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OFFICE OF POSTSECONDARY EDUCATION

**PUBLIC REGIONAL HEARING ON
NEGOTIATED RULEMAKING**

Wednesday, October 8, 2008

9:00 a.m. - 4:00 p.m.

1990 K Street, N.W.
Washington, D.C.

P R O C E E D I N G S

MR. BERGERON: Good morning. I'm hoping this microphone's working. I'll just bring it closer--as though anybody has trouble hearing me. Good morning. I'm David Bergeron, I'm Director of Policy and Budget Development here in the Office of Postsecondary Education.

With me this morning, we have a number of people from the Department staff who will be sitting at this table throughout the day, but right now I have Dan Madzellan, who is the Director of Forecasting and Policy Analysis here in the Office of Postsecondary Education, and Ron Sann, who is an attorney in our Office of General Counsel. Also sitting here up at the front is Vince Sampson, who is the Deputy Assistant Secretary for Policy, Planning, and Innovation. And before we go any further, I'm going to turn the microphone over to Vince and let him say a few words.

MR. SAMPSON: I'll say very few words.

First of all, thank you, everyone, for coming today. It's nice to see a packed house. There's still some seats up front, for those hanging around in the back. As you all well know, it's important that we have a robust record as we go through this process. You know, we're looking at a reauthorization for the first time in a number of years, with a lot of new issues and items for the Department to consider and implement in the years ahead.

So, we've done a number of field hearings, as it were, and we have a couple more to go, but this one is obviously important because we get to hear from a lot of representatives that we might not be able to hear from out in the field. So, we're looking forward to taking your comments, and then we'll look forward to the next step of interacting with you guys as we move forward.

MR. BERGERON: Thank you, Vince. Let me give you a little bit of background. This is our fourth--actually--fifth hearing that we're conducting. We have been in--around the country, as Vince said. We've been to California and Charlotte. We've been in Rhode Island and one in--and had a hearing in Texas. So, we've been hearing from folks. They've been well-attended, although not nearly as well-attended as this hearing is.

We appreciated the testimony that we've received when we've been out in the field. As Vince said, this is an important start to our process, taking and hearing what people's concerns are as they look at the Higher Education Opportunity Act of 2008, in thinking about the issues that we'll need to be regulating around. To help people find information, we've created a Web site

that is easier to find than most of ours at the Department, because it's at www.ed.gov/heoa. For people who know our Web site, it's pretty unusual for us to get a site that's easy to find. So, we would encourage you to check that Web site often. We have posted the record from the hearing in Texas, and we'll be posting the transcripts for each of these hearings as they are completed and reviewed by the Department staff. And so, look for those on our Web site. Once we complete this hearing process, we'll be publishing a Notice that will identify the committees and areas of interest that those committees will be addressing, and soliciting participation in negotiating committees.

That's a little different than the way we have done this in the past, in the sense that, when we've done this before, we've done a Notice that covered all of this, you know, initial activity. But we thought, given the range of issues, it's probably a good idea for us to wait and see what the public comment was before we developed the committee structure. So, look for that Notice in coming weeks. With that, I'll see if Danny or Ron have anything they'd like to add before we get going.

MR. MADZELAN: I just want to welcome you as well this morning, and thanks for coming out and helping us figure out what we're going to need to do over the next year or two in our regulatory process.

As David mentioned, we will be providing further information in a few weeks around a negotiating agenda and timelines and those kinds of things. When we last had one of our mega rulemaking activities coming out of the '98 amendments, you'll probably recall we kind of divided our work up into some things that needed to be done immediately, which we did in 1999, and then some other items that could wait a year or so for regulating. And so, we followed up with subsequent activity. You know, that's, again, a part of what we're hoping to accomplish with these series of hearings, is to hear from you folks out in the field to help us figure out how we stage the work that we need to get done to implement this reauthorization. Thanks.

MR. BERGERON: And before we get started, I guess just a couple logistical things. If you need to use the restroom, just go out through the doors--the door to your right, and then it's just around the corner, and there are signs that lead you to where the restrooms are, and then come back through the glass doors that are on your left. And the other thing is, if you do leave the building and need to come back in, the guard--now that you're all here, the guard should be able to let you up after lunch. We will make sure that there are people downstairs to help you get back up here again. They changed our security arrangements at the last minute on us. And so, it

has complicated our lives a little bit today. But--so, bear with us. If you encounter any issues, just grab one of the staffs. There are a bunch of them in the room right now, and most of them are standing up. So, if you have questions, just grab them. Ron, you got anything?

MR. SANN: Only hello and welcome. Thank you.

MR. BERGERON: With that, we'll hear from our first witness. If you could come to the microphone. The first person coming up and speaking to us is Heather Jarvis. Hi. Yes, please state your name and the organization you are with. Thank you.

MS. JARVIS: Good morning. My name is Heather Jarvis. I'm with Equal Justice Works. I'm an attorney representing Equal Justice Works on staff there. Can you hear me now?

