U.S. DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

PUBLIC REGIONAL HEARING ON NEGOTIATED RULEMAKING

Monday, October 6, 2008
9:00 a.m. – 4:00 p.m.

Johnson C. Smith University
100 Beatties Ford Road
Charlotte, North Carolina

P R O C E E D I N G S

MS. McCULLOUGH: Good morning. I'm Carney McCullough from the Department of Education, the Office of Postsecondary Education. To my left is Pamela Maimer, also with the Department of Education Office of Postsecondary Education. Out front, we have Nicky Harris and Patty Chase, from the Office of Postsecondary Education. They are the ones you met when you came in and signed you in.

On behalf of Secretary Margaret Spellings and Acting Assistant Secretary Cheryl Oldham, I would like to welcome you today to our fourth regional hearing. I also want to say a particular thank you to Johnson C. Smith University and President Ronald Carter for hosting this event this morning. We really appreciate that. As I mentioned, this is the fourth of six hearings throughout the country that we are having on gathering information from you about the agenda and the issues that we should consider during the negotiated rulemaking that we will be conducting as a result of the recently enacted Higher Education Opportunity Act of 2008, the reauthorization of the Higher Education Act. So, basically, today, we are listening to you, to what you have to say to us. There is a sign-up sheet out front. Some of you may have come in through the back way. So, if you are interested in testifying or presenting oral comments today, if you'd come down and sign in, you can sign in anytime throughout the day. We're going to allow about five minutes for each commenter. We have a sign interpreter up here, if you need assistance in that way. We are also accepting written comments through October the 8th, which is Wednesday. Also, if you brought written comments and you want to give them to us after you finish testifying, that is fine as well. The address for the written comments is, through the Internet, it is HEOA08@ed.gov, if you wish to submit written comments.

There was more information on the Federal Register notice that we published on the 8th of September. Let me just talk a little bit about negotiated rulemaking, for those of you who may not be as familiar with it. The first thing we do when we are conducting negotiated rulemaking is we are required to do for certain parts of this act is we have public hearings. We hear from you about what are the issues that you think are important for us to focus on and to hear what you have to say about that.

We go back, we consider what we've heard and figure out exactly how many committees we are going to need to have and sort of what those committees are going to talk about, what is going to be sort of the scope of their work, and then we'll publish another Federal Register notice sort of announcing that information and soliciting nominations for negotiators to come and sit at the table and be negotiators in this negotiated rulemaking effort. Our actual negotiations will probably start around February. As you know, we will be having a new set of bosses in January. So we are doing as much as we can in anticipation of that, but we probably won't start actual negotiations until February. Each one of the committees meets three or four times over the course of three or four months and, at the end of that time, we hope to have consensus on the Notice of Proposed Rulemaking to be published in the Federal Register.

And then we go through the normal and usual and customary process of accepting public comments on that Notice of Proposed Rulemaking. After that, we go back and we review the public comments, to get everything right, is there tweaking that needs to be done here or there, what might we need to change, and we'll publish the final regulations. For the Title IV programs, we're subject to a master calendar, which means that we'll have to have those final regulations published by November 1st of 2009 for them to go into effect for the 2010-2011 award year.

Pamela, would you like to say anything?

MS. MAIMER: Well, thank you, Carney.

It's wonderful to be here. It's a beautiful campus here at Johnson C. Smith, and we are very pleased and honored to be able to listen to your comments today. If you would, make sure that when you speak that you are speaking so that everyone can hear you and that we have 10 minutes per person for your comments. So I just wanted to say welcome. Now, I'm going to turn it over to the President, Ronald Carter, to give you some comments.

MR. CARTER: Thank you very much. A very good morning to all of you. I am Ron Carter, a three-month, eight-day-old 13th President of Johnson C. Smith University. The trustees, faculty, staff, and students are very honored to have the opportunity to host this regional hearing for the United States Department of Education. Want to thank all of you for coming to Johnson C. Smith University today to participate in this important first stage in the negotiated rulemaking process. I also would like to thank Secretary Spellings and the Department of Education staff

for choosing Johnson C. Smith University to host the fourth in a series of six regional hearings. We strongly support the Department's efforts to carry out these public hearings in compliance with the new law.

Ms. Cynthia Anderson, Johnson C. Smith University's Financial Aid Director since 1995, will present testimony later today. Cynthia has a deep understanding of student financial aid administration. While Mrs. Anderson will make recommendations on behalf of Johnson C. Smith University, others will suggest particular issues and agenda items that we want to convey to the Department of Education as they work on implementing the changes made to the Higher Education Act of 1965 by the Higher Education Opportunity Act of 2008.

As you know, negotiated rulemaking is required for all Title IV Federal financial aid programs and a new teacher preparation program provision. Funding for higher education is a vital investment the Federal Government makes for millions of our students. As Charlotte's independent urban university and one of the country's Historically Black Colleges and Universities, we feel it is important to have the HBCU community represented as a negotiator as this important process progresses. The United Negro College Fund, the Thurgood Marshall College Fund, and the National Association for Equal Opportunity in Higher Education would like to work with the Department in identifying the negotiators to represent the HBCU community. Some issues that are of particular importance to Johnson C. Smith include: One, establishing a new policy governing institutional and student eligibility and participation in the year-round Pell Grant Program during a single award year; two, propose regulatory changes governing the statutory modifications and the calculation of cohort default rates; and, three, proposed regulations that would implement the new statutory requirement limiting student eligibility to receive a Pell Grant to 18 semesters.

Again, I am delighted that we are hosting one of the six regional hearings, and I want to welcome all of our panelists and you from the Department who are here today. Do your best thinking, for the future of our institutions is in your hands.

Thank you.

MS. McCULLOUGH: Our first speaker is Belle Wheelan, from SACS.

MS. WHEELAN: Good morning. My name is Belle Wheelan, and I have the pleasure of serving over 800 institutions in 11 Southern States, Latin America and now Dubai, as President of the regional accrediting body

known as the Commission on Colleges of the Southern Association of Colleges and Schools or SACS. Additionally, I am a member of the Council of Regional Accrediting Commissions, or CRAC, the organizing body which ties together each of the seven regional accrediting commissions that collectively represents more than 3,000 institutions of higher education in the United States, enrolling more than 17 million students. Appreciate the opportunity to address this panel on the crucial issue of accreditation and several other issues under consideration during the Department of Education's rulemaking process for the recently reauthorized Higher Education Act.

Accreditation in the United States is a nongovernmental, peer-review process, designed to evaluate and ensure the quality of educational institutions and programs in our institutions of higher education. Each of the accrediting bodies is recognized by the United States Department of Education and the Council on Higher Education Accreditation, or CHEA, and SACS has been continuously recognized by the Department since the recognition process was initiated in the early 1950s. Not only does accreditation signal to the general public that an institution has successfully demonstrated that it meets all of the standards that have been developed to ensure quality in all of its programs and services, but we also know that DOE uses accreditation as a prerequisite for institutions to obtain Federal Title IV student aid. Through a network of professional peers and members of the general public, the evaluation process assesses formal educational activities, including the development and assessment of student learning outcomes as well as such things as governance and administration, financial stability, library and learning resources, admissions and student support services, and institutional and educational effectiveness.

During the recent process to reauthorize the Higher Education Act, accreditation was one of the central issues addressed. Consequently, we believe that it will also continue to be one of the most important topics facing the Department as it drafts regulations to implement this new law. We urge the Department to take special care to ensure that the committee structure that is chosen for this rulemaking process is done in such a way as not to lump accreditation in with dozens of other unrelated issues. We also ask that care be given to getting the right people with the right expertise at the table when this issue is considered. Please know that the members of CRAC stand ready to be helpful and active

participants in the rulemaking process. While Congress made it very clear that the negotiated rulemaking process should not promulgate regulations dealing with the standards used by accrediting bodies to ensure academic quality, there are other key policy issues that we believe could be clarified during the neg-reg process. Would like to briefly outline a few now.

Under distance learning, CRAC is uniquely aware of the issues facing online education today. We were in front of this issue several years ago when we adopted and implemented a common statement called, "Principles of Good Practice," an electronically offered academic degree and certificate program that had been developed by the Western Cooperative for Educational Telecommunications or WCET. WCET has recently developed another document that identifies some of the strategies that have already successfully been adopted by institutions to ensure the integrity of their electronically delivered programs. Though the student authentication requirement would not be overly onerous to the majority of accredited online and distance learning providers, it could drive up the cost of these programs if expensive procedures are mandated.

