Over the past fifty years, higher education has experienced tremendous success, exhibited by a rise in student enrollment, increased involvement in communities, and

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1. DEREK BOK, HIGHER EDUCATION IN AMERICA 9 (2013).

2. *See* EDUARDO M. OCHOA, *Foreword* to PAUL L. GASTON, HIGHER EDUCATION ACCREDITATION: HOW IT'S CHANGING, WHY IT MUST, at ix (2014).

enhanced academic opportunities for students across the world.[3] Research institutions in the United States are "revered for their national and international contributions," and the benefits they provide are indisputably significant.[4] The vast integration of colleges and universities in our society has inevitably made higher education indispensable.[5] Although it remains unclear precisely why higher education has boomed over the past decades, it is very likely that, in part, this boom has occurred because of the continuous improvements in the *quality* exhibited at these institutions.

Over a century ago, society began to focus on the quality of education provided in its schools.[6] The first voluntary association of postsecondary institutions was established "to define the difference between high school and college" and to establish educational standards.[7] In the years that followed, regional associations formed and created accrediting bodies that implemented standards and guidelines.[8] Membership in these associations required adherence to the developed standards.[9] Initially, the purpose of accrediting colleges and universities was solely to ensure academic quality, which included "the desire to encourage institutions to improve, facilitate the transfer of students, inform employers of graduates about the quality of education received, . . . and supply the general public with some guidance on which institutions to attend."[10] Although these purposes are still as important today as they were in the past, accrediting agencies now play a significant role when it comes to federal funding of higher education.

In 1965, Congress passed the Higher Education Act (HEA or

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3. W. NORTON GRUBB & MARVIN LAZERSON, THE EDUCATION GOSPEL: THE ECONOMIC POWER OF SCHOOLING 69 (2004); EUGENE P. TRANI & ROBERT D. HOLSWORTH, THE INDISPENSABLE UNIVERSITY: HIGHER EDUCATION, ECONOMIC DEVELOPMENT, AND THE KNOWLEDGE ECONOMY 3 (2010).

4. GRUBB & LAZERSON, *supra* note 3, at 69.

5. *See* TRANI & HOLSWORTH, *supra* note 3, at 3.

6. *See* ALEXANDRA HEGJI, CONG. RESEARCH SERV., R43826, AN OVERVIEW OF ACCREDITATION OF HIGHER EDUCATION IN THE UNITED STATES 1 (2014).

7. *Id.*

8. *Id.*

9. *Id.*

10. JEFFREY W. ALSTETE, COLLEGE ACCREDITATION: MANAGING INTERNAL REVITALIZATION AND PUBLIC RESPECT 3 (2007) (internal citations omitted).

the Act)[11] to "strengthen the educational resources of our colleges and universities and to provide financial assistance for students in postsecondary and higher education."[12] Today, under HEA, in order to receive the financial benefits available under the Act, colleges and universities must be accredited by a recognized accrediting agency listed by the Department of Education (DOE).[13] Thus, accrediting agencies act as "gatekeepers" of federal funds.[14] Although many might think that the government would act as its own "gatekeeper" to the funds it appropriates, a distinguishing feature of accrediting agencies is that they are all non-governmental entities.[15] Congress wanted to ensure that students were using their federal funds at "credible, legitimate and quality institutions," but rather than creating an entirely new system to measure "quality," Congress simply utilized the already-established accreditation system to achieve its goal.[16] In 2016, the DOE provided approximately $125.7 billion in aid to millions of students attending thousands of postsecondary educational institutions.[17] Thus, it is self-evident that Congress has a strong interest in ensuring that federal funds are spent appropriately; however, it is largely left to accreditors to decide how that is

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11. In 1965, Congress passed the Higher Education Act of 1965, Pub. L. No. 89–329, 79 Stat. 1219 (codified as amended at 20 U.S.C. §§ 1001–1161aa-1 (2012)).

12. *Id*. Although some sources refer to postsecondary and higher education as different types of education, for the purposes of this Comment, both terms will be used to describe any education after high school.

13. 20 U.S.C. § 1099b(a) (2012).

14. Doug Lederman, *Accreditors as Federal 'Gatekeepers'*, INSIDE HIGHER ED (Jan. 30, 2008), https://www.insidehighered.com/news/2008/01/30/accredit.

15. *See The Database of Accredited Postsecondary Institutions and Programs*, U.S. DEP'T OF EDUC., https://ope.ed.gov/accreditation/ (last visited Oct. 14, 2017).

16. STAFF OF S. COMM. ON HEALTH, EDUC., LABOR & PENSIONS, HIGHER EDUC., 114TH CONG., REP. ON HIGHER EDUCATION ACCREDITATION CONCEPTS AND PROPOSALS 2 (Comm. Print 2015), https://www.help.senate.gov/imo/media/ Accreditation.pdf.

17. U.S. DEP'T OF EDUC., FEDERAL STUDENT AID: 2016 ANNUAL REPORT 8 (2016). The amount of federal student aid provided from the DOE has decreased slightly the past two years. *Id.* The DOE delivered nearly $134 billion in aid in FY 14, and approximately $128 billion in FY 15. U.S. DEP'T OF EDUC., FEDERAL STUDENT AID: ANNUAL REPORT FY 2015, at 7 (2015); U.S. DEP'T OF EDUC., FEDERAL STUDENT AID: ANNUAL REPORT FY 2014, at 100 (2014).

accomplished.[18]

In recent years, Congress has faced scrutiny about the crippling effects of student loan debt, the deceptive tactics used by for-profit colleges, and a tough job market for new graduates, in addition to a host of other higher education-related issues.[19] As a result, Congress has scrambled to face these critics and has shifted its focus to the non-governmental actors—the accrediting agencies. Members of Congress have accused accrediting agencies of heedlessly allowing colleges to partake in questionable practices.[20] Consider the example of Corinthian College, which declared bankruptcy and resultantly closed its campuses after regulators found unethical marketing strategies and astronomical loan default rates among its students.[21] Similarly, at Charlotte School of Law, the DOE denied the law school's application for recertification for failure to follow standards for admissions and curriculum.[22] Nevertheless, these are just two examples that illustrate why legislators are frustrated with accreditors.[23] These instances, among others, have led legislators and the media alike, to call for reform over the accreditation process as well as to the ways that students access federal student aid.[24]

Part I of this Comment will explore the accreditation system in the United States. Specifically, it will discuss how the accreditation system operates and why the current system is unique in providing quality improvements for its member

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18. Lederman, *supra* note 14.