Equal Justice Works has dedicated 20 years to promoting public interest law, and to assisting law graduates who choose to do public interest work. We have joined with other public interest law leaders to support the enactment of Section 431, the loan repayment for civil legal assistance attorneys, and we have collaborated with law schools throughout the country to establish loan repayment assistance programs. We have assisted statewide programs, employer-based programs, and we really are national experts in the design and implementation of loan repayment assistance programs. And we have analyzed Section 431, and have a couple of suggestions to make in that regard. We've identified five specific areas that we find appropriate for regulation. The first is loan priority, the second are terms of repayment, the third, application priority, the fourth, double benefits, and the fifth, definition of statutory terms. So, we ask that the Department of Education designate these subjects for negotiated rulemaking. Specifically loan priority in Section 428(1) states that the Secretary shall carry out a program of assuming the obligation to repay a student loan by direct payments on behalf of a borrower to the holder of such loans, but the statute does not provide rules establishing a loan priority, and eligible civil legal assistance attorneys are likely to have many eligible student loans.

So, rules establishing an order of priority for repayment of those loans should be included on the agenda of a negotiated rulemaking committee. The committee can consider whether to prioritize Direct Loans, FFEL Loans, Grad PLUS Loans, higher interest rate loans, or the like. We also ask that a committee consider repayment terms. In Section 428(1), as well, the statute indicates that if an attorney quits or is fired for misconduct before they complete their service obligation, that borrower will repay the amount of

benefits that they have received. Rules establishing the terms of that repayment will need to be determined.

Thirdly, application priority. The statute itself sets out priority rules for selecting borrowers to receive benefits, but regulations implementing those borrower priority rules are needed. Negotiated rulemakers could determine additional priority rules as well for applications in the event that appropriations remain after initial distribution of benefits to priority borrowers. We also ask that a committee consider the double benefits provision of Section 428(l) which establishes an ineligibility for double benefits provision, stating that no borrower may, for the same service, receive a reduction of loan obligations under this Section and Section 428(k) or 455(m), being the new loan forgiveness program for servicing areas of national need and the College Cost Reduction and Access Act, public service loan forgiveness.

Now, rules establishing the appropriate application of this Section will be needed, and the committee can consider how to apply this provision in light of the loan and borrower priority rules, and the interaction between this provision and the College Cost Reduction and Access Act. And finally, there are some definitions that I believe will be needed. There are several statutory terms, including full-time, continually-licensed, involuntarily-separated, and contrary to the public interest that we believe ought to be the subject of rulemaking and definition. Equal Justice Works and I are happy to offer advice, propose draft regulations, and to support the Department's effort to address these issues. And so, I thank you and I'd be happy to answer questions if you have any of those.

MR. BERGERON: Thank you.

MS. JARVIS: Thank you.

MR. BERGERON: I appreciate it, Heather. Susan Saxton is next. Again, if you could tell us for the record who--state your name and the organization you represent. Thank you, Susan.

DR. SAXTON: Good morning. Is everything okay? Hi, my name is Dr. Susan Saxton. I'm the Chief Academic Officer for Laureate Higher Education Group.

Laureate Education has several accredited institutions in the United States, including Weldon University, Kendall College in Chicago, and the New School of Architecture and Design in San Diego. Weldon offers graduate degrees at the master's and doctoral levels in a variety of academic disciplines with the non-tradition adult learner who is working full-time or otherwise has not had the opportunity to pursue higher education in the

campus-based traditional setting. Kendall College offers degrees in business, hospitality, the culinary arts, and early childhood education. The New School of Architecture and Design offers bachelor's and master's degrees in architecture.

With a portfolio of diverse institutions, Laureate has experience with regional, national, and specialized accreditation. I appreciate the opportunity to share our thoughts with you on a number of issues, which we believe the Department should consider during the negotiated rulemaking process. As an overarching issue for consideration, my comments are focused on the need to better incorporate the interests of the non-traditional adult learner into the federal education policy.

Thus I speak today on specific concepts of innovation and teaching and learning, simplification of the Title IV administration, institutional disclosure, and accreditation with the broad recommendation, with changes in these policies--must take into consideration the needs of the non-traditional adult student. Laureate supports the Higher Education Opportunity Act's efforts to combat diploma mills. We consider these efforts critical for preventing fraud against students, and essential for maintaining the quality of distance education. We must prevent bad actors and illegitimate institutions from impacting success in this area, and we welcome the opportunity to work with the Department to accomplish this goal.

Laureate is proud of Weldon University's reputation and accomplishments in providing access to quality education for non-traditional students exclusively for distance learning. Distance learning is a proven way in which to provide access to quality education for many learners who otherwise would not be able to enroll in a campus-based program. Laureate, through Weldon, has been at the forefront of distance education, and has extensive experience in encouraging innovation while ensuring continued quality and a positive student experience. We also support the HEOA's provisions requiring Accreditors to maintain standards and train their site evaluators that have distance education. These changes recognize that distance education has become an accepted format for delivering educational programs, and that the accrediting agencies play an important role in ensuring quality in distance education as they do with all institutions and programs.

To review institutions that offer distance education consistently, it is important that all recognized accrediting agencies be knowledgeable about how distance education programs operate and how they differ from programs offered by other formats. In addition, we applaud the Department for working

with Congress to revise the definition of distance education to distinguish correspondence programs and other forms of distance education delivery.

Our institutions also take very seriously the responsibility to ensure that students enrolled in our programs are students participating in and completing our programs. For example, Weldon has a number of methods it uses to ensure continual contact between its students and professors, and we'd be happy to share these experiences in detail with the Department. The conference report does not mandate that institutions use or Accreditors require a specific type of process. Rather, it indicates that mechanisms such as passwords or identification numbers are currently sufficient for student verification. We consider it important that the Act's language regarding verification processes continues to provide institutions the flexibility to determine what type of process should be adopted.