There is an obvious concern on the part of Congress to ensure that students who enroll in courses delivered through this medium are the same ones who attend and participate throughout the entire length of the course. However, the community is not aware of a significant problem in this area. Therefore, during the rulemaking process, it will be important to know the extent of the problem before mandated solutions are put in place. Since the majority of students who enroll in distance learning courses and programs are adult learners, many of whom are returning for job preparation and who have limited incomes anyway, the cost of implementing the system will be another unfunded mandate and the cost will fall to them to bear.

Due process. The issue of ensuring that accrediting bodies provide their members with due process throughout the accreditation process, including during possible withdrawal procedures, has always been of vital importance to members of CRAC. Loss of membership is never taken lightly and procedural fairness and due process have always been integral parts of the process. At the same time, we must not have so many stringent process protections that we lose our ability to take decisive action to protect the best interest of students and their families when we find wrongdoing or an inability of an institution to comply with the

accreditation standards. Over the years, CRAC members have made a number of positive changes to their procedures, and we believe that every one of the regional accreditors already have processes in place to reflect nearly all of the changes in the new law.

Under monitoring institutional growth, there is language in the new law requiring accrediting bodies to monitor the growth of institutions that are experiencing significant enrollment growth. Regional accreditors already make a practice of monitoring the growth of our institutions and unusual changes they might experience. Any attempt to define the parameters of what constitutes significant growth or define steps that must be taken to address a particular situation would likely be very difficult, in our view. Rulemaking that creates a rigid, one-size fits-all structure will limit our ability to respond in a nimble and efficient way. Transfer of credit. The law requires accreditors to confirm that an institution has transfer of credit policies that are, A, publicly disclosed and, B, include a statement of the criteria established by the institution regarding the transfer of credit earned at another institution of higher education. These provisions give clear direction to accreditors to ensure a transfer of credit policy is in place and does not give license for an overall evaluation of any particular policy used by an institution or group of institutions. We believe that this language is fairly straightforward and unambiguous and does not need to be further refined in a regulatory process. The protections of the Higher Education Opportunities Act have struck a careful balance between all segments of the higher education community. Too much regulatory tinkering or reaching beyond the original intent of the law or allowing too many outside interests to reopen issues that were resolved by Congress could upend this balance.

Finally, we urge the Department to keep two overarching principles in mind during this rulemaking process: consultation to achieve buy-in from all parts of our community and flexibility to allow accreditors to adapt the policies to the individual circumstances that present themselves to our Commissions. Thank you for allowing me to testify today. Please feel free to call upon me or any of my colleagues in accreditation if we may be of any assistance, formal or otherwise, during the rulemaking process.

MS. McCULLOUGH: Thank you very much. Jack Henderson.

MR. HENDERSON: Good morning. My name is Jack Henderson, and I am President of the Brookstone College of Business, a proprietary institution with two campuses here in North Carolina. I am also President of the North Carolina Association of Career Colleges and Schools, a professional organization of North Carolina private career schools. From 1998 to 2003, I served as a Commissioner with the Accrediting Council for Independent Colleges and Schools, ACICS, a nationally recognized accrediting agency by the U.S. Department of Education, serving in 2003 as chair of the Council.

While a Commissioner, I also worked with the Department in the selection of Round 1 and 2 for the Department of Education's Distance Education Demonstration Program, reviewing the applications on their behalf. I would like to thank the Secretary for this opportunity to come before you and present my views on the Higher Education Opportunity Act.

I would like to address two areas of the Higher Education Opportunity Act, 90-10 and copyright infringement. The Higher Education Opportunity Act provides additional flexibility to institutions for the period July 1, 2008, to June 30, 2012, allowing them to count the net present value of institutional loans made during that period on a cash basis toward 90-10 compliance. There are several issues related to this provision that I would like to address.

One, the language requires that the loans be issued at intervals related to the institution's enrollment periods. This language should be interpreted broadly to allow an institution to issue these loans on an annual basis to students and not require that there be multiple disbursements. The concern that this provision was trying to address was that institutions would wait until the end of their fiscal year and only make institutional loans needed to reach their 10-percent target. My institution and many others have multiple class starts each fiscal year, providing these institutional loans to students at the beginning of those students' academic year would spread the loans out over the course of the institution's fiscal year. Auditors and program reviewers could easily cross-reference disbursement dates with the institutions' enrollment periods.

Two, the law also requires that the loans be subject to regular repayment and collections. The regulations related to this provision need to allow for the deferment of payment on an institutional loan while the

student is enrolled. Deferment of payments is in the best interests of student borrowers.

Three, the provision requires that the net present value be determined by the CPAs in accordance with generally accepted accounting principles and related standards and guidance. Would ask that the Department not regulate this concept but rather leave it to the expertise of the CPAs.

Four, the law provides that an institution cannot, in later years, use the revenue derived from repayments on loans toward 90-10 compliance if they use the accrual value of those loans in a prior year. This provision requires an institution to make a choice each year as to whether to use the accrual method or to save those loans for use on a cash basis later. The law is intended to provide flexibility to schools in achieving 90-10 compliance through the use of this temporary provision, and that intent would best be served by allowing institutions maximum flexibility to make a decision on a loan-by-loan basis each year rather than being required to treat all loans in a given year the same way.

The Higher Education Opportunity Act provides that for loans disbursed from July 1, 2008, to June 30, 2011, an institution can treat as non-Title IV revenue the amount of Stafford Loan disbursed to a student that exceeded the loan limits that existed prior to enactment of the Ensuring Continued Access to Student Loans Act, Public Law 110-227. The intent was, during this period of a tightened credit market, to allow funds that otherwise would likely have been provided by private lenders, but will now be provided under the authority of the temporary increase in loan limits, to count toward 90-10 compliance. A couple of implementation issues arise.

One, because Stafford Loans are divided into multiple disbursements, the question arises as to how an institution will attribute the extra loan amounts, especially in instances where some disbursements will cross over into the next fiscal year. The most sensible method for handling this issue would be to attribute the extra loan amount to each payment period in proportion to its relation to the total amount of Stafford Loan as it was initially packaged. For example, assume a financial aid package includes a $6,000 unsubsidized Stafford Loan. The loan will be disbursed in two disbursements, with the first disbursement occurring in one fiscal year, the second disbursement

occurring in the subsequent fiscal year. The amount of each disbursement is $3,000. The law allows for $2,000 of the $6,000 to count as non-Title IV revenue. In this example, the institution should be allowed to count $1,000 from each of the two disbursements as non-Title IV revenue. Schools should not be required to go back after the close of the fiscal year and reattribute the loan back to Title IV revenue if the student subsequently drops out and does not receive the remaining disbursement. Adopting a narrow view, allowing only amounts in excess of the original loan in this example, defeats the purpose and intent of the provision. Similarly, if a student drops out during the fiscal year and the funds are subject to return of Title IV funds calculation, the amount of Stafford Loan returned should be proportionately attributed to the extra and regular Stafford Loan amounts for purposes of the 90-10 calculation. The Higher Education Opportunity Act requires that institutions take steps to prevent students from illegally downloading and peer-to-peer sharing of copyrighted material. This provision was aimed mainly at traditional colleges and universities that provide high-speed Internet connections to their students in dormitories. My institution does not offer housing. Computers are utilized in the classrooms under the supervision of a faculty member. The risk of illegal downloading and sharing of copyrighted material is minimal at best. The regulations implementing this provision should, therefore, place less of a burden on institutions that do not have dormitories or other residential facilities where Internet connections are provided for students. Burdensome regulations, where there is little risk, serve only to increase the costs to the institution and, ultimately, the students.

Again, I wish to thank the Secretary and the panel for the opportunity to express my views. Thank you. Have a great day.

MS. McCULLOUGH: Thank you. Sherri Avent.

MS. AVENT: Good morning. My name is Sherri Avent, and I am the Director of Financial Aid at North Carolina A&T State University.

I bring you greetings on behalf of our Chancellor, Dr. Stanley F. Battle. I have worked in the financial aid field for about 27 or more years, including service at St. Augustine's College in Raleigh. I am pleased to appear this morning as a member institution on behalf of Thurgood Marshall College Fund. North Carolina A&T is North Carolina's third oldest and its largest Historically Black Institution, as well as its only Historically Black Land Grand Institution. It was chartered by

the North Carolina General Assembly in 1891, as a State's Historically Black Land Grant Institution, following Congress's enactment of the second Morrill Act of 1890. We are proud to be America's largest producer of African-American engineers. The Thurgood Marshall Fund was founded in 1985 as the fund-raising organization for the nation's Historically Black Public Colleges and Universities. The Fund launched a major public policy advocacy and information initiative for its 47th Historically and Predominantly Black Colleges and Universities member institutions in 2003 and has worked closely with its member institutions, the Congress and its HBCU partners association during the five-year Higher Education Act reauthorization process. I am pleased to join the dedicated representatives of the U.S. Department of Education, my peers and friends in the financial aid community, my colleagues in the higher education community to outline several of the primary issues that we believe should be included in the plan agenda for the 2008-2009 negotiated rulemaking session with regard to the Title IV student assistance. Mr. Dwayne Ashley, President and CEO of Thurgood Marshall Fund, has sent a letter to Secretary Spellings, outlining all of the issues that the Fund believes should be addressed in the negotiated rulemaking sessions. I will simply highlight several of these issues.

