

U.S. DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

PUBLIC REGIONAL HEARING ON
NEGOTIATED RULEMAKING

Friday, November 2, 2007
11:00 A.M. - 3:00 P.M.

Bayside Room
Sheraton Hotel
500 Canal Street
New Orleans, Louisiana

P R O C E E D I N G S

1
2 MR. BERGERON: Good morning.

3 I am David Bergeron. This is in
4 preparation for our conducting negotiated
5 rulemaking under the Higher Education Act of 1965.

6 I am David Bergeron, Director of Policy
7 and Budget Development in the Office of Post-
8 Secondary Education at the Department of Education.
9 And I am going to let my colleagues introduce
10 themselves, and then I will say some more things
11 about--that are preliminary, and I know that Diane
12 will want to add some welcoming remarks.

13 So, with that, I will give this to Diane.

14 MS. JONES: Hi, everyone. I'm Diane
15 Jones. I am the Assistant Secretary for Post-
16 Secondary Education.

17 Thanks for being here for the hearing. It
18 is a beautiful day outside, and I'm sure there are
19 a million other things you could think about doing,
20 but we really value the input that we get at these
21 hearings and through the negotiating sessions.

22 You know, we are proud that we delivered
23 three packages last week, and we think that the
24 process--the process works. It works well. The

1 comments that we get from you during regional
2 hearings during negotiation, and certainly in
3 response to the published proposed rules and
4 regulations, it is really helpful to us to make
5 sure that the final package that we put out there
6 is right and serves the purpose and, of course,
7 continues to meet our statutory requirements.

8 So, thanks for being here. We look
9 forward to hearing your comments, and we'll go
10 ahead and, I guess, get started.

11 MR. JENKINS: Good morning, everyone. I
12 am Harold Jenkins with the Office of General
13 Counsel, Department of Education.

14 MR. BERGERON: You know, I just want to
15 thank you all.

16 As Diane said, it is a great day outside.
17 I know that many of you have been here all week for
18 the Federal Student Aid Conference. I know others
19 have flown in this morning, and we appreciate
20 everyone who is here.

21 As Diane said, this is a really important
22 part of our process as we begin to think about
23 regulating under the College Cost Reduction Access
24 Act, and, you know, we've just gone through a very

1 extensive process coming out of the Higher
2 Education Reconciliation Act.

3 So, we're actually--have gotten some
4 practice at this. We probably will find this to be
5 an easier year, but we know that it is important
6 that we start the process with all of you and
7 getting your advice and counsel about the things
8 that we should be included in to be considered on
9 the negotiating agenda.

10 We will have another hearing in Washington
11 on the 16th of November, and then we will have a
12 concluding hearing in San Diego on the 29th. That
13 hearing, again, will be in conjunction with the
14 Federal Student Aid Conference so that it is easily
15 accessible to people who are in the financial aid
16 community, and allows us to be there and other
17 things in the conference. So, it has worked out
18 well, what we did last year, and I hope it will
19 this year.

20 You know, we will be closing nominations
21 for people to be serving on the negotiating
22 committee on November 29th. We welcome public
23 comment on the things we should be negotiating
24 until that date as well, and the details of that

1 are available in the Federal Register's notices and
2 on the Department's website.

3 Diane is wanting me to mention the data is
4 wrong on the website. It says the nominations
5 close on November 9th. We just left off a 2. And
6 the sad part of that is that it was wrong in one
7 place, and then we just copied that to someplace
8 else. So, it is wrong twice on our website. But I
9 think it is probably fixed by now. I know the
10 staff back in Washington has been working on that
11 over the past couple of days, and so I hope it is
12 right by now. With that, I would like to invite
13 the first commenter forward.

14 But as they come forward, it is Greg
15 Guzman. As they do that, you will see us wander in
16 and out from time to time. There will always be at
17 least one person sitting at this table; I promise
18 you that. But throughout the day, there will be
19 different faces, different people sitting in these
20 chairs, and just recognize that all of the
21 proceedings are being recorded.

22 We will have that--make that available on
23 our website as soon as we can after our hearings.
24 And so--and I know that Diane, who just sat down

1 for a minute, and I, as well as all of our staff,
2 go through these transcripts very carefully to make
3 sure that we hear from you as we develop the agenda
4 and proceed.

5 You can either use the microphone right
6 there or the one at the podium, depending on
7 whether or not you need to set paper down. So,
8 with that, I will turn it over to Greg.

9 Thank you, Greg.

10 MR. GUZMAN: Thank you. Only because I am
11 sick I am going to come up here. You guys can use
12 the clean, healthy one back there.

13 During the past three days, we have heard
14 Secretary Tucker and Secretary Jones both talk to
15 us about how concerned they are about students and
16 parents, and the entire direction of higher
17 education. They have pledged mechanisms of
18 transparency and accountability to students and the
19 taxpayers, yet they seem to have left out one very
20 important constituency as I see it, and that would
21 be the aid administrator.

22 For over 40 organized years, aid
23 administrators have been helping American families
24 achieve the dream. You heard Secretary Tucker say

1 in her listening session how important a role the
2 aid administrator plays in the success of students.
3 We have been doing this without regulation, without
4 oversight, and without recognition, because we
5 passionately care about what we do.

6 However, over the past two years, our
7 profession has been made out by the media and
8 politicians to be the bad guy. It wasn't already
9 bad enough that financial aid offices are
10 considered the most dangerous office to work on the
11 college campus, or that research shows that
12 financial aid is the most stressful occupation on a
13 college campus.

14 No. Now, we are asked by families if we
15 are on the take. We became used to the verbal and
16 physical threats for administering federal
17 regulations that we did not create.

18 Therefore, I now ask you to consider doing
19 something for all of us who sit on the front lines
20 of attacks for regulations that we did not create.
21 During this process, I ask you to consider
22 including in the loan forgiveness portion of the
23 CCRAA--to include financial aid administrators as
24 public service jobs.

1 Thank you.

2 MR. BERGERON: Thank you.

3 Eric Melis, would you come ahead and join
4 us at the microphone.

5 MR. MELIS: Thank you.

6 I am Eric Melis, Associate Director for
7 Financial Aid at George Mason University in
8 Fairfax, Virginia.

9 I have some real concerns with regard to
10 the redefinitions, or the additions to the
11 definitions of "independent student" in the CCRAA.
12 In particular, ward of the court. Number one, it
13 is very difficult to figure out what "ward of the
14 court" is. It always has been--because, in
15 speaking with one of my constituents, there are a
16 number of jurisdictions where the legal system
17 doesn't even recognize ward of the court as a
18 current status, as a recognized status.

19 I have some real concerns about the
20 definition of "ward of the court" at any time since
21 the age of 13. During the course of reviewing
22 dependency appeals that we see on a regular basis,
23 we have encountered a number of situations where--
24 there was a situation that lasted a very short

1 period of time in which the student was made "a
2 ward of the court," and then, the family situation
3 resolved itself. There was reconciliation and
4 everything went back to normal. And under these
5 guidances, it appear that student would now be
6 independent even though the family is fully capable
7 and willing to be the primary support for the
8 funding for the post-secondary education.

9 So, I would ask that we look very
10 carefully at how we use the term "ward of the
11 court," and how that is defined, both in
12 information provided to the aid administrators, but
13 also in information provided upfront to the parents
14 and students who are completing the application to
15 make sure we are capturing what is truly meant by
16 that status.

17 The same thing with regards to legal
18 guardianship. We have run into a number of
19 situations where a family has voluntarily, through
20 the courts, assigned legal guardianship to an aunt
21 or uncle or grandparent, not because there is some
22 issue with the family or the parent's unwillingness
23 to support, but because the family wants the
24 student to live either in the state in which the

1 school is located in hopes that they might secure
2 instate domicile, or just for the mere convenience
3 of geographic location and proximity to the
4 institution. And again, a situation like that, I
5 don't think, at least based on intent, that the
6 student really is an independent student, when it
7 is a matter of voluntary convenience.

8 I have some real concerns about the
9 emancipated minor issue, because, number one, the
10 requirements to get yourself, or get the student
11 declared emancipated as a minor, varies so greatly
12 from locality to locality. Even in my geographic
13 location, it is very easy for the family to have
14 the student, once they turn 18, be declared
15 emancipated. And though there is a declaration on
16 the part of both the parents and students during
17 that process, that the student has the resources to
18 be self-supporting as part of that process, there
19 is no follow-up validation of that.

20 And so, I know already during our
21 dependency appeals processes and in conversations
22 with students--we quite often have thrown to us
23 from the students, "I'll go get myself declared
24 emancipated. Will that make a difference?" So, we

1 already see the potential that this will be twisted
2 and used as a backdoor avenue to independent
3 student status.

4 So, I'd like to make sure that we look
5 very carefully during the process of negotiated
6 rulemaking in how we define those items.