Adjusting Title IV programs to better meet the needs of all learners, including the non-traditional adult learner, is of great importance to Laureate. We applaud the increases to the Pell Program's funding levels, and the expansion to a year-round Pell, because it recognizes the important role year-long funding plays in allowing particularly non-traditional FFEL students to continue and complete their educational programs.

We also appreciate the other changes to the Title IV programs that allow institutions to increase access to higher education for non-traditional learners. Finally, we applaud all efforts, including the Secretary's recently announced plan to streamline the FAFSA application and the associated approval process so that students may more quickly understand the funding for which they are eligible. Such understanding often has a direct bearing on their educational choices. In this area, we would welcome the opportunity to assist the Department in improving its processes and systems.

Laureate supports the general concept that institutions have a responsibility to disclose more information on student achievement to students, perspective students, and the public in order to improve institutional accountability and to help students make more informed decisions about their education. Such disclosures are particularly important for students who enter or return to higher education later in life to improve their career prospects. For this reason, we generally support the Act's requirement, for example, the data related to graduation, completion, and retention rates be disclosed. We believe it is important, however, that such information be disclosed in a manner that is useful to the public. Thus, it is critical that the Department carefully consider the definition of the

terms "retention rate," "graduation rate," and "placement rate," recognizing that varying types of institutions might define such terms differently.

Laureate believes accreditation should continue to play an important role in ensuring exceptional quality of educational programs, both those offered on the ground and those offered through distance education. In general, we support the new accreditation provisions of the Act. We believe those provisions generally respect the important independent relationship between an accreditor and an institution, for recognizing the need of federal policy agencies to ensure some consistency regarding processes and operations in accreditation. We commend the Act's recognition that different types of institutions measure student achievement in different ways unique to the distinct roles of that institution. As a general principal, we believe that measures must be linked to specific learning outcomes, and that each academic program should embody a set of student learning outcomes specific to defined and appropriate program goals.

Laureate supports the concept that each accreditor will look at each institution and its unique program goals in assessing the institution against its standards on student achievement. Laureate supports continuous interaction and frequent communication with Accreditors which enhances the relationship between our institutions and the quality assurance agencies.

The amendments to Section 102 regarding the expansion of the definition of proprietary institution of higher education to include liberal arts programs are complex. For example, they do not define what it means to have provided a liberal arts program by January 1, 2009. Further, the conference report indicates that, "The conferees understand that some programs offered by an institution make the definition of a program that leads to gainful employment in a recognized occupation and a liberal arts program." The conferees do not intend the terms "gainful employment in a recognized occupation," and "liberal arts" to be mutually exclusive. Given that this provision takes effect on January 1, 2009, we believe it is important for the Department to act quickly to provide institutions guidance on the implementation of this statutory definition.

In conclusion, Laureate asks the Department to consider when making any changes to its regulations how the federal government and the higher education community might do a better job serving the needs of a growing cohort of non-traditional adult learners who are purposefully seeking professional growth and lifelong learning opportunities. We believe that the public at large will benefit from the disclosure of data related to student

outcomes, continued support of the development of innovative methods of teaching and learning, policy reforms and streamlining of procedures relating to the financial aid system. Laureate looks forward to working with the Department on these issues as it proceeds with the negotiated rulemaking process. Thank you.

MR. BERGERON: Thank you, Susan. As you can see, we're trying to make a few adjustments so that it's a little easier for people to hear. Our next speaker is Mary Dorrell.

MS. DORRELL: Good morning. First of all, I want to thank you for the opportunity to be here today and share my thoughts and recommendations. The work of these public hearings is the first important step in identifying issues and address--soliciting our input. My name is Mary Dorrell. I've Vice President of Student Finance for Career Education Corporation.

I've been in student finance for 28 years at a community college, a public university, and proprietary institutions. Career Education Corporation is the largest on-ground provider of private, for-profit, postsecondary education. The colleges, schools, and universities that are a part of Career Education Corporation offer higher education to more than 90,000 students in a variety of career-oriented disciplines. The 75 ground campuses offer doctoral, masters, bachelors, associate degrees, as well as diploma and certificate programs. Today, I would like to address some of our 90-10 concerns.

I'd like to start with additional unsubsidized Stafford. The law provides that, for loans disbursed from July 1, 2008 to June 30 of 2011 an institution can treat as non-Title IV revenue the amount of Federal Stafford disbursed that exceeds the limits that existed prior to the enactment of ECASLA, Public Law 110-227. Our concern is that, because these loans are divided into multiple disbursements, it is unclear how the institution will attribute the additional loan amounts, particularly when some disbursements will cross over into the next award year. We suggest that the most appropriate method for determining the amount to attribute to the additional loan amount would be to relate the disbursements of subsidized Stafford, unsubsidized Stafford, and additional unsubsidized Stafford to each payment period in proportion to the total amount of the Stafford that was awarded for the loan period.

Schools should not be required to go back after the close of a year and reattribute the loan back to the regular Stafford if the student subsequently drops out and does not receive the remaining disbursements. Similarly, when a

student drops out and the funds are subject to R2TIV, the amount of the Stafford repaid should be proportionately attributed to the additional and the regular Stafford loans for the purposes of 90-10 calculations.

MR. BERGERON: Can you move the microphone a little closer.

MS. DORRELL: A little closer? Okay.

MR. BERGERON: Thank you.

MS. DORRELL: I want to also talk about institutional loans.

