

U.S. DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

OPEN HEARING ON
NEGOTIATED RULEMAKING

Friday, November 16, 2007
9:08 A.M. - 3:00 P.M.

U.S. Department of Education
Auditorium
550 12th Street, SW
Washington, D.C.

P R O C E E D I N G S

1
2 MR. BERGERON: Good morning.

3 [Discussion off the record.]

4 I'm David Bergeron. I am Director of
5 Policy and Budget Development in the Office of
6 Postsecondary education. Welcome to the
7 Department.

8 I always feel, when I come here, that I've
9 come to a remote outpost of the Department, because
10 it is a little walk from our Headquarters building,
11 and quite a walk over here for us coming from K
12 Street. But I want to welcome you here.

13 We like this room, in terms of space, to
14 have meetings in. I know that security is not
15 always the easiest getting into the building,
16 although I hope we have made it a little bit easier
17 than most of our guests to this building have
18 experienced.

19 But with that, there are a couple little
20 parts of the deal. And part of the deal is, when
21 you leave the building, see one of the federal
22 staff, and they will escort you out of the
23 building. That's to prevent people getting off on
24 the wrong floors and ending up in the wrong part of

1 this building, which is not completely occupied by
2 the Department of Education. And some of our other
3 Executive Branch colleagues in the building get a
4 little concerned when they have uninvited--or
5 unintended guests on their floors.

6 So, the security people of the Department
7 ask that we arrange for people to be escorts, and I
8 hope you find my colleagues to be good at that. If
9 they are not around, you can even grab me or Danny
10 and we'll help get you out of the building without
11 any trouble.

12 This is the second on the series of three
13 public hearings that we're having to consider and
14 develop the agenda for our negotiated rulemaking
15 that will be the result of, primarily, College Cost
16 Reduction and Access Act that was signed into law
17 back in September.

18 That Act includes a number of provisions,
19 which I know you are aware, in which regulations
20 are required. And most significantly, I think, for
21 many of us, the TEACH Grants that are authorized by
22 that ACT, where they become--that Program becomes
23 effective on July 1, 2008.

24 We have a sense of urgency around getting

1 those regulations in place so that Program can
2 begin with good rules governing it. That Act also
3 includes some issues around some loan programs and
4 including the changes in repayment plans and
5 differential special allowance payments for lenders
6 depending on whether they are for-profit or not
7 for-profit.

8 So, we expect that there will be a number
9 of issues that we will regulate around. The
10 purpose of these public hearings is to get your
11 input and advice as we begin that process, about
12 what issues we should be looking at as we negotiate
13 those regulations, and to give you an opportunity
14 to suggest other areas that we might need to look
15 at as we implement those programs and other things
16 in our education act.

17 I'm going to let my colleagues here at the
18 table introduce themselves. Throughout the day,
19 there will be different people sitting here, I'm
20 sure. I know that Danny and I have to make a trip
21 back to K Street later in the day for a little
22 while, and so, there will be different--we know,
23 this afternoon, there will be others sitting here.
24 I also know that Brian may not be here the whole

1 time either. So, if you're here and you see us
2 changing places, just bear with us.

3 Right now, we don't have a lot of people
4 signed up to testify. If you haven't signed up, I
5 would encourage you to go out and see my colleagues
6 who are at the table outside this room who are
7 signing people up.

8 But we do have a couple of people this
9 morning and at least one for this afternoon who has
10 signed up, but we will proceed as soon as the
11 people who have currently signed up--as soon as my
12 colleagues have an opportunity to introduce
13 themselves.

14 MR. MADZELAN: Thanks, David. Thanks
15 everyone, again, for coming this morning.

16 I'm Dan Madzelan, Director of Forecasting
17 and Policy Analysis in the Office of Postsecondary
18 Education, and I've done this kind of thing before,
19 not only the start of the process, these public
20 hearings, but also the middle part of it, the
21 actual negotiations, where we all get in a room and
22 enjoy each other's company and ideas, and then, at
23 the end of the process, where we actually publish a
24 proposed rule and, ultimately, a final rule.

1 And again, thanks for coming today. We
2 certainly look forward to your thoughts and
3 suggestions.

4 MR. SIEGEL: And I am Brian Siegel, an
5 attorney in the Department's Office of the General
6 Counsel, and I have primary responsibility for the
7 areas covered by the CCRA.

8 MR. BERGERON: And with that, I invite
9 Sandra Robinson to come forward as our first
10 witness--or first presenter. I don't know exactly
11 what we call you.

12 MS. ROBINSON: Good morning.

13 I want to thank you for this opportunity
14 to provide suggestions for consideration and action
15 by the negotiated rulemaking committee.

16 I will probably refer to my texts for the
17 remarks, because I know they need to be brief. And
18 in order to be brief, I will keep with the remarks.

19 MR. BERGERON: I will add that, right now,
20 we do not have a lot of people signed up. So, you
21 do not need to be as brief as advertised.

22 MS. ROBINSON: All right. I have been
23 practicing speed talking, so I will slow down a
24 little bit.

1 MR. BERGERON: You can slow down.

2 MS. ROBINSON: I'm from the South, so that
3 is very difficult to have to practice here, so
4 thank you very much.

5 I'm Sandra Robinson. I'm Dean of the
6 College of Education at the University of Central
7 Florida, America's sixth largest university, and
8 we're the largest source of education degrees in
9 the State of Florida.

10 Our programs graduate teachers and school
11 leaders who go on to fill the high-need areas of
12 science, math, educational technology, and special
13 education.