7 Also, if we identify documentation
8 requirements, if there may be some. As a quality
9 assurance institution, I can pretty well assure
10 that during at least the first round of these new
11 statuses, that we would be verifying students who
12 were eligible under those categories to make sure
13 that we're capturing the right people. We would do
14 that as part of our institutional verification
15 process.

16 Do I still have any time?

17 I will just throw one other thing out
18 there, unrelated to the independent student status,
19 and that is--my concerns--and I know that these
20 have been echoed throughout the conference every
21 time this has come up about the TEACH Grant.

22 At George Mason, our teacher programs,
23 with the exception of Phys. Ed., are all graduate
24 programs. But, since part of the student

1 eligibility definition to be eligible for the TEACH
2 Grant is the plan to complete. I would assume that
3 undergraduates who plan to then pursue the graduate
4 teaching certificate or graduate teaching degree
5 would be eligible for consideration, given any
6 other eligibility criteria for the TEACH Grant.

7 So, potentially, we have the four years of
8 undergraduate study, although they would hit their
9 aggregate at \$16,000, we have the two years of
10 graduate study, and then, we have a period of time
11 beyond that which they can actually commence the
12 service component, because this is then treated as
13 an unsubsidized loan at the point of non-completion
14 of that service component. We have the potential
15 there for some pretty serious accrued interest
16 issues.

17 And I would just like to look very hard at
18 what we do or what we are required to do to counsel
19 these students who might be eligible for these
20 upfront about the potential financial ramifications
21 of taking these programs, because I'd hate to see
22 that sort of debt burden dumped on these students
23 so far down the road that they haven't anticipated
24 and aren't prepared to deal with.

1 Thank you.

2 MS. BERGERON: Thank you, Eric.

3 Yes, absolutely.

4 MR. JENKINS: I would just like to make
5 one comment on the first couple of suggestions.

6 As we go through negotiated rulemaking, we
7 in the Department, and also the negotiators from
8 the community, need to keep in mind that for this
9 particular exercise, we are restricted by the
10 leeway that the Congress has given us in the
11 legislation.

12 For example, some of the definitions, such
13 as those that were mentioned here, "legal
14 guardian," "ward of the court," these are in a
15 section of the law that, for whatever reason, we
16 are not allowed to regulate on.

17 Similarly, actually, the previous
18 suggestion that financial aid administrators be
19 considered to be providing public service for
20 purposes of loan forgiveness, that is something
21 that could only be considered if it turned out that
22 they fit within one of the statutory categories
23 that are already there for loan forgiveness.

24 So, although we are eager to hear

1 suggestions, and certainly we want to hear about
2 concerns, these are sort of the ground rules that
3 we all have to work on in the negotiated rulemaking
4 process.

5 MR. BERGERON: Very good point, Harold.

6 The one thing that would be helpful is
7 issues around documentation standard--what those--
8 those kind of things that we can address that
9 aren't specific to regulating the subject matter of
10 mean analysis might be helpful as, either now, as
11 we go through the public comment period--because I
12 think there, and when we think about TEACH Grants,
13 it is particularly critical that we do exactly what
14 you have indicated, which is either by regulation
15 or by just our consumer information that the
16 Department makes available, make clear the
17 potential implications of the TEACH Grants.

18 So, sometimes, what we'll do is get out of
19 this is things that we can do, and should be doing,
20 administratively and not regulatorily, and we will
21 take that back and address that through our
22 process. And there are some times where there are
23 statutory issues that constrain us, and we may need
24 to be thoughtful about how we address them without

1 negating the statutory intent.

2 So, with that, Georgia Whidden, from
3 Tulane, right here in town.

4 Thank you, Georgia.

5 MS. WHIDDEN: I had no idea I was going to
6 speak. So I just scribbled down some notes. I had
7 no idea.

8 I do want, first off, to say something.
9 You just mentioned that this hearing is for a
10 specific reason, and we should all be aware that
11 our comments may or may not result in anything, but
12 it actually brings to mind the fact that a lot of
13 us here have something to say, and sometimes we
14 feel if we just voice it, someone will hear it, and
15 something will come out of it. Whether or not it
16 is for this particular reason, I just want to kind
17 of put that out there.

18 MR. BERGERON: Well, let me just respond
19 to that. What we did from the public comments last
20 time--we sorted things out and said, "Well, this
21 isn't really regulatory. These are administrative
22 things that we could take back and we can work on."
23 Some of them have been implemented and some of them
24 haven't yet because they take a longer time.

1 Other things are statutory. Well, we
2 can't change the law through this process.
3 However, we may have another way that we can affect
4 that. So, I encourage people to express what their
5 concerns are, and we'll do the sorting out as to
6 how we resolve those particular issues through this
7 process, or some other process.

8 So, you know--and I'm thrilled that you
9 came even though you weren't really thinking you'd
10 say anything.

11 MS. WHIDDON: I wanted to express a couple
12 of concerns, and I'm a little scattered, but I will
13 start with the CCRAA's loan forgiveness program for
14 public service, which is a godsend for students I
15 know and love, which are, in particular, law
16 students who have chosen to go into public
17 services: public defenders or legal aid--legal
18 services.

19 This is a wonderful that has happened for
20 them and will help elevate opportunities in that
21 sector, and we will see some real value out of
22 this, and we are thrilled about it.

23 There is still one sort of perverted twist
24 that has been recognized, and I just want to--not

1 that you may necessarily be able to do anything
2 about it regulatorily, but it has to do with
3 whether or not you're married.

4 We did a presentation on this the other
5 day, and I asked the students the value of their
6 love, because if they really loved the person that
7 their--their girlfriend, or boyfriend, their
8 fiancé, they have to consider, in some cases,
9 whether or not they were worth \$100,000 over ten
10 years.

11 They might want to put it off, have a long
12 engagement--they might have a few children. That's
13 perfectly fine, but as far as the marriage part,
14 they may consider living in sin for a little while.

15 I think maybe, if there is anything that
16 can be done about this, perhaps it should be looked
17 at. I personally have tried to think of a way that
18 you could allow someone to actually legally be
19 married and get the same level of benefits. I
20 haven't been--I'm not that smart. But I do want to
21 point that out and put it on the record that it is
22 kind of a perversion that if you are someone who is
23 passionate about going into public service, and you
24 do have a high level of debt, that there is real

1 monetary incentive not to get married.

2 I just want to put that out there, at
3 least to someone who also is employed. So, that is
4 a little bit perverted.

5 The other thing I wanted to comment on
6 is--the TEACH Grant, even though we don't have a
7 teaching program at my school, I did want to kind
8 of put something out there. I hadn't heard it
9 talked about, but the TEACH Grant actually could be
10 looked at as a way to increase your Stafford Loan
11 limits.

12 You know, a 6.8 percent interest rate, for
13 some students, whether or not it is a grant or an
14 unsubsidized Stafford actually might not be such a
15 bad thing. So, you know, we're all bemoaning the
16 fact that this can turn into a loan, but actually
17 it is a loan at 6.8 that a student might not
18 otherwise be able to get. I just wanted to put
19 that out there.

20 Another thing that I wanted to also--this
21 is kind of unrelated. You did say that this was to
22 make comments for other areas that you might think
23 help financial aid.

24 We are all concerned about private

1 educational loans. We are trying to wash our hands
2 of being involved with these private lenders. You
3 know, that is not our concern, but it is absolutely
4 our concern.

5 And I think it would be remiss not to
6 point out that private educational loans directly
7 affect all of our students and families.

8 I have children. I get these mailings all
9 the time, and we can't look away. I do know the
10 Department is working with other agencies to look
11 at this. Please, please look at it very carefully.

12 Please put up some market barriers where
13 you can. The fly-by-night, small--you know,
14 selling products on QVC yesterday are now in--
15 student-lending guys are loving it. They are
16 sending stuff out to all the kids, and our hands
17 are almost tied in this.

18 Why is there a growth in private loans,
19 and why will there be an explosive growth in
20 private loans? We know it is because of the profit
21 incentive of the lenders. They are going to be
22 going after the private loans more and more because
23 it is less profitable to go to federal loans. That
24 is one thing.

1 The other thing is that parents don't want
2 to go through the trouble of filling out the FAFSA
3 in some cases. Some middle-income parents don't
4 want to go through the hassle of filling out the
5 FAFSA.

6 You've just made it a little bit more
7 difficult for everybody. The other day, I saw that
8 we are required at financial aid offices to
9 perform, by hand, matches that are right now
10 available through the federal databases.

11 I suggest that there is created a FAFSA
12 Lite, some sort of mechanism where a family can
13 say, "I want to be able to borrow for my child. I
14 want to be a responsible parent. I want to go
15 through the federal loan program, but I don't want
16 my children to see my financial information. I
17 don't want to provide the financial information,
18 but I would like to please be able to borrow this
19 in a quick, easy manner." That's the marketing on
20 all these private lenders: quick, easy, instant.