The HEOA provides addition flexibility to institutions to allow them to count net present value of institutional loans on an accrual basis toward the 90-10 compliance. As a result of the tighter credit markets, many students who previously were able to obtain private loans are unable to obtain them now. Institutions are working with lenders to originate loans to their students despite the current markets. Schools then purchase these loans from the lender at a principal plus interest, and assume all responsibility for the debt at the point of purchase.

Although the loans are not made by a proprietary institution of higher education, the proprietary institution assumes all responsibility for the loan, including collections and default risk. If the institution did not purchase the loans, these third-party loans would clearly be included as cash received for the 90-10 purposes. However, with the purchase of these loans, it's not clear that these loans can be counted as cash received. With the purchase of these loans, they are similar to loans made by the institution. Therefore, to ensure that these loans are clearly defined in 90-10 purposes, we request that loans originated by a third party lender for the students at an institution but purchased in full by the institution be treated the same as institutional loans made by the institution as they relate to the 90-10 calculation. In addition, as part of paying institutional charges, many institutions allow students to use installment payment plans or retail installment contracts. While such payment plans do not include the issuance of funds at intervals related to the institution's enrollment periods, they include contracts that are legally enforceable, and subject to regular loan repayments and collections. For that reason, we believe such installment payment plans meet the standard of an institutional loan. Therefore, we request that such institutional payment plans be clearly defined as institutional loans as they relate to the 90-10 calculations. And finally, the law also requires that loans subject to regular repayment and collections--our institutions allow students to defer payment on certain loans while they're enrolled. We wish to ensure that a definition of

institutional loans includes loans that incorporate a deferment of payment while the students are in school and during a reasonable grace period after they leave, as we believe that these are also in the best interests of the students. And thank you.

MR. MADZELAN: Well, I think I can assure that David is not fed up with the--

[Laughter.]

MR. MADZELAN: --not frustrated at all, but we are joined, now, up here by Kay Gilcher of our staff. Kay, say hello.

MS. GILCHER: Hello.

MR. MADZELAN: Our next speaker is Ken Salomon. Welcome, Ken.

MR. SALOMON: Thank you. Good morning. I'm Ken Salomon, and I'm here on behalf of ACUTA, the Association for Information Communications Technology Professionals in Higher Education.

ACUTA asks that the Department develop through the negotiated rulemaking process the regulations to implement the HEOA's technology provisions, specifically the Emergency Notification System, or ENS, requirements and the Student Safety and Campus Emergency Management Grant Program regulations, the peer-to-peer, or P2P, file sharing requirements, and the distance learner verification requirement. ACUTA also requests that the Department select one of its members as a higher ed negotiator on the negotiated rulemaking panel dealing with the ENS and Emergency Notification Grant Program and include ACUTA members as technical experts and advisors to the P2P and verification negotiated rulemaking panel or panels. ACUTA believes that the face-to-face, give-and-take of negotiated rulemaking is the best way to develop effective ENS, P2P, and verification rules, because the difficult regulatory, legal, and policy challenges in developing these regulations are exacerbated by the fact that there is complex and rapidly evolving and changing technologies that underlie each of these issues.

Because ACUTA represents nearly 2,000 professionals at 800 colleges and universities in all 50 states, ranging from the smallest to the Nation's largest higher ed institutions, it is superbly qualified to participate in developing these technology rules through negotiated rulemaking. ACUTA restricts institutional membership to the full-time employee of an accredited institution, having primary responsibility for the control or direction of campus communication technologies services and budgets, and for campus voice, video, and data communications networks. ACUTA members have a deep expertise in all the key issues and technologies associated with the three HEOA

technology provisions. They're responsible for designing, managing, and operating telecommunications and data infrastructure on campuses that will be an essential component of the three technology provisions, and they fully understand the capabilities and the limitations of infrastructure and the upgrades that will be necessary to affect the technological solutions.

They are responsible for evaluating, selecting, implementing, testing and managing ENS on campuses of all sizes. They have experience and knowledge both in how these systems work and their limitations, knowledge which will be invaluable to the Department in developing practical and effective ENS rules.

As the only campus managers that work with many telecommunications carriers on a daily basis, ACUTA members understand the limitations of the public switch network, the impact of the capabilities of telecommunications infrastructure in their community, and the importance of redundant systems to minimize the risk of failure. ACUTA members know from real world campus experience in testing and using ENS for alerts that multiple notification methods are essential, something mentioned by the conference committee.

They also know that the best ENS system is only as effective as the telecommunications infrastructure that it runs on, an important consideration for the Emergency Notification Grant Program, and that the text, voice, and e-mail systems currently available depend heavily on factors such as opt-in rates, available bandwidth, and wireless coverage across the campus, all of which are affected by community-wide emergencies and by natural disasters.

ACUTA members can bring to the Department the real-world experience necessary to the development of truly effective ENS rules, policies, and procedures, one of the charges that you are given under this Section of the HEOA. They also understand development and management of network and data security policies and technologies, and their expertise in authentication and other aspects of security qualify them to advise the Department on the P2P and verification panels. ACUTA members are familiar with the technological authentication measures through their provision of the network on which campus learning management systems operate and through the operation of campus-wide network security and authentication systems and procedures. They can provide the panel with essential input about what technological options are now available to colleges, what is feasible within those systems, and what may be on the horizon.