14 Our college partners with 11 public school
15 districts, comprised of over 6,000 K-12 schools,
16 with an enrollment of over half a million students.
17 And as a public university, we also appreciate the
18 partnerships with key corporate entities, such as
19 Lockheed-Martin, Progress Energy, Boeing, and State
20 Farm Insurance, with a goal of preparing highly
21 qualified teachers and educational leaders.

22 Today, I am speaking on behalf of American
23 Association of Colleges of Teacher Education,
24 representing nearly 800 public and private schools,

1 colleges, and departments of education at
2 institutions of higher education throughout the
3 nation and its territories, as well as affiliate
4 members, including state departments of education,
5 community colleges, educational laboratories and
6 centers, and online teacher preparation programs.

7 AACTE's mission is to promote the learning
8 of all pre-kindergarten through 12th grade students
9 through high-quality, evidence-based preparation
10 and continuing education for all school personnel.

11 AACTE embraces the TEACH Grant initiative,
12 having vigorously supported the passage of the
13 TEACH Grant provisions of HR 2669.

14 This Program will encourage and serve as
15 an incentive for students to enter the profession
16 of teaching and education, and encourage practicing
17 educators to continue their lifelong learning and
18 professional development.

19 It is a proactive measure that addresses
20 the critical shortage of teachers in every
21 discipline, especially in the high-need areas of
22 STEM and special education, and the need for highly
23 qualified teachers in hard to staff schools, which
24 we know a lot about in Florida.

1 With full support for the TEACH Grant
2 Program, AACTE would like to raise the following
3 issues of concern in terms of expediting and
4 streamlining the implementation of the TEACH Grant
5 program so that solutions to the problems that they
6 address can be put quickly into place, and I have
7 seven different areas to address quickly.

8 First, clarifying under the definition of
9 "eligible institution," what constitutes extensive
10 clinical experiences.

11 AACTE advocates that teacher preparation
12 programs include, at a minimum, 450 hours of
13 supervised clinical experience. Teacher candidates
14 must spend significant time in the classrooms
15 during that preparation, observing expert teachers
16 and teaching methods, developing classroom
17 management skills, and working with diverse student
18 populations. Clinical experiences improve
19 candidates' effectiveness in the classroom, and
20 prepare them for the realities that they are going
21 to face.

22 In addition, the value of a supervisor's
23 extensive observation of a teacher-candidate's
24 interaction with children cannot be underestimated.

1 We recommend that the regulations include
2 a standard of 450 hours of clinical experiences.

3 Second, clarifying what happens when the
4 teacher shortage areas change. The TEACH Grants
5 require a four-year teaching service commitment in
6 a high-need subject area over what happens to a
7 teacher who begins teaching in a declared shortage
8 area but that shortage area is no longer deemed
9 such in the following year or three years?

10 AACTE recommends that the teacher be allowed to
11 teach all four years in the same subject area
12 regardless of whether that area remains a shortage
13 filed.

14 Third, clarifying the number of the TEACH
15 Grants available. The TEACH Grant Program is
16 supported through mandatory spending, thus, it
17 appears that as much funding as is required to meet
18 the demand for applicants will be available.

19 It would be helpful to have the
20 regulations clarify for students and institutions
21 that the program will indeed accommodate as many
22 teacher candidates as apply. This will enable the
23 institutions to engage in extensive outreach
24 campaigns without concern for over-promising or

1 over-promoting the scholarship opportunity.

2 Fourth, clarifying the payee of the TEACH
3 Grant Program and the timing of the distribution of
4 grants. AACTE supports the distribution mechanism
5 for tuition assistance. However, timing and
6 distribution of grants should be shaped to work in
7 concert with the federal grant system. We
8 recommend that institutions be able to apply for
9 additional funds throughout the year, as students--
10 particularly our non-traditional students tend to
11 enter postsecondary education at different times
12 during the year.

13 Five, clarifying reporting process for
14 TEACH grantees during their teaching service
15 commitment. AACTE recommends that the U.S.
16 Department of Education assume responsibility for
17 receiving evidence required of an applicant's
18 employment at the end of each service year.

19 While institutions of higher ed are
20 equipped to track students during their period of
21 enrollment, tracking transient students for an
22 eight-year period after graduation would
23 necessitate creating and monitoring a data system,
24 the cost of which is not included in the TEACH

1 Grant, so which we are not asking for.

2 As one example, the State of Florida
3 successfully administered a program of this nature
4 in the past. It had centralized recordkeeping
5 maintained by the state.

6 Sixth, clarifying who is eligible to apply
7 for a TEACH Grant in the graduate program. The
8 statute, as written, appears to exclude a
9 significant category of potential teachers, that
10 being career changers who are not retired and who
11 may not have content expertise in a teaching
12 shortage area, but who want to go back to school to
13 get their master's degrees to become certified in a
14 shortage area.

15 One example of this is our partnership
16 with Lockheed-Martin, who is very interested, of
17 course, in engineers. So, they are providing
18 funding for a master's degree program for such
19 people.

20 AACTE recommends that the Department of
21 Education's regulations clarify this issue
22 regarding eligibility to receive a TEACH Grant for
23 a master's degree program.

24 And finally, developing an annual report

1 on the TEACH Grant Program. In order to better
2 understand the impact of the TEACH Grant Program in
3 addressing serious and chronic teacher shortages in
4 our Nation, AACTE recommends establishing the
5 requirement for an annual public report, including
6 the number of TEACH Grants issued each year by
7 shortage field, the number of institutions of
8 higher education participating in the program, and
9 an accounting of how many applicants are teaching
10 in K-12 schools, and where they are teaching, to
11 include locations, school type, and the field in
12 which they're teaching.

