

Impact of Federal Regulations at a University

D. C. Spriestersbach and William J. Farrell

At a recent meeting of federal liaison officers from various universities, one association representative remarked, "the last thing we need is another university president, giving a protest speech on what federal laws and regulations are doing to American higher education." His remark was not so much a criticism of the speeches that had been made but rather an implicit testimonial to their effectiveness. Over the last 24 months the outpouring of anguished presidential

speeches and protesting annual reports has captured the attention of both the Congress and the executive agencies (1). Because of these outcries, a congressional commission on paperwork pursued an inquiry into the problem of excessive information gathering, a Department of Health, Education, and Welfare (HEW) task force has published a set of recommendations to ease the problem, executive orders have gone forth to limit the number of regulations issued, and the agencies themselves have taken to generating "notices of intent" that ask questions rather than simply state proposed rules. In Congress, more than one bill has been introduced to minimize federal impact.

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The plea for "no more presidential speeches" is really a recognition that higher education has reached a new stage in confronting a vexing problem in governmental relations. The need for impassioned protest has passed; the time has come for a critical analysis of the problem. The phrase "federal impact" encapsulates a whole series of distinct issues, and, convenient as encapsulations are in the give-and-take of rhetorical bat-

bles, they have a way of presenting problems that, by their very presentation, defy solution. A federal agency's refusal to accept a proposal hand-delivered 20 minutes past deadline may be no less serious a matter than the costs of implementing OSHA (Occupational Safety and Health Administration) regulations—at least symbolically—but it is clearly a problem different in kind as well as scale. If we are to persuade others that higher education today has a trou-

bled relationship with the federal government, and if we are to recommend solutions, then we need to sort out the kinds of federal impact that higher education experiences, pinpointing our most serious concerns. To that end, the University of Iowa took an inventory last year of the various ways in which federal laws, regulations, and administrative decisions affect its daily operations. The purpose of the study was not to make a cost analysis of federal impact, nor was it to collect horror stories of federal intrusions. Rather its intention was to provide a reasonably comprehensive, detailed narrative of how extensive the federal presence is in the day-to-day activities of a fairly typical university.

Even in summary form, that inventory comes to 50 pages of particulars, covering five main categories of university administration: (i) employment and personnel administration, (ii) student affairs, (iii) sponsored research and training, (iv) facilities administration, and (v) hospital administration. The section on employment and personnel administration includes the impact of at least 12 major pieces of legislation, and it contains

the most familiar and most often cited examples of federal impact. The section on student-related administration surveys admissions, student records, student activities, and student services, including financial aids, placement, and counseling. A third section details the influence of federal regulation regarding research administration, grants management, and the treatment of human subjects, animal subjects, and inventions. A fourth section concentrates primarily on regulation related to safety [for example, OSHA, and the Environmental Protection Agency (EPA)], space utilization, physical plant, and radiation protection. The final section is devoted exclusively to the teaching hospital, and it encompasses a wide range of impacts, such as patient care review, drug control, blood management, licensure, accreditation and validation studies, accounting and billing, as well as building designs.

As we sifted through these data, it became apparent that we had encountered at least three different kinds of federal impact. The first and perhaps most familiar is the direct cost that some federally mandated programs impose on higher education. Social Security, OSHA, and Unemployment Insurance are typical of such programs. A second and less easily measured impact is the "hidden" administrative cost that many more federal programs generate in our colleges and universities. A third type of impact is less easily described, but it has to do with certain "opportunity losses" that regulatory constraints can create in an academic environment.

In each case both an economic and noneconomic issue are involved. Although it is tempting to think of the direct costs of federally mandated programs as purely a matter of dollars and cents, it is important to keep in mind that significant education trade-offs are at stake and that the issue goes beyond that of "affordability." Conversely, the impact of constraint may bear no obvious price tag, but resulting opportunity losses are as economically real as the dollars paid out for compliance with OSHA regulations. Nonetheless, each kind of impact poses a different kind of problem for an educational environment. Each presents a different complexity in measurement, and certainly each demands a different form of redress.

Dr. Spriestersbach is Vice President for Educational Development and Research and Dean of the Graduate College, and Dr. Farrell is Associate Vice President for Educational Development and Research at the University of Iowa, Iowa City 52242.

The Impact of Direct Costs

Generally speaking, programs, projects, or activities that require a direct outlay of funds by educational institutions are ones mandated for many kinds of institutions, not simply colleges and universities. Because the costs of such programs are easily determined, their costs have been frequently used to dramatize the dollar impact of federal law and regulation on higher education. A case in point is the American Council of Education (ACE)-sponsored study, *The Costs of Implementing Federally Mandated Social Programs at Colleges and Universities* (2), which analyzes the impact of 12 such programs on six different institutions. It is primarily on the basis of the programs studied that some have come up with the commonly made statement that "federal impact" costs higher education approximately \$2 billion annually or roughly the same amount it receives from all private sources combined.

