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TRANSCRIPT OF TAPE-RECORDED
HEARING FOR
U.S. DEPARTMENT OF EDUCATION
NOVEMBER 29, 2007

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3 MR. BERGERON: -- having to receive public comment
4 on the negotiated rulemaking for the 2008 year. I'm David
5 Bergeron. I direct policy for the Office of Postsecondary
6 Education. With me is Jeff Taylor from our office of
7 general counsel department; and at some point this
8 morning Diane Jones, the assistant secretary for
9 postsecondary education, will join us. At that point
10 we'll let her say a few opening remarks.

11 This process is all about establishing the
12 negotiating agenda for the upcoming negotiated
13 rulemaking. We provided notice to the public in a Federal
14 Register notice indicating that we would be holding these
15 hearings and that we would form one or two committees to
16 develop a Notice of Proposed Rulemaking.

17 Principally, what we'll be addressing are issues
18 that arise from the College Cost Reduction and Access
19 Act; but if there are other issues that can be addressed
20 at the same time, we'll take those into account and try
21 to address them through that rulemaking process.

22 We're going to be -- I told you Diane would be here.
23 I actually had got -- no, actually, she has -- somebody
24 came along and took my cup and cleared it from my table
25 before I got back, so --

1 I'll go ahead and let Diane say a few words and then
2 I'll just finish the introduction and we'll get right to
3 you all and your comments.

4 MS. JONES: Good morning, everyone. Thanks for being
5 here. We are now starting, you know, yet another round of
6 negotiated rulemaking. And your comments through the
7 process last year were invaluable to the process and to
8 the outcome and so I'm so delighted to see so many people
9 here to make comments today.

10 Your comments through these sessions, as well as
11 through the negotiated rulemaking process, as well as in
12 response to the notices we publish -- we look and think
13 about every comment. And I can already tell you that some
14 comments that we got at the New Orleans meetings, we're
15 already reacting to them. There were some comments that
16 came through the earlier hearing where we went back to
17 Washington and said, "You know what? We got some ideas
18 not really on the new negotiated rulemaking, but on some
19 other things we're doing." These were great ideas.

20 And the undersecretary said, you know, "Let's move
21 on these ideas now." And I think she had actually made a
22 phone call to some of the people who gave those comments.

23 So not only are these comments going to be valuable
24 to this rulemaking process, but we also learn things from
25 you that we can do in other areas and in other aspects of

1 our work. And, you know, we need to hear from you because
2 you're the ones who are on the ground.

3 So I really appreciate everybody being here. We look
4 forward to your comments and we look forward to another
5 successful round of negotiated rulemaking. Thanks.

6 MR. BERGERON: As I was indicating, we will use the
7 information that we attain from these hearings to develop
8 the agenda. We anticipate that we'll be convening one or
9 two committees beginning in January with sessions, again,
10 in probably February and March to develop those -- the
11 Notice of Proposed Rulemaking, get that out for public
12 comment, and to then finalize the regulations by November
13 1st.

14 It is likely we will be moving more rapidly on
15 issues around the TEACH grant program as we develop the -
16 - our implementation for that new program so that can be
17 operational by July 1st. So you'll see things maybe done
18 a little bit differently as we go forward with that
19 particular process.

20 And this is all about your opportunity to provide
21 comments. I have a list of people who are already signed
22 up to provide their thoughts; and if you didn't have a
23 chance to sign up before you came in, or after you got in
24 the room realized you wanted to, please go out and see
25 Nicki and she'll sign you up for some time. We will go

1 and be here as long as we need to, within what the hotel
2 will allow us in terms of this room today. And so, you
3 know, we encourage everybody to take advantage of this
4 opportunity.

5 With that -- or, the other thing I should say is
6 throughout the morning and early this afternoon you may
7 see some of us wander in and out -- the people that are
8 sitting at this table and other people come and join the
9 panel here. And as we do that, I'll ask those -- try to
10 remember to ask those folks to introduce themselves so
11 that you're not talking to people you don't know. They're
12 all our colleagues at the Department, either in my office
13 or in Federal Student Aid. So, you know -- and they will
14 relay the information in. This is recorded and
15 transcribed and the transcripts of the hearings will be
16 available on our website shortly as we get into this
17 process.

18 So with that, I'd like Paula Cordero to come forward
19 from the University of San Diego. Good morning, Paula.

20 MS. CORDERO: Good morning. Thank you for this
21 opportunity to provide comments for the development of
22 the regulations for the TEACH grants.

23 I'm Paula Cordero, Dean of the School of Leadership
24 and Education Sciences at the University of San Diego. We
25 prepare approximately 150 teachers per year, many of whom

1 fill the critical shortage areas addressed in the TEACH
2 grant program. We're a private urban university and we
3 value our partnerships with the 42 school districts in
4 this county as well as eight community colleges with
5 which we have articulation agreements. We also partner
6 with foundations and a variety of non-profit
7 organizations, such as museums, in preparing highly
8 qualified teachers and educational leaders.

9 Just so that you know, San Diego County has
10 approximately half a million children in 655 public
11 schools. And in addition to my work at the University of
12 San Diego, I was appointed two years ago by Governor
13 Schwarzenegger as a member of the California Commission
14 on Teacher Credentialing, and the vision of the
15 Commission is to ensure high quality educators for
16 California's diverse students, schools, and communities.
17 California faces a persistent shortage of well-prepared
18 teachers, especially in schools with high concentrations
19 of non-native English speaking students.

20 We at the University believe the TEACH grant program
21 will serve as a wonderful incentive for students to enter
22 the teaching profession. Many potential California
23 teachers choose not to enter the profession because
24 teacher salaries are not sufficient to offset
25 California's cost of living. These grants then bring

1 people into the teaching profession by making teaching a
2 viable career option, one that they can afford. And this
3 viability is crucial for recruiting teachers for these
4 areas.

5 We at USD believe the TEACH grant program is a
6 proactive measure and we have five questions for you and
7 two suggestions.

8 First question: What happens when teacher shortage
9 areas change? The TEACH grant requires a four-year
10 teaching service commitment in a high-need subject area;
11 however, what happens when a person begins teaching in a
12 declared shortage area but that shortage area is no
13 longer deemed a shortage area in subsequent years? My
14 colleagues and I recommend that the teachers teach all
15 four years in the same subject area, regardless of
16 whether that area remains a shortage area. You've
17 probably heard this before at other hearings, but we just
18 want to reinforce it.

19 Another question: How many TEACH grants are
20 available? It appears that as much funding as is required
21 to meet the demand for applicants will be available. It
22 would be helpful to have the regulations clarified for
23 students and for institutions that the program will
24 accommodate as many teacher candidates as apply, and this
25 will enable us to engage in extensive outreach campaigns

1 without concern for over-promising or over-promoting this
2 scholarship opportunity.

3 Third question: What are the timing and distribution
4 of the grants? If institutions of higher ed underestimate
5 the number of grants they need, are they able to apply
6 for additional funds mid-year or do they have to wait
7 until the following year? I would think that institutions
8 should be able to apply for additional funds throughout
9 the year as students -- and we're getting more and more
10 non-traditional students -- as they enter postsecondary
11 institutions at various times during the year.

12 Further, student recipients should be made aware
13 that a grant has the potential to become a loan -- I
14 believe? -- if he or she fails to meet criteria. So
15 repayment -- at least I didn't see -- addressed in
16 legislation, and we don't understand how the repayment
17 process works.

18 Fourth question: What is the reporting process for
19 TEACH grantees during their teaching service commitment?
20 Now, the universities are equipped to track our students
21 during the time of enrollment and we do our absolute best
22 to follow up on our students, but tracking transient
23 students during an eight year period after graduation
24 would create an incredible -- it would put an incredible
25 onus on us that I'm not sure that we could carry that

1 out, and there's no funding for us to do that. And this
2 is especially hard for a school like the University of
3 San Diego because in spite of the wonderful weather in
4 Southern California many of our students do go back to
5 the states that they come from, so -- the parents want
6 them to. So we really need to know about that commitment.

7 The fifth question: Who is eligible to apply for
8 TEACH grants in the graduate program part? So it's a
9 little unclear. The statute as it's written appears to
10 exclude a significant category of potential teachers. Now
11 within that career changers group, those who are not
12 retired or who may not have the content expertise in the
13 teaching shortage area, but who want to go back to get
14 their masters degree in that certified shortage area. The
15 Department's regulations need to clarify this issue
16 regarding eligibility to receive a TEACH grant from
17 masters-to-be programs. Regulations should allow career
18 changers who are non-current or former teachers or non-
19 retirees to be eligible for TEACH grants.

20 And again, you know, this is particularly important
21 in an area like San Diego since we have many military
22 families -- we have all of these young men and women
23 returning from Iraq and Afghanistan and we want to get
24 them into the teaching profession. Many of them want to
25 become teachers in these shortage areas.

1 We have two suggestions for you. There's no mention
2 made about how the Department is going to evaluate the
3 TEACH grant program. In order to better understand its
4 impact in addressing the serious and chronic teacher
5 shortage not only in California but in the nation, it
6 would be most helpful for faculty and administrators and
7 schools of ed, as well as organizations such as the
8 California Commission on Teacher Credentialing, if there
9 was an annual report that was made available. And of
10 course that kind of report would include all the good
11 things that you normally include in your other reports,
12 so I'm sure that's on your burner.

13 And one of the challenges we foresee for a school of
14 education is to ensure that our perspective in current
15 teacher education candidates would be aware that TEACH
16 grants are available. We don't want this wonderful
17 opportunity to be lost. Thus, these grants will have to
18 be promoted in a variety of ways, so marketing becomes a
19 key issue. And also, the teacher candidates have to
20 understand the service obligations connected to this.

21 So the faculty of the School of Leadership and
22 Education Sciences at the University of San Diego are
23 committed to playing a vital role in spreading the word
24 and sharing the fabulous news about TEACH grants with our
25 -- not only our teacher education candidates, but also as

1 we work in the local schools. And we thank you very much
2 for this opportunity.

3 MR. BERGERON: Thank you. Normally we won't be
4 providing comment back on the testimony, but let me just
5 say a couple things. In regulation we wouldn't be
6 establishing a number of people who qualify because it is
7 an entitlement without a limit on number of dollars or
8 number of recipients, and we wouldn't want to impose one
9 by regulation. So that -- that's something we likely
10 won't regulate around.

11 On the issue of timing distribution, these will
12 operate just as Cal Grants and ACG and National SMART
13 Grants do, where this eligible student comes forward,
14 applies, is determined by the institution to be eligible
15 and the institution gets the money paid by the board.
16 Very -- you know, the same kind of process. So I think
17 that -- again, I don't think that's going to be subject
18 to regulation.

19 But in terms of many of the other issues, certainly
20 they'll be issues that we will address through the
21 regulatory process and we thank you for your testimony.
22 Anything else?

23 MS. JONES: Sounds like maybe you were listening
24 when we had our conversations over the past couple of
25 months. Yeah, many of these questions have come up before

1 in these fora as well as internally. So you asked perfect
2 questions that we've asked as well, and others, so
3 thanks.