19. *See* Oliver Bateman, *The For-Profit Law School That Crumbled,* THE ATLANTIC (Jan. 25, 2017), https://www.theatlantic.com/education/archive/2017/01/the-for-profit-law-school-that-crumbled/514355/; Gretchen Morgenson, *Woes for ITT, a For-Profit School, Bode Worse for Its Students*, N.Y. TIMES (June 10, 2016), https://www.nytimes.com/2016/06/12/business/woes-for-itt-a-for-profit-school-bode-worse-for-its-students.html.

20. *See* Morgenson, *supra* note 19 (Wilfred American Educational Corporation closed after routine falsifications of federal student aid applications were uncovered).

21. Lauren Gensler, *The World's Biggest For-Profit College Company, Laureate Education, Raises $490 Million In Public Debut*, FORBES (Feb. 1, 2017), http://www.forbes.com/sites/laurengensler/2017/02/01/laureate-education-initial-public-offering/#583142324374.

22. Bateman, *supra* note 19.

23. Gensler, *supra* note 21; Bateman, *supra* note 19.

24. *College Accreditors Need Higher Standards*, N.Y. TIMES (Oct. 20, 2016), https://www.nytimes.com/2016/10/20/opinion/college-accreditors-need-higher-standards.html.

institutions. Part II will discuss the concerns and criticisms of the modern accreditation system. Part III will argue that before legislators jump to wide-reaching reforms, they should strongly consider the benefits that our current accreditation system offers, and how striking a balance between accreditor accountability and the autonomy that was originally given, would achieve its goals of maintaining quality in our colleges and universities. In showcasing this balance, this Comment will examine the recent DOE decision to revoke the Accrediting Council for Independent Colleges and Schools' (ACICS)[25] accrediting powers by looking at regulations already under the HEA, and how consistent enforcement of these current regulations would be sufficient to strike this balance.

I. ACCREDITATION IN THE UNITED STATES

In the United States, an institution's "accreditation" is often associated with quality assurance, suggesting that an institution of higher education has met certain rigorous standards set forth by its accreditor.[26] It is not uncommon to walk into a university's admission office and hear admission officers advertising the university's academic accreditations in hopes of enticing students to attend. Even though many look to an accreditor's stamp of approval, very few know how the higher education accreditation system operates or the complexities that come along with it.[27] In the United States, there is no central control or oversight over postsecondary institutions like there is in other countries.[28] Accreditation is largely implemented by independent, non-governmental entities that create standards and require

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25. "ACICS is the largest national accrediting organization of degree granting institutions." ACCREDITING COUNCIL FOR INDEP. C. & SCH., http://www.acics.org (last visited Oct. 14, 2017).

26. Henry Lindborg & Stephen D. Spangehl, *U.S. Higher Education and Accreditation: A Quality Perspective*, ASQ HIGHER EDUC. BRIEF, Dec. 2011, http://asq.org/edu/us-higher-education-and-accreditation-a-quality-perspective.pdf.

27. See id.

28. HEGJI, *supra* note 6, at 1. For example, the European Association for Quality Assurance in Higher Education (ENQA) "promotes European co-operation . . . of quality assurance in higher education" among European Higher Education Area (EHEA) member states. EUR. ASS'N FOR QUALITY ASSURANCE IN HIGHER EDUC., http://www.enqa.eu/ (last visited Oct. 14, 2017).

compliance in order to gain membership.[29] However, although non-governmental agencies play a large role in this process, it would be misleading to say that the federal government plays no role at all.

Today, the federal government's primary role in accreditation is to maintain a list of accrediting agencies or associations that are "reliable authority" for the purposes of funding under the HEA. Many people are unaware that the federal government does not independently grant accreditation to institutions of higher education.[30] As of February 2017, the DOE recognized thirty-six accrediting agencies for Title IV funding purposes.[31] This recognition process is facilitated by the provisions enumerated in Section 496 of the HEA and Title 34 of the Code of Federal Regulations.[32] To gain recognition, the HEA has set forth specific standards and criteria that the agencies must adhere to.[33] An example of one of these requirements under Section 496 provides that after an accreditation agency or association is recognized as one, it must:

> Consistently appl[y] and enforce[] standards that respect the stated mission of the institution of higher education, including religious missions, and that ensure that the courses or programs of instruction, training, or study

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29. ELAINE EL-KHAWAS, INT'L INST. FOR EDUC. PLAN., ACCREDITATION IN THE USA: ORIGINS, DEVELOPMENTS, AND FUTURE PROSPECTS 14 (2001). The Council on Social Work Education is an example of an accreditation entity. *Id.* at 158.

30. *See* HEGJI, *supra* note 6, at 1; *see also* Lindborg & Spangehl, *supra* note 26.

31. *Accreditation in the U.S.: Accrediting Agencies Recognized for Title IV Purposes*, U.S. DEP'T OF EDUC., https://www2.ed.gov/admins/finaid/accred/accreditation_pg9.html (last modified Sept. 5, 2017). Title IV funding is implemented through programs authorized under Title IV of the Higher Education Act of 1965 that provide grants, loans, and work-study funds from the federal government to eligible students enrolled in college or career school. *See What are Title IV Programs?*, U.S. DEP'T OF EDUC., http://federalstudentaid.ed.gov/site/front2back/programs/programs/fb_03_01_0030.htm (last visited Oct. 14, 2017).

32. 20 U.S.C. § 1099b(c) (2012); *see* 34 C.F.R. §§ 602.10–602.38 (2016).

33. 20 U.S.C. § 1099b(a)(4)(B)(ii). If an agency seeks to include within its scope of recognition the evaluation of distance education or correspondence education, it must conform to requirements, such as requiring the institution to establish that the student who registers in a distance program is the same student who participates in the course. *Id.*

> offered by the institution of higher education, including distance education or correspondence courses or programs, are of sufficient quality to achieve, for the duration of the accreditation period, the stated objective for which the courses or the programs are offered.[34]

With the advent of new technologies over the past few decades, additional requirements have been included for agencies to gain and retain their recognition.[35] Thus, without formal recognition by the DOE, accreditors are unable to accredit institutions for purposes of federal funding.[36]

In addition to federal government recognition, the Council for Higher Education Accreditation (CHEA),[37] the primary non-governmental evaluator of accreditors, also exists to scrutinize and affirm the quality of accrediting organizations through a recognition process.[38] CHEA utilizes its own criteria and standards that have been determined as essential for quality assurance, and bases its recognition status on those elements.[39] Because differences between CHEA and DOE recognition exist, there are instances where accreditors may be recognized by one, and not the other.[40] Many consider DOE recognition paramount to CHEA because institutions of higher education must gain recognition from an accrediting agency that is approved by the

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34. *Id.* § 1099b(a)(4)(A).