21 Why, with all these database matches in
22 place, can't there be a mechanism where a family
23 can go in and choose, "I just want to go through
24 the matches. I would like to borrow Parent Plus or

1 I would like my child to be able to borrow the
2 unsub without going through all that financial
3 rigmarole," because I think that is a real barrier.

4 And if we could hold that up and we could
5 say, "This is fast. This is easy. This is just as
6 fast and easy as that marketing piece you got in
7 the mail the other day." That's just a suggestion.

8 Another place where resources might be
9 able to be used from the Department rather than
10 through schools is actually through the lender
11 list. Certainly, lenders are vetted. Please tell
12 me they are vetted somewhere.

13 MR. BERGERON: I guarantee.

14 Just so you know, the primary agreement
15 that lenders have to participate in the FFELP
16 Program is through the guarantee agencies, and the
17 guarantee agencies are the ones that do the vetting
18 of lenders to determine their eligibility to
19 participate in the FFELP Program. So, that's where
20 that responsibility lies.

21 MS. WHIDDEN: Got it.

22 So, the guarantee agencies are vetting,
23 and there is a database of lenders.

24 Is there a database of these borrower

1 benefits that lenders may offer today and bring
2 away tomorrow?

3 MR. BERGERON: No.

4 MS. WHIDDEN: But we are, at the financial
5 aid offices, required to put those out there and to
6 determine once a year whether or not they are still
7 valid. Can't the guarantee agencies do that?

8 MR. BERGERON: Well, then you get in the
9 circumstances where the guarantee agencies are the
10 ones who are basically developing the preferred
11 lender list, and the prohibition of the restriction
12 is, "You can't prohibit a borrower's choice and
13 lend--or a guarantee agency." So, it gets very
14 circular.

15 We hear you. We absolutely hear you. And
16 we've been struggling with this, and we'll take
17 this back and do some more work around this issue.
18 Because yes, we hear you.

19 MS. WHIDDEN: All right. I think that is
20 all my ramblings.

21 Thank you.

22 MR. BERGERON: Thank you.

23 Melanie Amrhein.

24 MS. AMRHEIRN: And I do represent a

1 guarantee agency. I'm with the Louisiana Office of
2 Student Financial Assistance.

3 And Georgia, I think that's a great idea.
4 I think the guarantee agencies could help fill that
5 role with our agreements to the lenders if the
6 Department would sanction it, and I think we could
7 do so in a very honest and forthright way that
8 would not show any favoritism, but just lay out the
9 facts, is what I would recommend.

10 But my question actually is from the state
11 scholarship and grant area. On the College Access
12 Challenge Grants, and I did not see those mentioned
13 in the negotiated rulemaking, and I didn't know if
14 that was intentional, and does that mean that the
15 Department will totally regulate that program?

16 MR. BERGERON: College--the Access--

17 MS. AMRHEIN: The Challenge Grants.

18 MR. BERGERON: The Challenge Grants are
19 not in Title IV of the Higher Education Act. They
20 are not subject to negotiated rulemaking.

21 Likely, we will not regulate the program.
22 We will do a grant solicitation to get information
23 from the states about their desire to participate
24 in the program and get application from them, and

1 that the program will basically operate under the
2 Department's general administrative regulations
3 statute, and the application that the agency or
4 organization representing the state or the
5 philanthropic submits.

6 So, it is not something where we intend to
7 regulate or would regulate. Particularly, that is
8 only a two-year program.

9 With that, I am going to turn it over to
10 Diane.

11 MS. JONES: That being said, I have
12 another group of staff people back at the office
13 actually working right now to develop a
14 solicitation for that program. So, if you have
15 some ideas and suggestions, I'd love to hear them,
16 even though we are not going to go through a
17 rulemaking. We are in the process of developing a
18 solicitation. So, please let us know your
19 thoughts.

20 MS. AMRHEIRN: Great. Thank you.

21 MR. BERGERON: That is everyone who has
22 signed up to this point to testify.

23 So, if anyone else wants to testify, I
24 would ask that you go and see my friend Nikki, who

1 is standing by the door, and sign up.

2 The reason I suggest that rather than just
3 going to the microphone is our court reporter will
4 need that information in order to have a record, a
5 full record, of the hearing. So, if people want to
6 sign up, go and see Nikki, and we'll add you to the
7 list--or maybe we have one more.

8 MR. BERGERON: Jeremy Wichert.

9 MR: WICHERT: Jerome Wichert

10 MR. BERGERON: Jerome Wichert. Okay.

11 I have been telling my wife for the last
12 couple of days--like, the last month-and-a-half
13 that I have to go and get my glasses changed,
14 because I cannot read anything.

15 MR. WICHERT: Most of it is me. It is my
16 penmanship.

17 I guess the thing I wanted to just mention
18 is I am thinking about the lender lists, and in one
19 of the sessions the other day we talked about the
20 fact that you could possibly operate without a
21 lender list.

22 The issue that we really get into is
23 making this easy for students, and we use ELM as a
24 disbursement agent, and we still would like to be

1 able to use ELM. I'm okay with actually getting
2 rid of a lender list, but we still need to be able
3 to operate efficiently. And part of that is for
4 the school's purposes, and part of it is for the
5 student's purposes.

6 And without the ability to at least direct
7 in some manner--I don't think we could operate
8 efficiently for students with large volumes.

9 So, I just wanted to mention that.

10 MR. BERGERON: Thank you.

11 As I said, if others want to testify, go
12 and see Nikki and she'll sign up. Otherwise, we'll
13 just stay here for a little bit--well, somebody
14 will be here throughout the day taking testimony
15 from anybody who wants to come and testify, but
16 we'll let the transcriber take a little rest until
17 someone is ready.

18 MR. BERGERON: We have another person
19 signed up.

20 Jim Reed, from West Texas A&M.

21 Thank you, Jim.

22 MR. REED: Thank you, David.

23 I'd like to continue part of the
24 conversation that was started with Jeff in the

1 earlier session concerning the determination
2 concerning dislocated workers and other persons in
3 that venue.

4 A very great concern that we have at the
5 institutions, as I voiced there, is that we will
6 find ourselves with people submitting themselves as
7 dislocated halfway through the year, three-fourths
8 of the way through the year, and asking us to do
9 dependency overrides for their children at that
10 point in time.

11 The other thing that concerns me about the
12 independency thing is the portion concerning--how
13 to best put this--the homeless student, and I think
14 the Department is going to really need to help us
15 as far as giving us some very clear not only
16 guidance, but perhaps some documentation that we
17 can ask for to ascertain as to whether a student
18 falls into this point.

19 I think the gentleman made a valid point
20 earlier that this is something we all struggle
21 with, along with the emancipated minor. It is a
22 point that we cannot seem to communicate in
23 anything that we share with parents and students.

24 Part of it, of course, is tied to the age-

1 old conflict of the regulations saying that a
2 student is not independent until they attain the
3 age of 24, where we live in a society where the--
4 quote often, families determine that, when a
5 student completes his or her high school education,
6 that they have then become an adult, and separate
7 themselves.

8 And we find ourselves discussing with
9 students ad infinitum, ad nauseum about, "Well, my
10 parents don't provide any support to me."

11 "Well, do you have contact with your
12 parents?"

13 "Well, I only see them twice a year," or
14 "I know where they live," and yet we find ourselves
15 having to enforce the rule that says, "If there is
16 no instance of abuse or some other mitigating
17 circumstances, that you're still a dependent
18 student."

19 And I'm really concerned that the points
20 concerning emancipation and homelessness are going
21 to fall into this same category, and we're going to
22 have an immense amount--a drastic influx of people
23 rushing to get these things acquired when they
24 determine that their son or daughter, by doing one

1 of these things, can then evade having to include
2 their tax information. And I just wanted to voice
3 that very strong concern.

4 Thank you.

5 MR. BERGERON: Thank you.

6 And with that, we will wait until we have
7 another person sign up.

8 MR. BERGERON: It is about noon, and so
9 we're going to go ahead and adjourn until 1:00,
10 since there is no one signed up to speak, but we'll
11 reconvene at 1:00.

12 Thanks, everybody.

13 [Whereupon, at 12:00 p.m., the hearing was
14 recessed until 1:18 p.m.)

15

1 team that did reach consensus. But I also thought
2 it was very significant that the Department made
3 every effort to incorporate those areas where
4 consensus was reached, even on portions of the
5 other teams, in order to come up with a fair
6 product, and I think they should be commended on
7 that, and we are pleased with the packages pretty
8 much as they came out.

9 I would like to address, in reaction to--
10 or in regards to the College Cost Reduction and
11 Access Act, one of the things that we are very
12 concerned with is, as we expand Title IV programs--
13 and, of course, on behalf of our students, we
14 greatly support that effort, and we look at some of
15 the things that can trickle down as a result of
16 that.