It is not always clear, however, that the burden or incidence of these mandated programs rests squarely on the educational enterprise. Consider the following two cases. Some time ago, the University of Iowa estimated that the capital cost of complying with OSHA regulations would amount to about \$25 million, more than 16 times the amount appropriated for the University of Iowa for capital expenditures last year. Similarly, a private university in the ACE study attributed 10 percent of its federal impact costs to OSHA alone, while a public university in the same survey ascribed 25 percent of its costs to that program. A strong case can be made that such expenses are borne directly by the educational enterprise, at least in the case of private institutions. Major capital improvements can reduce funds available for educational programs, freezing their development or passing those costs on in the form of higher tuition. However done, the student ultimately bears the burden in reduced programs or greater expenses.

What has been said about OSHA-inspired costs cannot be said of a university's share of the Social Security tax, however. As George Rejda points out in his textbook, *Social Insurance and Economic Security*, "research studies generally support the hypothesis that all payroll taxes, whether paid out by employers or employees, are absorbed by labor in the form of lower wages" (3). A cross-sectional analysis of nations with high employer taxes, performed by Brittain at the beginning of the decade, reveals that the imposition of a payroll tax does tend

to reduce wages by roughly the amount of the tax (4). Indeed, in the very ACE study that raises the Social Security issue, salaries of academic and non-academic employees are cited as one of the three institutional expenditures that are growing more slowly than program costs and that "may be bearing some portion of the burden" (2, p. 20). This is very much in line with Rejda's view that, in the case of payroll tax increases, "money wages do not actually fall, but the firm recoups the higher . . . tax by granting lower wage increases" (3). In any event, it would appear questionable to argue that the educational program itself or student tuition bears the lion's share of the Social Security burden. Educators undoubtedly do, but in that respect they are no different from other wage earners who are subjected to payroll taxes.

It is important, therefore, in measuring the impact of federally mandated social programs on higher education to determine where the real incidence or burden of the cost finally falls. The very credibility of our protests assumes that we are focusing attention only on those programs that are unwittingly financing other social goods at the expense of higher education. Moreover, the solutions we propose must recognize the real incidence of social program costs. Legislation that would help colleges and universities to comply with OSHA regulations would undoubtedly provide significant relief from a major federal burden, especially in the private sector. On the other hand, those who would propose to help "labor intensive" education by shifting payment for Social Security from payroll taxes to general revenue are overlooking the critical matter of incidence, and their proposed solution would provide little help to higher education in the long run.

In those cases where the direct costs of a federally mandated program are borne by the educational enterprise, a powerful case can be made for federal support. The argument is not that education is more important than employee safety or job security, but rather that a public program which finances itself at the expense of other publicly financed programs seriously distorts the ability of the society to judge the costs and benefits of its social programs. The real evil here is that of hidden costs, and it is far more pronounced when we turn from federal laws and regulations that require an explicit outlay of funds to those that impose an implicit burden in the form of administrative tasks. This was the kind of federal impact that we were most interested in identifying.

The Impact of Hidden Costs

Only a handful of federal programs consciously require direct outlays of educational funds for other national objectives, but literally hundreds of laws, regulations, and executive orders place an immense, invisible burden of administrative tasks on higher education. Most of the articles on federal impact have focused on the horror stories, on the egregious examples of absurd regulation or bureaucratic officiousness; but these exceptions (and they are exceptions) constitute only a small part of the problem. What the University of Iowa survey revealed is that the "reasonable" regulations create the real burden.

In our payroll department, for example, the staff has taken on six administrative activities in recent years because of new federal laws and regulations. They include efforts (i) to record information needed for all employees covered under the Fair Labor Standards Act, (ii) to implement the rules surrounding the Supplemental Retirement Annuities Law, (iii) to monitor employee compliance with a new provision under the new Pension Law, (iv) to notify on W-2 forms an employee's participation in a qualified pension plan, (v) to conduct a federally mandated survey on employment in higher education, and (vi) to mail to new employees a statement required by the Federal Truth and Lending Act. There is not a horror story in the lot. Each requirement appears perfectly reasonable and even minor in nature. And yet these six activities alone required the addition of one new employee, five filing cabinets of new records, and \$15,000 in computer programming and reprogramming expenses. In similar fashion, in the personnel department, 17 duties required by federal laws and regulations have necessitated five new administrative positions and \$10,000 in computer programming costs, plus associated costs in space and facilities.