4 MR. BERGERON: Jackie Fairbairn? Jackie is from the
5 Great Lakes.

6 MS. FAIRBAIRN: That's right. Thank you. Good
7 morning. My name is Jackie Fairbairn. I am the Director
8 of Policy and Regulatory Compliance for Great Lakes
9 Higher Education Guarantee Corporation.

10 Great Lakes is a private, non-profit corporation
11 that administers Federal Family Education Loan Program.
12 Our mission is to make the dream of education a reality.
13 We work with students, borrowers, schools, lenders, and
14 community organizations to change lives for the better
15 through higher education. As a leading guarantor of
16 student loans for over 40 years, Great Lakes is a
17 private, non-profit guarantee agency serving more than
18 two million student loan borrowers, 2,700 schools, and
19 1,400 lenders across the nation.

20 To begin with, Great Lakes would like to express our
21 support of the testimony given by Shelly Saunders [ph]
22 representing the National Association of Student Loan
23 Administrators, otherwise known as NASLA. In particular,
24 we support the call for the National Association of
25 Student Loan Administrators to be represented in the

1 negotiated rulemaking activity.

2 As in prior years, we feel that NASLA has been an
3 effective voice for student loan guarantors whose mission
4 it is to ensure consistent and reliable student loan
5 services to America's students, parents, and
6 postsecondary education institutions. Importantly, NASLA
7 is not a Washington, D.C. based trade association.
8 Rather, it operates through the consensus of its members
9 without a paid staff or outside consultants. Accordingly
10 it brings to the table the direct and unfiltered use of
11 actual operational FFEL agency participants.

12 We believe that together with program beneficiaries,
13 students, and parents, it is the operational program
14 participants who should be at the negotiated rulemaking
15 table. Since it is impossible for all to participate, the
16 secretary should recognize that those associations and
17 consortiums that most directly represent the operational
18 participants should be appointed.

19 Appointment of umbrella organizations or trade
20 associations as direct negotiators would appear
21 appropriate only when the umbrella organization
22 represents constituencies too numerous to be separately
23 seated, or who have no separate voice. Therefore, we
24 encourage the Department to consider, once again,
25 extending an invitation to the nation's guarantors.

1 Regarding the issues for negotiated rulemaking, we
2 know that the Department has heard a variety of very
3 important issues through these scheduled hearings which
4 underscore the necessity of engaging in the negotiated
5 rulemaking process. Great Lakes would also like to echo
6 the testimony brought forth by our guarantor members of
7 NASLA, one of which will be following me. Our NASLA
8 colleagues will be covering a number of the items that
9 also appear in our written testimony document, and so for
10 the interest of brevity I'm only going to cover three of
11 the mini-list that I will be submitting to you in
12 writing.

13 In keeping with our principles, Great Lakes
14 encourages the Department to focus on changes to the
15 regulations that enhance borrower benefits, preserve
16 borrower choice, simplify student loan borrowing, and
17 promote successful repayment. So the three issues I'm
18 going to bring to you today in this hearing are: the
19 first will be the issue regarding teacher loan
20 forgiveness, and consortiums and cooperative agreements.

21 As a result of Great Lakes' recent efforts to
22 promote teacher loan forgiveness program we have received
23 a number of applicants that have indicated that they are
24 employed through consortiums or cooperative arrangements
25 -- or co-ops -- that allow teachers, particularly special

1 education teachers, to teach at a number of schools.
2 These types of arrangements help schools that do not have
3 enough students to warrant employing a full time teacher
4 in a certain curriculum.

5 When asked if the teacher loan forgiveness program
6 may be available to these teachers, the Department has
7 indicated that they do not qualify since they are not
8 employed by an individual school or a school district
9 [recording blip] by the consortium or the co-op. That
10 conclusion seems to be counter to the intent of the
11 teacher loan forgiveness program and we believe it should
12 be reevaluated.

13 In addition, it appears counter to the Department's
14 policy on allowing a Title IV recipient to attend more
15 than one institution through a consortium agreement
16 between schools, including study abroad programs, and
17 still qualify for Title IV aid. We believe that the same
18 logic should apply once the loan goes into repayment and
19 the borrower is working toward eligibility for teacher
20 loan forgiveness.

21 The second issue we are hoping that the Department
22 will add to the negotiated rulemaking agenda is with
23 respect to establishing repayment terms after
24 rehabilitation. Defaulted borrowers who request
25 rehabilitation will provide to us as a guarantor

1 documentation establishing that their reasonable and
2 affordable payment does not meet the \$50 dollar minimum,
3 and this creates a problematic situation for us under the
4 FFEL. Now such a payment will assist the borrower in
5 regaining Title IV eligibility. This monthly payment
6 amount is not sustainable after the loan is rehabilitated
7 and sold to a lender as there is no flexibility to the
8 lender to establish a monthly payment amount below the
9 \$50 dollar minimum or any amount of accrued interest,
10 whichever is greater; we know this.

11 In other cases, while the amount of the monthly
12 payment during rehab may be above the \$50 dollar minimum,
13 or at least the amount of accrued interest, the required
14 monthly payment amount may still increase dramatically
15 after the purchase of the loan by the lender. While a
16 variety of repayment plan choices are available to these
17 rehabilitated borrowers, the regulations require the
18 borrower to proactively request a repayment plan choice
19 and is generally not offered that choice until after the
20 standard repayment schedule is issued by the lender.

21 We contend that in many cases the borrower's post
22 rehabilitation repayment plan choice is information that
23 could be secured prior to the completion of the
24 borrower's rehabilitation period. This information could
25 then be relayed to the purchasing lender at the time when

1 the loan is sold, allowing the lender to honor the
2 borrower's choice immediately, as well as ensuring the
3 repayment terms are appropriately aligned as possible
4 with the monthly payment amounts required during the
5 rehabilitation period.

6 For borrowers under the \$50 dollar minimum monthly
7 payment requirement, or accrued interest, the borrower
8 should be allowed to choose to have his or her FFEL loan
9 consolidated under the direct loan program in order to
10 obtain the income-contingent repayment immediately upon
11 successful rehabilitation. Versus the current rules which
12 require that the borrower apply for direct loan
13 consolidation after the rehabilitation loan once again
14 becomes delinquent. This is a problem.

15 And finally, we would like to make sure that we do
16 address the military grace period and the new deferment
17 rules. The heroes and the CCRAA have created an overlap
18 in the deferment criteria applicable to borrowers serving
19 in the military. Thus, we encourage the Department to
20 provide clear regulatory guidelines that allow maximum
21 benefit to borrowers.

22 Toward that end, we advocate that the Department add
23 a regulatory language to define "demobilization" and
24 define that as it is based upon the date that a borrower
25 arrives back home from a tour of duty as stated in the

1 borrower's military orders as we -- this is documentation
2 we already have. This definition would allow a borrower
3 to utilize this benefit without requiring additional
4 documentation. In addition, we encourage the Department
5 to allow the 13-month post active duty deferment to be
6 consecutive and not concurrent with the 180-day
7 transition period as provided for in the statute.

8 Finally, we advocate that the Department provide
9 this benefit to borrowers on a per occurrence basis.

10 In closing, I would like to restate that Great
11 Lakes' mission is to make the dream of education a
12 reality. We work with students, borrowers, schools,
13 lenders, and our community organizations to change lives
14 for the better through higher education. Toward that end,
15 Great Lakes supports the comments endorsed by NASLA; our
16 NASLA colleagues who will be testifying after me, later
17 this afternoon; and those of our student groups and the
18 associations that represent them. So thank you.

19 MR. BERGERON: Thank you, Jackie. Tammy Halligan.
20 She's from Career College Association.

21 MS. HALLIGAN: Hi. I'm Tammy Halligan with Career
22 College Association. I'm going to try not to read
23 directly from this, but I didn't memorize it last night
24 so you're going to get a lot of reading.

25 CCA is a voluntary membership organization of

1 accredited private postsecondary schools, institutes,
2 colleges, and universities. We have over 1,400 members
3 that offer everything from certificate programs to degree
4 programs associated with bachelors, post-baccalaureate
5 degrees, and professional degrees. So we run the gamut.
6 Our schools graduate approximately one-half of the
7 technically trained workers who enter the U.S. workforce
8 each year, and we also provide re-training for displaced
9 workers. All of our members are licensed by the state I
10 which they are located; accredited by a recognized
11 regional or national accrediting body, some have both;
12 and they are all approved by the U.S. Department of
13 Education.

14 We believe students and institutions would benefit
15 if the Department re-visited the regulations surrounded
16 preferred lender lists, particularly as they relate to
17 limitations on lenders assisting schools to educate these
18 students about lending and repayment options. Many CCA
19 member institutions, and other schools outside of sector,
20 are small. They do not have large financial aid staffs
21 that can provide the optimum level of counseling at all
22 stages of the loan process.

23 The lenders have the expertise and can provide the
24 additional human resources to increase the counseling to
25 students, and they have done so historically. The

1 Department, Congress, and our schools are also guest on
2 ensuring that these students have the best loan package
3 available to them. Student loan default rates should
4 continue to go down and prohibiting lenders from
5 providing this in-person loan counseling prevents
6 students from having direct access to these experts who
7 can provide them with the best information about interest
8 rate repayment options and debt management.

9 Additionally, many of these small institutions may
10 not be able to create a lender list with three lenders
11 willing to make loans to their students due to the low
12 volume of business they would receive from that
13 institution. We've heard from a lot of our schools that
14 have 30 students at a time enrolled in a program and only
15 run the program twice a year. They have very small
16 programs. They have very small loan volumes. They're very
17 concerned about the fact that they're not going to have
18 lenders who are going to be willing to provide these
19 benefits to their students on a preferred lender list.

20 In these cases if the institution discloses the
21 requirements and criteria used for selecting lenders to
22 be placed on this preferred list, and only one or two
23 lenders meet that criteria, such as providing the
24 permitted borrower benefit, we believe these institutions
25 should be provided a waiver for the number of lenders

1 required on the list. They can apply to the secretary for
2 other waivers. If they go through this process, they
3 provide that information to the secretary, waivers could
4 be granted on a case-by-case basis to institutions.

5 We also have several concerns regarding the TEACH
6 grants established in the CCRAA. I know you have heard
7 all of these complaints before. Our colleagues from NASLA
8 elaborated on them very nicely in Washington at the
9 hearing there, so I won't go into it full time. But one
10 of the concerns we have is the burden of tracking
11 students after completing the courses study. Who is going
12 to do this? Is it supposed to be the institutions, the
13 Department, will be a shared responsibility between them?
14 Like my colleague who spoke from San Diego, their
15 students move around, our students do a lot of this
16 through distance education. It's going to be hard to
17 track them.

18 Also, if a recipient should change his or her major
19 from teaching to another field and the grant would
20 convert to loan, this could put that student over his or
21 her loan limit. It's a very real scenario that such a
22 student in this situation would be forced to leave school
23 because without the traditional financial aid package of
24 grants and loans, that he or she would have been eligible
25 for before the grant to loan conversion, he or she will

1 not be able to attend school. Students who do not
2 complete their programs also tend to be those students
3 who default on their loans.