First, the Higher Education Opportunity Act includes a statutory change that would amend Section 401 of the Higher Education Act to establish a limit of 18 semesters or the equivalent with regard to the students' eligibility to receive a Pell Grant for all the students who receive Pell Grants on or after July 1st, 2008. The Secretary of Regulatory Authority to interpret this new statutory requirement could have significant impact on the persistence of lower income and some minority and first-generation college students. Accuracy and clarity in any regulation implementing this statutory change are critical to a successful implementation.

Second, the Higher Education Opportunity Act also includes a statutory change with regard to the calculation of institutional cohort default rates. Section 435 was amended to add a third year to the period for calculating an institutional cohort default rate, which will have the practical effect of increasing default rates at certain institutions. It appears that the new calculation could negatively impact the default rate at Historically Black Colleges and Universities.

Third, the Higher Education Opportunity Act also includes numerous changes in the Federal Family Educational Loan Program and the Ford Federal Direct Student Loan Program. Since HBCU students rely disproportionately on Federal student loans to pay for college, any change, good or bad, can impact enrollment and the opportunity for our students to gain access to college and the ultimate survival of the HBCUs because of the high tuition dependency. Thurgood Marshall and the HBCUs would like to be represented on the Loan Committee organized for this 2008-2009 negotiated rulemaking.

Finally, Thurgood Marshall was one of the only three or four national higher education associations, including the United Negro College Fund, that advocate for the creation of the year-round Pell Grant. We believe that our students will benefit from the award of a second Pell Grant in an award year, allowing them to attend college year round by enrolling for a third summer semester. While some students that would normally graduate in four years would finish in three by attending year round, we strongly support a regulatory interpretation that provides for maximum institutional participation and student eligibility for the year-round Pell Grant Program. The Historically Black College and University community has been represented at each negotiated rulemaking session that follow a reauthorization of the Higher Education Act. The three major HBCU associations, the National Association for Equal Opportunity in Higher Education, NAFEO, the Thurgood Marshall College Fund and the United Negro College Fund, have collaborated in order to ensure the presence and participation of the entire HBCU community and our member institutions in these important regulatory deliberations.

Because of the important issues outlined above and others that impact our community that we have not mentioned, we look forward to participating in the 2008-2009 round of negotiations. My comments relative to the hearing today represent my thoughts and views on behalf of Thurgood Marshall College Fund.

Thank you for the opportunity to speak before you today.

MS. McCULLOUGH: Thank you. William Cameron.

MR. CAMERON: Good morning. My name is William Cameron. I am the Assistant Vice Chancellor for Information Security at the University of North Carolina, Chapel Hill.

I would, first, like to thank the Department of Education for providing this opportunity to make comments. I would also like to thank Johnson C. Smith University for hosting this event.

In response to the recent signing of the Higher Education Opportunity Act, with the sections imposing new duties on universities to take an active role in combating illegal file sharing, we, as representatives of the University of North Carolina at Chapel Hill, would like to take this opportunity to submit the following comments regarding any new rules that may be developed to further define and/or enforce Sections 488 and 493. Specifically, Section 493 requires that every college and university develop plans to effectively combat the unauthorized distribution of copyrighted material, including through the use of a variety of technology-based deterrents. We believe this language is intentionally vague. Appropriately, the lack of further definition intends to provide academic institutions with the maximum flexibility in meeting this new requirement. We are concerned that, as a part of the planned enforcement efforts, further rules will be developed which may limit colleges' and universities' options in how they pursue effectively combating the unauthorized distribution of copyrighted material. Such additional rules may result in significant and unintended consequences. As we are sure you are aware, in terms of information technology, college environments are both diverse and complex. Institutions have made significant investments in their IT infrastructure with the goal of enhancing information sharing. Should the Department of Education seek to be more specific in its rulemaking process to define and limit what is meant by acceptable technology-based deterrents or if inappropriate metrics are applied to measure an institution's success in effectively combating the unauthorized distribution of copyrighted material, we are concerned that long-term severe and unintended consequences may result.

If implemented without proper consideration, rules may be established that require specific technologies that are expensive, limiting and ineffective. Arbitrary deadlines could be set which will require a reprioritization of equally or more important initiatives. Additionally, the selection of poor metrics to measure effectiveness could result in wasted resources and inaccurate assessment of a college's progress in helping address the illegal distribution of copyrighted material. These profound and unintended consequences are possible if thorough consideration is not given during the rulemaking process. In

conclusion, we, the representatives of the University of North Carolina at Chapel Hill, recommend that any planned rules directed at enforcing Section 493, as well as Section 488, be included as a part of a negotiated rule process to ensure that thorough consideration has been given before developing any related rules. We further request that the rules for Sections 493 and 488 be tasked to a negotiated rulemaking committee that is dedicated just to this issue. The rulemaking committee should be composed of members with the background, skill, and diversity required to develop appropriate rules that meet the language of the act, while providing institutions with the maximum flexibility to meet the new requirements of the HEOA in a way that minimizes the adverse impact to college environments.

We specifically request that EDUCAUSE be included in any rulemaking body, as this association has a rich history of addressing this issue on behalf of our community and a deep understanding of the issues facing higher education institutions in dealing with this complex and difficult issue.

Thank you, again, for this opportunity today to express our comments and our concerns.

MS. McCULLOUGH: Thank you. Cynthia Anderson.

MS. ANDERSON: My name is Cynthia Anderson. I want to thank you for inviting me to speak. I am the Director here, tomorrow will be 13 years. My background, for the last 20-something years, has been financial aid. I started at the University of Wyoming, which was a state school, I went to a proprietary school for several years and then went into the private schools. I think what I would like to say is more from the trenches because those that make the rules are out there, but we have to enforce the rules.

Some of the things that I have seen that has change drastically in the last several years is the Pell Grant eligibility. They have raised the eligibility, but they have lowered the EFC, so we have a lot of middle-class parents that are not eligible for the Pell Grant anymore. So we can limit the semesters they get it or we can broaden the semesters they get it, but we have a huge gap for middle-income families, and it is stopping those students from coming to school. The adding a semester for students I believe would help them. They could possibly finish quicker. And with a private school, that would be very important just because of their loan indebtedness that we see now.

The default rates. I hate to even mention the default rates because they are confusing, as it is now. I know that a lot of schools it affects them so dramatically and schools work very hard on trying to keep them down, working with the students while they're in school, out of school and for someone--for that to change, it's a huge impact on every school that is out there, from the community colleges, for those that don't even give to loans anymore to these students because they are afraid of the default rate.

Thank you for inviting me. This is our seeing-eye dog that we have here, I understand. Thanks a lot.

MS. McCULLOUGH: Thank you. Bill Zahn.

MR. ZAHN: My name is Bill Zahn. I'm the Associate Director at the University of North Carolina at Greensboro. I am really here more as not representing the university but just as the profession. Some of my concerns are that as I was going through provisions of the Higher Ed, it seems that there are a number of things that are coming out, the new definitions for independent students and the documentation that is going to go along with that. The schools are going to be responsible for collecting, although it is self-reported. One of the things, at least in what I was reading, is that they adopted, to clarify that an orphaned individual in Foster Care or an emancipated minor can be declared an independent. Does that mean it is permissive or is it that they will be? The language is there. Hopefully, that will be brought out.

I hope that when it comes into the negotiated rulemaking that some of these provisions that have a cost factor associated will be taken into consideration. There was another one, which I'm not sure I can find it now, but basically it was, it prohibits somebody that was convicted of a sexual crime. Who is going to monitor that and how will that reporting be done?

Hopefully--oh, there was one other one. That in the area where there were prohibitions against--and it was in the lending section and in the guarantee section, that allowed for exit counseling, but it was silent on entrance counseling. Is that prohibited? And yet when you look at some of the other provisions and language, it included both entrance and exit. So it just appeared to be that there was sort of a disconnect in the process. Of course, that may be typical for stuff coming out of Congress.

That was basically it. Thanks.

MS. McCULLOUGH: Thank you. Bill Spiers.

MR. SPIERS: Good morning. I'm Bill Spiers. I am the Director of Financial Aid at Tallahassee Community College, but today I'm representing the Florida Association of Student Financial Aid Administrators and our some 800 members.