In conclusion, ACUTA appreciates this opportunity to state our recommendations that the Department employ negotiated rulemaking to develop the regulations implementing the HEOA's complex and important technology

provisions, that an ACUTA representative be selected as a higher education negotiator on the ENS panel, and that ACUTA members be included as technical experts and advisors on the P2P and distance learner verification reasons-panel. For the reasons I've stated above, ACUTA believes that it is particularly well-qualified to be an important and valuable ENS negotiator, but should the Department determine otherwise, it requests inclusion as a technical expert or advisor to that panel. Thank you.

MR. MADZELAN: Thank you, Ken. Marie Bennett.

MS. BENNETT: Good morning.

MR. MADZELAN: Marie, make sure the microphone is close.

MS. BENNETT: Are we close enough? We're good?

MR. MADZELAN: Thank you.

MS. BENNETT: Okay. Good morning. I'm Marie Bennett. I'm submitting testimony on behalf of Marilyn Cargill, President of the National Association of State Student Grant and Aid Programs, NASSGAP, and its members. I will read portions of the testimony and provide a complete written copy.

NASSGAP represents agencies in the 50 states that operate state aid programs, including the Federal LEAP and SLEAP programs. In 2006-2007, our member states provided \$9.3 billion in state student financial aid. On behalf of NASSGAP, I thank you for this opportunity to provide this input. The first topic I want to discuss--regarding financial aid application simplification.

A few years ago, my colleague, Dennis Obergell, identified five principle points to consider in such deliberations. States use the FAFSA as the primary application for state need-based grants. State financial resources are finite, but the population of needy students is growing. And with regard to that, that growth requires increased diligence on the part of states to make sure that the most needy students do not lose financial aid at the expense of simplifying a form. There is a delicate balance between reducing complexity and sacrificing good stewardship of public funding. And five, if questions important to state grant agencies are eliminated from the FAFSA, then states will have no choice but to create additional forms for students to complete in order to capture the missing data. States have been agents for change and have contributed significantly to the simplification milestones that have occurred over the years. NASSGAP conducted the research which led to the identification of common state questions that could be retained in the FAFSA, and that number of questions today is ten. We believe the Act provides abundant opportunity to achieve a more accessible and successful application system. Some of the opportunities that we've

identified include the design of the form and all of its versions should be a matter that engages all the partners who use the FAFSA form.

Agreement about which questions are state questions that are protected under the language of the HEOA must be achieved in an open and accountable fashion. The development of the process which will allow individuals to file an application prior to January 1, the use of prior prior-year data from the IRS as the base data for calculating the EFC, use of other income and asset data that cannot be derived from the IRS data, any studies, pilots, demonstration projects, and the assessment of their impact on the ability of states and institutions to award aid, the inclusion of state and institutional aid on the federal model financial aid form. A second matter of great importance to our members, of course, is the language in the law that authorizes the Leveraging Educational Assistance Partnership Act, and replaces the SLEAP with a new Grants for Access and Persistence Program. Because GAP contains so many new requirements, the law allows up to a two-year transition period, during which time states can continue to apply for SLEAP funding. It is unclear how the state allotments will be determined for GAP, especially during the two-year transition period from the special LEAP Program.

There is a provision in GAP that a state receiving an award cannot receive an allotment less than a previous year; however, if a state continues to use special SLEAP during the transition period, will the same initial allocation formula as used in Special LEAP apply to GAP? Beyond the transition period, the basis for the Department to make initial GAP state allotments is unspecified. Further the continuation and transition language timeline needs clarification as it provides for a two-year period that begins on the date of the enactment of the HEOA, during which the Secretary will continue to award SLEAP, given that the '08-'09 LEAP and SLEAP award years were made--those awards to the states were made in June 2008 and the bill was signed October--August--I'm sorry--August 14, 2008. The statutory language appears to result in Special LEAP awards continuing through 2010-2011 at the states' option.

We also request that the Department permit the use of the Fed Forecaster as an acceptable method of providing an early estimate of federal aid as required in GAP. The student eligibility determinants in GAP include measures not now reflected in the FAFSA. For example, has the student participated in an early information or mentoring program? It appears, then, that an additional question will be needed on the FAFSA to capture this data.

Per the Act, states are to provide notification to eligible students who receive LEAP Program grants--that they are receiving Leveraging Educational Assistance Partnership Grants funded by the federal government, the state, and, where applicable, other contributing partners. To implement the literal provision will require most states to develop and administer two separate student grant award systems to accommodate separate notifications: one for students with LEAP GAP that includes federal funding, and one for students with only state funds in their awards. This could, in effect, impair access. NASSGAP recommends that in regulation the Department allow states to provide notification to eligible students that such grants "may be funded by the Federal Leveraging Educational Assistance Partnership Program, matching state funds, and other funds."

Third, regarding the Gear Up Program, there is a provision for the Secretary to increase the grant duration from six years to seven years in the case of an eligible entity that applies for a grant for seven years.

Our question for you to consider is, will Ed allow a seventh year of grant payment for current grant awardees if their grant application and subsequent annual performance reports indicate that they plan to continue to monitor Gear Up students and provide services in the students' college freshman year, and perhaps beyond. NASSGAP is also concerned by provisions that require the state and partnership grant recipients to provide a personalized 21st century scholar certificate to all students served by the program. NASSGAP urges the Department to find ways to streamline these requirements.