13 AACTE urges the Department to develop and
14 operationalize a significant marketing campaign to
15 make sure that the TEACH Grants become a household
16 name and highly sought after.

17 Members of AACTE are committed to playing
18 a vital role in the spreading the word and sharing
19 the good news about TEACH Grants with our
20 institutions and in the K-12 schools where our
21 faculty and our candidates work daily with
22 students.

23 Thank you very much for the opportunity to
24 present these recommendations.

1 MR. BERGERON: Thank you.

2 Can I ask a follow-up question?

3 MS. ROBINSON: Sure.

4 MR. BERGERON: You raised the issue of
5 clarifying the shortage areas, in that a teacher
6 can teach for the period of their service
7 obligation in that same field.

8 The concern of the--the issue that we have
9 been struggling with is around how do students know
10 what shortage areas there are nationally today,
11 because they are the ones listed in the statute.
12 And then are there any that are designated by
13 states, for example.

14 And so, the struggle I think we have been
15 struggling a little bit with is "What do you do for
16 the students in terms of their experience while
17 they're in school? Do you grandfather in the
18 shortage areas that were--when they first received
19 a grant, or do you do it only when they've entered
20 the teaching workforce.

21 I mean, we've had some conversations on
22 that. We would welcome your thoughts on that.

23 MS. ROBINSON: I think in terms of the
24 requirements that the states have, it would be most

1 advantageous to the students themselves to
2 grandfather them in. Whatever the teaching
3 shortage area is when they begin their
4 preparation--because, for many of us, that is so
5 designed and dictated, frankly, by the states, that
6 once a student starts in a certain area, it would
7 be difficult to change.

8 Now, admittedly, maybe a year or two in
9 here, the first two years are pretty much general
10 education sorts of courses, because, by our
11 national accreditation, students must take all the
12 general ed fields. So, there is a little bit of
13 flexibility, but once they really are admitted to
14 professional education programs, they are pretty
15 much following the dictates of the state in order
16 to become certified. So, it would probably add
17 years to their preparation programs if, indeed,
18 they were not grandfathered in at some point in the
19 process.

20 MR. BERGERON: Thank you.

21 Whenever I do this, I know that,
22 invariably, that I will hit a name that stumps me.

23 And at these times, I generally hand them
24 to Mr. Madzellan and say, "Danny, you can call our

1 next person to come to the table.

2 Dennis Patanazek [ph.]--close?

3 MR. PAKANIZZEK: I think it was pretty
4 close. It is Pakanizzek. If the "z" were an "h,"
5 it wouldn't scare, but the "z" always scares
6 people. It is really interesting.

7 MR. BERGERON: Yes. Thank you, Dennis.

8 MR. PAKANIZZEK: Thank you for the
9 opportunity to be here.

10 I am the Dean at Salisbury University,
11 which is just across the Bay. We are Maryland's
12 third largest institution for preparing teachers,
13 and today, I am representing not only Salisbury
14 University, but the Maryland Association of
15 Colleges for Teacher Education, as well.

16 And you would think that Dr. Robinson and
17 I spent some time together preparing our testimony,
18 but we did not. Even though we were colleagues in
19 Florida together, we prepared our testimony
20 independently, but it really strikes at many of the
21 same issues.

22 Maryland, like many of the states, has
23 what is called "an extreme teaching shortage." We,
24 last year, hired 6,500 new teachers in the state,

1 and Maryland institutions prepared somewhere around
2 2,600. So, we had to find teachers from a lot of
3 other places. So, we're very excited about the
4 TEACH Grants as a way to provide incentives for
5 teachers to enter the field.

6 But we do have a number of questions. We
7 are very excited about the program, but want to
8 raise some issues that we think that the negotiated
9 rulemaking committee may want to address, and
10 certainly the first of those is clinical
11 experience.

12 And like Dr. Robinson, we believe strongly
13 that the clinical experience portion is a critical
14 part of teacher preparation, and it may be one of
15 the single most important pieces that affects
16 teacher retention. Without the extensive clinical
17 experience, people enter the classroom unprepared
18 to teach and unprepared to manage classrooms.

19 The question that I think we need to
20 consider is--we know that the pipeline for a four-
21 year degree in teacher education often involves,
22 for many, many students, beginning at the community
23 college level. So, we need to figure out--one of
24 the questions to figure out is how do community

1 colleges fit into this equation for extensive
2 clinical experience. So, that's one area that we
3 share in common.

4 The second issue is about "post-bac,"
5 because what we know is that we really, probably,
6 are not going to solve the teacher shortage,
7 especially in the critical fields through
8 traditional four-year undergraduate teacher
9 preparation programs.

10 We need to have programs that focus on
11 career changes. So, my concern is that we make
12 sure that--here's what we don't want to end up
13 with.

14 We don't want to have people who take a
15 course here and then go to another college and take
16 a course, and then go to another college and take a
17 course, because that is going to lead to a less-
18 than-cohesive program, and I would think an
19 accounting and accountability nightmare in terms of
20 these grants, as well.

21 So, I think my recommendation would be
22 that we talk about--that these will be for people
23 who enter a program and finish that program, rather
24 than people who sort of shop around for the most

1 convenient course that fits into their life. So,
2 it is another area, I think, to get some clarity
3 about.

4 The other issue is probably whether or
5 not any undergraduate work can be eligible for
6 TEACH Grants if in fact the teacher preparation is
7 at the Post-bac level.

8 Example, California. California requires
9 a fifth year. Most of the fifth-year programs in
10 California are post-bac programs. They are not
11 master's degree programs. And in those instances,
12 people have to finish their bachelor's degree to
13 get their content before they go on to the fifth
14 year.