35. For instance, colleges and universities have started to utilize distance learning and online technologies to offer classes taught solely online. Critics have contested whether a true online learning community can exist that provides the same educational experiences that in-classroom offerings provide. *See* RENA M. PALLOFF & KEITH PRATT, ONLINE LEARNING COMMUNITIES 4 (Rocci Luppicini ed. 2007).

36. 20 U.S.C. § 1099b(a).

37. CHEA, an association of 3,000 degree-granting colleges and universities, recognizes sixty institutional and programmatic accrediting organizations. *Summary of CHEA Principles and Recognition Standards at a Glance*, (Council for Higher Educ. Accreditation, Washington, D.C.), Aug. 2015, http://www.chea.org/userfiles/uploads/chea-at-a-glance_2015.pdf.

38. *Id.*

39. *Id.* CHEA relies on standards that advance academic quality, demonstrate accountability, and encourage self-scrutiny and planning for change. *Id.*

40. JUDITH S. EATON, COUNCIL FOR HIGHER EDUC. ACCREDITATION, AN OVERVIEW OF U.S. ACCREDITATION 8 (2015). For example, the DOE recognizes seven regional accreditors, while CHEA recognizes six. HEGJI, *supra* note 6, at 3.

DOE to partake in student financial aid programs previously discussed.[41]

Although new requirements for agency recognition have been added over the years, the approach to accreditation has been largely undiminished in its attempt to assure and improve academic quality.[42] In the United States, accreditation typically takes on a form of self-regulation, which utilizes a self-study and peer review system, allowing an institution of higher education to evaluate its own practices, while allowing others from the education community to provide feedback at the same time.[43] Based on the standards and criteria created by the agencies, institutions of higher education are evaluated to determine their "quality" and these standards and criteria are later used to measure the institutions' improvements or deficiencies over time.[44] Once an institution is accredited, it must periodically partake in a reaccreditation process, which requires the institution to self-review against the agency standards, followed by peer review and judgment of whether the standards were met.[45] This intricate process is exclusively financed by colleges and universities, and thereby illustrates how successful non-governmental processes can work.[46]

A. Regional, National, and Programmatic Accrediting Agencies

Accreditation comes in different forms. While those who have attended a college or university may be familiar with the specific

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41. *See* AM. COUNCIL ON EDUC., ASSURING ACADEMIC QUALITY IN THE 21ST CENTURY: SELF-REGULATION IN A NEW ERA 18 n.5 (2012).

42. *See Call for Review and Comment,* COUNCIL FOR INTERIOR DESIGN ACCREDITATION (2011), https://accredit-id.org/2011/09/call-for-review-and-comment/ (last visited Oct. 14, 2017).

43. EATON, *supra* note 40, at 4.

44. *Id.* at 5.

45. *Id.* at 4. Periodic review, ranging "from every few years to as many as ten years," has become the norm. *Id.*

46. *Id.* at 8. "The work of accrediting organizations involves hundreds of self-evaluations and site visits each year, attracts thousands of higher education volunteer professionals, and calls for substantial investment of institutional, accrediting organization, and volunteer time and effort." *Recognition of Accrediting Organizations Policy and Procedures*, COUNCIL FOR HIGHER EDUC. ACCREDITATION, http://www.chea.org/4DCGI/cms/print.html?Action=CMS_Document&DocID=321&MenuKey=main (last visited Oct. 14, 2017).

accreditation of their respective academic program, other types of accrediting agencies exist as well. There are three general types of accrediting agencies in the country: regional, national, and programmatic or specialized accreditors.[47] While each play important roles, their focuses often differ. The DOE recognizes only thirty-six accrediting agencies for Title IV funding purposes; however, dozens of other accreditors exist.[48] Some of these accreditors are capable of accrediting entire institutions, where others seek only to accredit an individual program.[49]

The DOE recognizes seven regional accrediting agencies that operate throughout the country.[50] As its name implies, these accrediting agencies focus on institutions in specific geographic locations throughout the country.[51] Collectively, these agencies accredit approximately 3,050 public and private institutions, focusing primarily on nonprofit and degree-granting institutions.[52] Regional accreditation is often looked upon as the "gold standard" of accreditation because these agencies can grant accreditation status to an entire institution, which includes all the academic programs the institution offers.[53] Not only does it allow the institution to participate in Title IV funding programs, it often provides benefits to students such as easier transferability of credits between institutions and favorable admission outcomes for applicants to graduate degree programs.[54]

Similar to regional accreditors, national accrediting agencies

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47. HEGJI, *supra* note 6, at 3–5 (reporting that regional "accrediting agencies concentrate on specific regions of the country" and grant accreditation status to an entire institution; national accrediting agencies "operate across the United States and also accredit entire institutions"; programmatic or specialized accrediting agencies "also operate nationwide" and grant accreditation status to "single-purpose institutions").

48. U.S. DEP'T OF EDUC., *Accreditation in the U.S.*, *supra* note 31.

49. HEGJI, *supra* note 6, at 3–5.

50. *CHEA- and USDE-Recognized Accrediting Organizations*, (Council for Higher Education Accreditation, Washington, D.C.), July 2017, http://www.chea.org/userfiles/Recognition/CHEA_USDE_AllAccred.pdf; U.S. DEP'T OF EDUC., *Accreditation in the U.S.*, *supra* note 31.

51. HEGJI, *supra* note 6, at 3.

52. *Id.* at 3 & n.7.

53. *See Accreditation of Colleges and Universities: Who's Accrediting the Accreditors?*, THEBESTSCHOOLS, http://www.thebestschools.org/degrees/accreditation-colleges-universities/ (last visited Oct. 14, 2017).