4 A student who is forced to drop out of school before
5 earning their postsecondary credential, because of
6 reaching their maximum loan limit, will be in a position
7 of having a debt that simply cannot be paid. We urge the
8 Department to consider these big picture factors when
9 regulating this program and other areas of the HEA that
10 it could affect.

11 We feel the Department must carefully consider the
12 regulations to establish procedures to annual determine
13 the borrower's eligibility for the income-contingent
14 repayment program, including the verification of the
15 borrower's income and amount of their loan. This valuable
16 program needs to be regulated in a manner that will
17 provide the most benefit to students with the least
18 amount of burden.

19 Finally, we encourage the Department to add the
20 financial responsibility regulation to the negotiated
21 rulemaking agenda. There have been a number of changes to
22 GAAP and new accounting policies that have had a
23 significant impact on the current financial ratio
24 analysis. The current regulations do not properly account
25 for some of these changes. During the negotiated

1 rulemaking sessions stemming from Fed Up legislation in
2 2002, this topic was not discussed because of the already
3 ambitious agenda.

4 The Department has shown this past year that it is
5 possible to successfully hold multiple negotiated
6 rulemaking sessions at the same time. Addressing the
7 financial responsibility regulations has been put off for
8 quite some time and it's time for them to be fully
9 discussed. I know that with the very short time frame we
10 have for these negotiated rulemaking sessions it's most
11 likely not going to be possible. We would very much
12 appreciate it if it is. If not, I think the Department
13 should fully consider adding it to the next round
14 stemming from the HEA reauthorization. There's a lot of
15 legislation that's going to change, a lot of the rules
16 that really impact these financial regulations.

17 Thank you for the opportunity to discuss this. We
18 hope to provide further assistance to you as the
19 negotiated rulemaking sessions unfold. We feel that with
20 the input of committee members on the negotiated
21 rulemaking teams -- who are knowledgeable about their
22 topics and represent a very definitive section of
23 postsecondary education, enabling them to speak with
24 authority on behalf of the constituency they represent --
25 that we can arrive at good regulations.

1 Thank you. And always, you know, you can call me
2 with any questions.

3 MR. BERGERON: Thank you, Tammy. I should have --
4 when I provided my comments before about TEACH grants I
5 should have added one other observation. That is that we
6 envision that the Department will be the entity that
7 tracks these individuals who receive these awards and
8 make sure that they are aware of their obligation to
9 fulfill that service and do all of that kind of
10 servicing, and putting it in quotes, of these grants.

11 MS. HALLIGAN: Very good to know.

12 MR. BERGERON: So that's our current thoughts with
13 regard to that.

14 MS. HALLIGAN: If those thoughts became reality that
15 would be wonderful. We'd appreciate it. Our schools would
16 appreciate it.

17 MR. BERGERON: Thank you, Tammy.

18 MS. HALLIGAN: Thank you.

19 MR. BERGERON: Robert Hendricks, please. Robert is
20 from the University of Arizona.

21 MR. HENDRICKS: Good morning. I'm Bob Hendricks and
22 I'm the Associate Dean at College of Education,
23 University of Arizona. And I, too, would like to applaud
24 the legislation that has led to the authorization of the
25 TEACH grant initiative. And we're truly hopeful that it

1 will provide incentives for more students to consider the
2 profession of teaching, that it will in fact increase the
3 teacher candidate pipeline, and particularly in high-need
4 content areas.

5 There's a couple issues of practicality that I'd
6 like to talk about from a perspective of working daily in
7 the trenches of teacher education. And one concerns the
8 language, and I would say a fairly ambiguous language,
9 dealing with "interest in teaching." We're not quite sure
10 what that means and we're not quite sure when that gets
11 applied because we have a lot of students who enter our
12 university, our college, as pre-ed interested students.
13 Some of them become less interested as they progress
14 through the program.

15 Our program at the University of Arizona is a two-
16 year program, which means that during those first two
17 years, while there may be some association with interest
18 in the profession of teaching, the real commitment
19 doesn't become apparent until the second semester of the
20 sophomore year. So does the interest begin when they
21 enter the doors, or does it begin when they're poised to
22 apply for the program?

23 We know there are many configurations; ours is only
24 one of them. Some are four-year programs. There's the
25 consideration of the community colleges, many of whom are

1 offering associate degrees. In our case, a third of the
2 students who come into our program are transfer students
3 who come to us after their sophomore year. There are
4 post-bac programs, there are fast track programs, there
5 are mid-career programs, there are alternative
6 certification programs, there is really a tremendous mix
7 and it isn't one size fits all. So that whole area of
8 interest I think is really something that you're going to
9 have to wrap your hands around and decide how that's
10 going to look.

11 But secondly, beyond that, I think there's really a
12 -- there has to be perhaps career guidelines as to what
13 level of commitment exists. Now this is a level of
14 commitment on the part of two parties. It's a level of
15 commitment on the part of the student. It's also a level
16 of commitment on the part of the institution because
17 there are some folks who are interested in teaching that,
18 quite frankly, we are not interested in. And so, you
19 know, I don't know how I can be, you know, more direct
20 about that. And so the reality is, if they're -- I wish
21 my dean were here.

22 So, you know, we deal with that every day and so if
23 that level of interest doesn't match our interest, it's
24 going to lead to frustration, it's going to lead to
25 unfulfilled promises, it could even lead to award of

1 monies that at some point you're going to have to get
2 back. And so I go back to that issue of, you know, what
3 do we -- at what point do we warrant that interest in
4 something that's validated?

5 For example, you know, in the legislation it talks
6 about GPA. GPA is very important. We don't minimize the
7 value of that. However, there are other criteria that we
8 also consider in the admission of a student into a
9 program, and among them -- and this is another sacred
10 topic -- is the disposition of those individuals who are
11 interested in becoming teachers. And particularly we see
12 this in some of our mid-career changers whose vision of
13 what it looks like in the classroom may have been
14 something that has long passed them by. And so it's --
15 you know, it's an issue of interest matching the reality
16 of, you know, accepting students into our program. And,
17 trust me; we want to accept as many students in our
18 program that can become highly qualified teachers. But
19 we've got to match that interest with eligibility.

20 The third thing, and you've heard this from two
21 other speakers, is the whole issue of data tracking. And
22 I do appreciate the fact that you're going to do that. I
23 would suggest that there's some other opportunities for
24 data tracking in this whole experience.

25 For example, if you're going to invest and support

1 these candidates, do we know that it's going to make any
2 difference first of all in the number of additional
3 candidates that we're introducing to the pipeline? Are we
4 simply competing with those people out there already who
5 want to become teachers? The goal ought to be to increase
6 the number of candidates.

7 Secondly, do we know -- or will we know if there's a
8 correlation between the retention rates and the success
9 rates of these teachers compared to those who come to us
10 in other ways? Is there a different level of commitment?
11 Is there a different level of motivation? We know that
12 there are some programs that are very successful on a
13 short-term basis because candidates view them as a social
14 service experience, but they don't really see teaching as
15 a lifelong commitment. I would hope that we could track
16 some of that data to see if this really is making a
17 difference.

18 The state infrastructure, and our institution
19 infrastructure, for tracking this information is really -
20 - I wouldn't even say it's broken. I don't think it's
21 even in operation. It's been very difficult. So I would
22 encourage you not only to do that, but to work hand in
23 hand with the state agencies because I think there's an
24 added value of the benefit to the states if you're
25 collecting this information, that it will be helpful to

1 the states as far as them tracking as well, you know,
2 what their teacher initiatives are producing.

3 I thank you for your review and consideration of
4 these comments.

5 MR. BERGERON: Thank you. Mary Mowdy from NCHELP.

6 MS. MOWDY: Good morning. I can't say that too much
7 longer. My name is Mary Mowdy. I am the Executive
8 Director of the Oklahoma Guarantee Student Loan Program,
9 and I also currently serve as the Chairman of the board
10 of directors of the National Council of Higher Education
11 Loan Programs. We like to call ourselves NCHELP.

12 NCHELP is a non-profit association with a very
13 diverse membership, guarantee agencies, secondary
14 markets, lenders, loan servicers, collection agencies,
15 schools, and other organizations involved in the
16 administration of the Federal Family Education Loan
17 Program. We have approximately 190 members and many of
18 those are organization members. I represent NCHELP in my
19 testimony today.

20 In its October 22nd federal register notice, the
21 Department of Education requested suggestions for issues
22 that should be considered for the negotiated rulemaking
23 agenda. I am pleased to offer some comments and
24 recommendations on six topics.

25 Item one is simply support for negotiated rulemaking

1 NCHHELP believes that negotiated rulemaking provides a
2 valuable opportunity to engage stakeholders in the
3 regulatory development process. We believe that active,
4 in-person negotiation allows for real input and that the
5 ultimate result is better rules. For these reasons we
6 commend the Department for undertaking this negotiated
7 rulemaking endeavor.

8 The benefits of the process, however, are limited if
9 real negotiation does not occur. We were disappointed
10 that the negotiated rulemaking that preceded the
11 publication of the loan regulations earlier this month
12 was cut short, ending without consensus. We believe that
13 a consensus rule could have emerged had the process been
14 permitted to continue. We hope for a better outcome in
15 the upcoming negotiation and encourage the Department to
16 support the process.

17 Item two, composition of the negotiated rulemaking
18 committee. Approximately 80 percent of federally
19 sponsored education loans are made in the Federal Family
20 Education Loan Program, the FFELP. NCHHELP recommends that
21 the negotiated rulemaking committee include
22 representatives of each of the principal constituencies
23 within the FFELP, specifically guarantee agencies,
24 guarantee agency servicers, collection agencies, for-
25 profit lenders, non-profit lenders, and loan servicers.

1 NCHERP will be making specific nominations to the
2 Department for negotiators from each of those groups.
3 Also, we recommend that the school representatives at the
4 negotiated rulemaking table include a representative
5 group from those schools that participate in the FFELP.

6 The negotiated rulemaking committee for the
7 negotiation that was conducted earlier this year was
8 unfairly weighted toward representative from schools that
9 participate in the William D. Ford Federal Direct Loan
10 Program, rather than the FFELP. Those schools that
11 participate in the FFELP cannot be adequately represented
12 on the committee if a majority of the negotiators
13 representing educational institutions come from schools
14 that participate in the direct loan program.

15 Item three has to do with preemption. The October
16 22nd notice states that the Department expects to conduct
17 negotiated rulemaking on other regulatory issues,
18 including potential federal preemption of state laws that
19 may conflict with the Department's regulations on
20 improper inducements and on the use of preferred lender
21 lists in the FFELP. NCHERP supports adding this to the
22 agenda, as we believe there is a real need for federal
23 preemption in these areas. The final regulations for the
24 federal student loan programs, published by the
25 Department on November 1st, 2007, contain comprehensive

1 sets of rules governing both prohibited inducements and
2 preferred lender arrangements.