15 So, I think some clarity about in what
16 cases would undergraduate count and be eligible for
17 TEACH Grants would be necessary in the rulemaking.

18 Certainly another area is eligibility, and
19 this sort of relates to the whole business about
20 the shortage fields. Does one become eligible
21 simply by declaring a major in one of the high-need
22 areas? That's the first thing. We need to make
23 sure that institutions can verify that eligibility.
24 And it seems another piece that we need to make

1 sure--we are talking about, literally, people who
2 would be high-school seniors in some cases.

3 We need to make sure that those student
4 are aware of, when they seek money through a TEACH
5 Grant, that what the requirements are for service
6 afterwards--so, probably instigating some sort of
7 promissory note will accomplish that and also
8 provide a way, perhaps, to focus their studies.

9 I am concerned, as you are, about what
10 happens--the teacher shortage areas is an
11 interesting one, because the language talked about
12 a number of areas pre-identified, but then others
13 that would be identified by state or local
14 education agencies.

15 Let me give you the Maryland example.
16 Today, in Maryland, early childhood education is a
17 critical shortage area. Will it be in five years
18 when the student finishes the program? We don't
19 know that. So, we need to solve that problem. And
20 I think that--it is sort of, like, if you sign on
21 the dotted line that you are entering a shortage
22 area that has been identified by the state that, in
23 fact, the deal would be a deal, that if you
24 continue and follow that path and teach in that

1 area, that we should probably honor our promise.

2 But in Maryland, it is a little bit more
3 complicated, because we put out a teaching staffing
4 report every year based on data that comes from
5 somewhere. In that staffing report, then they
6 declare what the shortage areas are. It is
7 possible for a district in Maryland to declare
8 itself a geographic shortage area. Every one of
9 the school districts has done so.

10 In addition, in Maryland, minority
11 teachers and males are considered shortage areas.

12 So, I think this goes way beyond the
13 intent of the language of the bill, but it is one
14 of those things that I think--achieving clarity
15 about how state and local shortage area
16 declarations will be treated is a critical piece.

17 So, I think that, you know--I also have
18 attached to my testimony some comments from our
19 financial aid director that get into a level of
20 detail that goes way beyond the expertise of a
21 dean, and I am attaching that because I think it is
22 important to you, but I would be delighted to
23 answer any questions that you might have or address
24 anything further.

1 But thanks for the opportunity, and I wish
2 you well in the negotiated rulemaking. It is going
3 to be quite a process.

4 MR. BERGERON: It is going to be quite a
5 process and quite a rapid process.

6 MR. PAKANIZZEK: A rapid process.

7 MR. BERGERON: I expect--how do you think
8 we should address the issue of community colleges
9 and how they would fit within this.

10 MR. PAKANIZZEK: Well, I think community--
11 to be honest, I think community colleges serve two
12 very different roles right now.

13 One is that they serve as really part of
14 four-year programs by offering associate's degree
15 or, in many states, associated arts and teaching
16 degrees that are really an articulated part of
17 four-year programs.

18 I think in those cases, most of them have
19 agreed that they will provide clinical experience
20 for their students in several of the three or four
21 courses that become part of the teacher education
22 program.

23 I know in our state, for example, students
24 will usually leave the community colleges with at

1 least 100 hours of such experience through three or
2 four courses.

3 The other role that community colleges
4 play, often, is a provider of alternative
5 certification programs. And in my belief, it is at
6 that point that we really need to think about the
7 clinical experience that is required as comparable
8 to what you would require of any other teacher
9 education program, an extensive clinical
10 experience.

11 So, I mean, I think it depends on the role
12 of the community colleges. You just can't say for
13 community colleges it is this way, because they
14 play very different roles.

15 So, that would be my take.

16 MR. BERGERON: So, you would see, at least
17 as a first role, the role as the first two years of
18 the undergraduate program, some kind of articulated
19 agreement between the community college and a four-
20 year institution that awards degrees in teacher
21 education.

22 MR. PAKANIZZEK: Yes. Either institutions
23 or institution. In Maryland, we have a statewide
24 agreement that we have all agreed to accept the

1 associative arts degree in teaching as an
2 articulated program.

3 They come into our institutions with no
4 further course review. So, I think that's the key
5 for the first scenario, is some sort of an
6 articulated agreement, whatever that might look
7 like.

8 MR. BERGERON: In the second scenario, do
9 you think it is covered in some manner by the
10 general eligibility requirements?

11 MR. PAKANIZZEK: I think so.

12 MR. BERGERON: Right, right.

13 Other questions?

14 MR. MADZELAN: Yes, you touched upon, you
15 know, the notion of, at least initially, the
16 student eligibility for the grants.

17 You mentioned that they were trying to
18 ensure that--at least at the start--that we get
19 into the TEACH Grant Program those people that
20 intend to be teachers. And again, I think you
21 mentioned we try and stay away from scenarios where
22 students are kind of shopping around a bit.

23 And you, you know, talked about a
24 promissory note or some sort of agreement, or

1 something like that. And again, these are the same
2 kinds of issues that we've been discussing back in
3 the office.

4 And, you know, it is a concern for us,
5 because, obviously, this is not a trivial amount of
6 money, \$4,000, that--you know, this is a grant
7 program, but, in a sense, it is a loan program
8 that--where the loan is either repaid through
9 service or cash.

10 And so, that's the concern for us is to
11 minimize at the front end that pool of students
12 that, kind of on the back end, will not be repaying
13 via service. And you know, so we think about the
14 counseling that needs to be provided. And you know
15 obviously who is in the best position to provide
16 that counseling? The schools.