Finally, in Title II, as we understand Sections 205 and 207, some or all state funding received under the HEOA could be lost if certain state teacher assessment and state report card provisions are not met. We request that the Department's regulations reflect what we believe is the intent of those Sections, that only funding awarded to states under Title would be in jeopardy should a state be unable to comply with the reporting requirement.

I thank you for the opportunity to provide our statement, and NASSGAP looks forward to working with the Department on the implementation of the HEOA.

MR. MADZELAN: Thank you, Marie.

MS. BENNETT: Thank you.

MR. MADZELAN: Next is Tony Birda [sic]. Good morning.

MR. BIEDA: Good morning, members of the Panel. I appreciate the opportunity to come and talk to you today. My name is Anthony Bieda, and I am

Director of Regulatory Affairs for ACICS, which is the Accrediting Council for Independent Colleges and Schools. We're one of the largest national accrediting agencies, based here in Washington, D.C. We represent and accredit about 700 institutions in 46 states and 9 foreign countries, representing a combined aggregate enrollment in excess of 550,000 students that are pursuing academic programs in professional, occupational, and technical fields, up through and including the master's degree program.

I have presented you a copy of a letter from our board, weighing in on some of the issues surrounding the Higher Education Opportunity Act. I will not spend any time reading it, but I do want to highlight with my verbal comments the thrust of that letter. One of the key issues that our institutions face, and more importantly the students they endeavor to serve continue to face, is the ability to transfer academic credit--if they so choose to transfer their studies--from one of our credited institutions to another institution that is also eligible for Title IV federal student financial aid. And in the Higher Education Act, that is recognized--it is acknowledged. I think the Congress has done a good job in once again giving some profile to that issue and recognizing that it is persistent and has not gone away. We encountered the same dimensions in our dealings with our students and running interference on their behalf with institutions and with state regulators, in particular.

So, the three elements that are mentioned in the letter as it pertains to this reauthorization of the Higher Ed Act is, number one, a laudatory comment dealing with the need to gather more information, more study, more research. There is an abundance of information out there, an abundance of studies that have been done about access to transfer of credit, but yet the ability of that information to really guide effective policy both at a federal and state level is still a little suspect, and we believe there is good intent and therefore good need for implementing the Higher Education Act to seek more information on a more objective basis that gets at best practices, what is working, what isn't, and how that can be replicated across a broader spectrum.

Secondly, I think in terms of the requirements of the Accreditors that is contained in the language of the Higher Education Act, we believe Congress did a good job in providing the sideboards and the parameters for the participation by Accreditors in making sure that schools have, in fact, transparency and disclosure of information about transfer of credit, and that that is verified through the regulation of the Accreditors. We believe that

the language in the Act provides good parameters, and would recommend that the--in promulgating rules, the Department doesn't need to go above and beyond that.

And then, third, the gist of the letter focuses on the ongoing inability for students who initiate their studies at nationally-accredited schools if and when they choose to transfer that credit, the first and, in some cases, the most persistent barrier they will encounter when they go to that regionally accredited school and ask for transfer is, in fact, the notion that, on the basis of institutional accreditation, the discussion cannot even occur, let alone an effective evaluation of which of those credits should be eligible for transfer and which ones should not. Now, you all know, and certainly Congress knows that on more than one occasion, and not just from the Department but from other key institutions that play in this issue, that it has been stated that source of accreditation is not to be the sole basis for denying transfer of credit, let alone to be denying a thoughtful review of the potential for some academic credit to transfer, and yet that issue persists. So, that's only a tiny portion of the overall issue for transfer of credit, but it is the portion of the issue that, as a national accreditor and as representing those students, we continue to encounter on a recurring basis.

So, with that, I'll conclude my remarks and entertain if you have any questions.

MR. MADZELAN: Thank you, Tony, and I apologize for butchering your last name. I have trouble reading.

MR. BIEDA: That's okay.

MR. MADZELAN: So, if we mispronounce anyone's name, please correct us, for the record. Thank you. Mark Luker.

MR. LUKER: Good morning. I'm Mark Luker, Vice President of EDUCAUSE. EDUCAUSE is the leading nonprofit association representing higher education technology leaders and professionals. Our membership includes over 2,200 campuses, ranging from community colleges to large research universities to supercomputer centers and to statewide systems. On behalf of our members, we urge the Department of Education to direct special care to rules written for the enforcement of Section 493 of the Higher Education Opportunity Act. In particular, we refer to the requirement for all institutions to, (a), develop plans, including the use of technology-based deterrents for combating copyright infringement on campus networks and, (b), to offer alternatives to unauthorized content distribution.

The details of these rules can have a significant impact on the ability of our members to continue operating campus networks with cost effectiveness, efficiency, openness, security, stability, and innovation that are essential to research and instruction. They can also have significant negative impact on the cost of higher education. With respect to (a), we ask the Department to follow the guidance of the conference report accompanying the legislation, which correctly observes that the technologies move quickly from the drawing board to obsolescence, and concludes, "The conferees intend for each institution to retain the authority to determine what its particular plans for compliance with this Section will be." Provision of appropriate network technology is one of the great challenges on today's college and university campuses, and only the most flexible interpretation of Section 493 will enable our campuses to maintain the level of excellence needed in this increasingly competitive world. Regarding (b), offering alternatives to unauthorized content distribution, the Department should be aware that many campuses have provided alternatives, and the market is currently thriving with several established models for the legitimate distribution of digital entertainment, with new ones constantly emerging.