3 However, prior to November 1, and in the absence of
4 federal rules, a number of states passed their own
5 legislation pertaining to one or both of these subject
6 areas. Others are considering similar legislation. While
7 the Department's regulations and the various state laws
8 deal with common issues, the way these issues are
9 addressed is not uniform.

10 The federal student loan programs are national in
11 scope. Participating educational institutions typically
12 enroll students from across the country. Many student
13 loan providers operate on a national or regional basis.
14 Even those whose student loan program is localized
15 regularly lend to residents who attend out of state
16 schools. It is common for lender located in one state to
17 make loans to students attending school in a different
18 state. The student may be a resident of a third state, so
19 what law applies in these cases?

20 The willingness of some states to enforce their laws
21 against out of state educational institutions if any
22 state resident attends the school, and against out of
23 state student loan providers, underscores the dilemma
24 faced by educational institutions and lenders alike. The
25 Department's regulations are both tough and

1 comprehensive.

2 The various state laws deal with essentially the
3 same issues, but with different wrinkles. The confusing
4 pattern of requirements makes both compliance and
5 enforcement difficult. Because of the need for uniformity
6 and consistency, NCHELP strong believes the Department
7 should, by regulation, preempt state laws in these areas.

8 Item four, income-based repayment. NCHELP has been a
9 supporter of legislation to help those who are having
10 difficulty meeting their student loan repayment
11 obligations. While we believe the student loan program is
12 of tremendous benefit to the vast majority of borrowers,
13 we recognize that debt is a challenge and burden for
14 some. For this reason we supported efforts to address
15 this subject in the College Cost Reduction and Access Act
16 of 2007.

17 The new income-based repayment option enacted in the
18 CCRAA represents a significant step forward. However, the
19 legislation was developed without specific input from the
20 loan community on operational issues. We believe that
21 operational issues embedded in the legislation can be
22 worked out as a part of negotiated rulemaking and
23 strongly endorse including this subject as part of the
24 upcoming negotiation.

25 Item five, Parent PLUS loan option. The CCRAA

1 directs the Department to auction off the rights to make
2 Parent PLUS loans beginning July 1st, 2009. NCHELP
3 strongly opposes student loan auctions within the FFELP.
4 The foundation of the FFLEP is that borrowers have a
5 choice of lender. This pro-consumer competition has
6 driven down borrower costs and increased innovation and
7 efficiencies within the program. Instead, under the CCRAA
8 borrowers no longer will be able to choose their lender,
9 but rather will be required to utilize a lender selected
10 by the government, the lender with the winning auction
11 bid.

12 NCHELP recognizes, however, that between now and
13 July 1st, 2010, the Department must plan and implement an
14 auction process for Parent PLUS loans in FFELP. FFELP
15 participants, educational institutions participating in
16 the FFELP, and representatives of Parent PLUS borrowers
17 all should be part of this process. To the extent
18 implementing regulations are contemplated, they should be
19 developed through negotiated rulemaking.

20 And the final item has to do with reauthorization.
21 The October 22nd notice states that if legislation to
22 reauthorize the Higher Education Act is completed prior
23 to the first negotiation session, the Department may also
24 include on the negotiation agenda additional changes to
25 the regulations.

1 While it is possible, if not likely, that HEA
2 reauthorization will not be completed prior to a January
3 negotiating session, we believe in any case that final
4 legislation will be enacted soon thereafter. NCHELP
5 recommends that the Department consider expanding the
6 negotiating agenda even after the first session, if
7 legislation is enacted. These negotiations are major
8 undertakings by the negotiators and by the organizations
9 they represent. It would be unfortunate if the Department
10 failed to take advantage of the negotiation in progress
11 to address additional regulatory issues stemming from the
12 reauthorization.

13 Thank you for the opportunity to provide these
14 recommendations.

15 MR. BERGERON: Thank you, Mary.

16

17 (End of Tape 1, Side A)

18

19

20 (Tape-recorded hearing 11-29-07; Tape 1, Side B)

21

22 MR. BERGERON: Ms. Diaz from the Center for
23 Employment Training?

24 MS. DIAZ: Thank you.

25 MR. BERGERON: You're welcome. You said you wanted -

1 MS. DIAZ: I wasn't expected to --

2 MR. BERGERON: I know. You were -- had asked to
3 speak this morning if we had time, and we have time so I
4 wanted to move you up in the agenda.

5 MS. DIAZ: Thank you. I appreciate that, the
6 opportunity also, and I did prepare myself, as well as
7 everybody else because I am taking the opportunity to be
8 here and get involved in this situation.

9 I have three issues that I would like to discuss, or
10 to bring to your attention, and one of them has to do
11 with the new regulations for the FFELP program. I'm the
12 financial aid director for the Center for Employment
13 Training. We have 20 schools throughout the country and
14 we are, as a matter of fact, a direct lending
15 institution, yet I have been blessed with the opportunity
16 to work with the state guaranty agency by having -- just
17 because the Department could not support the training
18 needs that we would like them to have, and especially in
19 the area of default prevention.

20 So I receive a lot of support from them in training
21 in default prevention initiatives. We have been
22 establishing different programs with my different schools
23 and working together we have been able to review one
24 school in particular that we have been working with for
25 the past two years with a new project. In collaboration

1 with the guaranty agency we're able to reduce the default
2 rate from 14 percent to five percent. So I'm really happy
3 about that, but at the same time very concerned with the
4 fact that they will not be able to provide the support
5 that they have been providing to us right now.

6 And I'm wondering if the Department of Education is
7 going to be able to provide the same resources like
8 institutions like ours who, to begin with, we are non-
9 profit, but I know there are a lot of small institutions
10 out there who do not have the kind of resources, nor
11 would have the staff necessary to provide all this type
12 of activities. So I encourage the Department to really
13 look at that and take in consideration the small
14 institutions like us who do not have enough resources.

15 My second concern comes as a parent. I do have a
16 teenage daughter who started school last year just in
17 time when the interest rate went up to nine percent. And
18 here we are competing with credit cards giving us a lower
19 interest rate. So that was very discouraging for me as
20 financial aid director having to know that I'm getting a
21 better chance of paying for my daughter's education
22 through a credit card because the interest rate is lower
23 than what the class loan can offer us. Yet I don't see
24 any conversation right now in terms of trying to lower
25 the interest rate of class loans.

1 The -- not taking in consideration the fact that as
2 financial aid officers or directors we have to promote
3 diversity between lenders, yet as a parent I have to go
4 with what the government is going to choose for me on my
5 behalf and have no choices, basically, providing better
6 education for my daughter. So I'm very concerned as a
7 parent with the class loan interest to be in with -- in
8 the limitations of the choices that we're going to have.

9 My third concern is as a Hispanic and immigrant in
10 this country. I attended the Hispanic survey initiatives
11 up in Portland and I have been to that for several years,
12 yet I was very surprised this year to find out that the
13 focus of that group is on supporting the administration
14 of the schools, not in expanding the services to the
15 community. I would like to encourage the Department to
16 look at those resources and be sure that the money is
17 invested and really provide that information to the
18 community in serving those students who really need to be
19 aware of the opportunities that we have through Title IV
20 funds.

21 Thank you for the opportunity.

22 MR. BERGERON: Thank you. I'm going to step out for
23 a minute and see if there's anyone else signed up to
24 speak this morning. If there is somebody that's in the
25 room that is, you can come to the microphone, but I'll go

1 check with my staff and see if they have any new folks
2 signed up for the morning.

3 That did conclude our -- the list of folks who had
4 signed up to speak this morning, so we will adjourn until
5 1:00 o'clock. Then we will have our next speaker with us.
6 So enjoy your lunch. See you all at 1:00 o'clock.

7
8 (End of Tape 1, Side B)

9
10
11 (Tape-recorded hearing 11-29-07; Tape 2, Side A)

12
13 MR. BERGERON: Good afternoon.

14 MS. KOWALSKI: Good afternoon. My name is Laura
15 Kowalski. I'm the Assistant Manager of Policy and
16 Regulatory Affairs with Texas Guaranteed Student Loan
17 Corporation. TG is a public, non-profit organization
18 serving as a guarantor in the Federal Family Education
19 Loan Program. I'm speaking today on behalf of TG and also
20 in support of the testimony offered by the National
21 Association of Student Loan Administrators, NASLA, at the
22 Department of Education's regional hearing in Washington,
23 D.C. on November 16th; and also the testimony that was
24 offered this morning by my NASLA colleague from Great
25 Lakes.

1 Because of the importance of recent trends in
2 changes to student loan borrowing, and the fact that the
3 FFELP is by far the largest source of federal student
4 aid, TG believes it is important that guarantors
5 participate as both a lead and an alternate negotiator in
6 negotiated rulemaking. A core focus of guarantors is to
7 maximize the success of borrowers in repaying their
8 loans. As an administrator of the FFELP, a guarantor
9 works closely with the Department, students and families,
10 schools, lenders, and loan servicers throughout the life
11 of the loan. Inclusion of a guarantor voice in the
12 negotiations will promote broad-based, well-informed
13 rules.

14 In the Federal Register notice dated October 27th
15 the Department stated that the number and organization of
16 the negotiating committees will be based on the comments
17 receive as a result of that notice. In order to establish
18 a manageable committee size and an agenda that reasonably
19 can be addressed in only three negotiation sessions, TG
20 strongly recommends that the Department establish two
21 committees to prepare proposed regulations, one committee
22 for loan related issues and a second committee for non-
23 loan related issues. The expertise required of
24 negotiators to affectively and efficiently analyze and
25 develop proposed regulations on loan issues is very

1 different from the expertise needed of negotiators for
2 non-loan issues.

3 TG feels that there are several overarching
4 principles on which the Department should concentrate
5 during the negotiated rulemaking process, focusing
6 specifically on changes to the regulations that enhance
7 borrower benefits, simplify student loan borrowing, and
8 promote successful loan repayment. In keeping with these
9 principles, TG proposes a total of seven issues for
10 negotiation for both the FFELP and the Live Rock loan
11 program, and all of these are included in our written
12 testimony. In my oral testimony this morning I'm only
13 going to highlight three of those, so you don't have to
14 listen to all seven.

15 Okay. The first topic is federal preemption of state
16 laws pertaining to prohibited inducements and preferred
17 lender lists. We support the Department's interpretation
18 of its authority to exclusively regulate prohibited
19 inducements and preferred lender lists and believe that
20 the Department should explicitly state in the regulations
21 that these are areas reserved solely to federal
22 jurisdiction in order to allow for a consistent
23 administration of the Title IV student loan programs
24 throughout the nation.

25 Currently several states either have passed or are

1 contemplating laws which regulate the conduct of Title IV
2 institutions acting within the state or in interstate
3 commerce with state residents. In order to facilitate the
4 accomplishment and execution of the full purposes and
5 objectives of the FFELP administration, the Congress and
6 the Department have already created a detailed regulatory
7 framework for these areas which provides specific
8 guidance to every entity participating in the program as
9 to what activities are allowed and what obligations are
10 incurred. State regulation in this area in addition to
11 the federal laws will confuse or even undermine the
12 FFELP's carefully crafted administrative framework.