54. Id.

operate throughout the United States and may grant full accreditation status to an entire institution. These institutions typically focus on career and single-purpose schools, including distance learning institutions.[55] These accreditors are often broken down into two distinct types: faith-based and career-oriented accreditors.[56] Faith-based accreditors typically review religiously affiliated institutions, which make up approximately 470 institutions in the United States.[57] The career-oriented accreditors accredit approximately 4,298 institutions, primarily ones that are for-profit status.[58] While accreditors across the board have been scrutinized, career-oriented accreditors have faced the most pressure from the public for allowing the institutions they accredit to partake in questionable practices.[59]

Instead of granting accreditation status to an entire institution, accreditors exist that focus on accrediting specific academic programs offered at institutions or accrediting single-purpose institutions.[60] These accreditors are commonly referred to as "programmatic" or "specialized" accreditors. Commonly, specific programs are accredited by a programmatic accrediting organization even though the institution that hosts this program

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55. HEGJI, *supra* note 6, at 4. Distance learning is "an educational process where students receive instruction through online classes, video recordings, video conferencing, or any other audio/visual technology medium. It enables people to receive education without having to be physically present in a classroom." *What is Distance Learning?,* EDUCATIONCORNER, http://www.educationcorner.com/distance-learning/what-is-distance-learning.html (last visited Oct. 14, 2017).

56. HEGJI, *supra* note 6, at 4. "Faith-based" accreditors review doctrinally based institutions. The Transnational Association of Christian Colleges and Schools is an example of a faith-based accreditor. "Career-oriented" accreditors review mostly proprietary institutions, many of which are single-purpose institutions. The National Accrediting Commission of Cosmetology Arts and Sciences, Inc. is an example of a career-oriented accreditor. *Id.*

57. Id.

58. Id.

59. *See, e.g.*, Morgenson, *supra* note 19.

60. HEGJI, *supra* note 6, at 4–5 (examples of single-purpose institutions include those that focus on engineering and technology); *About Accreditation*, COMM'N ON ACCREDITATION OF ALLIED HEALTH EDUC. PROGRAMS, https://www.caahep.org/Accreditation.aspx (last visited Oct. 14, 2017) (examples of specific academic programs include law schools, medical schools, and nursing programs).

already holds accreditation by a regional or national accreditor.[61] When a specific program seeks individual accreditation, this indicates that the program meets certain requirements that may be required for a particular field of study.[62] Take a law school for example. Typically, law school programs are under the umbrella of an institution already accredited by a regional accreditor. This accreditation in and of itself would qualify students in the program to use federal student aid to attend the program. However, most law school programs seek accreditation from the American Bar Association (ABA), a programmatic accreditor, because bar admission for new graduates in many states is contingent upon attending an ABA accredited law school.[63] Thus, programmatic accreditation often serves other purposes than the ability to exclusively receive Title IV funding.

B. How Accreditation Improves Quality

Improving quality at institutions of higher education is no easy feat. The accreditation system that exists today has been built upon a system that not only focuses on maintaining quality at institutions of higher education, but also on finding ways to improve that quality. While the DOE has incentives to maintain a certain level of quality for eligibility in its funding, the traditional accreditation process provides other benefits.[64] It seems that there would be little benefit for "established institutions of higher education to participate in accreditation if the only goal were assurance of minimum quality."[65] Federal funding is undoubtedly a pertinent benefit of accreditation. Improving institutional quality, however, helps institutions keep a competitive edge over their peer intuitions and helps attract stronger students and faculty to their campuses.

The distinctive non-governmental, self-assessment, and volunteer peer review components that the accreditation process

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61. HEGJI, *supra* note 6, at 4–5.

62. *Id.* at 5.

63. *See* NAT'L CONF. OF BAR EXAMINERS & A.B.A., COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2015, at 8–9 chart 3 (2015).

64. STAFF OF S. COMM. ON HEALTH, EDUC., LABOR & PENSIONS, *supra* note 16.

65. Judith Areen, *Accreditation Reconsidered*, 96 IOWA L. REV. 1471, 1482 (2011).

uniquely relies upon helps improve quality at these institutions. The independence and autonomy that colleges and universities have been given, free from prohibitive government control, allows them to continue to evolve and improve in this global economy without being shackled by regulations.[66] Utilizing non-governmental accreditors also allows the agencies to adapt and set appropriate standards for the wide variety of institutions of higher educations that exist. For example, measuring the quality of a business school and the quality of a medical school may be very different, and allowing accreditors to assess this without government obstacles is important. Defining what "quality" means is a difficult task, so providing deference to accreditors to create these standards and processes helps improve quality at different types of institutions.

Self-evaluation by institutions of higher education also helps improve quality. Without taking time to truly examine the many facets of an institution, it would be difficult to assess the progress being made in any one area. The self-evaluation process allows institutions to first assess themselves against the standards set by the accreditor, before review by their peers.[67] This process allows the institution to look at itself honestly, to assess how it measures up against the standards put forth, and also allows it to take note of where it excels and where it is deficient. Because this process is done periodically, it ensures that institutions will continue to evaluate themselves in order to continuously address the quality they strive to provide.

Furthermore, peer review may be one of the most important features of the process. Peer review in the accreditation process is based on the assumption that higher education quality is best served through a process that allows peers of an institution, typically professionals informed on the best practices in the industry, to make judgments that determine if the quality is met.[68] During the process, professionals contribute their time and

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66. *See* Alexander W. Astin, *Accreditation and Autonomy,* INSIDE HIGHER ED (Feb. 18, 2014), https://www.insidehighered.com/views/2014/02/18/accreditation-helps-limit-government-intrusion-us-higher-education-essay.

67. *See* EATON, *supra* note 40, at 5.

68. *The Roles and Responsibilities of an HLC Peer Reviewer*, HIGHER LEARNING COMMISSION, https://www.hlcommission.org/Peer-Review/peer-reviewer-roles.html (last visited Oct. 14, 2017).

expertise in various ways, such as helping to establish standards, visiting and inspecting member institutions, and ultimately making determinations on whether the standards were met.[69] Knowledge sharing not only benefits the institution being evaluated by receiving feedback from its peers, but also benefits the professionals that volunteer to help with the evaluation.[70] Participating in the process allows the volunteers to take the lessons they have learned back to their own institutions, in addition to bringing that knowledge to subsequent visits as evaluators.[71]

II. CONCERNS AND CRITICISMS OF MODERN ACCREDITATION

Not surprisingly, a comprehensive system like accreditation, with annual expenditures in the billions of dollars tied to the process, faces sharp criticism. Although this Comment will not explore all the challenges, issues, and criticisms of the system, it is helpful to know the context through which some of these concerns and criticisms might arise. As previously mentioned, in recent years, Congress has faced scrutiny about the crippling effects of student loan debt, the deceptive tactics used by certain institutions of higher education, and a tough job market for new graduates.[72] As a result, many have criticized accreditors.[73] These criticisms often arise from the context of for-profit colleges accredited by various national accreditors; however, there are ample critiques of the whole accreditation process in general.[74]