This market growth and development is appropriately occurring without the direct participation by higher education institutions. We're committed to supporting the expansion of this active commercial market without using tuition dollars for subsidy, and without interference and compliance with the relevant provision of Section 493. For many years, EDUCAUSE community members and staff have been directly and intensively engaged with the entertainment industry with technology vendors with a wide range of on- and off-campus experts in an attempt to find mutually acceptable approaches to the problem of Internet-based copyright infringement.

As the Department works to develop the rules required in enforcing Section 493 of HEOA, EDUCAUSE asks to be included in your deliberations, and to nominate or participate on any related negotiated rulemaking panel.

Thank you.

MR. MADZELAN: Thank you, Mark. Gwen Dunsy [sic].

MS. DUNGY: Good morning. And I want to correct my name: It's Dungy. Okay. I am Executive Director of NASPA, the Professional Association for Student Affairs Administrators in Higher Education. The focus of our work is the overall wellbeing of students on a safe and secure environment for learning. Student affairs administrators have followed the education--Higher Education Reauthorization process, and we are pleased with the many

components that serve students in higher education well. We appreciate the opportunity to make comment today to call attention to three areas of concern.

One area of concern is the interpretation of the immediate notification of critical incidents in Title IV, Section 485. We believe that it is vital that campuses have flexibility to critically analyze and respond to campus emergencies using their best professional judgment in regard to timeliness and notifying the campus community. Any additional definitions or unnecessary regulatory controls could seriously compromise the campus' ability to contain an emergency. A timely response for one circumstance on one campus is unique to that campus, and each incident must be judged on its unique circumstances.

Secondly, the Higher Education Opportunity Act requires colleges and universities to develop policies related to missing students. This provision is problematic as it is truly impossible to track which students are away from campus more than 24 hours. The law would put expectations on colleges that could not be met, and it raises expectations of parents and campus personnel--that campus personnel can actually monitor the comings and goings of students. Colleges already collect emergency contact information, and they already have in place policies and procedures for handling Missing Person Reports through campus or community law enforcement. As negotiators begin to consider possible rules and regulations as they relate to missing persons, NASPA recommends that negotiators keep in mind that campuses are diverse in type and number of students enrolled, and that policies should be allowed to vary based on individual institutional characteristics. Also within Section 485 are the new campus fire safety reporting requirements. In 1998, campuses across the country began to meet the challenge of complying with the Clery Act reporting requirements. It was not until several years later that intensive training and publication of the Handbook for Campus Crime Reporting was completed. As negotiators begin to develop regulations, it is important that rules are drafted in such a way that campus administrators are able to comply within a reasonable timeframe, and that any training and publications are distributed as soon as possible.

And as I close, I'd like to bring your attention to student affairs administrators and educators as a valuable resource--from financial aid and textbooks to peer-to-peer file sharing, from financial literacy to alcohol and drug violations. All of these have an impact on the education environment and students' ability to succeed. As partners in educating students, student affairs professionals take a large share of the responsibility for students'

complete college experience. As such, they have knowledge pertinent to future discussions by the rulemaking panels. Therefore, I believe it is in the best interest of students and the Department of Education to include student affairs professionals on any negotiated rulemaking panels under consideration. Student affairs professionals understand the challenges ahead of us as a Nation in regard to access, affordability, and accountability, because our work allows us the view of the personal lives of students in ways others on campus may not have. We bring less known but critical information to the deliberations. Our education and support roles with students have no boundaries. We are educators who work with the whole student: their learning and their welfare.

Thank you for the opportunity to make a comment.

MR. MADZELAN: Thank you, Gwen. Our next speaker is Jonathan Kassa.

MR. KASSA: Good morning. Thank you for this opportunity. As the Nation's leading non-profit advocacy organization for safer colleges and universities, Security on Campus is pleased to have this opportunity to offer comment on behalf of students and their families, specifically, as it relates to negotiated rulemaking process to implement the provisions of the Higher Education Opportunity Act. Several important campus safety-related measures were enacted as part HEOA that warrant consideration and attention by a separate negotiated rulemaking committee, specifically Section 488 of HEOA, amended the campus security disclosure provisions of the Jean Clery Act to, among other things, add a statement of emergency response and warning policy to annual security reports produced by institutions of higher education.

Section 488(g) established new disclosure requirements in the Higher Ed Act of 1965 for campus fire safety, missing residential students, and about the loss and restoration of eligibility for student aid in the event of a conviction for a drug violation. Additionally, Section 493 added a new element to the program participation agreements entered into by institutions requiring disclosure of the outcome of disciplinary results in cases of alleged violent crimes to the victims of those crimes.

And paneling a separate negotiated rulemaking committee to address these five campus security-related disclosure provisions will help ensure that the expertise of those most familiar with these issues can be brought to bear on these issues in a tightly focused setting.

We would recommend that the panel include representatives of campus public safety professionals, fire safety experts, emergency response experts, and campus safety advocates. In enacting these provisions, the Congress as

well as the President who signed them into law recognized that a safe learning environment is essential and must be a top priority. Without it, the taxpayer investment in higher education is significantly undermined and the Nation is robbed of the eventual productivity of those students whose lives are either needlessly lost or adversely impacted by crime, fires, or other emergencies on campus. Making implementation of these provisions ought to be a priority as well. Thank you again for the opportunity to offer this comment, in advance, for the U.S. Department of Education's thoughtful consideration of our recommendations. Please don't hesitate to call on Security on Campus if we can be of any assistance to you in this process.