13 We recognize that wholesale preemption of state
14 laws, regulations, and rules is outside of the purview of
15 this negotiated rulemaking process. Therefore, the new
16 regulation should state that the regulation of prohibited
17 inducements and preferred lender lists in the FFELP are
18 areas of regulation exclusively reserved to the federal
19 government and state laws; regulations and rules in this
20 area are completely preempted. And this way, all FFELP
21 participants will share a common source of guidance, thus
22 avoiding the very sort of patchwork regulatory scheme
23 which allows for problems and uneven application of the
24 federal law to arise.

25 The second topic I'd like to talk about is the pilot

1 PLUS auction program. This program raises several issues
2 that will need to be addressed in regulatory language. As
3 others have already testified, almost all of these issues
4 concern borrower choice, and just a few examples include:
5 situation where borrower's dependants transfer from a
6 school in one state to a school in a different state;
7 consolidation rights, where the borrower has loans with
8 multiple lenders due to multiple dependants attending
9 schools in different states; and whether a borrower would
10 be able to borrow from a lender other than one of the two
11 winning lenders for a particular state, thus preserving
12 the potential serialization benefits of a single PLUS
13 master promissory note that we've had for the last
14 several years.

15 Finally, TG is very concerned about the guarantor's
16 role in the pilot auction process. The law does not
17 address the guarantee of the Parent PLUS loans made under
18 this program. The industry would like for the Department
19 to clarify in regulations the guarantor's role.

20 And the third topic I'd like to highlight is having
21 to do with economic hardship. We would like to advocate
22 for the continuation of the debt burden test that the
23 secretary retained in regulations, even though the test
24 was removed from the Higher Education Act in the CCRAA.
25 Indications from the Department are that this debt burden

1 test will remain in regulations for the time being, and
2 we strongly support the test being retained permanently.

3 In addition, we encourage the Department to consider
4 revising other areas in the regulation. For example, the
5 mandatory forbearance provision, where such an income
6 measurement or guideline could be useful and benefit
7 borrowers. The application of the new debt burden test
8 could prove beneficial to a borrower who has exhausted
9 all of his economic hardship deferment eligibility but
10 still needs to postpone payments and obtain forbearance.
11 Currently the mandatory forbearance provision does not
12 incorporate this new debt burden test or the borrower's
13 actual family size.

14 Those are the only three I'm going to talk about
15 this morning, so in conclusion I just want to say TG
16 appreciates the Department's consideration of this
17 testimony and offers itself as a resource to the
18 Department on these and other issues that the Department
19 may consider in the negotiated rulemaking process. Thank
20 you for your time and consideration.

21 MR. BERGERON: Thank you. The reason we have
22 indicated that we're retaining at least for this time is
23 that we wanted to make sure that whatever we do with
24 regard to the income-based repayment option, that was
25 also provided for in the CCRAA, is somehow --

1 MS. JONES: There's not a gap there.

2 MR. BERGERON: -- consistent or coherent with that.
3 So that's the reason we phrased it the way we have at
4 this point is just to recognize that we want to make sure
5 we look at that issue when we're negotiating. So thank
6 you.

7 MS. KOWALSKI: You're welcome.

8 MR. BERGERON: Dan Madzellan is joining the panel up
9 here. Dan is the director of Forecasting and Policy
10 Analysis in the Office of Postsecondary Education. I was
11 wondering if we have Phyllis Fernlund in the room?
12 Phyllis, come and talk with us. Phyllis is with
13 California State University.

14 MS. FERNLUND: Thank you.

15 MR. BERGERON: Thank you.

16 MS. FERNLUND: I appreciate this opportunity to
17 provide suggestions for the development of the
18 regulations for the TEACH grants. I'm Phyllis Fernlund,
19 Dean of the College of Communication and Education at
20 California State University, Chico, located in Northern
21 California and serving a region about the size of Ohio.

22 The School of Education at Chico State graduates
23 approximately 450 new teachers every year and we are
24 collaborating with our College of Natural Sciences on
25 several projects to increase the number of teachers in

1 the critical STEM fields.

2 Today I'm speaking on behalf of the California State
3 University, the CSU. Our system of 24 campuses prepares
4 over half of the state's teachers in California and 10
5 percent of the nation's teachers. Teacher preparation is
6 a central mission of the CSU and we are strongly
7 committed to partnerships with the P-12 schools to
8 educate highly effective teachers.

9 The CSU system is excited about the TEACH grant
10 program and we believe this will be a powerful incentive
11 tool in our efforts to recruit and support teachers. As
12 with every state, California is facing teacher shortages
13 in the critical areas. The TEACH grants represent a
14 significant investment on the part of the federal
15 government in addressing these shortages. And as teacher
16 preparation institutions, we look forward to working with
17 the Department in the development and implementation of
18 the program.

19 I have five issues I'd like to raise. Several of
20 them have been raised by Dean Paula Cordero this morning,
21 so I will briefly comment on those that are repetitions.

22 First of all, clarifying who is eligible to apply
23 for the TEACH grant. You probably know that most of the
24 teacher candidates in California are post-baccalaureate
25 students. They come from a variety of majors in their

1 teacher preparation program and it's important that our
2 institutions can accurately advise our students as to
3 their eligibility for the TEACH grants. So let me give
4 you several examples of areas where we would have some
5 questions.

6 A student who is a senior takes several prerequisite
7 courses before graduation and before formal admission to
8 the teacher credential program. These courses -- these
9 prerequisite courses are required by the program in the
10 state, but will this undergraduate senior be covered by
11 the grant for both their undergraduate work and their
12 graduate studies -- their post-baccalaureate studies?

13 Second case: is a credentialed special education
14 teacher who wants to complete advanced work with a
15 special education masters degree eligible for the TEACH
16 grant for the two years of graduate study?

17 The statute as written appears to exclude a category
18 of potential teachers. These are career changers, not
19 retired teachers, and they do not yet have content
20 expertise in their teaching shortage area. They want to
21 go back to school to get their masters degree and become
22 certified in a shortage area. Are these teachers
23 eligible?

24 The CSU system recommends that the Department of
25 Education's regulations clarify these issues regarding

1 eligibility to receive a TEACH grant.

2 A second area is in the extensive clinical
3 experience required. Clinical experience is crucial in
4 teacher preparation. Students can have excellent subject
5 matter expertise and knowledge of child development and
6 pedagogy, but clinical experiences provide opportunities
7 to apply that knowledge in elementary and secondary
8 classrooms.

9 At CSU Chico we require over 700 hours of supervised
10 field experience for our candidates in special education
11 and in elementary education. Students participate in
12 clinical experiences for 30 weeks in several different
13 types of classrooms and school populations. We believe
14 this experience is critical as these new teachers will
15 field jobs in a wide variety of schools and must be
16 prepared to provide all children the opportunity to
17 learn. The regulations need to include a standard of at
18 least 450 hours of supervised clinical experience, as
19 recommended by the American Association of Colleges of
20 Teacher Education.

21 A third area Dean Cordero has already spoken to and
22 that is the number of TEACH grants available. And I
23 believe you have answered that question earlier this
24 morning.

25 A fourth area, clarifying the payee of the TEACH

1 grant program and the timing of the distribution of
2 grants. We need timely confirmation of tuition support
3 prior to the beginning of fall semesters. We recommend
4 the institutions be able to apply for additional funds
5 throughout the year a students, particularly our non-
6 traditional students, tend to enter our institutions
7 throughout the year.

8 And the fifth area, clarifying the reporting process
9 for TEACH grantees. The state of California has no data
10 system for tracking the teacher's employment over time
11 and the CSU recommends that the Department of Education
12 assume responsibility for receiving the evidence required
13 of an applicant's employment at the end of each service
14 year.

15 Finally, I'd like to urge the Department to carry
16 out an extensive marketing campaign to let candidates and
17 potential candidates know about the TEACH grants. As an
18 AACTE board member, I know that AACTE will work closely
19 with its members to publicize this wonderful opportunity.
20 The CSU system is ready and willing to partner in this
21 effort and we look forward to working with you to ensure
22 that the TEACH grant program is a successful one.

23 Thank for the opportunity to present these comments.

24 MR. BERGERON: Thank you. Lauren Asher from the
25 Institute for College Access and Success. You're welcome.

1 Thank you.

2 MS. ASHER: Since you've already said who I am I
3 won't repeat it. Thank you very much for this
4 opportunity.

5 My comments are focused really on the provisions
6 that are directly concerned with student loan repayment
7 and forgiveness, though there are many other important
8 provisions in the bill. And I'm pleased to submit this
9 testimony on behalf of America's past, present, and
10 future student borrowers.

11 The new income-based repayment program is in fact
12 modeled on a proposal that was developed by the Project
13 on Student Debt with students' parents, lenders, and the
14 higher education industry and community. And its purpose
15 is to make sure that loan payments are fair and
16 manageable. Comments on the IBR program focus on making
17 sure that it is in fact as accessible and helpful to
18 those who it's intended to help as possible.

19 I'll start with the maximum repayment period. The
20 secretary has the authority to set the maximum repayment
21 period for IBR at anywhere up to 25 years. We recommend
22 that she set the maximum at 20 years. A 20 year rule
23 would reduce the risk that loan payments would
24 permanently displace critical savings for retirement,
25 children's education, and other costs that families need

1 to meet in order to function. Also, after 25 years of
2 qualifying payments, any remaining balance is likely to
3 be only or mostly interest. They would have paid off
4 their principal probably more than one time over.

5 In addition, and regardless of the length of the
6 qualifying period, we believe that payment should be able
7 to accrue throughout the borrower's life time.

8 As for qualifying payments, the statute makes clear
9 that all of the payments in this list I'm about to read
10 are valid, in combination of any kind, whether
11 consecutive or not, and whether or not they occurred
12 before the law's enactment: payments made while in IBR;
13 payments made while in income-contingent repayment, ICR;
14 period of economic hardship deferment; payments under a
15 standard 10 year repayment plan; and, regardless of the
16 repayment plan, payments that are at least equal to or
17 exceed what they would have been under the standard
18 repayment plan.

19 We believe the rules must be very clear about the
20 payments and period that qualify towards the maximum
21 repayment period and we support rules that make sure that
22 borrowers who act in good faith are eligible for the
23 benefit that IBR is supposed to provide. To that end we
24 suggest that qualifying payments also include payments
25 made under any other payment plan that equal or exceed

1 what the borrower's payment would have been under IBR or
2 ICR, whichever would have been lower. That would include
3 payments of \$0 if those would have been the payments required
4 under IBR or ICR. And we also think that that same rule
5 should apply to payments made while the borrower is in
6 forbearance, rehabilitation, or any other repayment
7 status.

8 Interest coverage. For subsidized Stafford loans the
9 IBR statute is clear that the government pays the
10 interest for up to three years. The rule should clarify
11 that these three years could occur any point and not just
12 simply during the first three years of repayment.