17 We are very concerned that institutions
18 may face increased problems with the 90/10
19 provisions. We are looking at an arena where a
20 school that might be close--and by the way, most of
21 my institutions are not affected by this because of
22 the way we are structured, but generally,
23 proprietary institutions deal with this and, in
24 many cases, they are very close.

1 And when you look at the increase in loan
2 limits, pending increase in Pell limits, schools
3 that were at 88/12 or at 85/15 might all of a
4 sudden find themselves at 91/9.

5 We are hopeful that, in the process of
6 reauthorization, 90/10 may go away, or it may get
7 moved from one section to another. Sanctions may
8 not be as draconian where they would hit in one
9 year. They may apply to all institutions, which we
10 support, by the way, but those are things that
11 might happen. You know, we've been looking for
12 reauthorization to occur for the last couple of
13 years.

14 Since you are going to engage in another
15 round of negotiated rulemaking, you have the
16 ability, as was done in the last round, to add
17 items to the agenda. And in view of the increasing
18 limits on loans, the increasing Pell Grants
19 available to students, we think it would be prudent
20 for the Department to take another look at 90/10,
21 in the definition of what revenues count where.
22 These items were brought up before, and they
23 weren't deemed necessary to be changed, but we
24 believe it might be worth taking another look at

1 that now.

2 We are also very concerned that, as a
3 result of the CCRAA, that we may be heading toward
4 an area of lender access problems, especially for
5 smaller institutions, and for institutions that
6 offer programs of one academic year, two academic
7 years. As we shrink the margins for lenders and
8 certainly there are reasons to do that--we do run
9 the risk that lenders will begin to be very
10 selective as to who they want to lend to. And
11 lenders can say, "We are not going to lend to two-
12 year or one-year programs, because the cost of
13 servicing a \$3,000 loan is the same as cost of
14 servicing a \$30,000 loan."

15 And any of us who were around in the past
16 when we hit lender access problems, lenders said,
17 "Well, we're not going to service--we're not going
18 to make loans to students at schools that had over
19 a 7 percent default or over a 10 percent default
20 rate, whatever."

21 And those institutions found themselves in
22 the lender-of-last-resort world. I would be,
23 perhaps, bold enough to say that lender-of-last-
24 resort programs are out there theoretically.

1 Whether they have any money left or the states have
2 siphoned it off and moved it around and done
3 whatever--if this happens suddenly, we could find
4 serious problems in students being able to get
5 access to FELP Loans.

6 Of course, the schools could migrate to
7 the direct loan program, and some people think that
8 would be a good idea, but in principle, we believe
9 that the dual programs have served, perhaps, the
10 best of all worlds in making competition and making
11 lenders more sensitive to students and their needs.

12 So, again, I think--we would ask that the
13 Department be mindful in crafting regulations that
14 we take the restrictions that have been placed by
15 statute, and we don't so overimpose them as to
16 drive lenders from the field.

17 You know, if you are in a small town--
18 those schools in small towns may have trouble
19 finding three lenders that are unaffiliated to put
20 on a preferred lender list, and if two of the
21 lenders decide to leave the program or not to offer
22 loans to that school, or students in that school,
23 we could have problems with that lender access
24 issue.

1 And I think that is about it. I don't
2 know how specific--I can't make specific
3 recommendations, other than, if you are going to
4 have a round of Neg Reg, you have the--while the
5 book is open, you can pinpoint areas that are
6 significant, and I think that those do represent
7 potential problems for the education community
8 going forward.

9 Thank you.

10 MR. BERGERON: Thank you, Ray.

11 Anyone else who wants to speak, go and
12 visit with Nikki and give her your information, and
13 until then, we will just hang out for a few
14 minutes.

15 No, Danny, you can't.

16 MR. MORAN: We are going to reconvene the
17 hearing.

18 As we do that, I am going to introduce
19 myself. My name is Bob Moran, and I am a senior
20 advisor in the Undersecretary's Office at the
21 Department.

22 And our next witness is Jennifer McNeel
23 from Tulane.

24 MS. McNEEL: I had a question regarding

1 the TEACH Grant and how it--when it gets converted
2 to an unsubsidized Stafford Loan if they don't
3 participate in a--you know, they decide that they
4 don't want to teach.

5 My question is, "How will that be
6 reflected on NSLDS?" And he indicated that it
7 wasn't going to go towards aggregate limits. So,
8 I'm just curious how that is going to be reported
9 on NSLDS.

10 And then my second question is, "Once that
11 becomes a direct student loan, if a prior borrower
12 has a consolidated loan in FERP through a FERP
13 lender, can they then consolidate that direct
14 unsubsidized loan into their FERP consolidation
15 loan if they choose to do so?"

16 MR. MADZELAN: Hi, I am Dan Madzelan with
17 the Office of Postsecondary Education.

18 Not to be fresh, but your first question,
19 "What do you suggest?"

20 And I say that because, I mean, we're in
21 the session here to try and get some ideas from you
22 folks about how we should be addressing some of the
23 issues that have been raised--programmatic issues
24 that have been raised by the Reconciliation Act.

1 We have, you know, at least 1,000
2 approaching a million questions about the TEACH
3 Grant program and how we implement that.

4 And, you know, it is safe to say right
5 now, "We just haven't made any decisions." This is
6 a program that comes online next July 1st. We are
7 planning for a relatively aggressive rulemaking
8 process this winter and spring, so that we have
9 final rules in place at about the time the program
10 comes online. So, you know, there's just a lot of
11 questions, both policy and operational.

12 Now, in terms of NSLDS reporting, that
13 will most likely follow along after we make certain
14 policy decisions about when--these are clearly
15 grants at the start, and they may be, clearly,
16 loans at the end. So, between those two points, if
17 there is a change from grant to loan, when does
18 that occur, and what is the programmatic response?
19 What is the apparatus that has to kick in at that
20 point so that we are now treating this benefit that
21 we provided as a grant now as a loan?

22 Now, you know, this statute gives us some
23 guidance about, you know, accrued interest and that
24 kind of stuff, because it acts as an unsubsidized

1 loan--unsubsidized direct Stafford Loan, but again,
2 the operational issues, we have to make the policy
3 and programmatic decisions first.

4 MS. MCNEEL: Okay. So, my question was--I
5 mean, we're a school that does not offer a teaching
6 program, so we may have a lot of students coming in
7 at the graduate level that took out this grant and
8 then decided that is not what they want to do.
9 They want to pursue something else.

10 And so, I would encourage that it still
11 remain as a line item on NSLDS, that we can view
12 that, so that they know that they have a loan out
13 there, but I would strongly suggest that it doesn't
14 reflect anywhere in the aggregate totals up at the
15 top, because right now, we already have an issue
16 with loans as being flagged as over aggregate even
17 if they are not.

18 And then, the second part of my question
19 regarding if they have--they take out--let's say it
20 becomes an unsubsidized direct loan, and then
21 they've no borrowed a FLEP loan after it has
22 already become the direct unsub loan. Can they
23 then consolidate that loan back into the FLEP
24 Program?

1 MR. MADZELAN: Again, I think that is a
2 decision we will have to make.

3 Under current law, when you look at what
4 are the loans that are eligible for consolidation,
5 and you take the position that this TEACH Grant is
6 now an unsubsidized direct Stafford Loan, well,
7 that is a loan that is eligible for consolidation.

8 So, if you just sort of take the world as
9 it is today, I think the answer to your question is
10 yes. But again, because we have to make some
11 decisions and some calls around, "When does this
12 thing that begins life as a grant that may in fact
13 turn into loan--when, in fact, does that occur?"

14 And you know, these are questions for us
15 around returns to Title IV.

16 MS. McNEEL: Well, that was going to be my
17 next question, was, "How is that going to play in
18 RTT IV?"

19 MR. MADZELAN: Exactly. And then how do
20 these play into institution's cohort default rates.

21 It is just many, many questions for us.

22 MS. McNEEL: Okay. Well, then that was my
23 comment more than a question.

24 Thank you.

1 MR. MADZELAN: Thank you very much.

2 MR. MORAN: Is there anybody else at this
3 point?

4 Well, we'll go on short recess again.

5 Again, if anyone would like to testify,
6 please leave your name in the back, and that way we
7 can get it on the record.

8 And we'll take a short recess until we get
9 another name. Thank you.

10 [Brief recess.]

11 MR. MORAN: we have another person who
12 would like to come to the microphone, and her name
13 is Adrienne Mendes of St. Joseph's School of
14 Nursing.

15 MS. MENDES: Hi. Thank you.

16 This will have more of a comment and I
17 guess a question and concern.

18 I heard through all the conference this
19 week about--especially under Secretary Tucker. She
20 talked about simplicity--simplifying the process,
21 accessibility.

22 And I am quite--going home a little bit
23 discouraged with that, because, under the new
24 regulations for lender choice, I don't know how

1 this is going to make the process any simpler for
2 our students.