I am going to try to keep my remarks brief because I know there are others following me. Today, we wanted to talk very briefly about Section 483 and simplification. As a public two-year institution, I feel that I can implement simplification without any difficulties. My concerns and our concerns as an association arise from the fact that as we continue to simplify the free application for Federal student aid, we turn schools away from using solely the free application to using other sources that provide additional information and are fee based to students. So what we have done is we have taken a free process, and we have added a fee to it unintentionally, but because we continue to remove the items that are needed by financial aid administrators to do their job on a day-to-day basis. It would be much better to slow down simplification. I was part of the initial effort on this. I was part of the College Board CSS Assembly Council, and we were privy to the initial discussions on this topic. And my concern was then, and is now, how are we going to do our day-to-day job and administer our institutional funds with the elimination of the items that we are talking about at this point?

Another concern that I have are the estimates that have been bandied about over the last few months in concern to simplification is that it would increase the population applying for aid by approximately 40 percent. If that number is true, if that number is even in the relative ballpark, and we see an increase in applications of 40 percent in need-based funds, where are the funds coming from to fund these students? So you have to understand, as we understand, I know that we are all in agreement that this is not a need-based formula that we are using but rather a rationing device to distribute limited funds over the largest population possible. So if we increase it by 40 percent, I do not see additional funds coming or being funded by the Congress at this time with other pressing issues that we know of existing. So we have to ask ourselves that question.

In conjunction with that, Section 484, in model forms, it always frightens me when we start talking about model forms. If you will think back, I forget, two reauthorizations ago, we were all dictated to put in

front of Pell, Federal Pell; in front of Stafford, Federal Stafford. The reason for this because students didn't realize they were receiving Federal funds. I don't think students realize anymore today that they are receiving Federal funds than they did before we put the word "Federal" in front of them. I think that to dictate what we put in our forms and how the forms are laid out will actually serve to erode what we can communicate to students because each of our institutions collectively work diligently to ensure that the message to the student is clear, that the message is concise and that the message is correct. So it is very important to us that the student understand what we are telling them because we realize that our packages are being compared against other institutions and we want students to see us in the best light possible too. My third point is from Section 111, reporting requirements. Again, this frightens us because we don't know what we're getting into. What of this information isn't already available either through the various reports we're filing or through other actions that we have to take from our program participation agreement to other items? What's really not available and why are we adding additional burdens on the schools in order to provide additional documents? I think this is an unnecessary burden that we need to look at, possibly even take back as a technical amendment, but those are the three things that we wanted to highlight today.

I want to remind you that in the last real reauthorization we had, we were given a great gift. It was called "Return to Title IV." None of us have figured that out yet, and now we are looking at these additional items. So the main thing to remember as we move forward is that the Higher Education Act and the Title IV funds that are available to us are for students. And everything we can do to keep this process clear for students, keep it free for students, and encourage students to apply, they are good things. But let us also remember we are dealing with limited dollars and that we have to tell the students, if we have another episode of linear reduction, and it falls on us to convey that message.

Thank you.

MS. McCULLOUGH: Thank you. Kim Jenerette.

MR. JENERETTE: My name is Kim Jenerette. I am the Director of Financial Aid at University of South Carolina Upstate, just up the road two hours from here in Spartanburg, South Carolina. I serve on the

Legislative Relations Committee for SCASFAA, a nine-state association, as well as chair the same committee in South Carolina.

It is my first time at a regional hearing. I was a little bit nervous when I first got here. That nervousness quickly evaporated when I saw Carney and her smile, her warm demeanor. And as I say that now, Carney has not always been friendly to us. I've gone to her before and asked her some certain things when I was at Furman University, and she came back and told us no. But we still like Carney. She still works with us, and she still listens to us. So it's a pleasure to see you here this morning.

As Cynthia noted earlier, and Bill--both Bills--I am in the Financial Aid Office as well. So we're in the trenches, and I want to get right down to some things that I believe are important. So what better place to start than the Financial Aid Office than Section 402, the Academic Competitiveness Grant. I believe we're in the third year of a 5-year-funded program. The last time I heard numbers, we're about 50 to 60 percent of appropriations--50 to 60 percent of the appropriations were actually spent. That cheer you heard a couple of weeks ago, or whenever, was not the folks cheering for their favorite football team; it was those of us in the Financial Aid Office when we heard or read that ECASLA had changed the basis of tracking progression from an academic year to just the word "year." That's a major fundamental shift in the Financial Aid Office. I never really knew there were different definitions between academic year, award year, and year until we came up with the Academic Competitiveness Grant. My first recommendation would be when the ACG and SMART abolish the weeks of instruction. By trying to mirror this with ours and looking at this, this has greatly reduced the efficiency for us delivering financial aid. And in some institutions, the last SCASFAA meeting, there were well over 100 schools that had not made one award yet. So it has not only greatly reduced the efficiency in delivering awards but just awarding in general.

I am hoping that using grade level may be the somewhat universal standard that we can use in determining eligibility for the ACG award for students. With that, we could allow for the inclusiveness of all hours, collegiately earned hours. That would include AP, IB or dual enrollment hours. Now, that would be a little tricky, but about two years ago, we had a combined Carolina conference at the Grovepark Inn in Nashville, and

Anthony Jones, our friend, talked about the assumption versus the tracking methods.

This would allow us to work with what educators called an individualized education plan, when dealing with kids in high school, in elementary school, in middle school, and it allows us to work with students who may come in with 24 or 30 hours of earned work already. And for those students who are on an accelerated track, we could possibly view them, and if an appropriate measure, they could get a SMART Grant later on, since they may graduate in three years, but for those students who would still continue to come four years and not be SMART Grant eligible, we could go with the tracking method and allow them to be more efficient and receiving the ACG-1 and ACG-2, should they be eligible again. I would like to mention maybe considering for ACG-2 for students who did not meet the rigorous high school requirements to be eligible to receive the ACG-2 by reaching the certain hours, whether it be 24 and 30 as we have it in the current environment and the necessary 3.0 GPA, if they have proven academic success or academic strength.

Section 401, the Federal Pell Grants, I agree with my colleagues about the 18 semester limits and concerns. I would just like to state, through technical amendments or what have you, allow institutions to continue to monitor this through satisfactory academic progress. If there are institutions who are abusing this, we have existing laws on the books, we have program reviews, we have audits to deal with it accordingly. For multiple Pell Grants within a single year, I don't think there would be anyone in this room that would be against that. The only thing I would carefully ask the Department to do, through negotiated rulemaking, is to allow the regs to be drafted which will allow us, as institutions, to meet 668.16. And if memory serves me correctly, that is to capably administer the types of aid we have. Section 412, the TEACH Grant. That has changed all my presentations. I am now allowed to use the word "caveat" in my presentations because this grant is not gift-based aid. By the Department's own statistics, they have conservatively noted that 80 to 86 percent of students will not meet the service obligations. For those of you who are in this room and you are not in the Financial Aid Office, let me say that again. This is called the TEACH Grant. It is a grant that converts to a loan. We in the Financial Aid Office call it a "groan." And the Department has come back and said 80 to 86 percent of students will not meet the service requirements. So if a student receives

a $16,000 grant undergraduate, which is the aggregate limits currently for a student and they do not meet the service requirements, that grant, for those of you not in the office, I want you to understand, this converts to an approximately $37,000 unsubsidized loan. That's in addition to the annual and aggregate limits a student can receive on the Stafford Loan.

So, very simply, while we applaud the Department allowing for the flexibility to utilize majors at each institution, we just want the name of this program changed from TEACH Grant to TEACH Loan. That allows, in gear-up programs that we have everywhere, it allows early awareness for the students to understand what type of funds they may be receiving and maybe consider that this loan converts to a grant not after four years of service but perhaps after two years of service.

Lastly, I want to close by just reviewing Section 151. Section 151 deals with definitions. And we would like to consider revising the definition of a "preferred lender arrangement," substitute that to perhaps "participating lender arrangement." The word "preferred" denotes a school has an active preference for a specified lender, when recommendation of such a preference to a borrower is otherwise prohibited by law. The word "participating" connotes the appropriate distance between the school and the lender that schools are required to maintain.

Thank you both for allowing me to speak.

MS. McCULLOUGH: Thank you. Bob Stovall.

MR. STOVALL: Hello. Thank you. I'm Bob Stovall. I'm from Merit Network. It's a 501(3)(c) organization based in Michigan, and our community members are the public universities and private colleges and other higher eds in Michigan.