13 We also believe that there needs to be a simple
14 process for income confirmation that needs to be as easy
15 for borrowers as possible. We suggest that it be no more
16 complex and require no more information than it takes to
17 currently complete the IRS form 4506-T, which is how you
18 request to have your IRS tax transcript sent to a third
19 party, which would include the Department of Education.
20 And I have a whole report about how that's okay, but it
21 could certainly be worked out that the amount of data to
22 be refined to just give you what you need. Right now the
23 ICR program uses a very simple form even shorter than the
24 4506-T to get the necessary income data to calculate
25 payments. That form could potentially be extended to IBR

1 and an improvement would be to allow the applicant to use
2 an electronic signature and not just a hard signature to
3 that end.

4 It could also help reducing processing, storage, and
5 security burdens for the Department because then you
6 wouldn't be getting inundated with lots of paper and will
7 be getting it in a simple form in an electronic stream
8 from the IRS.

9 Alternative documentation for changed circumstances
10 also needs to be an option for people whose tax data may
11 not reflect their current situation, especially if it's
12 taken a turn for the worse. There needs to be a way for
13 them to document changed employment, family situations,
14 and other factors that affect their income and required
15 payment level.

16 I'm going to now address some issues around
17 consistency between IBR and ICR. They are two programs
18 with, in some ways, very similar goals but somewhat
19 different operations and also different statutory
20 requirements. The secretary has a great deal of
21 flexibility in how ICR operates and certain areas of
22 flexibility for IBR.

23 On the maximum repayment period, we recommend that
24 it be the same as we recommend for IBR, 20 years rather
25 than 25 for the same reasons. Rights for borrowers in

1 default should be the same under both programs. Currently
2 borrowers can exit default by consolidating their loans
3 into direct loans and then entering ICR to repay the
4 consolidated loan. This is a critical lifeline for
5 borrowers who would otherwise find it impossible to ever
6 rehabilitate their loan. We think they should have the
7 same rights upon entered IBR regardless of whether they
8 consolidated their loans in direct or in FFEL.

9 The minimum payment right now in ICR, if it is more
10 than \$0 but less than \$5 dollars it's still \$5 dollars.
11 We think that to reduce unnecessary paperwork for both
12 borrowers and the Department it should be set at \$0 for
13 both programs so that anything between \$0 and \$4.99
14 defaults to \$0, rather than defaulting up to \$5.

15 On interest capitalization, for unsubsidized
16 Stafford loans and subsidized Stafford loans after
17 borrowers have exhausted their three years of interest
18 coverage, as I've described, the IBR statute clearly says
19 that interest is charged but only capitalizes if and when
20 a borrower exits IBR. That means that even if their
21 income increases and they remain in IBR, their payments
22 do not exceed what the standard repayment would have been
23 for their original amount, not the capitalized amount.

24 The current ICR rules allow capitalization until the
25 added interest equals 10 percent of the original

1 principal, and after that it's treated as not
2 capitalizing until they exit. We think that they ought to
3 be made the same so that ICR conforms to IBR and that 10
4 percent goes away.

5 On income percentage factors, ICR has a payment
6 adjustment factor based on borrower's income level and it
7 had the benefit of reducing the maximum required payment
8 for low income borrowers with relatively low debt who
9 might otherwise end up with payments that would be
10 burdensome and create the kind of hardship that the
11 program is designed to help them avoid. We think that
12 they would be maintained and added to IBR, however the
13 ICR payment adjustment factor also increases the maximum
14 payment for borrowers with high incomes, which can create
15 an incentive for them to switch back and forth between
16 IBR and ICR, which we think would be administratively
17 unpleasant for the Department and divert taxpayer
18 resources from other important purposes. It would make
19 sense to have a payment adjustment factor of no greater
20 than one in either program.

21 On protected income, the intent is to keep loan
22 payments from causing undo hardship. The level of
23 protected income in IBR is mandated at 150 percent of the
24 poverty level for the borrower's family size and 85
25 percent of income above that baseline. We believe that

1 ICR should conform to that standard as opposed to the
2 lower one at 100 percent poverty and 80 percent of income
3 above that level.

4 Loan forgiveness for public service employees I have
5 a few comments on. The program is intended to encourage
6 and reward public service and it needs to be clearly and
7 easily accessible to the people who serve their fellow
8 citizens, country, and community. Qualifying jobs are
9 clearly defined in the statute that full time employees
10 in government, military service, and 501(c)3 non-profits
11 are covered. It does not specify what their jobs need to
12 be and our understanding is that it should be any job,
13 especially since often the lower level jobs are the worst
14 paying and most in need of this kind of relief.

15 The rules should confirm that all employees in these
16 sectors are eligible, regardless of their specific job.
17 It should explain the circumstances under which borrowers
18 in the other professions named in the statute qualify if
19 they fall outside of those three sectors, government,
20 military, (c)3 non-profits. And it should rely on the
21 employer's definition of full time unless that exceeds 40
22 hours per week.

23 For confirming qualifying employment we think
24 borrowers should be able to confirm their qualifying
25 employment on a yearly basis. That would help avoid very

1 difficult paperwork at both ends if, after they've
2 completed their 10 qualifying years -- perhaps in 10
3 years, perhaps in 20 -- they have to go back and find
4 accurate and valid documentation for that entire period
5 of time. We would urge the Department to set up a user-
6 friendly system for year-by-year employment confirmation
7 for people who are participating in the program.

8 As for its relationship to other loan forgiveness
9 programs, some of the people who are going to fall under
10 the public service loan forgiveness program may qualify
11 for other kinds of loan forgiveness before they reach
12 that 10 year point under other federal and private
13 programs, which vary greatly in the number of years of
14 service they require and the specific types of job you're
15 supposed to be performing and how much loan they forgive
16 -- which types of loans or what amount. We think that
17 people who receive partial loan forgiveness through other
18 programs before they qualify for public service loan
19 forgiveness should still be able to get the remainder
20 forgiven once they reach the 10 year qualifying time
21 period for public service loans.

22 There's no minimum qualifying period specified in
23 the law. If the statute is clear that the 10 years of
24 qualifying employment don't have to be consecutive, we
25 think the minimum should be set at two months, or eight

1 weeks, that could add up to a year, that could add up to
2 10 years.

3 Again, to make sure that these programs are actually
4 accessible to the people who need to use them and
5 qualify, there needs to be some investment in awareness,
6 and the responsibility lies both on the part of lenders
7 in the lending industry and the Department. The
8 Department should hold lenders accountable for informing
9 each borrower about all of their options, especially if
10 their financial circumstances change over time. And
11 interested borrowers must also be able to get accurate
12 and up-to-date information about IBR and public service
13 loans from the Department before regulations are
14 finalized, based on whatever information is available and
15 a way to know when more information will be available.

16 So on the due diligence front, we recommend that
17 lenders, servicers, and guarantors should have a clear
18 and enforceable responsibility for helping borrowers
19 identify the best repayment plan for their circumstances,
20 as well as informing borrowers that they can change plans
21 if their circumstances change. If lenders fail to do so,
22 they should lose their guarantee. And any borrowers who
23 receive a real runaround from lenders should be able to
24 consolidate or reconsolidate into a direct loan where all
25 options are available.

1 To prevent defaults the due diligence regulations
2 should be amended to require lenders, when a borrower is
3 first delinquent on a loan, to notify the borrower of the
4 availability of IBR, as well as the ability to
5 consolidate into ICR through direct loans. The Department
6 should also require lenders, servicers, and guarantors to
7 provide information to all borrowers about available loan
8 forgiveness programs.

9 On the Department side we think that there ought to
10 be an information registry set up for people who are
11 asking now, as they are of us and I suspect of you, about
12 IBR and the public service loan programs so that they can
13 say, "I want to know more." And they can get a notice,
14 whether through an RSS feed or something that says,
15 "Okay, we now have more information." This is especially
16 important for public service loans because the time from
17 when your work may qualify began when the law was
18 enacted, so some people may already be starting to
19 accumulate those 10 years or not know what they need to
20 do to make sure that their time period is going to
21 qualify. The Department should create a webpage with the
22 most current information about these programs and conduct
23 trainings about the new programs for 800 number staff and
24 other employees who have direct contact with borrowers
25 and students.

1 The Department should also notify eligible employers
2 whose employees are likely to qualify for public service
3 loan forgiveness and provide them with some information
4 they can give to their employees about it.

5 On TEACH grants, while we understand that the
6 intention is to help aspiring teachers enter and stay in
7 the profession, we have serious concerns about the design
8 of the program and believe it would be best if it were
9 not implemented. Some aspiring teachers may ultimately
10 benefit, but many more will end up with higher loan
11 and/or interest debt because they won't meet all the
12 criteria that you have to meet to get the forgiveness,
13 and they'll be worse off than if the program hadn't
14 existed at all.

15 The label is false and misleading. They are not
16 grants, they are loans. They are unsubsidized Stafford
17 loans and they're only forgiven after a specific amount
18 of time and specific types of schools teaching specific
19 type of subjects, which all depend on external factors
20 that students can't control, including whether they turn
21 out to be good teachers or not, but also whether jobs are
22 available at the times they would need to have them.

23 If a student has any financial need and isn't
24 absolutely sure that they're going to succeed in meeting
25 all of these criteria, including being a good teacher,

1 they'd be better off with a subsidized Stafford loan. If
2 they take the unsubsidized Stafford TEACH loan and don't
3 meet all the criteria for forgiveness, they will owe
4 nearly \$3000 dollars more because of capitalized in-
5 school interest and then also be subject to higher
6 interest rates in repayment because the new interest rate
7 only applies to subsidized Stafford loans.

8 In addition, these grants -- or so-called grants --
9 could easily displace real grant aid in schools financial
10 aid packages if treated as grants by colleges. You could
11 end up with people having the average amount of debt for
12 undergraduate, which is \$20,000, plus up to \$16,000 in
13 additional loans which look like grants but aren't, and
14 then having to pay all of that off; whereas they might
15 have qualified for other grants from the school if the
16 TEACH grants were treated as loans in a package. Those
17 who do get their TEACH loans forgiven may be no better
18 off because they might have qualified for grants anyway.

19 If the program is implemented the regulations should
20 require that all participating colleges and universities
21 treat and label the awards as loans in financial aid
22 office, provide all of the counseling information
23 required for other borrowers of federal loans, and inform
24 potential recipients of the estimated proportion of
25 students in the program who are actually predicted to

1 fulfill all the requirements for forgiveness.

2 A couple of other issues. Loan forgiveness should
3 not create new hardships for students and borrowers,
4 particularly IBR and ICR which are designed to help avoid
5 extreme hardship. We know that this is not in the purview
6 of the regulatory process at this time, but those two
7 programs, when the loans are forgiven that amount is
8 taxable to the borrower -- or can be made taxable to the
9 borrower -- which if they haven't been able to pay off
10 all their loans in 20 or 25 years, odds are they're going
11 to be seriously burdened by that tax. So we just
12 encourage the Department to work with the IRS to ensure
13 that the amounts forgiven under ICR and IBR are not
14 considered for tax purposes. It appears that the public
15 service loan forgiveness program would not be taxable
16 because it's under the IRS code a type of forgiveness
17 tied to a type of job which means it's not taxes. We have
18 more details on that if you want.