17 I mean, we can do a little bit of that
18 upfront in a sort of FAFSA screening and stuff like
19 that, but that's a real concern for us, that we
20 don't have individuals--we don't have students that
21 say, "Wow. A free \$4,000."

22 MR. PAKANIZZEK: Right. I think it is a
23 critical piece.

24 It is a critical piece in a couple of ways

1 also, because it seems to me that receiving a TEACH
2 Grant, then, is computed into a student's overall
3 eligibility for other awards, and so, the timing
4 becomes critical. The accuracy of the information
5 that the student receives becomes critical. And
6 that is all a timing issue, also, and that is why
7 the Department needs to move forward with more
8 deliberate speed than we in higher education have
9 ever imagined.

10 But we're on board with you in terms of
11 knowing how fast this has to work, because really
12 it will become--it will become a recruiting tool.

13 I was at an open house for prospective
14 students last Saturday, and I was talking about the
15 TEACH Grants, and people said nobody seems to know
16 about these. And I said, "Well, that's because
17 we're a much better university than any of the
18 others that you've been looking at."

19 But the reality is we really do have to
20 get this pretty clear and pretty quick so that we
21 can actually make it available for prospective
22 students in the fall.

23 MR. BERGERON: When we implemented
24 Academic Competitiveness and National SMART

1 Grants--it will be two years on July 1st--we did it
2 through a process that involved us publishing an
3 interim final regulation without negotiated
4 rulemaking and the normal customary public comment
5 process.

6 Our goal here is not to do that in this
7 case. Our goal here is to do the normal, though
8 expedited dramatically, negotiated rulemaking
9 process in the advance of doing an NPRM, with a
10 very short comment period in turning around a final
11 rule so that it is in place by July 1st.

12 And that is an extraordinarily ambitious
13 calendar. And to the extent that you all in the
14 community can help us with that, we appreciate it.
15 It is a challenge. I will say I am comfortable
16 that we can accomplish it working it together. We
17 got--while we did not have a formal negotiated
18 rulemaking or any formal public comment process
19 around ACG and National SMART Grants, we got a lot
20 of people from the community telling us stuff early
21 on in the process that helped us make sure that we
22 weren't too far off track.

23 And then, we did do--go through a process
24 of finalizing the rule, and then doing a Neg Reg.

1 We've had lots of comment on that. But this will
2 be a process that we'll have to all be working very
3 closely together and moving very quickly.

4 And I appreciate your coming today and
5 providing us your thoughts early in this process.
6 So, thank you.

7 MR. PAKANIZZEK: Good.

8 MR. BERGERON: Right now, we have no one
9 else signed up to testify that I know of. I will
10 check with my colleagues in a second. So, we will
11 just take a little break and, when someone is
12 ready, we will reconvene.

13 [Recess.]

14 MR. BERGERON: We're going to reconvene
15 now. We have a couple of additional people who
16 have signed up to speak.

17 I think it is S. Saunders from American
18 Assistance--NASLA.

19 How are you? Good to see you again.

20 I was looking for a first name, and there
21 wasn't one.

22 MS. SAUNDERS: Shelley.

23 MR. BERGERON: I know that, Shelley.

24 MS. SAUNDERS: So, good morning.

1 As we discussed, my name is Shelley
2 Saunders, and I am Vice-President of Strategic
3 Services with American Student Assistance, and I am
4 here on behalf of ASA and my fellow guarantors up
5 in the National Association of Student Loan
6 Administrators.

7 NASLA is a private, non-profit, voluntary
8 membership organization, comprised of four VFA
9 guarantors, who are: ASA, California Student Aid
10 Commission Education Fund, Great Lakes, and Texas
11 Guaranteed.

12 NASLA is organized to ensure consistent
13 and reliable delivery of student loan services to
14 America's students, parents, and post-secondary
15 institutions.

16 First thing I would like to talk about is
17 participation in negotiated rulemaking. Over the
18 last several years, many factors have impact
19 student loan borrowing, including the rising cost
20 of education, increasing borrower indebtedness, the
21 rapid growth of private loan borrowing, significant
22 changes in interest rates and the popularity of
23 loan consolidation.

24 Because of the importance in these trends

1 and changes in student loan borrowing, NASLA
2 believes that it is important that guarantors
3 participate as both a lead and backup negotiator on
4 the loan issues team in negotiated rulemaking.

5 A core focus of guarantors is to maximize
6 the success of borrowers in repaying their loans,
7 and as an administrator of the FFELP, a guarantor
8 works closely with the Department, students, and
9 families, schools, lenders, and loan servicers
10 through the life of the loan. Inclusion of a
11 guarantor voice in the negotiations will promote
12 broad-based, well informed rules.

13 NASLA has been an effective participant in
14 negotiated rulemaking during the last several times
15 it has been conducted, and we encourage the
16 Department to approve a NASLA guarantor
17 representative as a participant in negotiated
18 rulemaking once again.

19 Our first issue is federal preemption. We
20 believe the Department of Education should provide
21 explicit and total preemption of state laws which
22 regulate the conduct of Title IV institutions to
23 allow for consistent administration of the Title IV
24 student loan programs throughout the Nation.

1 The Secretary's comments to the final
2 Title IV regulations, implementing changes under
3 HERA and CCRAA published on November 1st included
4 language which clearly reiterates that federal
5 regulations preempt any state statute or regulation
6 which stands as an impediment to the federal law.

7 Such an explicit statement was welcomed by
8 Title IV institutions as providing a solid
9 foundation from which we may assess our program
10 obligations.