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69. *Id.*

70. *See id.*

71. Areen, *supra* note 65, at 1492.

72. Chris Kirkham, *For-Profit College Recruiters Taught To Use 'Pain,' 'Fear,' Internal Documents Show*, HUFFINGTON POST (Feb. 8, 2011, 4:23 PM), http://www.huffingtonpost.com/2011/02/08/for-profit-college-recruiters-documents_n_820337.html (discussing fear, emotion, and pain-based pressure tactics used by for-profit college recruiters to increase enrollment and secure additional federal student-aid); Annie Waldman, *Department of Education Demands Greater Accountability from College Accreditors*, PROPUBLICA (Nov. 6, 2015, 9:15 AM), https://www.propublica.org/article/department-of-ed-demands-greater-accountability-from-college-accreditors (quoting Under Secretary of Education, Ted Mitchell, who proclaimed, "[w]e will not be able to make accreditation do the work it needs to do for students and taxpayers without congress stepping up.").

73. Kirkham, *supra* note 72; Waldman, *supra* note 72.

74. *See* Kirkham, *supra* note 72; *see also* Waldman, *supra* note 72.

The Institute for College Access & Success reported that "seven in [ten] (68%) college seniors who graduated from public and nonprofit colleges in 2015 had student loan debt," with "an average of $30,100 per borrower."[75] This four percent increase from 2014 clearly shows the imminence[76] of the student loan crisis.[77] However, the report did not take into account for-profit institutions because few of these schools report student loan debt data.[78] Today, some project that there are "more than 44 million borrowers with $1.3 trillion in student loan debt in the U.S. alone."[79] Accreditors have faced scrutiny because many for-profit institutions exhibit high percentages of students that accept student loans resulting in default.[80] The default rate for nationally accredited colleges is substantially greater than other types of accreditors, and many argue that accreditors should not continue to allow for-profit institutions to utilize these practices that foster such crippling results.[81] Specifically, some worry that "accreditors' lax approval standards can open the door to mass fraud" by these for-profit institutions.[82] Part of the reason for concern is that

> students attending nationally accredited colleges are

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75. DEBBIE COCHRANE & DIANE CHENG, THE INST. FOR COLL. ACCESS & SUCCESS, STUDENT DEBT AND THE CLASS OF 2015, at 1 (2016), http://ticas.org/sites/default/files/pub_files/classof2015.pdf.

76. *See id.* at 5–6 (illustrating, by state, the percentage of graduates of public and non-profit four-year colleges who graduated with student loan debt). For example, New Hampshire, on the high end of the spectrum, reported 76% of students who graduated with an average of $36,101 in student debt, while Utah, on the low end of the spectrum, reported 50% of students who graduated with an average of $18,873 in student debt. *Id.*

77. *See id.* at 5–6; *see also* Zack Friedman, *Student Loan Debt in 2017: A $1.3 Trillion Crisis*, FORBES (Feb. 21, 2017, 7:45 AM), https://www.forbes.com/sites/zackfriedman/2017/02/21/student-loan-debt-statistics-2017 ("Student loan debt is now the second highest consumer debt category – behind only mortgage debt – and higher than both credit cards and auto loans.").

78. COCHRANE & CHENG, *supra* note 75, at 2.

79. Friedman, *supra* note 77.

80. BEN MILLER, CTR. FOR AMERICAN PROGRESS, UP TO THE JOB? NATIONAL ACCREDITATION AND COLLEGE OUTCOMES 2 (2015), https://cdn.americanprogress.org/wp-content/uploads/2015/08/31134358/ Miller-Accreditation-brief-9.1.pdf.

81. *See id.* at 5.

82. *Id.* at 2.

> generally lower income; 62 percent of students at nationally accredited institutions receive Pell Grants versus 38 percent of students at regionally accredited institutions. But the borrowing difference should still be concerning because 78 percent of the credentials awarded per year at nationally accredited colleges are certificates. Many of these certificates do not lead to particularly high incomes and provide returns well below the expected results for bachelor's degrees, which make up 56 percent of the credentials that regionally accredited colleges award each year. Borrowing more for lower-return programs means that students may have more trouble paying off their student loans.[83]

These arguments arise from the idea that an accreditor, responsible for ensuring educational quality, is not adequately doing its job if it allows its member colleges to create a system where a sizable percentage of their students have little prospect of repaying the debt they have undertaken.

In addition to high student loan debt, Congress has held hearings over the past decade, which show that for-profit colleges used deceptive recruitment tactics, misconstrued their employment prospects, and in some instances, provided subpar educational experiences for their students.[84] These concerns are why some have called for more consumer protections for our students. With the growth of the for-profit college industry over the past two decades, there has been increased scrutiny of their business practices.[85] Particularly, "[s]tudent and employee allegations of impropriety" at some institutions have brought these questionable practices to light, creating fear that there is "systemic consumer fraud and abuse" taking place across the

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83. *Id.* at 5.

84. *For-Profit Colleges and Universities*, NAT'L CONF. OF ST. LEGISLATURES (June 3, 2013), http://www.ncsl.org/research/education/for-profit-colleges-and-universities.aspx.

85. THOMAS L. HARNISCH, AM. ASS'N OF STATE COLL'S AND UNIV'S, CHANGING DYNAMICS IN STATE OVERSIGHT OF FOR-PROFIT COLLEGES (2012), http://www.aascu.org/uploadedFiles/AASCU/Content/Root/PolicyAndAdvocacy/PolicyPublications/Policy_Matters/Changing%20Dynamics%20in%20State%20Oversight%20of%20For-Profit%20Colleges.pdf.

country.[86] The real fear is that these institutions are "enriching themselves rather than providing enriching academic experiences to students."[87] In response to these fears, Congress has called for stricter regulations, and many states have taken some action to provide "safeguards and transparency for students" and to help evaluate the most pertinent areas where these funds should be spent.[88] Although much of these criticisms have been focused toward for-profit institutions, the blame and criticism has also been shifted to accreditors for allowing these institutions to continue questionable practices with little repercussion.