I'm here to talk about the peer-to-peer copyrighting infringement provisions that are in this act. The concern we have here, and I think some other folks have talked about this, is that we are worried that it's going to be a one-size-fits all approach, and that is going to be not manageable on the technology side. And our concern is this, is that it's really focused against the larger universities, and the smaller colleges and junior colleges that have small dormitories or don't have dormitories at all, they're going to have to abide by the same rules, and we don't think that's going to be manageable or affordable for them. There is another concern here, too; that they are talking about the peer-to-peer applications and file sharing. There's a whole plethora of legitimate use

for those applications in research and content management within campuses and external to campuses to the remote campuses and to the online students, and we don't want to damage that ability for the content to be provided. We don't want to prevent our institutions from meeting their mission, which is to educate our students in our community. So we've got to create the rules. And as one of our colleagues has mentioned, and bring in organizations like EDUCAUSE in part of the rulemaking, to make sure it is measured and the whole community is represented, that we're just not trying to say, well, the large universities can do this, the research universities can do that--so everyone can do that. No, we've got to have measured, leveled rules for each part of our community. It's really, really important. Because as we move forward, we need to use our technology to educate our communities and to use the technology to get the word out and not prevent it. Some of these rules could be made that would prevent us from being able to use the right technology for the right applications. So I would like to thank you for the opportunity to speak on this. I really recommend or just strongly recommend that considerations of the smaller campuses are taken when you create these rules.

Thank you.

MS. McCULLOUGH: Thank you very much. Jim Kessler.

MR. KESSLER: Good morning. I don't know if anyone has formally welcomed you to North Carolina. So welcome. We have this weather that we have to put up with all the time, including today.

My name is Jim Kessler. I'm the Director of Disability Services at the University of North Carolina. I am here representing the Association on Higher Education and Disabilities, of which I have been fortunate enough to be a past President. I want to thank you for allowing us the opportunity to speak to you today. And, first, let me say that AHEAD fully supports the Higher Education Opportunity Act reauthorization, which we believe supports the efforts of institutions of higher education and our core constituency to improve transition, support and instructional services, service and instructions for all students with disabilities. While 77 percent of students with disabilities hope to go to college, only 31 percent are able to attend. We are hopeful that these new regulations will increase the opportunities for all students with disabilities and thereby make higher education a reality for all. AHEAD is a professional organization of individuals involved in the development

of policy and the provisions of quality services to meet the needs of persons with disabilities involved in all areas of higher education--undergraduate, graduate, professional two-year and four-year schools all over. We have about 2,500 members throughout the United States and in other countries. We are fortunate to have a formal membership with 30 affiliates around the country and numerous other professional organizations working to advance equality in higher education for persons with disabilities.

AHEAD dynamically addresses current and emerging issues with respect to disability, education, accessibility for persons with disabilities and trying to be able to achieve universal access. As such, we are actively involved in all facets of promoting full and equal participation by individuals with disabilities in higher education and supporting the systems, institutions, professions and professionals to attend to the fulfillment of this obligation. There are five points we would like to address this morning.

Under Title II, Part B, Section 3, Subpart 3, Section 251, Preparing General Education Teachers to More Effectively Educate Students with Disabilities. AHEAD supports a structured, multi-sensory approach as outlined by the National Reading Panel, which highlights five pillars of literacy that are critical to the essentials of reading skills. As part of this, AHEAD supports the use of research-based methodologies in determining the best approach to instructions in reading and mathematics. The education of teachers takes place within higher education. Our approach toward disabilities and accommodations form the foundation for the expertise of the future teachers and the employers it prepares.

The necessity for students in K-12 to be able to learn the skills to learn is critical for the transition to higher education. Because of the influence of the climate and the importance of modeling the best practices, AHEAD supports the model demonstration projects of Title VII to provide technical assistance and professional development for faculty, staff and administrations in institutions of higher education in order to provide students with disabilities quality education at all levels. We also encourage the investigation of models, whereby teachers' preparation programs can more effectively model and assist in accelerated training of those teachers recruited from model national programs such as Teachers of America. Point two, under Title VII, an advisory commission on accessible instructional materials and postsecondary education for students with

disabilities. This also is a concern for the other gentleman who spoke about copyrights. AHEAD fully supports all efforts to make instructional materials in a timely and useable format for all students with disabilities. This is particularly important for those students with print disabilities, as was outlined in the Wall Street Journal article on September 17th of this year, which chronicled the increasing number of students with learning disabilities entering postsecondary education and their needs for varying levels of alternatives to print. AHEAD and its members have been important leaders in the creation and the development of expansion of services to fill the void of alternative print, such as Book Share, and to encourage RFB&D, Recordings for the Blind and Dyslexic, efforts to provide materials in a digital format.

AHEAD member institutions have an obligation to ensure nondiscrimination of all persons with disabilities in accordance with the language of the Americans with Disabilities Act and its amendments and the Rehabilitation Act of 1973. We feel that the current definition, as listed in the Higher Education Textbook Access Act of 2007, referring to print disability, would exclude or not sufficiently encompass people with disabilities who would participate in or benefit from the use of books in an electronic format. The definition needs to be revised to not be based on the outdated National Library Service standard definition, but on the definition that reflects today's scientific realities. As our campuses are beginning to deal with issues confronting returning service men and women with disabilities, we need to broaden our ability to understand and address the disability-related impacts to reading and other academic tasks are essential.

AHEAD believes that an advisory committee will be able to examine a broad spectrum of materials and needs to encourage the common approach to flexibility and formats that will allow students to move between and within our educational systems. We look forward to participating and consulting and assisting in these efforts.

Point three, an e-text clearinghouse. Under Title VII, a model demonstration program to support improved access to postsecondary and instructional materials for students with print disabilities. Through our e-text initiative, a collaborative project involving numerous student organizations and institutions they serve, publishers, AHEAD has developed an understanding of stakeholders' positions and current capacities. AHEAD supports the idea of a national clearinghouse for

accessible text, seeing it as a necessary and efficient first step to a seamless provision of accessible digital technology directly for students with print impairments. We support the goal and the intentions of this legislation to improve timely and useful access to printed instructional materials for people with disabilities. We absolutely realize that while the current section is not the final answer to the issues of text accessibility, it clearly provides for a critical first step in attacking a significant area. Point four, data collection under Title IX. Colleges will be asked to report the "percentage of undergraduates enrolled in the institution who are formally registered with the Office of Disability Services of the institution or the equivalent office for students with disabilities."

The collection of data on students with disabilities has been inconsistent over time and across institutions. The lack of consistent data has hindered the evaluation of our progress toward inclusion, our identification of best practices and our ability to predict future resource needs. AHEAD sees the simple headcount of students with disabilities seeking services or accommodations as an opportunity to develop an infrastructure for the collection of more meaningful data and the development of reliable models for service delivery and resource planning. We are pleased to see the addition of this provision because students with disabilities, like all of the minority populations on campus, deserve to be included and counted.

Currently, there is no defined system or methodology in place to count college students with disabilities, and determining how this task is accomplished is critical. Some questions that need to be considered when looking at this provision are, are we going to count students with disabilities like we do other minorities or only those students who request accommodations? If so, how do we ensure that we include students with disabilities who do not register with our offices? We need to ensure that students who receive financial assistance through the various agencies, such as vocational rehabilitation and other services with disability services are not counted more than once. Considering that not every disability fits nicely into every category, we will be asked for a--we will work on a tracking methodology. In the end, what will be the purpose of the data for the individual institutions as well as the government? We are pleased to see the addition of these provisions because students with disabilities, like all other minority populations

on campuses, deserve to be included and counted. However, as indicated above, AHEAD feels that further clarification is necessary in order for the data collection to be efficient and meaningful. AHEAD would be happy to participate and consult in this discussion.

Thank you, again, for the opportunity to speak and listen to the views of the Association of Higher Education and Disabilities. And thank you, Johnson C. Smith, for taking the leadership and hosting us this morning.

MS. McCULLOUGH: Thank you. Meghan Trowlbridge.

MS. TROWLBRIDGE: Good morning. My name is Meghan Trowlbridge, and I am speaking today on behalf of the Center for Disability Resources at the University of South Carolina. The Center for Disability Resources, or CDR, is one of 61 university centers for excellence in developmental disabilities education, research and service, located in major universities throughout the United States. We function as a bridge to connect the knowledge, expertise and resources of the university to persons with disabilities and the service delivery systems in the community. Our mission is to enhance the well-being and quality of life for persons with disabilities and their families. We collaborate with persons with disabilities and their families to develop new knowledge and best practices, train leaders and effect systems change.