19 On the more technical side, fixing the medical
20 review process for disability discharge requests. Right
21 now, doctors are often given unrealistic time tables to
22 respond when the Department seeks additional information
23 to determine whether someone is sufficiently disabled to
24 qualify. Borrowers are not notified if the doctor fails
25 to provide follow up information in the allotted time.

1 They only find out when they receive a denial based on
2 medical review failure, which is the doctor's failure to
3 respond. And doctors who fill out the forms in good faith
4 are not alerted to the likelihood that they'll probably
5 have to submit more information or given a chance to
6 submit it at the time that they get the request.

7 To ensure the process gives disabled borrowers
8 meaningful access to important relief, doctors should be
9 given at least 30 days to respond to follow up request
10 for information. Borrowers should be notified prior to
11 denial of a discharge request if a doctor fails to reply
12 in the time allotted and given at least 30 days to
13 contact their doctor and follow up. And doctors should be
14 given a way to provide additional information at the
15 initial time of contact.

16 Finally, financial hardship claims in debt
17 collections and offsets. All student loan borrowers
18 should have the same rights to raise hardship claims when
19 facing collection and their claims should be judged by
20 fair and consistent standards. Currently the right to
21 request a reduction in collection due to hardship or to
22 raise hardship as a defense for collection action can be
23 evaluated different depending on the type of collection
24 action, or may not be recognized at all.

25 Currently wage garnishment through the Debt

1 Collection Improvement Act specifically states, "We
2 consider objections to the rate or amount of withholding
3 only if the objection rests on a claim that withholding a
4 proposed rate or amount would cause financial hardship to
5 you and your dependants." This same language should be
6 added to the guarantee agency wage garnishment hearing
7 provisions and to offset provisions.

8 Thank you very much for this opportunity and please
9 call if you have any questions.

10 MR. BERGERON: Thank you. Luke? Who are you speaking
11 -- yes. Who are you speaking for first?

12 MR. SWARTHOUT: U.S. PIRG. And then [inaudible].
13 Hello and thank you. My name is Luke Swarthout. I'm the
14 higher education advocate for the U.S. Public Interest
15 Research Group. U.S. PIRG is a national network of state-
16 based non-partisan, non-profit organizations. We have
17 chapters on about 100 campuses around the country and
18 organizations in 30 states, and for the last 15 years
19 have worked at the federal level representing students on
20 issues of higher education access and affordability.

21 I'm going to first speak on behalf of PIRG, but then
22 I've also been asked to speak on behalf of Deanne Loonin
23 from the National Consumer Law Center. And many of our
24 comments are going to be the same, so I'll actually
25 probably associate here with a bunch of comments on ICR,

1 IBR, TEACH, and public loan forgiveness; and then she
2 wanted me to -- wants to put a couple of other issues on
3 the table for the negotiating sessions.

4 And then also because I have a cold and Lauren Asher
5 did a very comprehensive job on going through a number of
6 the issues, I may walk through sort of the key
7 principles, some of the key issues that we see for the
8 critical programs and lead you to the written testimony
9 for sort of further reference.

10 First off, just want to express our thanks and
11 gratitude to the Department for moving so expeditiously
12 to rulemaking on law that we see as quite important. It
13 has been the intent of law makers on both sides of the
14 aisle in crafting the College Cost Reduction and Access
15 Act to help address the challenges students pay with debt
16 burdens and loan repayments, and so working to quickly
17 implement rules so that students can know the changes
18 that are coming and prepare accordingly as, we think,
19 consistent with their interest and the interest of
20 Congress, and so are very excited about that.

21 Would also note that we hope throughout the process
22 the Department looks to regulate these rules in the
23 interest of students. I think that's overwhelmingly been
24 the intent of Congress and I think should be the intent
25 of the Department as we move through.

1 I'd like to highlight three main issues. The first
2 is income-based repayment, the second is the TEACH
3 program, and the third is public service loan
4 forgiveness.

5 Income-based repayment will provide borrowers of
6 both the direct loan program and FFEL with meaningful
7 flexible loan repayment options. We encourage the close -
8 - the Department to focus closely on the implementation
9 of the IBR program to -- and also where possible to make
10 it consistent with the current ICR program available in
11 the direct loan program. Providing a consistent set of
12 rules across these two programs will simplify the process
13 for borrowers attempting to choose an optimum repayment
14 plan.

15 Major issues in income-based repayment include
16 ensuring access to IBR, mandating that servicers,
17 lenders, and guarantors inform students about their
18 opportunities; ensuring that students in FFEL have access
19 to IBR consistent with what they currently have in ICR;
20 and then also that borrowers who wind up defaulting on
21 their loans, unfortunately, have access to enter IBR once
22 again.

23 I have made notes about making sure that we're
24 clarifying qualifying payments so that there's clear --
25 that periods in IBR, ICR, economic hardship, and standard

1 repayment all count towards IBR repayment clock and that
2 we count previous ICR payments towards IBR in the overall
3 calculation of forgiveness. Just as Lauren spoke before,
4 making sure that there's an easy way to confirm income
5 through the IRS will greatly aid students in easily
6 qualifying for IBR. And finally, we encourage the
7 Department to shorten the time of repayment in income-
8 based repayment and income-contingent repayment to 20
9 years. It's on the discretion of the secretary to shorten
10 this length from the 25 year window that it currently
11 exists at. Most borrowers will repay their loans short of
12 the 25 year timeline and this will provide serious
13 assistance to those students for whom the investment in
14 higher education winds up not yielding greater economic
15 opportunity.

16 We've a number of recommendations and we encourage
17 the Department to look at conforming IBR and ICR around
18 issues of interest, coverage, and capitalization,
19 protected income, minimum payments, and income percentage
20 factors, and I'll leave you my written comments for more
21 details.

22 Second, I'd just like to briefly touch on the TEACH
23 program, which I know has received a lot -- duly received
24 a lot of attention in this and previous hearings, and I
25 know is a top priority for the Department. The TEACH

1 program has the opportunity to provide some students with
2 financial assistance on their path to becoming teachers,
3 however, the program may also unexpectedly saddle
4 students with serious debt burdens.

5 We recommend the Department carefully implement
6 rules to ensure that students are aware of the conditions
7 of the TEACH program and the consequences for failing to
8 meet them. Notably, we would encourage the Department to
9 treat TEACH awards as loans for purposes of upfront
10 packaging, as well as ultimate forgiveness. As such, we'd
11 encourage using a promissory note mandating loan
12 counseling consistent with -- with the fact that many
13 borrowers may have to pay off their TEACH award.

14 And then we would also encourage the Department to
15 look into increased flexibility for TEACH grant loan
16 repayment, taking into account situations where the
17 student might be called into active service or any number
18 of any other reasonable -- you know, situations that
19 might make it difficult for them or impossible to fulfill
20 their requirements.

21 Third, I'd like to briefly touch on the public
22 service loan forgiveness. The first suggestion is one
23 that I think may go beyond the scope of normal rulemaking
24 but I think is a valuable service the Department can
25 provide in the time between -- up until final rules are

1 promulgated. One idea is to provide a registry where
2 students can sign up to get information and be updated as
3 the rules change or as information becomes more
4 available. There is a serious interest in this program
5 and there is mixed information about how students can
6 take advantage of it and what opportunity it provides for
7 borrowers. The Department could have a very positive
8 impact in providing greater information.

9 In addition, we encourage just further clarification
10 of the professions that qualify for public service loan
11 forgiveness, as well as an easy system for confirming
12 employment. And finally, a minimum employment period to
13 qualify forgiveness. We suggest that at least if a
14 student -- excuse me, if a graduate has worked for two
15 months, that be considered sufficient to count towards
16 the overall 10 year clock.

17 Again, many other issues will likely come before the
18 Department and we encourage you throughout the process to
19 be thinking of how to -- how to regulate in the interest
20 of providing students with more affordable college
21 education. And again, want to thank you for convening
22 these hearings, of which I've been a dutiful participant
23 and visitor, and moving so quickly on this.

24 MR. BERGERON: Before you go to --

25 MR. SWARTHOUT: Sure.

1 MR. BERGERON: -- Deanne's -- the testimony you're
2 going to give for Deanne, on the issue of getting the
3 information out, we have limitations on what we can do as
4 a federal agency. I don't know that we have anybody
5 [inaudible] RSS as a federal agency, at least I don't
6 think the Department has adopted that technology. But it
7 might -- we might find some ways for us to work together
8 to set up -- you know, as we make information available,
9 to provide it to some third party who could help us get
10 the word out. And so, you know, look for opportunities to
11 work jointly and collaboratively on those issues.

12 It may be that some of our colleagues in the student
13 loan side of the world too, and I'm thinking of guarantee
14 agencies and the like, that might have some interest in
15 all partnering together to work for some solution around
16 that particular problem, because I think it's a
17 significant issue for everybody that -- getting that kind
18 of information out. I know I get telephone calls all the
19 time from people who say, "I'm graduating from college
20 now and I want my loan forgiven because I'm going to work
21 in public service for 10 years."

22 And I go, "Well, that's not the way it's quite going
23 to work."

24 MR. SWARTHOUT: Certainly. I put it forward as a --
25 more as a problem looking for solution that works for

1 everyone than with sort of a particular attachment to
2 that solution. So that -- I would look forward to that
3 discussion.

4 MR. BERGERON: Great. Thank you.

5 MR. SWARTHOUT: That could be the funny comment on
6 the record this time.

7 MR. BERGERON: Unlike the other time, definitely.

8 MR. SWARTHOUT: Deanne -- the National Consumer Law
9 Center and U.S. PIRG made very similar, in some cases
10 identical, recommendations in a number of the pieces that
11 I just talked through. Rather than reiterate those, I'd
12 like to read for additional -- read from her testimony on
13 additional proposals for the rulemaking agenda. And
14 you'll excuse me, but I don't know this by heart.

15 Disability discharges were the topic of discussion
16 in the 2006-2007 round of rulemaking and, although we are
17 not satisfied with the final rules in the topic, we
18 understand that a rehashing of the core issues previously
19 discussed would be unproductive at this time. Instead,
20 the proposal discussed below are intended to supplement
21 the final rules and ensure that disabled borrowers can
22 access this important relief.

23 The intent of these proposals is to make the process
24 more transparent for borrowers, physicians, and loan
25 holders. Specifically, we propose adding the following

1 topics to the agenda. One is medical review failures. A
2 second is due process rights in response to offset. And
3 the third is repayment terms after rehabilitation.

4 The final rules from the summer reserve the right
5 for the secretary to require the borrower to submit
6 additional medical evidence if the secretary determines
7 the borrower's application does not conclusively prove
8 the borrower is disabled. This merely codifies an
9 existing practice in which the Department routinely
10 requests follow up information from doctors who have
11 completed disability discharge forms.

12 There are a number of serious problems with the
13 medical review process. Statistical analysis by guarantee
14 agencies submitted to the Department during rulemaking
15 highlighted that the large number of borrowers that are
16 denied relief due to medical failures. As a result, many
17 severely disabled borrowers are lost in the system
18 through no fault of their own.