11 The difficulty for Title IV institutions,
12 meaning schools, lenders, guarantee agencies,
13 servicers, and secondary markets stems from state
14 laws or regulations which do not appear to stand as
15 an impediment to the federal law, but which, in
16 effect, create multiple and competing obligations,
17 and regulatory schemes through which Title IV
18 institutions must navigate.

19 Currently, several states either have
20 passed or are contemplating laws which regulate the
21 conduct of Title IV institutions acting within the
22 state, or in an interstate commerce, with state
23 residents, under the theory that unless explicitly
24 preempted, state laws, which are more restrictive

1 than the federal laws, are permissible.

2 Simply put, new regulations should state
3 that Title IV programs are, by definition, an area
4 of regulation exclusively reserved to the Secretary
5 and the Department of Education and that state law
6 in this area is totally preempted. In that way,
7 each Title IV institution will have one clear set
8 of guidelines thus avoiding the problems of an
9 uneven application of the federal laws to arise.

10 Next issue is with respect to the Pilot
11 PLUS auction program. The Pilot PLUS auction
12 program provision in the act raises several issues
13 that will need to be promulgated through regulatory
14 language.

15 Issues concerning borrower choice, such as
16 whether a borrower would be able to borrow from a
17 lender other than one of the two winning lenders
18 for that particular state. We are also concerned
19 about the guarantor's role in the Pilot auction
20 process. The law does not address the guarantee of
21 the Parent PLUS Loan made under the auction
22 program.

23 We would like for the Department to
24 clarify in regulations whether the two winning

1 bidders per state get to choose the guarantor from
2 which they will obtain their loan guarantees on the
3 PLUS loans. Or, since it is on a state-by-state
4 basis, the state designated guarantor will be the
5 automatic guarantor for all parent PLUS loans made
6 in that state.

7 Economic hardship. Continuation of the
8 debt burden test. We would like to advocate for
9 the continuation of the debt burden test that the
10 Secretary retained in regulations, despite the
11 removal of the test in the Higher Education Act put
12 forth through the College Cost Reduction and Access
13 Act. Indications from the Department are that this
14 debt burden test will remain in regulations for the
15 time being, and we strongly support that the test
16 be retained permanently.

17 In addition, we encourage the Department
18 to consider revising other areas in the regulations
19 where such income measurements or guidelines could
20 be utilized to benefit borrowers.

21 The application of the established debt
22 burden test could prove beneficial to a borrower
23 who has exhausted all his economic hardship
24 deferment eligibility but is still needing to

1 postpone and obtain a forbearance.

2 However, the forbearance provision does
3 not incorporate the borrower's family size, which
4 is critical when evaluating a borrower's debt
5 burden relative to his or her income.

6 NASLA appreciates the Department's
7 consideration of this testimony, and offers itself
8 as a resource to the Department on these and other
9 issues that you may consider.

10 Thank you.

11 MR. BERGERON: Thank you.

12 One question. Well, a comment, and
13 whether you want to have any observations. When we
14 retained it, our view was that we wanted to retain
15 the debt burden test as it currently stands, at
16 least until such time as we regulated around
17 income-based repayment and that payment plan was
18 available. To some extent, there is some potential
19 conflict or overlap between those two provisions.

20 Do you think we should still retain that,
21 or do you think that we would be more--that it
22 would be more appropriate for us to look at it
23 holistically in the context of that IBR plan?

24 MS. SAUNDERS: If you're going to look at

1 it more holistically, then that makes sense, but if
2 the gap is going to stay out there, then...

3 MR. BERGERON: Right. Well, our concern
4 right now was that if we didn't retain it in
5 regulations, there would be, clearly, a gap.

6 But when we said we were going to look at
7 it--we want to look at in the context of the new
8 repayment plan, as well as whether or not we should
9 just retain or do something different there.

10 MS. SAUNDERS: Yes.

11 MR. BERGERON: Anything else?

12 MR. SIEGEL: Yes, I would like to ask a
13 question about the preemption issue.

14 I understood, and our final regulations
15 reflect, that we would consider the issue of
16 preemption as it relates to preferred lender lists
17 and improper inducements.

18 It sounds like NASLA is asking for a much
19 broader preemption question that would relate to
20 the entire student loan program. Is my
21 understanding correct?

22 MS. SAUNDERS: Those are the two main
23 issues at hand, that you just discussed, but if we
24 could clean it all up at once, that would be nice.

1 MR. SIEGEL: Okay.

2 Just as NASLA and others prepare for this
3 discussion, negotiated rulemaking, I just ask you
4 to keep in mind that the standard for federal
5 preemption of any state law is relatively narrow.

6 And that it--the state laws generally have
7 to frustrate the federal purpose. It is not just
8 that they may in some instances conflict.

9 MS. SAUNDERS: I understand.

10 MR. SIEGEL: So, there will have to be
11 some evidence from NASLA and others that those
12 conflicts exist, and that they would frustrate the
13 federal purpose--

14 MS. SAUNDERS: Okay.

15 MR. SPIEGEL: --before we would have any
16 authority to preempt.

17 MS. SAUNDERS: Understood.

18 Thank you.

19 MR. BERGERON: Thank you.

20 Andrew Friedson.

21 Is Andrew in the room?

22 AUDIENCE MEMBER: I think he is running a
23 little late.

24 MR. BERGERON: Yes. We apologize for

1 confusion about location and difficulty finding us.

2 We will just hang out for a minute and
3 give Andrew an opportunity to get here, because
4 we're not going anywhere.

5 And if anyone else wants to sign up to
6 give testimony, see my colleagues outside at the
7 table.

8 Thank you.

9 [Recess.]