In 2014, the United States Government Accountability Office (GAO) released a report that, in part, looked at what type of sanctions accreditors took against institutions that did not conform with the standards they put forth.[89] The GAO found that

> [o]ver a 4-1/2-year period, accreditors—independent agencies recognized by the Department of Education (Education)—sanctioned about 8 percent of schools for not meeting accreditor standards. They terminated accreditation for about 1 percent of accredited schools, thereby ending the schools' access to federal student aid funds . . . . From October 2009, when data were first consistently collected, through March 2014, when the latest data were released, GAO found that accreditors issued at least 984 sanctions to 621 schools, terminating the accreditation of 66 schools. Of sanctions issued in 2012, the most recent full year on reasons for sanctions at the time the study began, *GAO found that accreditors most commonly cited financial rather than academic*

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86. *Id.*

87. *Id.*

88. NAT'L CONF. OF ST. LEGISLATURES, *supra* note 84. For example, "Connecticut passed HB 5500 that requires each institution of higher education, including for-profit institutions licensed to operate in the state, provide uniform financial aid information to every prospective student who has been accepted for admission to the institution." *Id.*

89. U.S. GOV'T ACCOUNTABILITY OFF., GAO-15-59, HIGHER EDUCATION: EDUCATION SHOULD STRENGTHEN OVERSIGHT OF SCHOOLS AND ACCREDITORS 1–2 (2014). In addition, the GAO looked at how likely accreditors were to "sanction schools with weaker student outcome or financial characteristics by terminating their accreditation or placing them on probation." *Id.*

problems.[90]

The report ultimately asks whether accreditors' standards are adequately ensuring educational quality.[91] To support this, the report found that "schools with weaker student outcomes were, on average, no more likely to have been sanctioned by accreditors than schools with stronger student outcomes."[92] Thus, critics seem to argue that accreditors are not adequately assessing and holding member institutions responsible for academic-based violations.[93]

Although some critics disagree on whether enough is being done to ensure effective academic quality, part of the issue is how "quality" is defined. This disagreement stems from the different perspectives of what quality is and how to assess it. For the past thirty years, higher education professionals have tried to answer these questions.[94] However, one of the main challenges is that "quality is an elusive term for which there is a wide variety of interpretations depending upon the views of different stakeholders."[95] So it is easy to see that the way higher education professionals think about quality can be very different from the way legislators in both federal and state governments think about quality. For example, the Association of American Colleges & Universities' approach towards a liberal education is one that "empowers individuals and prepares them to deal with complexity, diversity, and change."[96] In addition, it describes a liberal education as one that "helps students develop a sense of social responsibility, as well as strong and transferable intellectual and practical skills such as communication, analytical and problem-solving skills, and a demonstrated ability to apply knowledge and

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90. *Id.* at preface (emphasis added).

91. *Id.* at 40. The report considered accreditor standards including academic quality, administrative capability, financial capability, integrity, governance, and institutional effectiveness, among other issues that do not fall within the enumerated categories. *Id.* at 45.

92. *Id.* at preface.

93. See id.

94. Laura Schindler et al., *Definitions of Quality in Higher Education: A Synthesis of the Literature*, 5 HIGHER LEARNING RES. COMMS. 3, 3 (2015).

95. *Id.* at 4.

96. *What Is a 21st Century Liberal Education?*, ASS'N OF AM. C. & U., https://www.aacu.org/leap/what-is-a-liberal-education (last visited Oct. 14, 2017).

skills in real-world settings."[97] This approach tends to exhibit the more traditional sense of education that is committed to providing students with a "moral, civic, and intellectual" curriculum.[98]

In contrast, today, the traditional goals of American education are often set aside because of the added pressure to make college more vocational-based.[99] Instead of focusing on the origins of the American education system of providing a traditional moral, civic, and intellectual education, the main concern has now become occupation or employment outcomes. It seems the government views quantitative outcome numbers (such as employment after graduation and graduation rates) as a way of defining and assessing quality, rather than more abstract factors such as moral, civic, and intellectual proficiency.[100] This divergence in thinking continues to lead to disagreement on how accreditation should be handled in the future, and who should be responsible for quality assurance.

III. THE FUTURE OF ACCREDITATION

In light of some of the perceived issues and criticisms in the accreditation system, a host of legislators and critics voiced their desire to overhaul the current system.[101] Some suggest that the government should play a more comprehensive role in the oversight process, while others call for an entire revamp of the accreditation system itself.[102] Reform of the system has already begun. In November 2015, the DOE announced a Transparency Agenda (Agenda) that ultimately gave the government greater influence in the accreditation process.[103] Some of the actions taken in this Agenda range from the DOE requiring accreditors to submit decision letters when accreditors place institutions on probation, to now publishing "student outcome measures for each institution alongside its accreditor" so users can have greater

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97. *Id.*
98. *See* GRUBB & LAZERSON, *supra* note 3, at 57.
99. *Id.*
100. *Id.* at 3.
101. *See* Waldman, *supra* note 72.
102. *Id.*
103. Press Release, U.S. Dep't of Educ., Department of Education Advances Transparency Agenda for Accreditation (Nov. 6, 2015), https://www.ed.gov/news/press-releases/department-education-advances-transparency-agenda-accreditation.

access to this information.[104] In addition, the Agenda announced legislative proposals calling for Congress to repeal current regulations so it would have authority to recognize accreditors based on "student outcomes and other risk-based criteria," and for Congress to "establish a set of standardized, common definitions and data reporting."[105]

Members of the Senate have also recently proposed a bill that would amend the HEA to create new government involvement with accreditation.[106] In September 2016, U.S. Senators Elizabeth Warren, Dick Durbin, and Brian Schatz introduced the Accreditation Reform and Enhanced Accountability Act of 2016.[107] Senator Warren's press release indicated that the "legislation would take steps to reduce student debt and to protect students and taxpayers by reforming higher education accreditation and strengthening the [DOE's] ability to hold accreditors accountable."[108] Ultimately, the bill addresses major issues and concerns facing accreditation and higher education, but it does so by taking away some of the autonomy given to accreditors to adapt standards to the diverse types of institutions they accredit.[109]

A. Striking a Balance

Although legislators have good reason to be concerned about the issues surrounding higher education in the United States,

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104. *Id.* The data being published includes "average net price for Title IV recipients, graduation rate, federal loan repayment and default rates, median debt of graduating students, post-school earnings, enrollment of Pell Grant recipients, enrollment of students over age 25 and part-time students, accreditation status, and heightened cash monitoring status." *Id.*

105. *Id.*

106. Press Release, Sen. Elizabeth Warren, Senators Warren, Durbin, and Schatz Introduce Bill to Reform Higher Education Accreditation and Strengthen Accountability for Students and Taxpayers (Sept. 22, 2016), https://www.warren.senate.gov/?p=press_release&id=1249.