3 I represent a very small institution, and
4 I see pretty much my students on a one-by-one
5 basis, and I can understand the process of
6 confusion. I see the faces of confusion. For
7 them, it is very difficult.

8 So, I am really concerned about this
9 lender choice, because, frankly, to be honest with
10 you, in my 14 years of financial aid, counseling
11 students and parents, I can tell you firsthand that
12 when something goes wrong with the lender, it comes
13 back to us, the financial aid office, and that's
14 what really concerns me.

15 One of the reasons we do what we do is
16 because we know what we are doing. And I feel that
17 in some way, the Department--yes, the Department--
18 needs to make lenders a little bit more accountable
19 as to, you know, the information they are providing
20 to students, the information that they are putting
21 out there, but at the same time, I don't know how
22 this is going to simplify the process for students.

23 And it is not going to be just the FAFSA.
24 I can picture this, in my institution, how this is

1 going to play out: the confusion of filling out the
2 FAFSA, and now, more information to them to go and
3 disseminate, go figure out what lender you want to
4 use.

5 That's one area that I'm concerned and
6 really, really wish--you know, I know you are in
7 the process right now where the rules are made, but
8 I just wanted you to keep that in mind, because I
9 not only do that, but I do speak in a lot of
10 financial aid nights at the high school level, so
11 that is a concern.

12 My next concern has to do with the parent
13 in college, and I know that, right now, under the
14 current formula, the student cannot count the
15 parent. And if--I want to know if there is the
16 possibility of putting that back into the--since we
17 are talking about the middle class America here
18 being the most affected--I, personally, would be
19 affected by that, because my daughter is going to
20 go to school next year, and we are in the middle
21 class, and I don't see how that can help me, even
22 being a financial aid administrator. I would like
23 to see something like that proposed again where the
24 parent can--we're not in a position where we can

1 possibly support right now support tuition and fees
2 for my husband and my daughter as well. So, I
3 would like to see that reopened again and probably
4 discuss that again--the possibility of counting the
5 parent.

6 MR. MORAN: Well, real quick, on your
7 first comments about simplicity and the Under
8 Secretary's comments earlier this week.

9 You know, that was mainly the FAFSA, and
10 when you take a look at the rules that have come
11 out, we have tried to take a very consumer-friendly
12 approach, tried to get as much information out for
13 the consumer, and the consumer-oriented--and that
14 being the student that we are all here to serve.

15 And so, when you look at the
16 Undersecretary's comments about simplification,
17 making that process less onerous, so that--where
18 they are not thwarted away and, you know, other
19 marketing provisions become more interesting than
20 going after federal aid, federal grant aid, federal
21 programs, and then, state aid and institutional
22 aid, that would result from completing the FAFSA.

23 And then, obviously, you mentioned the
24 lender regs, that--again, that is from a consumer-

1 friendly standpoint of trying to get information
2 out.

3 And as I think you heard in our session
4 earlier, we are going to develop and assist in what
5 we feel is the right information that should be
6 provided, and we think that we can work with you as
7 we move forward in making that a less onerous
8 process.

9 We understand that--well, we've heard the
10 comments and understand, you know, the concerns
11 there.

12 On your second point, I'm going to let
13 you...

14 MR. MADZELAN: Well, with respect to
15 parents in college and the need analysis formula,
16 recall that the federal formula is specified in
17 statute.

18 I mean, the Congress basically wrote the
19 formula for us. I am of an age when the Education
20 Department had regulatory authority to essentially
21 write these formulas for the Pell Grant and other
22 programs, but again, this is a statutory provision.

23 There are some reasons why the Congress
24 chose to do this. I think it was back in 1982 when

1 they decided to make the change, but, you know,
2 where--at the Education Department, at any rate, in
3 terms of this provision--I mean, we are bound by
4 the statute here. So, there is really nothing
5 through the regulatory process that we could do.

6 MS. MENDES: Okay. Thank you.

7 MR. MORAN: The next person we'd like to
8 call to the microphone is Rosy Toney, from
9 Southwestern Louisiana University.

10 MS. TONEY: Good afternoon.

11 I have a couple of questions, and I am
12 kind of asking for clarification, too.

13 One would be the emancipated student. For
14 students, my understanding is, for '08-'09
15 students, emancipated students can now be declared
16 independent. My question is, "Are there going to
17 be any guidance on a timeline?"

18 I do know that emancipated students that
19 have to have some sort of support and there's some
20 other things that's ordered through the court. So,
21 are emancipated students--I'm making an assumption
22 here, so please correct me if I'm wrong--would have
23 to be court-ordered emancipated? If not, that
24 would certainly be a suggestion.

1 The other thing is, at one point can a
2 student become emancipated before they begin
3 college? For instance, I can allow my son to
4 graduate in May and then emancipate him in June.

5 So, in my opinion, I could see some abuse
6 of that. So, will there be some type of timeline
7 as to--maybe a student would have to be emancipated
8 so many months or a year before they are--before
9 they actually attend college, or will it be that at
10 any time--whatever time they are emancipated, they
11 automatically become eligible?

12 MR. MADZELAN: Well, this is a tricky area
13 for the same reason when I responded to our
14 previous speaker.

15 This provision that Congress expanded to
16 essentially expand the definition of "independent
17 students" is basically what it is doing, is within
18 that portion of the law in Title IV of the
19 Education Act, Part F, the Need Analysis, that the
20 Congress specifically forbids the Department from
21 regulating.

22 So, we cannot go through a regular
23 rulemaking process. However, we can offer guidance
24 based on what we see in the legislation, if there

1 is legislative history. You know, Congress
2 supports those kinds of things. We get other floor
3 debate speeches by representatives and Senators.
4 We find that in the Congressional Record, but any
5 kind of information that we can find that would
6 illustrate for us what the members of Congress were
7 thinking when this provision was being proposed.

8 We will certainly be providing some
9 guidance, likely through "Dear Colleague" letters,
10 but again, it will be in a fashion that we think
11 best interprets the plain language of the statute.
12 And again, I am being a little cautious here,
13 because, again, this is an area we are specifically
14 forbidden from regulating on.

15 I think the statute does speak to
16 emancipated youth, homeless youth, individuals in
17 circumstances of that kind of nature. And it also
18 makes references to other federal legislation. So,
19 we think, without having the benefit of our
20 attorneys check this out closely for us yet, of
21 course, this will happen over the next several
22 weeks, that the other federal legislation that is
23 referenced in our legislation will, we think,
24 probably give us some benchmarks that then we can

1 use and then share with you.

2 I think--is this a provision that is
3 effective '09-'10. Anybody recall offhand? I know
4 you mentioned '08-'09, but my general recollection
5 is--and I no longer rely on memory. I have gotten
6 to that stage in my life, that I think the need
7 analysis provisions are effective for '09-'10. I
8 could be wrong on that. But either way, you know,
9 we will have some guidance and information out for
10 you, again, in a timely fashion.

11 MS. TONEY: Okay. Even though--I know
12 that it is not something that can be regulated, but
13 could it be suggested that there be a timeline as
14 opposed to--because, I mean, we can see the fraud
15 and abuse in that easily--that a student completes
16 high school with their parents, and then they are
17 immediately emancipated to get the benefit of
18 becoming an independent student with virtually no
19 income.

20 The other thing pretty much follows the
21 same line, is the legal guardianships. Could we
22 make suggestions that there be a timeline placed on
23 the legal guardianship, also? And it follows that
24 same point. Students could easily finish high

1 school with the parent's information, and then
2 parents can then release--give guardianship to
3 another relative whose income is not as high and
4 making them automatically become eligible as an
5 independent student for more funds.

6 MR. MADZELAN: Yes, we certainly share
7 your concerns for potential fraud and abuse.

8 Again, this whole notion of the
9 emancipated youth, homeless youth, guardianship--
10 you know, these are issues that, in our Title IV
11 programs, really haven't been required, at least in
12 terms of the eligibility part of it--haven't been
13 required to address up until this point in time.
14 So again, this is something we will be studying
15 carefully.

16 MS. TONEY: And in both of them,
17 especially with the legal guardianships, I think it
18 is--the guardianship regulations are from state to
19 state, but I believe, in Louisiana, legal
20 guardianship is recognized through an attorney.
21 Some are only recognized through the courts.

22 So, could we also get some guidance--I
23 mean is it--if an attorney just gives the
24 guardianship or do a guardianship, is that

1 acceptable, or will it have to go through the
2 courts. We just kind of need some guidance on
3 that, also.

4 MR. MADZELAN: Yes. We will certainly try
5 to provide our guidance that is sensitive to the
6 laws and customs in the various states.