I'm here today to provide recommendations on the development of regulations regarding financial aid for students with intellectual disabilities. We are delighted that Congress included provisions in the law that will make it possible for students with intellectual disabilities, mental retardation and other significant cognitive disabilities who are enrolled in comprehensive transition and postsecondary education programs to access financial aid. Research shows that students who have the opportunities to participate in postsecondary education are more likely to become employed and to live more independently than students who do not have these opportunities. We found that students who are more self-determined were more independent overall, and they were more likely to be working for pay at higher hourly wages. These postsecondary actions for students will positively impact the overall quality of life. However, affordability is a real issue. The new provisions in the law that allows students with intellectual disabilities enrolled in programs designed for them to be eligible for work study

programs, Pell Grants and Supplemental Education Opportunity Grants will be a real help to these students and their families.

The CDR is pleased to partner with the College Transition Connection and the National Down Syndrome Society, supporting an innovative initiative in South Carolina. This collaboration works to provide grant monies for postsecondary education programs at colleges and universities in South Carolina. The grant covers a planning year, start-up costs and personnel. Students or their families are responsible for tuition and fees. Partnerships with the Developmental Disabilities Council, Vocational Rehabilitation and the Department of Disabilities and Special Needs are being cultivated to enhance these opportunities and provide support for the students. Currently, there are grants being administered to three South Carolina universities: the University of South Carolina began the Carolina LIFE, which stands for Learning Is For Everyone, Program in August 2008 with the admission of three students. Clemson University is halfway through their planning year, and they will admit students in the spring of 2009. Coastal Carolina University has been awarded a planning grant, and students will start classes there in the fall of 2009 semester.

These programs will provide students with opportunities to participate in regular classes, with support, to be involved in extracurricular activities on campus and to experience inclusion on a college campus. Each LIFE program is different based on the specific culture and opportunities offered at the universities. Some specially designed or program-specific classes are offered, as well inclusive classes with "typical" students. The goal of the LIFE programs is to prepare students for employment and independent living upon graduation. Our first recommendation is that the negotiated rulemaking team includes at least one expert in this area to ensure that the regulations properly reflect congressional intent. We also recommend that the following principles and suggestions be used in developing the regulations.

Number one, ensure that the process be as simple as possible for families and institutions of higher education to navigate.

Number two, ensure that the financial aid process is as easy as possible for families to understand and use and is closely linked to the process that other students use.

Number three, ensure that institutions of higher education do not have to jump through multiple hoops to provide assurances that they offer a program.

Number four, in providing clarification on the definition of a student with an intellectual disability, include language in the conference report that makes it clear that a student with an intellectual disability who attends or has attended private school or is home schooled is eligible.

Number five, make it clear that a student who receives financial support from a school district or other government agency is still eligible to be considered for work study jobs and tuition that they pay, if any.

Thank you for this opportunity to address you today. We would be very pleased to provide any follow-up information and my contact information is in the written statement.

MS. McCULLOUGH: Thank you very much.

Let's take a 15-minute break. When we return, it will be Jeff Arthur, from ECPI College of Technology. So we will reconvene at 10:30.

[Brief recess.]

MS. McCULLOUGH: We will now reconvene the hearing. Our next speaker is Jeff Arthur from ECPI College of Technology. Before we get started, let me remind you that if you have not signed up for a time slot, we have plenty of times left available. Just sign in with Patty and Nicky in the front, and we'd love to hear from you.

MR. ARTHUR: First of all, I'd like to thank the Secretary for giving us the opportunity to participate in these hearings. I was a negotiator at the loan issues neg-reg last year and understand the value and the impact that this process can have. So I applaud this process, and I'm glad to see so many people participating.

I am the Vice President of Information Systems and Financial Aid at ECPI College of Technology and here representing the Career College Association. ECPI has 12,000 students and 18 campuses. I do have a staff of six people that have over 20 years in financial at ECPI. So I know we still struggle with this. I don't know how everybody deals with a lot of the complexities, but we'll get through it, won't we.

The first issue I would like to address is the year-round Pell issue. I am very grateful for this provision. With most of our students attending one and two-thirds academic years each calendar year, we always struggle to deal with students that want to accelerate their education and with a system that has disincentives to do so right now. So this is a good step to try to remedy some of that. Because of our crossover payment periods, our students can have these periods actually occur over 16 months. You can have an award year with payment periods that cover a 16-month span. So I do ask that the Secretary give maximum flexibility and consideration of these issues when we award these students in dealing with this issue. In regards to the 90-10 issue. With the application of non-Title IV programs being counted as revenue now, I would remind the Secretary or, hopefully, understand that many of our institutions, our states and our accreditors approve institutions on an institutional basis not on a program basis. So where I have programs, a lot of Microsoft certification programs and phlebotomy courses and things like this that it appears the intent is to allow us to include those in the revenue, those programs may not specifically be approved by the state or accreditor other than they are automatically approved in our scope of our accreditation to give deference for that and not require us to go to those agencies to "Can you approve this program and all these several programs."

With regards to the application of the additional $2,000 that was granted to us in July, while it seems logical that when you apply the use of that $2,000 in the 90-10 rule, that that would be applied proportional that all loans that a student gets, even if there is a refund calculation or other issues like that, to allow the use of that $2,000 as a non-Title IV aid proportional to all of their student loans. The next issue I would like to address is the cohort default rate. I learned with the last speaker that CDR has another meaning, too, but I know it has a definite meaning to us. We are going to have an interesting time when these CDRs are transitioned to three-year rates from two years. It seems that there will be a couple of years there where there will be both a two-year and a three-year rate published for core default rates. It will be important to allow appeal challenges to both rates under the rules that apply to each of those rates. It is currently a two-year appeals and provisions allowed to challenge and penalties incurred with a two-year rate that we would want to see that retained for the two-year and that the new rules that

are related to the three-year apply to the three-year rate and keep those kind of straight there. In regard to the preferred lender lists and opportunity pools, please understand and consider, as regs are updated and written regarding loan programs provided by lenders to our students, that we are struggling, on a weekly basis, to find any lender that will provide a reasonable program for our students. It would work against the interests of students if we were to be required to put a program in front of students that is not in their best interests. Right now I only have two private loan programs that I consider reasonable for our students. It could easily become one in these times or possibly none, but hopefully we'll retain at least one. But I would hate to have to go through any hoops or things to try to put a program in front of students that does not make sense at all.

An additional issue, we are going to be required to disclose retention rates, it seems. Being a year-round school, with a very restrictive--there's really restrictive leave of absence requirements right now. In light of that, some of our students create their own summer term, which they may actually take any time of the year, but because we are year round, I would ask that when we calculate retention rates that we give consideration to students that return within a reasonable time to their program and not have to count those as dropped. So when you look at retention rates, you really do need to leave a window from the time you close off the end of the cohort period to the time that you calculate the rate and allow students a reasonable time to return.

I also understand that there's some issues regarding distance education, verifying that students that are taking courses online are actually who they say they are. I could definitely see on the surface how it seems that it's a reasonable question, how do you know the person on the other end of that on-line course is really how they say they are? But in reality, going to college is a lot of work, and I don't see that you would find people prepared to attend college for someone else's benefit. So I would say keep the administrative burden low on this. Keep the impact of this in perspective. I really--we have struggled with this issue many times. I'm sure we'd be concerned, but when they go through the financial aid application process, you definitely know who is getting the financial aid. That we ensure. So the question is do they actually have somebody that might be taking a course on their behalf. Well, it's a lot of work, and I would suggest it's probably not the issue that it may

seem to be on the surface, so keep the burden low. And then my last comment, regarding the copyright infringement. I want to echo something that Jack Henderson said earlier, but expand on that a little bit. Our institution, bandwidth is precious. We do not have bandwidth available for entertainment purposes. Our IT people have phones that go off when there's unusual bandwidth activity. And so it would be important to us to keep the administrative burden low in an institution like ours, where this is absolutely no issue. It is something that we have under control. And if we can minimize the impact on us administratively, it would be appreciated in consideration of those institutions that are in that scenario.

Thank you.

MS. McCULLOUGH: Thank you. David Harrison.

MR. HARRISON: Good morning.

MS. McCULLOUGH: Good morning.

MR. HARRISON: I'm David Harrison. I'm the Associate Vice President for Legal Affairs at the University of North Carolina, General Administration. My business card is this big. You can't have a public hearing without a lawyer or two, so I am here.