107. *Id.*

108. *Id.*

109. Jamaal Abdul-Alim, *Stakeholders Divided Over Education Reform*, DIVERSE: ISSUES IN HIGHER EDUC. (Apr. 27, 2017), http://diverseeducation.com/article/95834/ ("As Congress seeks to reform the accreditation system for institutions of higher education, it should avoid a 'one-size-fits-all' approach that fails to take into account the varied missions of different colleges and universities that serve diverse student populations.").

there are consequences to implementing new regulations in this area. Few would deny that issues and concerns facing the accreditation system today need to be addressed. Legislators and the media are not overreacting; these concerns are important because the higher education system is vast and effects millions of people around the country and around the world. When the system does not work to its full potential, the fallout from these shortcomings can have a far-reaching impact. The concerns about high student loan debt, high default rates, deceptive tactics by institutions, and the other concerns previously discussed, are good reasons to reexamine what is being done and what laws already exist. However, before legislators jump to far-reaching reforms and regulations, Congress needs to evaluate the laws that are already in place, as many of them are sufficient to hold accreditors accountable for the dereliction of their duties.[110] The risk of swiftly jumping into far-reaching reforms, likely as an emotional response to these issues, is that the touchstones of the current accreditation system can be undermined by ceding too much control to the government actors involved.

When examining the current laws on the books today, there are a significant amount of "operating procedures" that accreditors must abide by in order to maintain their recognition by the DOE.[111] These operating procedures range from requiring accreditors to perform regular on-site inspections that "focus on educational quality and program effectiveness" to addressing complaints against its accredited institutions by "review[ing] in a timely, fair, and equitable manner any complaint . . . related to the agency's standards or procedures."[112] Accreditors are required to take "follow-up action" and "enforcement action," as necessary, based on the outcome of their review.[113] These requirements, among others, are the government's approach to assure that

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110. *See* Leo Doran, *Does Higher Education Accredidation Need Fixing?*, INSIDESOURCES (Apr. 27, 2017), http://www.insidesources.com/higher-education-accreditation-need-fixing/ ("It has never been and should never be the federal government's role to judge the quality of a school's education programs. Entrusting independent accrediting agencies with that responsibility protects academic freedom and student choice.").

111. *See* 20 U.S.C. § 1099b(c) (2012); 34 C.F.R. § 602 (2016).

112. 20 U.S.C. § 1099b(c)(1); 34 C.F.R. § 602.23.

113. 34 C.F.R. § 602.23(c).

accreditors will focus on academic quality at the institutions they accredit, and hold those institutions accountable. Notwithstanding these standards, the government also has the opportunity to take punitive measures against accreditors if it determines they failed to effectively apply the government's criteria. The law gives the government the discretion to limit, suspend, or terminate recognition.[114] The law explicitly states:

> (1) If the Secretary determines that an accrediting agency or association has failed to apply effectively the criteria in this section, or is otherwise not in compliance with the requirements of this section, the Secretary shall—
>
> > (A) after notice and opportunity for a hearing, limit, suspend, or terminate the recognition of the agency or association; or
> >
> > (B) require the agency or association to take appropriate action to bring the agency or association into compliance with such requirements within a timeframe specified by the Secretary, except that—
> >
> > > (i) such timeframe shall not exceed 12 months unless the Secretary extends such period for good cause; and
> > >
> > > (ii) if the agency or association fails to bring the agency or association into compliance within such timeframe, the Secretary shall, after notice and opportunity for a hearing, limit, suspend, or terminate the recognition of the agency or association.[115]

When looking at these options that the government has carved out for itself in the law, it seems that it has adequate ways to communicate with accreditors if it thinks its criteria is not being met.[116] It has developed a system where it can make recommendations to non-compliant accreditors and provide them

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114. 20 U.S.C. § 1099b(l)(1)(A).
115. *Id.* § 1099b(l)(1).
116. *See id.*

with an opportunity to correct their deficiencies.[117] After careful review, if the DOE concludes that the accreditor has not demonstrated compliance, it can submit the case to an advisory committee that will make its recommendation of what action should be taken.[118]

When looking at the options the government, and specifically the DOE, have in addressing accreditor accountability, it really comes down to an enforcement issue. The same behavior that the government is accusing accreditors of engaging in (i.e. not holding their member institutions accountable), is exactly what the government is doing with its accreditors. Instead of uniformly holding accreditors to the criteria in the laws and regulations that already exist, it seems clear that the DOE has stood idly by until pressure hit a tipping point that required it to take action. In response, Congress has proposed new laws and agendas that add stricter criteria that accreditors must utilize to evaluate their member institutions in hopes that it will address these issues.

If the DOE more uniformly applies the laws that already exist, it will better serve the higher education community and accrediting bodies because it will allow accreditors to keep the autonomy they need in order to adhere to standards around the "stated mission of the institution[s]" required by the HEA.[119] When accreditors are given more leeway, it allows them to encourage colleges and universities to try new innovative approaches without shackling them down with restrictive regulations. It seems manifest that new pervasive regulations for accreditors and the institutions they accredit will negatively affect the growth and innovation like we have seen over the past fifty years. The government's attempt to unilaterally decide what "quality" is by adding new criteria will undermine the accreditation system's distinctive non-governmental, self-

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117. 34 C.F.R. § 602.33.

118. 34 C.F.R. § 602.33(e)(1). The National Advisory Committee on Institutional Quality and Integrity (NACIQI) currently is a committee authorized to provide "recommendations regarding accrediting agencies that monitor the academic quality of postsecondary institutions and educational programs for federal purposes." Based on those recommendations, the Secretary of Education makes the final decision. National Advisory Committee on Institutional Quality and Integrity, U.S. DEP'T OF EDUC., https://sites.ed.gov/naciqi/ (last visited Oct. 14, 2017).

119. *See* 20 U.S.C. § 1099b(a)(4)(A).

assessment, and volunteer peer review features.[120] These features would become futile because institutions would have little need or incentive for self-assessment and peer review as long as their "student achievement measures" such as graduation rates, default rates, and repayment rates proposed in the new bill were met.[121] The government must strike a balance where it holds accreditors accountable to the criteria it has already put forth, while still giving accreditors the autonomy to allow their member institutions the ability to innovate and flourish. In striking this balance, accreditors must be able to keep sufficient autonomy to create its own standards. With increased regulations, Congress must appreciate the fact that it will stifle the progress that colleges and universities have the ability to achieve.