Often it is difficult to gauge the costs of such burdens. For the most part, new administrative tasks are simply absorbed by existing staff and existing resources. As these tasks mount, they gradually result in additional staff and attendant operating costs. "Recently, an administrative assistant was hired to assist at a cost of \$9,100," notes the respondent for the registrar's office; "the need for this new person came largely from the great burden the VA [Veterans Administration] places on the University" (5, p. 9). That is, little duties gradually accumulated until there had to be an actual addition in full-time staff, and then only on the basis

of judgment and inference can it be traced back to specific governmental duties.

In some cases, the costs are never evidenced, because they consume economies that are achieved in other sectors. Thus, speaking of the cost impact of the Buckley amendment, one administrator reports: "No estimate is available of man-hours and/or cost required by these new regulations. However, we have not been able to eliminate a clerical position we had planned to phase out." In measuring financial impact, in brief, it is important to take into consideration what might have been as well as what is.

It is difficult to distinguish between administrative tasks generated by law and regulation from those a university would undertake anyway. A case in point is the growth in financial-aids administration at the University of Iowa. Our financial-aids staff grew from two administrators and three clerical staff members in 1967 to seven administrators, five clerical staff, five graduate assistants, and six students on hourly wage in 1976-77. Salaries expanded from \$50,094 to \$155,905, and general expense from \$3500 to \$30,000 in 8 years. This dramatic growth reflects in part a growth in student-aid programs, as well as a university commitment to keep students fully informed on financial-assistance opportunities. It also reflects, however, the cost of frequent changes in reporting requirements for federal student-assistance programs. Similarly, the growth in the personnel department reflects the university's own commitment to affirmative action as well as regulatory mandates.

Because of these and other measurement problems highlighted by our survey, we doubt that federal compensation is the answer to this second kind of federal impact. In cases where some federal compensation is provided for administrative burden, it rarely if ever covers the actual costs. In most cases, the VA now reimburses the university for its work with a check for approximately \$4 per benefit recipient, for example; but the registrar's office (which performs much of the work) estimates that the university's real costs are close to \$20 per benefit recipient. The introduction of more administrative fees for services, coupled with the difficulty of measuring actual costs, might seem to justify the addition of still more administrative tasks, worsening rather than improving the invisible burden on colleges and universities. Moreover, in sharp contrast to federally mandated social programs, federally mandated administrative tasks may no more serve the interests of the federal

government than they do the institutions that implement them. Automatic compensation might stifle the only kind of protest that inefficient and ineffective regulations are likely to encounter, and that is the protest of those designated to implement the rules.

The real need is to eliminate regulations that are ineffective, useless, or too costly for the benefits they yield. For example, a task force of educators and federal administrators should look for:

1) *Frequent changes in reporting formats.* The report format under the Maternal and Child Health formula grants has changed every year for the last 6 years, requiring the maintenance of additional manual ledgers and expensive changes in automated fiscal accounting reports.

2) *Different federal agencies imposing different reporting requirements in the same information area.* Affirmative action is the classic case with the Department of Labor, the Office of Civil Rights, and HEW performing like but separate roles. More recently, when the Office of Management and Budget issued A-110 regulations for the various federal agencies, each agency in turn issued its own notice of intent to publish regulations on the regulations. The result will be multiple sets of regulations on the same guidelines.

3) *Individual reports that duplicate general contract provisions.* The National Institutes of Health requires a final invention statement and certification as part of every final report that duplicates assurances in a general University of Iowa-HEW institutional patent agreement.

4) *Reports whose costs and complexities far exceed those of comparable reports in the private sector.* Medicare-Medicaid requires a special 50-page accounting of hospital accounts that costs the University of Iowa hospitals \$48,000 annually. It is ten times as long and complex as accounting reports required by private carriers or those prepared for internal purposes.

5) *Multiple evaluations of the same activity.* The Social Security Administration is now conducting validation surveys of hospitals accredited by the Joint Commission on Accreditation of Hospitals to accredit the accreditor.

6) *Reporting requirements that ignore current educational practices in colleges and universities.* Recently the VA issued regulations that assumed implicitly that universities and colleges took daily class attendance.

7) *Approval or review procedures that involve multiple governmental units.*

Formula grant applications for a program to train social workers must first go through the state and then the regional office in Kansas City. Special project grants under the Health Professions Act must first be reviewed by the local Health Systems Agency and then by the State Health Systems Agency before going on to the regional office. This is a regional office requirement.