You have heard from some of my colleagues from our campuses. General Administration is the common enemy around which they unite. We are going to be submitting to the Secretary a written statement, a formal statement, but I thought I'd take some time, a little bit less formal, to talk about peer-to-peer and how important that is to us. A couple years ago, I published a journal article for Notre Dame Law School and the title was, "The File-Sharing Wars: It Feels Like Belgium Over Here." And that's what higher education is. We have this war that we didn't ask for. We've got the content community and we've got file sharers who shouldn't be doing it, and we do the best we can to stop it. I think we haven't told our story very well. The story that we should have been telling is that we are the group that educates students about not infringing. We do everything we can technologically to stop the infringement, and we've done a good job of it. We've done a good job of it for many years. When this went to Congress, and we had I guess the prospect of having very strict, narrow rules, we were very concerned. We were scared. We've seen this before. You start with the player piano, you go through the phonograph, you go through cassette tapes, you go through MP3 players, and we've all seen the same thing--streams of piracy. We were worried

that we were going to get nailed with some really strict technological measures and some difficult administrative measures in order for us to keep going on and stopping the infringement and educating our students. When it came back from Congress, and it was very sort of broad language, I think very understanding language, we were encouraged. We were delighted that Congress looked at all the things that we were doing already. We don't certify to the Secretary about what we're doing, but you can look at 17 different plans at my university.

Last week we had a meeting of the university attorneys, and I asked all these different campuses, you know, we go from 3,000 students at a liberal art community at Asheville to Chapel Hill and State, which are R-1 institutions, and said, "Is there a common approach that we could take for this problem?" And they said, "No, there is no common approach." We have an overarching copyright policy which applies to everyone, all 200,000-plus students, all of our staff, all of our faculty. But what each campus does with infringement is totally different. At East Carolina, they will go to the student and take the peer-to-peer program off their computer. At Chapel Hill, they'll send them up into discipline. They have to sign a contract, cut them off from their laptops. They'll have to go do their work at the computer labs. Western Carolina has expelled some students for file sharing. There just is not one size fits all, as one of our colleagues said earlier.

So what we would ask is that the Secretary balance the concerns in the same way that Congress and the courts have balanced, whether it was the beta max player, when the courts talked about substantial non-infringement, or it was compulsory licenses when it comes to music. All those things are potential piracy, the balance was made. And so what we want is a dedicated committee for the peer to-peer and an assumption that we are doing the right thing and that the Department will help us continue doing the right thing.

The law is never going to catch up to technology, but we are delighted to have this type of rulemaking, and we would be delighted to participate in any way.

Thank you.

MS. McCULLOUGH. Thank you very much. Marlene Hall.

MS. HALL: Thank you very much. I am very glad to be here, and I will tell you, quite frankly, this is the first time I have ever spoken

at one of these regional hearings. So please forgive me if I slip up a little bit.

I originally came in to simply watch the hearing for UNC Charlotte, and particularly for the Police and Public Safety Department. But I found that several of my colleagues are quite interested and as members, we are all members of IACLEA, the International Association of Campus Law Enforcement Administrators, we also are members of the Southeastern Chapter too. We found that we have a lot in common in terms of avid interest in what the public safety and emergency management provisions are in the proposals being made. I do want to thank you for the opportunity for us to be able to say some of these things. I'd like to just quickly recognize the fact that we have Winthrop, Johnson C. Smith, Duke, and Johnson & Wales also with us here.

One of the things that we were asking that might be considered is the fact that we could take some of these public safety and emergency management provisions and look at them to clarify some of the definitions and parameters that are stated in the regulations, and I will get into that in just a moment. Those would be the provisions contained within the Title IV, Part G, Section 488 of HEOA. And then we also would like to ask that serious consideration be given to forming a separate negotiating committee so that we could go through some of these critical, yet very complex, issues that are affecting our campus communities. One of the examples would be with disclosure of the fire safety standards and measures. We need a little more clarification, if possible, on the fire safety report. For instance, several times student housing is referred to. But every once in a while there will be larger parameters in there. And so when we are talking about drills, policies, future improvements, is there an interest just in student housing for the report or do we need to look further, you know, more expansively on the campus? The other thing is that with certain types of incidents and students being students, we have all sorts of interesting incidents that occur sometimes, but if there is, for instance, a piece of paper that is taped to a student's door and someone catches fire to it, is that considered property damage? If there is a free newspaper, which oftentimes they are there for the picking, is that considered property damage? If so, what is the base value that we need to put on there for the reporting on that?

One other thing that we notice is that it talks about being sure to report injuries that require medical treatment. Every once in a while,

you'll have someone who refuses medical treatment. So do we need to go ahead and include those in the reports, too, for the spirit of the law?

Another area is on the criminal offenses that need to be reported, the four new reporting crime categories--larceny, simple assault, vandalism and intimidation--under the Cleary Act, in the section for the hate crimes. Overall, I think most of my colleagues and I would say that's pretty easy to add to the record keeping that we are already doing. What we would ask is that let's not forget that we already have some established guidelines under the old Cleary regarding criteria and deadlines. And if we could look toward those to help us regulate the new hate crime categories, that would be very helpful. One other thing that was mentioned, too, was the term "intimidation." It needs a clear definition because it's not listed in the Uniform Crime Reporting Standards for other events that are recorded. So we could really use the help on that. One other area is on emergency notification. Of course, the terms that are involved in that, we need to carefully look at those and how they are defined. Just using some of the events of the past 2 years as examples, notification of an incident needs a clear definition for the reporting of an event, after confirmation of that event, and an allowance for professional evaluation of that event prior to a campus wide alert. For example, there may be some sort of protocol that we need to take a look at, not just for when there is a crime, but let's say if a student has a health hazard, such as meningitis or tuberculosis, that would obviously cause some concern.

Looking at some earlier attempts to define some issues in the Cleary Act, a term as simple as "calendar" needs to get a little more attention, if you could. Seeking some clarity was a little bit--well, it was far from easy. The definition of the terms are essential to useful compliance and, more importantly, the exercise of notification procedures to protect those on campus. Events off campus tend to spread, and it's oftentimes a case-by-case judgment. It makes it a little bit difficult. We would be very glad to invite a little more definition in that too. All cases we have got to use professional judgment of first responders, emergency managers and other campus health and safety personnel. They all must be balanced with the notification requirement to ensure that emergency situations are communicated to those on campus in ways that are timely, accurate and useful, and I would like to probably emphasize the word "useful." Another area was missing person procedures. This law

requires the creation of a plan for dealing with reports of students missing for more than 24 hours. This could be an effective idea for any campus that does not have a protocol for missing persons, but regulations must ensure that the balance of student privacy and contact provisions are smoothly intertwined. I notice that oftentimes there was reference to students being 18 years of age and looking at parent notifications, and we appreciate that. We just want to make sure that we keep in mind that most students are legally adults and that campuses usually have little or no legal function in local parentis. MOUs, or Memoranda of Understanding, was another area with local law enforcement. We think that MOUs should be encouraged, but we want to also make sure that it is understood that that is usually by mutual consent between the two or more agencies, and it's not a situation that is imposed by one agency over another agency.

The last thing is on emergency response and evacuation procedures. As institutions, we have to provide the campus community with a statement of policies and procedures, we understand, that are related to the emergency response and evacuation; in essence, requiring the establishment of an emergency operations/management plan. This can be a very complex issue for negotiated rulemaking. Many different missions, resources, programs, structures, and makeup of the country's colleges and universities, and I think what we just heard just in the region or the state itself and UNC can be challenging. If even a summary discussion could be done, that would be really helpful. We are keenly aware of the need to plan for emergencies, and we look forward to helping craft guidance, if possible, on how best to help institutions develop and plan for this. When we were talking about possibly forming a separate committee, we would also very much appreciate serious consideration of including some of the members of the association from IACLEA on that. My understanding--again, this is my first time--that one can nominate persons to be on there, and I would like to nominate someone from IACLEA being on there. Our IACLEA President sent in a letter just recently referring to the Director over Government Relations, and I am sure that probably the President, Lisa Sprague, or the Chair of the Government Relations, Mike Webster, would be very glad to work with DOE on that.

Thank you very much.

MS. McCULLOUGH: Thank you. Debbie Kingsberry. No. All right. Dr. Andrea Williams. Antonio Stephens is going first.

MR. STEPHENS: Good morning. My name is Antonio Stephens. I am the Director of the Educational Talent Search and Upward Bound Program at Saint Augustine College, also the President representing the North Carolina Federal TRIO Programs and North Carolina Council for the Educational Opportunity Programs, better known as NCCEOP. I am here today to talk about the U.S. Department of Education's proposed changes for the Federal TRIO Programs, with the reauthorization of the HEOA. We recommend the following changes in reference to Talent Search, Student Support Services and the annual performance reports of Talent Search to reduce the minimum number of participants from 600 to a lower number so that Talent Search projects can provide a more targeted service or more targeted services to its students and to increase the cost per student allotted for Educational Talent Search.