B. ACICS's Termination of Accrediting Rights

To illustrate a balance between accreditor accountability and autonomy, the DOE's decision to terminate the Accrediting Council for Independent Colleges and Schools' (ACICS) accrediting rights, the largest national accreditor, serves as an excellent example. Instead of adding extensive new criteria that accreditors must meet, the DOE evaluated ACICS under the current laws in place and held them to those standards. In June 2016, during ACICS's application process for renewal of DOE recognition, the national advisory panel on accreditors recommended that the DOE withdraw ACICS's recognition and cited violations such as failure "to verify job placements, identify institutions that were at risk and monitor educational quality."[122] Subsequently, Emma Vadehra, chief of staff to the DOE secretary, wrote a letter to the ACICS president notifying him that the DOE was "terminating the Department's recognition of ACICS as a nationally recognized accrediting agency," and cited 21 violations.[123] The letter

120. *See* Areen, *supra* note 65, at 1479–80.

121. Department of Education Advances Transparency Agenda for Accreditation, *supra* note 103.

122. Patricia Cohen, *Government Moves to Close a Watchdog of For-Profit Colleges*, N.Y. TIMES (Sept. 22, 2016), https://www.nytimes.com/2016/09/23/business/government-moves-to-close-a-watchdog-of-for-profit-colleges.html.

123. Letter from Emma Vadehra, Chief of Staff of Sec. of U.S. Dep't of Educ., to Roger Williams, Interim Pres., Accrediting Council for Indep. Colleges and Sch. (Sept. 22, 2016) (on file with author).

indicated that "ACICS's track record does not inspire confidence that it can address all of the problems effectively."[124] In response, ACICS filed an appeal and claimed that the prior findings against it were "arbitrary, capricious, an abuse of discretion [and] not in accordance with law."[125] That appeal was denied.[126] In a last attempt to undue the DOE's decision, ACICS filed for a temporary restraining order (TRO) asking a court to stay the DOE's decision, reinstate its recognition, and to enjoin the DOE from enforcing the DOE's requirements.[127] On December 21, 2016, a federal district court denied the TRO and indicated that ACICS failed to demonstrate (1) "substantial likelihood of success on the merits"; and (2) "that the 'balance of harms and public interest' weighed in favor of its request for emergency relief."[128]

In light of this decision, all the schools accredited by ACICS retain their federal aid eligibility for 18 months, but will have to seek a new accreditor within that time.[129] Those that are unable to secure a new accreditor will lose federal aid eligibility.[130] Although the decision seems harsh as it affects 245 institutions and hundreds of thousands of students, uniform DOE enforcement of its current criteria will serve two purposes.[131] First, by more uniformly and routinely taking action (not necessarily termination of recognition) against accreditors not meeting the applicable standards, it will incentivize the accreditors to hold the institutions they accredit to the standards they set or encourage them to administer their own sanctions against the institutions

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124. Id.

125. Melissa Korn, *Education Secretary Denies Appeal by College Accreditor*, WALL ST. J. (Dec. 12, 2016, 6:11 PM), https://www.wsj.com/articles/education-secretary-denies-appeal-by-college-accreditor-1481582554.

126. Id.

127. Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction at 1, Accrediting Council for Indep. Colleges and Schools v. King, No. 16-2448 (D.D.C. Dec 15, 2016), ECF No. 5.

128. *Alert: Judge Denies ACICS Motion for a Temporary Restraining Order*, COOLEY (Dec. 21, 2016), https://www.cooley.com/news/insight/2016/2016-12-20-judge-denies-acics-motion-for-a-temporary-restraining-order (citations omitted).

129. Paul Fain, *ASICS-Accredited Colleges Meet Federal Deadline*, INSIDE HIGHER ED (Jan. 10, 2017), https://www.insidehighered.com/quicktakes/2017/01/10/acics-accredited-colleges-meet-federal-deadline.

130. See id.

131. See id.

that do not meet those standards. Knowing that the DOE will terminate an accreditor's recognition status if the violations are not remedied incentivizes institutions to come into compliance because they recognize that without DOE recognition, their stamp of approval means very little, and will likely cause them significant financial harm. Second, by the DOE more uniformly and routinely taking action, institutions of higher education will also be incentivized to increase their quality and to ensure compliance with the standards put forth by their accreditors. Institutions will recognize that if their accreditor loses its recognition privileges, it will have limited time to try to find another accreditor. If the institution cannot secure one, the students attending those institutions will no longer be able to use federal student aid there. Thus, institutions likely will have financial setbacks without access to federal aid, which will incentivize them to meet the accreditors' standards. All of this can be done without adding additional government regulations. In striking this balance between accreditor accountability through DOE enforcement while still allowing some accreditor autonomy, it will foster a system that demands quality and will meet the expectations we have for our accreditation system.

CONCLUSION

The accreditation system in our country is comprehensive and complicated. Thousands of colleges and students rely on accreditors to give stamps of approval in order to gain access to our federal aid programs. This access is contingent on quality. But the job of ensuring quality is not just for accreditors; it is for the institutions being accredited, as well as the government. Although the accreditation process is largely touted as a non-governmental process, the DOE recognition process is crucial and is controlled by the executive branch. Towards the end of the Obama administration's time in office, we know the DOE took a more proactive and aggressive stance against accreditors like ACICS.[132] The government recognized that it needed to play a more visible role in accreditation by holding accreditors and institutions responsible for questionable practices. With the

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132. Id.

nomination and confirmation of Betsy DeVos as the new DOE secretary under the Trump administration, much of the policy initiatives will be up to her. Although it is early in this administration's tenure, some are questioning her decision to hire a chief compliance officer from a for-profit college as her new assistant, one that was facing multiple investigations at the time.[133] Many have expressed concerns that this new administration may try to scale back regulations for for-profit colleges instead of creating more protections for students.[134] Although these concerns are speculative, the higher education community can only hope that the DOE under the Trump administration will find the value in striking the balance between accreditor accountability and the autonomy they need to assure quality in our higher education system.

133. Patricia Cohen, *Betsy DeVos's Hiring For-Profit College Official Raises Impartiality Issues*, N.Y. TIMES (Mar. 17, 2017), https://www.nytimes.com/2017/03/17/business/education-for-profit-robert-eitel.html?mcubz=0.

134. Roger Yu, *Loosening of for-profit school rules worries student advocates*, USATODAY (Mar. 22, 2017, 5:15 PM), https://www.usatoday.com/story/money/2017/03/22/loosening-for-profit-school-rules-worry-student-advocates/99504116/.