7 MS. TONEY: Okay. Thank you.

8 Oh. One correction: It is Southeastern
9 Louisiana University.

10 MR. MORAN: Thank you.

11 Next person we would like to call is Tom
12 McDermott, from Johns Hopkins University.

13 MR. McDERMOTT: Good afternoon.

14 My question has to do about--with the new
15 TEACH Grant Program, and I'll be the first to admit
16 I have not yet read the final rules that were
17 released on November 1st. So, I am basing this
18 question on information that I have learned
19 throughout the conference this week.

20 My first question is, Do students--or will
21 students need to demonstrate a financial need in
22 order to qualify for the TEACH Grant, because I
23 didn't see that as a bullet point requirement in
24 any of the slides?

1 MR. MORAN: Legislatively, at this time,
2 there was no need in there at all.

3 MR. McDERMOTT: Okay.

4 My second question is, Since the Grant
5 could conceivably turn into a loan for some
6 students, can schools treat it as an unsubsidized
7 loan? And what I mean by that is, use it to
8 replace EFC as opposed to reduce need when they
9 apply for financial aid.

10 MR. MORAN: The--that's just going to be
11 something that we are going to work out through
12 negotiated rulemaking. I think that there's a lot
13 of questions around the TEACH Grant on how it gets
14 applied.

15 I--you know, and legislatively, it is
16 silent on that. So, that is going to be something
17 that we are going to work through as we go through
18 this.

19 MR. McDERMOTT: And then, the third
20 question is, Will the Department publish annual
21 statistics regarding how many of the TEACH Grants
22 actually convert to unsubsidized loans?

23 MR. MADZELAN: I think that--you know,
24 obviously I can't give, obviously, a definite

1 answer. I mean it is a good idea.

2 I mean, we, obviously--we will know that
3 information internally, just like we know, you
4 know, information on the number of Pell recipients,
5 right on down the line.

6 We routinely make a lot of programmatic
7 data available--you know, Pell Grant, end-of-year
8 report, student loan stuff. The--I mean it is a
9 good issue--a good question. And you know, we used
10 to be able to kind of say, "Well, you know, if we
11 have the resources, we'll do it." But now, since
12 we basically publish everything electronically, you
13 know, we have to come up with a different excuse to
14 not do something.

15 But I think that, by and large, this will
16 be information that obviously will be of interest
17 to policymakers, both here in the Department and
18 then on the Hill, as well. So, it is probably
19 something that--I don't think that would be
20 something that we would hide.

21 And in the terms of annual reporting,
22 well, you know, I don't know exactly how we'd do
23 that. But again, in the context of making a lot of
24 programmatic--program-specific information

1 available, the answer is probably yes.

2 MR. McDERMOTT: And then the fourth and
3 final question regarding TEACH Grants.

4 If there is no needs tests required for a
5 student, will the student have to submit the FAFSA
6 to apply for the TEACH Grant?

7 MR. MORAN: Well, I mean, right now we are
8 working on developing a question for the FAFSA.

9 I don't know that we've talked about the
10 corollary where if you don't complete the FAFSA,
11 would you still be eligible, and I would think that
12 would be something that could be worked out.

13 MR. MADZELAN: Well, we would hope that
14 individuals would complete the FAFSA, because it is
15 the gateway to other forms of aid.

16 We understand that there are those who,
17 you know, are--maybe feel some of the questions are
18 a bit intrusive or whatever. But also, a TEACH
19 Grant awardee, a grantee, a student still has to
20 demonstrate otherwise eligible--which, you know--
21 appropriate citizenship, and males are registered
22 with Selective Service if they are supposed to be,
23 and you know, we have the drug question and
24 citizenship, and so there are a lot of these

1 eligibility questions that we handle, you know,
2 sort of in a very transparent fashion via the FAFSA
3 and the central processing system, and the matching
4 arrangements we have with other agencies.

5 So, I think, as sort of as a policy
6 matter, we want as many people to fill out a FAFSA
7 as we can. And again, as a practical matter, we
8 haven't made a decision yet, but having a
9 potential--or teacher candidate as the statute
10 refers to these individuals, go through the FAFSA
11 process wouldn't be a bad idea just to get the
12 other eligibility checking taken care of.

13 MR. McDERMOTT: Thank you.

14 MR. MORAN: Before you go, can I--this is
15 a hearing really designed to get your thoughts on
16 some of these questions that you've just raised.

17 And so, can I ask you if you have some
18 thoughts on that to share some of them?

19 MR. McDERMOTT: Well, at Hopkins, we
20 struggle with--we try to encourage parents to fill
21 out the FAFSA when they are interested in a Plus
22 Loan, for all of the reasons that you just
23 described, are useful and would be helpful for the
24 TEACH Grant program. But we still have a

1 significant number of families every year who just
2 do not want to file the FAFSA. So, we collect
3 signed statements regarded citizenship, and
4 certifications regarding Selective Service.

5 And I could foresee the same issue
6 occurring with students who perhaps were never
7 receiving any type of assistance before who are
8 interested in the TEACH Grant, and may say, "Well,
9 why do I have to follow the FAFSA?"

10 So, the FAFSA in its current state, you
11 know, with all the questions--it is hard to argue
12 with a student or with a family that, you know--
13 "Why do I have to divulge all this information if
14 this is the only thing I'm getting and it is not
15 really based on need?"

16 The issue about the possibility about the
17 award turning into unsub is a concern for us, just
18 in terms of, you know, trying to control student
19 debt and make sure that students don't end up
20 graduating with significant debt load.

21 So, if there is, you know, statistics at
22 some point that show that there is a large number
23 of students who actually end up turning their grant
24 into a loan, we would want to be able to let

1 students know about that upfront, as they consider
2 taking that grant. And hopefully, it wouldn't turn
3 into a loan, but we would want to advise them about
4 that.

5 Thanks.

6 MR. MORAN: Thank you.

7 The next person we would like to call is
8 Jennifer McNeel from Tulane again.

9 MS. McNEEL: I'm back.

10 I have some follow-up concerns regarding
11 the TEACH.

12 One concern I had was abuse and fraud. In
13 the cases where you have students coming in that
14 may not necessarily want to teach, but you are at a
15 school that offers teaching and they see this as a
16 way of obtaining additional loans, with no intent
17 to teach.

18 So, there was mention that there was a
19 signed letter of an intent to teach. Could you
20 inform me of that? Is there going to be a letter
21 that they have to sign indicating that they have an
22 intent to teach in order to get the grant, or is
23 this self-identified?

24 I'm sorry, I didn't read the whole rule on

1 it, but I am trying to find out, "How do they
2 identify themselves as a student that wants to
3 teach?"

4 MR. MORAN: Those eligibility requirements
5 and those other factors that Dan was talking about
6 earlier, we haven't developed how those mechanisms
7 will work yet.

8 That will come out as we move forward
9 here. I will say that we do share the same type of
10 concerns, and as we move forward, we will be,
11 hopefully, moving forward making sure that these
12 are directed to those folks that...

13 MS. McNEEL: And I am just concerned about
14 how you are going to monitor intent for someone
15 that leaves your school five years later.

16 MR. MADZELAN: Well, we think at the front
17 end--again, we said the front end is a grant unless
18 it becomes not. And we believe that there is
19 something that we need to get on the front end so
20 that the student understands that it is a grant
21 now, but may not always be a grant.

22 And you know, not to say that it is going
23 to be a promissory note, but again, it has to be
24 some firm indication that the student knows that

1 this is a grant that may not stay a grant forever.
2 So, again, on the upfront side--you know, it is not
3 going to be like a Pell Grant--"Well, here's your
4 money and see you next semester," but rather some
5 additional communication, some additional
6 counseling, some additional work with the
7 individual student, so, they, you know, understand
8 as best they can, as an 18-year-old incoming
9 freshman, that maybe 8, 10, 12 years from now, it
10 could become a loan.

11 MS. McNEEL: Okay. And in that aspect, if
12 it does become the unsubsidized Stafford Loan,
13 since a requirement of that is the Free Application
14 for Federal Student Aid, I would recommend that
15 become a requirement of the program.

16 The second thing is, if the TEACH Grant
17 will affect the school's cohort default rate, and I
18 would recommend no on that.

19 The next thing I wanted to refer back to
20 was lender lists and providing some guidance
21 regarding some sort of chart.

22 I am assuming that when we develop a
23 streamlined lender list, we usually provide a link
24 to those lenders that we use on our website that

1 details the borrower's benefits in that program.
2 And we used to do a chart, and we removed the chart
3 because of the fact that the moment you published
4 the chart, it was no longer valid and those
5 benefits have changed.

6 And so, I would encourage some guidance on
7 exactly what type of chart or exactly what sort of
8 documentation on our websites we should be
9 providing.

10 I feel that, if we are directing them to
11 the lender's websites, which are updated with the
12 most accurate information--is that sufficient when
13 the school themselves is not providing that
14 benefit? Is the link itself okay? Or is it--if I
15 am not putting it out in text on my website, is
16 that sufficient? And that is my concern with that.