As far as the administrative costs of federal impact are concerned, the ultimate objective is to keep federal regulation lean and effective, neither to eradicate it nor to subsidize it. To this end there must be a partnership between educators and federal agencies for the drafting of efficient as well as effective regulations. The new "Notices of Intent" to publish regulations (NOI's) are a step in the right direction. Assessment of economic impact of legislation at the time of drafting (as proposed by Senator Herman Talmadge of Georgia), use of university consultants in the actual drafting of regulations (as proposed by former HEW Secretary Mathews), cost simulations of implementation prior to final regulations, cost-benefit analyses attached to proposed regulations, proper congressional oversight of the economic consequences of regulations, use of one agency to regulate one problem area, and the like, could go a long way in ameliorating this second kind of federal impact on higher education. None will solve the problem, of course. As long as higher education continues to rely on the federal government in the pursuit of its various missions, regulation will remain an important fact of academic life, and as long as frail humanity creates the regulatory code, ineffective and inefficient regulations always remain a threat. Like sound fiscal and monetary practices, however, good drafting procedures can control runaway inflation in the current cost burdens on universities and colleges.

Potential "Opportunity" Costs of Federal Impact

Whether direct or indirect, evident or hidden, financial costs still remain only one dimension of the problem. Although we have difficulty measuring what regulations have done to us, we have even more difficulty envisioning what they might have kept us from doing. We do not know whether discoveries have gone undiscovered, any inventions have been uninvented, or educational developments have been untried because of federal regulation. And yet negative con-

straint is every bit as important as positive command, and psychic burden is as critical as cost burden in determining the full impact of federal regulation. That is why, in our survey, we placed special emphasis on the constraints that administrators, instructors, and researchers might encounter in their daily experiences.

Although few project directors complained about the brunt of federal impact, many administrative staff members who experience the brunt of federal regulation directly do express a degree of exasperation. Consider the following comment on the Buckley amendment. "In my 16 years with this office, I have never encountered a more time-consuming, expensive, or frustrating federal law. It has taken valuable time that I should have been spending helping our candidates find positions. While I am not necessarily in disagreement with its intent, its abrupt passage and lack of clarity have caused great difficulty to this office, to employers, and, most importantly, to the candidates themselves" (5, p. 17). One cannot read this passage without concluding that something has been lost through time diversion and plain frustration in the writer's service to the candidates. It is not a loss that can be measured, but it is every bit as real as the dollars OSHA costs, perhaps even more real.

Now none of us needs a crystal ball to

foresee that, if regulatory burdens and constraints continue to grow, their effect will eventually reach beyond our protective layer of administrative staff to teachers and researchers (6). And it is conceivable that the psychic burden of regulation dramatized in the above passage will come to rest on scientific inquiry and humanistic learning just as heavily as it has come to weigh on placement. Although less tangible than OSHA costs, or even the payroll duties, this third kind of federal impact concerns us the most, because it could carry with it the highest social cost of all, namely, the loss of new knowledge, new creativity, and new understanding.

Such costs cannot be covered by federal subsidy. They cannot be prevented by new rules for writing regulations. They can be avoided only when those who regulate and those who are regulated share the same common objective, when they trust each other in the pursuit of that objective, and when they are both more intent upon the goal than the paces of their fellow runner. In a recent conference with several university presidents, HEW Secretary Califano epitomized the problem when he suggested that most regulations today are written as though they were for lawbreakers.

It seems to be no coincidence that the problem of federal impact emerged in this country after an era of riot on American campuses and in an administration

suspicious of the academic scene. A legacy of mutual mistrust remains, and it continues to generate a type of regulation that is instinctively heavy-handed. Such regulation might be subsidized or minimized by aggressive action on the part of educators, but its psychic burden will continue to grow until its cause is laid to rest. Although there is a need to subsidize the federally mandated programs that are truly borne by higher education, and although there is a need to resist with vigor the ineffective and inefficient administrative burdens imposed on our universities and colleges, there is also a need to restore the spirit of partnership and cooperation that once characterized the relation between state and gown. Without this, the opportunity costs to both will far exceed the costs of any positive burden.

References and Notes

1. For elaboration, see C. B. Saunders, Jr., *Educ. Rec.* 57, 217 (1976).
2. C. Van Alstyne and S. L. Coldren, *The Costs of Implementing Federally Mandated Social Programs of Colleges and Universities* (American Council on Education, Washington, D.C., 1976).
3. G. E. Rejda, *Social Insurance and Economic Security* (Prentice-Hall, Englewood Cliffs, N.J., 1975), p. 458.
4. J. A. Brittain, *Am. Econ. Rev.* 61, 110 (1971).
5. Office of the Vice President for Educational Development and Research, "Impact of Federal Regulations on the University of Iowa," an unpublished document (University of Iowa, Iowa City, 1976).
6. For comments on how federal impact is already affecting faculty, however, see B. L. R. Smith and J. J. Karlesky, *The State of Academic Science* (Change Magazine Press, New Rochelle, N.Y., 1977), chap. 1, p. 190.