10 MR. BERGERON: We're going to reconvene.

11 Andrew Friedson is joining us.

12 Andrew.

13 MR. FRIEDSON: How are you? I feel like
14 we are too close to use the microphone.

15 MR. BERGERON: The court reporter does
16 need you to use the microphone.

17 MR. FRIEDSON: I'll use it anyway.

18 Good morning. My name is Andrew Friedson.
19 I currently serve as the Student Body President at
20 the University of Maryland. I stand before you
21 this morning to represent the 25,000 undergraduates
22 at College Park, and also to advocate for millions
23 of college students across the Nation. Thank you
24 for allowing me the opportunity to testify.

1 Last November, I testified during the
2 negotiated rulemaking process. Although we weren't
3 able to use that process to make significant
4 changes, it was an important starting-off point to
5 passing some of the most significant federal
6 legislation for students in a half-century.

7 This morning, I stand before you, one year
8 later, to discuss some concerns that I have and to
9 express my hope that you make these programs as
10 student-friendly as possible in implementation.

11 I truly appreciate your initiative in
12 moving this process forward so hastily, and I'm
13 looking forward to having them done.

14 The College Cost Reduction and Access Act
15 of 2007 will literally transform the number and
16 demographics of students who will be able to attend
17 college, and will drastically improve their
18 opportunities once they graduate. It promotes
19 desperately needed public sector jobs, increases
20 access for the neediest students, supports under-
21 represented communities, and appropriately links
22 repayment to income.

23 Students face serious hardship in terms of
24 the cost of college and the burden of debt, and

1 this legislation makes crucial strides to improve
2 both. It is absolutely critical that this
3 negotiated rulemaking process ensures that the
4 legislation does what was originally intended: to
5 help students better afford college both during
6 their time as a student and once they graduate.

7 I have a few recommendations for this
8 Committee to consider when it implements the
9 legislation.

10 First, I hope the Department of Education
11 works to ensure that all students have access to
12 student loan programs. We must ensure that all
13 students have access to income-based repayment.

14 Secretary Spelling should provide clear
15 guidance to lenders, servicers, and guarantors of
16 their responsibility to assist borrowers in
17 identifying the best option for their individual
18 circumstances. Borrowers who face duplicity from
19 lenders should be able to consolidate, or
20 reconsolidate, into a direct loan in order to
21 provide them with all available options.

22 Additionally, the maximum repayment for
23 income-based repayment and income-contingent
24 repayment should be capped at 20 years. The

1 Secretary of Education has discretionary power to
2 limit repayment from the current 25-year statutory
3 limit. It is important to note that the vast
4 majority of borrowers who will have paid their loan
5 before 20 years; however, this will alleviate the
6 small number of students who have struggled with
7 their repayment from the burden of debt and will
8 allow them to be productive society members for
9 their future years.

10 And lastly, I recommend that the
11 Department of Education clarify the rules of what
12 periods of repayment count towards cancellation
13 following the duration of repayment.

14 I would suggest including the following:
15 periods while on income-based repayment, periods
16 while on income-contingent repayment, periods of
17 economic hardship deferment, payments under a
18 standard 10-year repayment plan, and payments that
19 are at least equal to the standard repayment plan,
20 regardless of which plan the borrower is using.

21 Inevitably, other issues will arise
22 throughout this process. It is my sincere hope
23 that the Department of Education will act in the
24 best interest of students in each decision it makes

1 when implementing these changes to student
2 borrowing programs.

3 In closing, please continue to keep in
4 mind that the purpose of education and the backbone
5 of America is the idea of increasing opportunities
6 through one's hard work and through his or her
7 dedication. With the passage of this landmark
8 legislation and the tireless work of this
9 Committee, we have an opportunity to offer college
10 graduates the chance to make decisions based on
11 their interests and not on their income. Having a
12 workforce that is actually passionate about their
13 jobs is in the public's best interests both today
14 and long into our future.

15 Again, thank you for your time, and for
16 moving so quickly to make college more affordable
17 for students throughout this country. I appreciate
18 it.

19 MR. BERGERON: Thank you, Andrew.

20 Andre is the last person we have signed up
21 to testify this morning.

22 If you are interested in testifying and
23 didn't sign up as you came in, I would encourage
24 you to go and see my colleagues outside the door

1 and get on the list of people to testify.

2 Otherwise, we will just hang out here
3 until about lunchtime.

4 Thanks.

5 [Recess.]

6 MR. BERGERON: Good morning. We are going
7 to reconvene.

8 So, if there are conversations, they can
9 go out in the hallway. That would be great. Also,
10 if anybody wants to sign up to testify, go ahead
11 and visit with our colleagues outside at the table.
12 But right now, we do have somebody who is here to
13 testify, and that is Phil Schrag

14 Could you come forward, Phil.

15 MR. SCHRAG: Thank you. I'm Philip, with
16 one "l," Schrag, S-C-H-R-A-G.

17 I am a professor of law at Georgetown
18 University, and I'm speaking on behalf of the
19 Association of American Law Schools.

20 Thank you for allowing me to appear at
21 this hearing and discuss the agenda for negotiated
22 rulemaking, to take account of the changes made by
23 the College Cost Reduction and Access Act.

24 I agree with the observation of Senator

1 Edward Kennedy that this law is the most important
2 boost to the financing of higher education since
3 the GI Bill, from the point of view of graduate and
4 professional students, especially those who will
5 incur high educational debt in relationship to
6 their expected incomes.