19 Now our own experience representing borrowers
20 confirms the difficulties involved in communicating with
21 doctors and explaining to doctors that previous
22 determinations of disability by federal or state agencies
23 carry no weight with the Department of Education. There
24 is no sigh of relief once a doctor fills out the form
25 because we know that at some unanticipated point in the

1 future the doctor will get requests for more information
2 or in many cases simply resubmit information already
3 provided.

4 While we respect the Department's right to ensure
5 that borrowers that receive discharges are truly
6 disabled, we have serious issues with the random,
7 inefficient, and inequitable way in which this program is
8 administered. Doctors are extremely busy. In most cases
9 they're even more inaccessible to our low income clients,
10 many of whom have limited educational levels or limited
11 English skills. It is critical to streamline the process
12 so that as much information can be gathered at the
13 initial point of contact with doctors, one of the few
14 times when the borrower has the doctor's full attention.

15 Borrowers should be provided with comprehensive
16 information regarding the Department's planned
17 verification activities and associated timelines at
18 various points in the process, including on the
19 application form and after submission of the form. Such
20 disclosures should outline the income documentation
21 requirements and what, if any, additional documentation
22 may be required within clear and reasonable submission
23 and determination timeframes.

24 We urge the Department to address at least the
25 following key issues in the next round of rulemaking:

1 first, unrealistic and unreasonable deadlines for follow
2 up document submission by physicians; second, failure to
3 notify borrowers when a doctor has failed to provide
4 follow up information; and third, inadequate information
5 about the process. On this third problem, we recommend
6 requiring the Department to notify doctors they will
7 likely be contacted for additional information after
8 completing the discharge forms and requiring the
9 Department to develop a system that would allow doctors
10 to provide this information with initial applications.

11 In addition, we recommend the Department codify in
12 the regulations all of the review and verification
13 activities it will conduct during the conditional
14 discharge period, along with applicable response and
15 review timeframes, and require that this information be
16 disclosed to the borrower within the guarantor's current
17 notification requirements. Guarantors should be allowed
18 to assist borrowers in attaining and submitting
19 documentation upfront that may be required later.

20 With respect to due process rights in response to
21 offset, currently a borrower's right to request a
22 reduction in collection due to hardship, or to raise
23 hardship as a defense to collection action, may or may
24 not exist and may be evaluated differently depending on
25 the type of collection action. This makes no sense. All

1 borrowers should have the right to raise hardship and
2 should be able to be evaluated under a similar standard.

3 At a minimum, we urge the Department to ensure that
4 all borrowers have the same rights when facing
5 collection. Currently the regulations for wage
6 garnishment through the Debt Collection Improvement Act,
7 specifically provided at -- a quote that you can read --
8 that, quote, "we consider obligations -- objections to
9 the rate or amount of withholding only if the objection
10 rests on a claim that withholding at the proposed rate or
11 amount would cause financial hardship to you or your
12 dependants." The same language should be added to the
13 guarantee agency wage garnishment hearing provisions, to
14 the tax refund hearing provisions, and to the offset
15 regulations.

16 The offset issue is particularly important because
17 the Department currently takes no -- takes the position
18 that they may review the offsets due to hardship at their
19 discretion, but are not required to do so.

20 And the third point, repayment terms after
21 rehabilitation. The right to a reasonable and affordable
22 rehabilitation payment is often wrongly denied. The
23 problem arrives in part from the system established by
24 the Department which provides compensation to collectors
25 for setting up rehabilitation plans only if the plans

1 require borrowers to make certain minimum payments.
2 Collection agencies may also have their own incentive
3 system for employees.

4 The 2007 wage and hour case describes these
5 compensation systems. In this case the collection agency
6 award --

7

8 (End of Tape 2, Side A)

9

10

11 (Tape-recorded hearing 11-29-07; Tape 2, Side B)

12

13 MR. SWARTHOUT: -- a statutory right to make
14 reasonable and affordable payments. The FFEL collectors
15 claim that lenders will only purchase the rehabilitation
16 loans if the balance is paid down sufficiently. They may
17 also claim that negative amortization is prohibited.
18 However, there is no explicit ban on negative
19 amortization in the rehabilitation regulations, as there
20 is in the income sensitive repayment regulations.

21

22 Further, the FFEL regulation prohibit the imposition
23 of a minimum payment. Documentation is required if the
24 payment is below \$50 dollars, but these payments are
25 clearly allowed if that is what is reasonable and
affordable for a particular borrower. Thus, a very low

1 income borrower should be able to set up a rehabilitation
2 plan with very low payments, even \$0.

3 The system just simply does not work for low income
4 borrowers. It does not work at the front end when
5 borrowers are denied reasonable and affordable repayment
6 terms. If borrowers clear this hurdle, the next barrier
7 arises when the loan is sold and the new lender requires
8 a standard repayment plan rather than allowing the
9 borrower to choose a more affordable plan.

10 According to guarantee agencies, the repayment term
11 guidelines for lenders fail to provide flexibility to
12 establish a monthly payment amount below the amount of
13 monthly accrued interest. Thus, while the regulations
14 allow for all borrowers to seek rehabilitation and
15 require the payments to be reasonable and affordable,
16 borrowers with very low monthly payments are almost
17 doomed to re-default unless these borrowers are able to
18 obtain income-contingent repayment under the direct loan
19 program.

20 In other cases, while the amount of the monthly
21 rehabilitation period may be at least the amount of
22 accrued interest, the required monthly payment amount is
23 still increased dramatically after the purchase of a
24 lender.

25 We believe that a lender's post-rehabilitation

1 repayment plan choice is information that in many cases
2 the guarantor may be able to secure prior to the
3 completion of a borrower's rehabilitation period.

4 Now these proposed changes in the policy guidelines
5 we believe would remove barriers towards long term
6 successful repayment of rehabilitated loans. We also urge
7 the Department to consider the problem of continued
8 collection efforts while a borrower is repaying through a
9 rehabilitation plan. There is no prohibition on such
10 collection efforts in the regulations that we know of.

11 When representing borrowers we request that the loan
12 holder agree to a cessation of collection other than
13 routine billing statements. Most collectors agree to this
14 provision. We believe this should be standardized in the
15 regulations. It's contrary to both the borrower and loan
16 holder interest to continue collection efforts while a
17 borrower is making the effort to repay through
18 rehabilitation. Positive reinforcement is needed during
19 this period in order to ensure that rehabilitation
20 succeeds.

21 Thank you for your consideration on these and other
22 issues.

23 MR. KERRIGAN: I've been instructed to introduce
24 myself. My name is Brian Kerrigan. I work in the Office
25 of Postsecondary Education along with Danny and David.

1 And I guess David's gone for a while and I'm here to make
2 sure someone has someone to speak to in case anyone else
3 leaves. Do we have anyone else that's coming up?

4 Next speaker would be Dorothy Young from the U.S.
5 Student Association.

6 MS. YOUNG: Hello? Okay. Well that's awkward
7 [inaudible]. Hi, my name is Dorothy Young. I'm a third
8 year undergraduate student at UC San Diego. I'm the Vice
9 President of External Affairs in our student government
10 and I'm also here representing the United States Student
11 Association.

12 So here because [unintelligible]. I currently have
13 about \$10,000 dollars in loans and I'm only in my third
14 year; I'm going to be staying five years. I live off of
15 my financial aid, my loans, and a \$95 dollar a week
16 stipend. Because of my work with student government I'm
17 not able to hold another job. And my future, I want to go
18 into community and non-profit work so the couple things I
19 want to talk about today are related to loan forgiveness.

20 First off, you know the College Cost Reduction Act
21 of 2007 was a great step in increasing affordability and
22 access of higher education. We need to make sure that
23 we're continuing to support the CCRA and that the
24 Department of Education is supporting and strengthening
25 it to the best interest of all students. One of these

1 ways is about income-based repayment and income-
2 contingent payment, and in your rulemaking to mitigate
3 the disparities between IBR and ICR so that both are
4 accessible, for example, so that IBR-2 is accessible to -
5 - is for those whose income is about 150 percent over the
6 poverty income, as well as ICR is. Basically because
7 without income-based repayment guidelines, loan
8 forgiveness is basically ineffective because people will
9 be paying unmanageable amounts every month.

10 We want the secretary of education to set the
11 maximum repayment period to set 20 years because
12 currently it's -- the maximum is 25 years. That's kind of
13 big because it's up to 25 years but there's not really
14 any real date. Twenty years is enough time for most
15 borrowers to repay their loan; and those that cannot are
16 in the greatest need of relief either because they've had
17 extremely low paying jobs for those 20 years, or because
18 they have unmanageably high debt.

19 Twenty year rule also reduces the risk that loan
20 repayment would permanently displace critical savings for
21 them to buy houses, for their children's education, in
22 households with little or not financial security. We want
23 to make sure that we're strengthening our economy, not
24 harming it and those who are fighting to give back to it
25 by, you know, participating in public service as a

1 career. Debt should not be punishment for trying to
2 access one of the most basic rights of the country, which
3 is education.

4 We want borrowers to make payments in good faith, to
5 have their payments count towards loan cancellation no
6 matter when the payment happens. Which means that if a
7 borrower makes payments that would have counted but was
8 technically in a different payment status not listed
9 above, for example maybe they defaulted on their loan and
10 they're doing rehabilitation payments or making reduced
11 payments for any reason and they're not counting towards
12 that 120 payment that it takes to get loan forgiveness.
13 Somebody who is not making a lot of money really needs
14 every one of those 120 payments to count in order to --
15 in order to mitigate the current debt that -- that
16 accumulates in order to access higher education.

17 That was also connected to the fact that we want
18 clear definitions as to what payments count towards loan
19 cancellation. Those that have the chance to get a loan
20 cancelled are in desperate need of it as they either have
21 maintained a severely low paying job for 20 years, or
22 have had such an unmanageably high level of debt that
23 they really need the loan forgiven.

24 Another factor is for the three years of government
25 paid interest after graduation to be -- use that any time

1 during that -- during the repayment process, not the
2 automatic three years after because somebody might have a
3 job right after school graduating. Then their parents may
4 be able to pay a little bit more, but then later on they
5 really will need that interest to be paid if maybe they
6 start a family or buy a house.

7 Moreover, we also want to make the entire process of
8 declaring income, declaring change of income, and other
9 associated documents that prove status to be accessible
10 online through the IRS or through the Department of
11 Education, which would take away the financial cost as
12 well as the time consuming cost of faxing things. Also
13 save trees, which would be a good idea because we need
14 them to breathe.

15 So, I mean, overall, just to urge like throughout
16 the entire process to remember to be thinking of the best
17 interest of the students who are obviously throughout the
18 country. USSA will be submitting additional written
19 recommendations. Thank you.

20 MR. KERRIGAN: Thank you. We have no additional
21 scheduled speakers at this point in time. We will of
22 course wait around to see if anyone else does sign up and
23 wishes to address us.

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25 (End of Tape 2, Side B)

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(Tape-recorded hearing 11-29-07; Tape 3, Side A)

MR. KERRIGAN: Okay. Being that it's 3:00 o'clock,
or very close to it, the hearing is officially closed.

(End of Tape 3, Side A)