17 MR. MORAN: You know, as we have
18 highlighted, the Department is working on a mild
19 disclosure form, and as far as the other comments
20 about whether the website is sufficient to move
21 forward, I think we will be issuing guidance around
22 that area as we move forward with this issue.

23 MS. MCNEEL: Okay. And I guess, the
24 sooner the guidance the better.

1 Because, as a school that does early
2 decision and early action, we are already getting
3 our award letters out for the next year, and
4 providing that information on our websites to our
5 students.

6 MR. MORAN: Sure. And obviously, the
7 Department would love to see compliance as early as
8 possible.

9 But as you know, the regs that were
10 published yesterday don't go into full effect until
11 July 1 of '08. So, you know, any ED decisions that
12 are coming up this spring, we'd like to see them
13 applied, but, you know, if they're not, then we
14 can't really--there is no enforcement level on our
15 part.

16 The next person we would like to bring
17 back is Rosy Toney from Southeastern Louisiana
18 University.

19 MS. TONEY: Thank you.

20 Once again, I want to address the--as you
21 can see, I am on the emancipations, legal
22 guardianships, and this time it is the foster
23 child.

24 It is my understanding that, if a child is

1 in foster care from--at age 13, regardless of the
2 situation that occurred after that, they would
3 still be considered an independent student. Is
4 that correct?

5 MR. MADZELAN: Yes. I believe that the
6 literal reading of the statute would say yes.

7 MS. TONY: Okay. I would like possibly
8 for that--and I know--I guess we can't--I am going
9 to say, "to be reconsidered," because I am a
10 counsel worker, and we work a lot with foster
11 children.

12 And we see a lot of--and children are gone
13 for a lot of reasons, but they often are not--a lot
14 of them are not gone but a few months. And they go
15 back to middle- to upper-class homes. They go back
16 to parents who can afford to pay. And they are,
17 there--if we remove them at age 13 and then from 13
18 to 18, from then on they will be considered
19 independent. They will be living with their
20 parents, and the parents are going to be able to
21 pay for college, and I think that is an abuse for
22 the other children who are legitimately away from
23 home and cannot pay and don't fall in the middle-
24 to upper-income categories. A lot of these parents

1 fall into the middle- to upper-income categories.

2 And to just blankly say that a child who
3 has been in foster care, for whatever reason, at
4 age 13--and may have only been there for a couple
5 of months--they would then be considered
6 independent, I would think is an abuse. So, it
7 would, you know, behoove us to maybe consider that
8 and maybe do a timeline on that, also--that maybe
9 if they have been in foster care or were in foster
10 care at 16 or 17 be considered--and have not
11 returned to their families or to their parents--be
12 considered independent as opposed to putting them
13 in foster care, taking them out, and they remain
14 with the parents who can pay and then let them come
15 out as independent students.

16 Okay.

17 MR. MORAN: We're going to wait for the
18 next person to arrive.

19 [Pause.]

20 MR. MORAN: We're going to invite Patrick
21 Gorman from LSU Health Science Center back to the
22 microphone.

23 MR. GORMAN: Thank you.

24 This is my first trip. It's okay, though.

1 Thank you.

2 I just want to follow up on some comments
3 on several of the issues that have already been
4 discussed--a few suggestions regarding the TEACH
5 Grant.

6 One is, in order to strike a little fear
7 in hearts of students who might be considering
8 using this mainly to get more loan money, you might
9 put some sort of a statement to the effect that
10 you're not allowed to tell lies when you're trying
11 to get federal aid, even though, as been discussed,
12 it would be very hard to prove somebody had a false
13 intent. It wouldn't hurt to have a statement of
14 that to that effect on the initial agreement that
15 the students would sign.

16 I'd also like to suggest that, to the
17 extent that you may be allowed to under the law,
18 you'd consider special circumstances in the
19 fulfillment of the teaching commitment. If I
20 understand correctly, they have eight years to
21 teach for four years to meet--to fulfill that
22 commitment.

23 If you're able, you may want to consider,
24 essentially, deferments or forbearances of that

1 timeframe for continuing education. I know eight
2 years seems like a lot to do something for four
3 years, a good timeframe, but you may run into
4 situations where it would be appropriate to extend
5 that timeframe. It could be issues related to
6 hardship and family situations, and what have you.

7 You might also give some consideration to
8 those teachers who might, through their own
9 excellence, be offered administrative positions in
10 their Title I schools. And if that occurred early
11 enough to prevent them from fulfilling their four
12 years of teaching, you may want to consider that
13 service as fulfilling the commitment, or do
14 something to give them some--to avoid them
15 incurring the full penalty, which I guess is a
16 related suggestion, "If someone is unable to
17 fulfill the full four years, and there is some
18 legitimate cause that you could develop," I don't
19 really have them in mind right now, "but if
20 possible, you might want to consider a partial
21 conversion of the funds from grant to loan, because
22 basically, as it stands now it is all or nothing.

23 So, those are my suggestions on a program
24 that I have no business talking about because we

1 don't teach teachers at our school. I hope we're
2 going to teach a few teachers--a few students who
3 will go on to teach in healthcare education, but of
4 course that's not--that wouldn't be qualifying.

5 Sorry. I knew I wanted to follow up on
6 some of the other--

7 MR. MORAN: All right. As you are
8 thinking about that, we appreciate those comments,
9 and we'll certainly take them all in as we move
10 forward on the negotiated rulemaking provisions.

11 MR. GORMAN: Okay. All right. Thank you.

12 I did have a suggestion, and this I know
13 is not--well, it is not related to the new law. I
14 guess it is related more towards our brewing
15 controversy over the past year or so regarding
16 lender lists, lender choice, providing lender
17 information.

18 I recommend that the Department of
19 Education go the extra mile with their template,
20 and actually require or invite lenders to provide--
21 to fill in that template and provide a link where
22 schools can go out and grab those templates on
23 given lenders and put them--or link to them.

24 That way, you could put the onus on the

1 lenders to keep their templates up to date, because
2 as Jennifer mentioned, it is tough to keep a chart
3 up to date. Well, it may be impossible to keep a
4 chart up to date, because it is possible lenders
5 will make changes without telling us in advance or
6 even afterwards.

7 So, I don't know that you have the
8 authority to require lenders to provide that
9 information, but you could possibly go out and get
10 that authority, or certainly try to create an
11 environment where it would be beneficial to lenders
12 to provide you with that information so that you
13 could provide populated grids or charts that
14 schools could tap into.

15 All right. Thank you.

16 MR. MORAN: The next person that we'd like
17 to invite to the microphone is Tom McDermott from
18 Johns Hopkins.

19 MR. McDERMOTT: Hello again.

20 My question this time, or actually,
21 suggestion, is regarding the loan auction process
22 that was discussed where, in each state, there
23 would be essentially two Plus lenders that would be
24 designated.

1 And my concern is that it conflicts with
2 the guidance to schools to have at least three
3 lenders on a preferred lender list if a school was
4 going to create such a thing. And so, there could
5 be a situation where there are only two lenders
6 that students could borrow from in a state, and a
7 school could only put those two on a list. How
8 would they meet the guidance or the guidelines
9 established for the criteria for creating a
10 preferred lender list?

11 MR. MORAN: Well, again, the auction is
12 only on the Parent Plus Program.

13 MR. McDERMOTT: Right.

14 MR. MORAN: So, you know, obviously this
15 is one of those dichotomies where the Department,
16 when it moved forward with its regulations--and
17 we're trying to make sure the message of borrower
18 choice was out there.

19 One, it is statutory that a borrower can
20 go anywhere and bring in any lender that they would
21 like. But on the borrower choice side, when we
22 talked about there being three choices by the
23 school, we were hoping to provide options.

24 This is a legislative provision. Now, let

1 me take a step back there, please. Those three are
2 also in various other--referenced in other various
3 legislative proposals that are on the Hill.

4 Now, you have the Hill in a different
5 program, in a pilot program--they consider to be a
6 pilot program, for this auction, saying, "In the
7 Plus, this is how you're going to do it."

8 And so, I hear your concerns and I hear
9 your dichotomy there, and we--it is actually--we
10 appreciate these comments.

11 MR. McDERMOTT: Thank you.

12 MR. MORAN: We would like to invite
13 Jennifer McNeel from Tulane back.

14 Thank you.

15 MS. McNEEL: To follow up my colleague's
16 question about the Parent Plus loan--is it the
17 state that the school is in or the state of the
18 borrower?

19 MR. MORAN: The school.

20 MS. McNEEL: The state of the school.

21 Okay.

22 So, I could potentially have a parent who
23 sends their child down here to Tulane but also has
24 a child back in California being required to borrow

1 through two different lenders?

2 MR. MORAN: That is the potential, yes.

3 MS. McNEEL: I'm concerned.

4 And my follow-up question to that was--I
5 am concerned that you're limiting choices. You're
6 having this broad umbrella under the Stafford
7 Programs and under the Grad Plus Program, and the
8 Grad Plus Program was designed very similarly
9 through the Parent Plus loan route--that is how it
10 was originally designed--and yet now we're limiting
11 the lenders that our parents can choose, and I'm
12 concerned about that.