Student Support Services do not delay the SSS competition more than one year from its originally scheduled Fall 2008 time frame, in reference to the annual performance reports or APRs to revise and distribute APRs to the TRIO community as soon as possible. I would like to go into depth a little bit more. In reference to Talent Search, HEOA includes several changes to the Talent Search Program. Specifically, the legislation modified the purpose of the program to include college completion, expanded prior experience to examine whether students pursued rigorous programs of study in high school, receive their high school diplomas on time and whether students are enrolled in and graduated from postsecondary educational programs. It created a required services section, specifying that projects must provide students with high-quality academic tutorial services, proper guidance in secondary and postsecondary course selection, assistance in completing college entrance exams and admission and financial aid applications. In order to achieve these goals, Talent Search projects will need to increase the intensity and, quite likely, the number of counseling sessions for each participant. Therefore, we urge the Department of Education to reduce the minimum number of participants from 600 to a lower number. This will allow the Talent Search projects to provide more targeted services. Additionally, we encourage the Department to increase the cost per student allotted for Talent Search participants in order to assist projects in meeting these objectives.

In comparison to reducing the number, we can compare this to smaller class sizes within secondary schools. Studies over the last 20

years have provided researchers and educators with the opportunity to observe reduced class size classrooms and gather data on student achievement. Class size reduction has been deemed successful and students show marked improvement in learning. This is from the Clearinghouse of Educational Policy and Management. And also in recent years reducing class size has gained increased prominence as a school improvement strategy. Now, some 40 states now have class size reduction initiatives in place and Federal money available for such efforts. Such goals led the Federal Government in 2000, in the year 2000, to create the highly touted Federal Class Size Reduction Program, which gave states funding to recruit, hire and train new teachers. Clearly, the size reduction will allow more time per student. The Department has also noted that it required better funding with reduced sizes. And according to the American Educational Research Association, smaller class sizes can produce lasting gains particularly for minority and low-income students. So we advocate for a reduction in the size of a new program, a new Talent Search Program, from 600 to a lower number.

The Student Support Services Program, it is our understanding that the Department is considering a plan to delay the next competition for the Student Support Services funding for three to four years so as to bring all four-year grantees into sync with those that have extra years due to high scores in previous competitions. Now, typically, the next competition will take place this fall. While HEOA grants the Department the authority to provide a one-time limited extension of the length of a TRIO Grant in order to synchronize the awarding of grants, it also mandates that it must do so under terms that are consistent with the purposes of the TRIO part of HEOA. This is Section 403(a), Part 1, Subpart B. Now, one of the many purposes outlined in that legislation was the intent of Congress to extend opportunities to participate in TRIO Programs to students enrolled in branch campuses. And this is from Section 403(a), Part 7, Subpart B. Therefore, we discourage the Department of Education from delaying the SSS competition or any other TRIO Grant competition for more than one year. To do otherwise, would limit opportunities for students at institutions that for the first time will be eligible to host SSS projects on their campuses. Indeed, a significant delay of any TRIO competitions would prove to be unfair to needy and deserving students that desperately need the vital and life-changing services offered by TRIO Programs.

And, finally, the annual performance reports. For the first time, Congress defined prior experience by describing outcome criteria for all TRIO Programs. In addition, Congress included new required services provisions and amended previously existing permissible services provisions. In order to effectuate these changes and to allow current TRIO projects to complete these reports in a timely manner, we encourage the Department to update these materials and disperse them to the TRIO community as soon as possible.

Thank you very much.

MS. McCULLOUGH: Thank you very much. Debbie Kingsbury. Andrea Williams.

DR. WILLIAMS: Good morning. I would like to take this opportunity to echo the position of our President, Antonio Stephens. I am Director of Student Support Services and the Educational Opportunity Program at College of the Albemarle. It is two programs, two TRIO Programs.

These programs have been around for a long time, and we do appreciate the support that has been rendered. And the positions that Mr. Stephens shared with you this morning, we looked at the concerns with the new grants and whatnot, the time frame is very critical.

As a member of an institution of community colleges, the only thing that I would like to echo is that in terms of if you are crafting any other legislation or anything like that, the community college system uses a database program, Datatel, and we are very interested in extending our opportunities, our TRIO Programs, particularly within the community college system. But many of our colleges do not collect information pertaining to low income, first generation and individuals with disabilities on a routine basis. So we are ill-equipped in many aspects of being able to compete for these vital resources for the TRIO programs. Here in North Carolina, we are represented very well with the number of TRIO Programs that we do have, but the concern that we have is the ability of the community college system because there is not a routine, regular reporting basis or collection method for us to be competitive in identifying that type of information.

So in terms of if there are any opportunities to allow community college people in the mechanisms of crafting information for you all or being represented, we would like to do so.

Thank you very much.

MS. McCULLOUGH: Thank you. Guin White.

MS. WHITE: Good morning. My name is Guin White. I am the Director of an agency in Greensboro, North Carolina, that is a community-based, first-in-the-state TRIO Program. Mr. Stephens has already given you the information that we brought here regarding the Talent Search Program. So at this time, I just wanted to add that the research came directly from the Department of Ed in regard to class size, and that's what we are pushing for.

Right now, that is all I needed to say.

MS. McCULLOUGH: Thank you very much.

MS. WHITE: Thank you.

MS. McCULLOUGH: That is all of the people that have signed up to testify at this point in time. So, with that said, we will reconvene at 1 o'clock.

[Whereupon, the morning session was adjourned.]

AFTERNOON SESSION

MS. McCULLOUGH: Good afternoon. It is now 1:05. I am calling the hearing to order. However, we have no one signed up to testify at this point or to provide comment, so we will adjourn until someone signs up.

[Recess.]

MS. McCULLOUGH: It is 1:30, and we will reconvene the hearing. First, Sharon Oliver.

MS. OLIVER: Good afternoon. I am Sharon Oliver, Director of Financial Aid at North Carolina Central University. Thank you for the opportunity to briefly share the impact of Section 436, changes in the cohort default rate calculation.

Is this the right time for a change in the calculation of the cohort default rate? Today we have the highest unemployment rate. Today we have the highest gas prices. Today we have the highest number of banks and lenders closing. Today we have the highest foreclosures on mortgages and most recently the highest Federal bailout. The economy is indeed in transition. Based on the current status of our economy, it is anticipated that the default rates will rise. As you well know, the national average for the default rate increased on this year. The change in the calculation of the cohort default rate will have a significant impact on

Historically Black Colleges and Universities. It has been noted that the default rate will likely increase by 25 to 50 percent with this new change. I respectfully ask the Department of Education to consider eliminating CDR as a critical measurement for institutional success. Instead, I offer that the holders of loans should be held accountable for repayment activities. Schools should be responsible for exercising due diligence by providing loan entrance and loan exit counseling interviews and sharing repayment options.

Again, I ask is this the right time for a major change in the calculation of the CDR during an unstable economy?

Thank you.

MS. McCULLOUGH: Next, we have Melody Lawrence.

MS. LAWRENCE: Good afternoon. My name is Melody Lawrence, and I am the Financial Aid Director at Southwestern Community College, about four hours west of here. This is the first hearing of this type that I have attended, and I really did not come prepared to speak. But given the friendly audience, I just wanted to share a concern I have about the Academic Competitiveness Grant, since it is being continued under this current legislation.

Really, I have two major concerns. One is the substantial burden that this program places on financial aid administrators in trying to make sure that we are getting the money to all the right students who are eligible and that the students are indeed eligible under all the different criteria and just, anecdotally, have observed over the last couple of years in my office the amount of time that it takes to give out 20-some thousand dollars seems to me to be totally out of proportion, and I hope that's not what was intended initially.

My second concern about the program has to do with who is actually receiving it. I have to question, when I see that the dramatic falloff in the number of students who are receiving second-year grants versus first-year grants, that there may be something wrong here in the way the program is designed or defined. And, secondly, when I have students who have past the rigorous course assessments or met that criteria by passing the rigorous programs in their high school and they come into my community college and are signed up for all remedial courses, and they are being given a grant called Academic Competitiveness Grant, I have to question, again, whether the original intent of the grant is actually being met. And basically just asking that the Department consider doing

some sort of immediate assessment on the effectiveness of the program. Because, personally, I would rather see those funds that have been allocated to that program be made available to another program that is going to meet the students' needs better.

Thank you.

MS. McCULLOUGH: Thank you very much. Do we have anyone else signed up to testify at this point?

There is no one ready to testify at this point, so we will adjourn until someone else signs up to testify.

[Recess.]

MS. McCULLOUGH: It is now 4 o'clock and the hearing is now closed. Thank you very much.

[Whereupon, at 4 p.m., the public hearing was adjourned.]