7 The most important feature of this new law
8 is the creation of the income-based repayment plan.
9 Sections 2.03 and 4.01 of the new law, creating
10 income-based repayment and a public service loan
11 forgiveness program, were necessary because of the
12 income-contingent repayment option, which had
13 failed to achieve one of its principle goals--
14 principle goals of the Congress that had created it
15 in 1993, and that was to enable students who wanted
16 lower-paying public service careers to obtain the
17 costly advanced education necessary to be able to
18 work in those careers.

19 In a book I wrote in 2002, Repay as You
20 Earn, I documented the lack of interest in the ICR
21 plan among students with very high educational debt
22 and among financial aid advisors who counsel them.

23 The main reasons why students do not
24 voluntarily elect ICR is the long 25-year period

1 before any forgiveness can occur. The IBR plan in
2 Section 2.03 lowers monthly repayments compared
3 with ICR or any other repayment plan for those with
4 high debt-to-income ratios.

5 But just as important, for idealistic
6 students with high educational debt, Section 4.01
7 provides for forgiveness of remaining balances at
8 the end of 10 years for borrowers who have made 120
9 payments under IBR, ICR, or standard repayment
10 while working full-time during that period in
11 public interest jobs.

12 I have written an article describing the
13 operation and great importance of these provisions.
14 It will be published next month in the Hofstra Law
15 Review and is available on the Web in draft form on
16 the Georgetown University website, and on the
17 Social Science Research Network website.

18 The new law leaves open several questions,
19 however. These are among the most important issues
20 for negotiated rulemaking.

21 First, what types of work qualify as
22 public service jobs? Some of the qualifying
23 occupations are clear from the statute, including
24 those in government and those in an employment by

1 non-profit organizations that are described in
2 Section 501C3 of the federal income tax law.

3 But Section 4.01 appears to encompass
4 employment in other jobs, well. For example,
5 Section 4.01 appears to cover, "public service for
6 individuals with disabilities, and jobs in
7 'emergency management,' even if those employees are
8 not working for the government or for 501C3."

9 Those two types of employment are
10 specifically covered in the catch-all clause at the
11 end of 4.01, but all the other specific occupations
12 in--listed in Section 4.01 must be dealt with by
13 the regulators as well.

14 Similarly, prosecutors are specifically
15 covered by Section 4.01 even if they do not work
16 for the government. Does this mean that
17 prosecutors, for example, who are working for an
18 international criminal court or are employed by an
19 international body are entitled to the benefits of
20 this section?

21 Second, how many hours per week or in a
22 month constitute full-time employment within the
23 meaning of Section 4.01?

24 Third, if a borrower who wants to use the

1 public service forgiveness program consolidates an
2 FFEL loan before beginning repayment into a federal
3 direct consolidation loan, will the regulations
4 characterize the federal direct consolidation loan
5 as one that is made by the United States to assist
6 the individual in attending an educational
7 organization?

8 This is important because, if it is
9 characterized that way, then Section 1.08(f) of the
10 internal revenue code appears to exempt the amount
11 of forgiveness for public service at the end of 10
12 years from the gross income of the borrower.

13 Conversely, if such a consolidation loan
14 is not regarded as fitting that category, only
15 forgiveness on loans that were federal direct loans
16 from the start will be tax exempt under section
17 1.08(f)

18 That would provide a significant
19 competitive advantage to loans under the federal
20 direct loan program. There is no indication that
21 enacting the College Cost Reduction and Access Act
22 Congress intended such a distinction between the
23 tax treatment of forgiveness--between FFEL loans
24 that were consolidated into federal loans and loans

1 that originated as federal direct loans.

2 Fourth, are all lenders required to offer
3 IBR repayment plans? If they are not, what must
4 they do to disclose to potential borrowers that
5 they will not be able to repay through this plan.

6 Fifth, if, as expected, Congress permits a
7 married borrower to file a separate tax return and
8 base IBR repayment on the borrower's own income and
9 debt, should married borrowers who use income-
10 contingent repayment and whose spouses are not also
11 using income-contingent repayment, have the same
12 opportunity to avoid a marriage penalty. The
13 Higher Education Act only requires imputation of
14 spousal income to borrowers who file joint tax
15 returns, although the regulations that are
16 currently in effect go beyond the necessary
17 requirements of the ACT.

18 And finally, now should FFEL borrowers be
19 notified of their right to consolidate their loans
20 into a federal direct consolidation loan for the
21 purpose of using the public interest loan
22 forgiveness program? Can the procedure of
23 consolidating be made as simple as possible?

24 Since months of employment in public

1 service already qualify for the 10-year period
2 after which forgiveness will occur, an event that
3 started on--a status that started on October 1st,
4 should the Department quickly adopt interim
5 measures to facilitate consolidation with ICR
6 repayment for those who are now in public service,
7 and who want to begin repaying under the ICR
8 formula immediately while waiting for IBR to take
9 effect in 2009.

10 Thank you.

11 MR. BERGERON: Thank you. I don't think
12 we have questions.

13 I think we'll go ahead and adjourn until
14 1:00, when we will reconvene.

15 [Recess.]

16 MR. BERGERON: Good afternoon.

17 We're going to reconvene the public
18 hearing on negotiated rulemaking.

19 At the moment, we have no one who has
20 requested time to speak. So, we are going to wait
21 and provide opportunities for people to sign up,
22 and then reconvene when there is speaker available.

23 Otherwise, we will just recess for a
24 little while.

1 [Recess.]

2 MR. BERGERON: At this time, I will close
3 this hearing with respect to negotiated rulemaking
4 and reopen, or meet again, on November 29th in San
5 Diego.

6 Thank you.

7 [Whereupon, at 4:01 p.m., the hearing was
8 adjourned.]