13 MR. MORAN: Thank you.

14 Would Patrick Gorman please return to the
15 mike, from LSU Health Sciences--and this time you
16 are returning.

17 MR. GORMAN: Yes, I'm back. Thank you.

18 A follow-up regarding the Plus Program--
19 the Parent Plus auction. I've been in student
20 financial aid for quite a while. I just got my 20-
21 year plaque at our state conference. It is the
22 "professional mortality plaque," is what I would
23 like to think of it as.

24 But I've always worked in health

1 professions, and I worked with the health education
2 assistance loan program, and I don't know--those of
3 who have been around for quite a while and had any
4 dealings with that program may remember that there
5 was--the HEAL Loan Program did have a competitive
6 bidding for lender participation.

7 And two things about that I'd like to say.
8 One is that the basis of competition was, "Which
9 lender would provide the lowest rate to the
10 borrower?" And I would love to see that kind of
11 competition. Because frankly, I think this kind of
12 competition is not going to produce lenders that
13 are not going to offer anything special to the
14 borrower. And you know, even with the cut in
15 margins and all--of course we are seeing special
16 benefits trimmed and probably going away.

17 But with competition for the lender that
18 is willing to take the lowest special allowance, I
19 don't think we are going to see lenders willing to
20 provide any special financial benefits to parent
21 borrowers, and that does concern me. I don't know
22 if you could have another stage to the auction,
23 "What were you going to do for our borrowers?" but
24 that is something that I am concerned with.

1 Now, of course, the HEAL was not a pretty
2 loan. It was variable rate. It was designed to be
3 self-sustaining. It had a fairly high insurance
4 premium. So, I'm not up here to be a cheerleader
5 for the HEAL loan program, but I did like the
6 concept of competition to provide the borrowers
7 with the better rate.

8 I would also like to say about that,
9 though--and this, I think, could be applicable
10 here--it was a fairly disruptive process, because
11 lenders had to bid every so often to become the
12 Heal lenders. Schools were confused, borrowers, I
13 guess, were confused at various times. There
14 became orphan disciplines, because it was bidding
15 by health professions' disciplines, and some
16 disciplines that were smaller, they didn't have a
17 lot of people bidding for their business. So, I
18 think that this process is going to create some
19 disruptions.

20 One other thing with that in mind is I
21 suggest that you include in your process what you
22 will do if one of the lenders that wins the lending
23 rights for a state decides that they don't want to
24 make student loans anymore, or that they bid too

1 low and they really can't afford to do this, and
2 so, they're not going to make loans. You know, I
3 don't think we want a situation where there is only
4 going to be one Plus lender really active in a
5 state.

6 Or, of course, I guess the idea of all
7 this is, eventually, if it is really groovy--
8 they're going to put that in there, aren't they?--
9 that this would spread to Stafford, too.

10 Is that not the idea? I mean...

11 MR. MORAN: We would hate to guess at
12 congressional intent beyond what has already been
13 indicated.

14 MR. GORMAN: Okay, okay.

15 MR. MORAN: But--and I don't want to go
16 through the machinations of how we got to the
17 auction, but what I will tell you is that, in the
18 legislation, Congress proscriptively told the
19 Department that we have, basically--in determining
20 who will be eligible to make a bid, the Department
21 has some criteria around which they can limit those
22 bidders, mainly around the service area and how
23 we--and set up service criteria, and what type of--
24 basically, what will end up a minimal level of

1 service that we'll be allowed to provide.

2 Then, once we have set that service, the
3 bidders who come in to meet that--we are required
4 by law to take the two lowest bidders for--on what
5 they will take as a SAP payment.

6 The borrower rates are set. You know,
7 they are already statutorily set. That is not
8 necessarily part of the auction program.

9 So, the only thing we really can influence
10 here is the service aspect of that. And on that
11 service side, we may or may not get the best
12 service out of the list of candidates.

13 MR. GORMAN: Okay. And service, of
14 course, would be things like customer service hours
15 and availability of human interaction--some kind of
16 track record, possibly. It would not involve
17 discounts or financial--potential financial
18 benefits to the borrowers, though, I assume, right?

19 MR. MORAN: We need to work through those,
20 but at this time I don't believe there can be
21 discounts in that fashion.

22 MR. GORMAN: And the second point, if a
23 lender drops out of student lending--a winning bid
24 lender drops out of student lending or determines

1 that they don't want to make the loan at that rate,
2 so they are not going to be providing the loans?

3 MR. MORAN: Right. And as the Assistant
4 Secretary, Diane Jones, indicated earlier in her
5 talk, that they are two-year auctions.

6 So, every two years, the lenders will be
7 rebidding for each state. So, we would--I think
8 the assumption on our part--and again, it is an
9 assumption, so I don't want to make it sound like
10 it is concrete at this point, but we would be
11 expecting anybody who bids to service and provide
12 that service for those two years for the auction.

13 MR. GORMAN: Okay. Well, then, I would
14 still stand by my suggestion that you have a
15 fallback in cases where a lender might, for
16 whatever reason, drop out within that two-year
17 period.

18 MR. MORAN: There are provisions in the
19 law where a lender may not necessarily bid, but ask
20 the Secretary to be the lender of last resort for
21 that state where no one bids, potentially.

22 And so, there's some provisions of making
23 sure that there is at least lender service out
24 there for each state, but we appreciate the

1 comments on the other side.

2 Jennifer McNeel from Tulane.

3 MS. MCNEEL: My question is regarding--
4 well, my statement regarding ranking customer
5 service.

6 Electronic processing is key in making
7 sure that they are able to transmit and receive
8 information electronically from every single school
9 in that state--would be key, depending on the
10 software packages that each institution uses
11 differ.

12 And then, my second response is that the
13 Plus MPN is currently good for--it is a ten-year
14 note on that. If there is a two-year auction, and
15 at the end of the two years that lender is no
16 longer still a viable lender, that parent will need
17 to re-sign a new note with the new bank?

18 MR. MORAN: Those are discussions we are
19 having now, as to working through that.

20 It is part of the question raised earlier
21 today in the general discussion around, "If I'm
22 already a Plus borrower when the auction starts,
23 does my Mass Promissory Note continue through that
24 or not?" And so, those are things that we are

1 still working through.

2 MS. MCNEEL: Which would lead me to my
3 concern regarding default prevention and having
4 several different lenders out there that you're
5 making payments to and having to keep track of who
6 owns your loan, and who I should be contacting.
7 So, that's a reason for my concern of that.

8 MR. MORAN: Thank you.

9 Rosy Toney from Southeastern Louisiana
10 University.

11 MS. TONEY: Thank you.

12 We are having this side bar conversation
13 back here because we are concerned. We are
14 concerned about the service that not only the
15 parents and students will be receiving, but the
16 schools.

17 It opens the door for the lowest door for
18 the bidder of Plus Loan lenders and right now, we
19 are going through this--well, you know, the issues
20 with the lender partners has become a big thing.
21 But we base a lot of our decisions on service. It
22 is not always who is going to feed us the biggest
23 meal, but who is going to provide us the better
24 service. Who can we get in touch with during our

1 working hours? Who can we refer students to that
2 we know that their questions are going to be
3 answered?

4 If a student is going into default, we
5 kind of know who we can send them to, to work with
6 them to keep them from going into default.

7 We are not going to have the benefit--
8 possibly we are not going to have the benefit this
9 time. We don't have a clue what we're going to
10 get.

11 And if it is not going to be service
12 oriented, how will that benefit anybody? I guess
13 that's my question. How is that going to--I mean,
14 I think it is going to be more of a fiasco than
15 anything else.

16 The students can't get in touch with them.
17 The schools can't get in touch with them. The
18 parents won't know how to get in touch with them.
19 How is that going to benefit the whole loan
20 program, limiting it to two possibly unknown
21 lenders?

22 I mean, we're real concerned about that.
23 Okay.

24 MR. MORAN: I appreciate your comments.

1 Thank you.

2 Jennifer McNeel from Tulane.

3 MS. McNEEL: You are getting the entire
4 contingency of Louisiana over here.

5 To follow up on that. With just offering
6 the two Parent Plus loans, I would be fearful, too,
7 that if a parent sees it as, "This is the lender
8 that the state and the DOE says is the best lender,
9 then this might be the best lender for the Stafford
10 loan, too."

11 And so, all of our hard work going into
12 providing them with the best Stafford loans that
13 are out there--they are going to just streamline it
14 right to that lender that may be unknown.

15 MR. MADZELAN: Well, thank everyone for
16 coming today.

17 Our time is up. And again, thanks again
18 to all of our commenters.

19 [Whereupon, the hearing concluded at 3:30
20 p.m.]