Thank you.

MR. MADZELAN: Thank you.

MS. GILCHER: Okay, we're going to do a little switch, here. Mike McComis.

MR. McCOMIS: Good morning. My name is Michale McComis and I'm the Associate Executive Director with the Accrediting Commission of Career Schools and Colleges of Technology, and I welcome the opportunity to speak to you today on issues related to accreditation in the proposed negotiated rulemaking.

ACCSCCT is a national accrediting agency that's been recognized by the Department of Education since 1967, and most recently re-recognized in 2005. We accredit close to 800 institutions that serve about 220,000 students annually, both degree-granting and nondegree-granting institutions that are predominately organized to educate students for occupational trade and technical careers. We believe that it is important that the Department follow Congress' intent to improve access, accountability, and transparency in higher education, while preserving the unique relationship that accrediting agencies have with the institution they accredit, to include the peer review process, which is a critical component to that relationship. Today, I'd like to provide some thoughts on areas that the Department may wish to explore during its negotiated rulemaking process, including making accreditation more transparent and encouraging quality and innovation, supporting the mobility of our students, student achievement, and ensuring institutions receive due process.

First, with respect to transparency and accreditation, we believe that increasing the public's understanding on the accreditation process is an important component to the effectiveness of that process. We publish notices of our accreditation decisions on our Web site, and notify interested parties

such as the Department of Education in accordance with the previous statutory and regulatory requirements. Thus, we support the provisions in the HEOA that require disclosure of increased information about accreditation including public disclosure of certain accreditation actions. With respect to innovation, ACCSCT is committed to innovation in education. We have separate and highly articulated standards on distance education, and we were the first agency to have distance education explicitly included within our scope of recognition. We therefore are pleased to see that the Act included definition of distance education, and support the Act's acknowledgment that agencies need to have separate standards applicable to distance education, and that site evaluators are knowledgeable about distance education.

Congress included a provision requiring Accreditors to ensure that institutions have processes in place to establish that the students taking their courses are the ones who enrolled and will receive the credit. ACCSCT encourages the Department to rely on legislative intent to guide its regulatory interpretation. The conference report defers to Accreditors and institutions to determine what technologies and processes are appropriate, and we note that passwords and identification numbers are currently sufficient. With respect to transfer of credit and the mobility of students, as the Department knows, ACCSCT has regularly argued in support of a federal policy that supports more flexible and less arbitrary transfer of credit policies.

In fairness to students, many of whom are Title IV recipients, transfer of credit decisions should be based on course equivalency and competency of students attending legitimate accredited institutions, rather than based solely on the source of accreditation of the sending institution. This concept is supported by the Council on Higher Education Accreditation, CHEA, the American Association of Collegiate Registrars and Admissions Officers, or AACRAO, and the Council of Regional Accrediting Commissions, or C-RAC.

Although that particular policy was not included in the HEOA, we do applaud the Act's inclusion of Title IV provisions that will increase the disclosure and student knowledge of institutional transfer of credit policies; we support that.

ACCSCT believes that this transparency is a very important step forward, and we've already promulgated such standards for our accredited institutions. We encourage the Department to continue to urge institutions to more actively consider course equivalency and student competency in their transfer of credit evaluations and decisions. With respect to due process,

ACCST has comprehensive decision making and appeals processes. Institutions subject to adverse actions are provided numerous opportunities to address the agency's concerns in writing and in face-to-face settings.

Under HEOA, an institution will be afforded an additional opportunity at appeal to provide new information related to its financial condition, if the financial condition was a reason or a condition for the agency's adverse action. This new requirement, however, still provides Accreditors with flexibility to determine their own processes, and the Department should continue to be deferential to Accreditors' processes as long as the standards and practice comply with the Act's requirements. Of paramount importance, of course, is that any regulation should preserve the Accreditors' ability to take swift action when necessary to protect students attending a distressed institution.

Although outside the scope of the negotiated rulemaking process, I'd like to take a moment briefly to address the issue of student achievement. ACCST believes that the HEOA preserves the ability of agencies to set standards of student achievement with which their accredited institutions must comply. We have had quantitative standards in place for over a decade that require our institutions to demonstrate acceptable rates of graduation and employment on an annual basis. In addition, ACCST has in place standards requiring institutions to focus on continual improvement in these areas. We believe that this type of review of our institutions--student achievement outcomes is essential to ensuring quality, and we are heartened that nothing in the HEO changes an accreditor's ability to maintain these standards or to require compliance with them as a condition of accreditation.

In conclusion, I would just like to emphasize that accreditation plays an important role in ensuring institutional quality, and I hope that the Department will continue to rely on accreditation as a method by which to increase transparency, enhance innovation, ensure student access and achievement, and maintain due process for institutions. Given the critical role that accreditation plays in the number of amendments to the accreditation provisions in the Higher Education Act, I would urge the Department to establish a separate negotiated rulemaking committee on accreditation, and to populate that committee with experienced, knowledgeable people on the issues relevant to accreditation. I look forward to the opportunity to work with the Department in this regard, and--as negotiated rulemaking discussions on accreditation move forward. Thank you.

MS. GILCHER: Thank you, Mike. And I'd like to have my colleague introduce himself.

MR. KERRIGAN: Brian Kerrigan. Thank you.

MS. GILCHER: I just want to ensure that you have enough federal ears to hear you well. Okay. Next is Emily Singer.

MS. SINGER: Good morning. I apologize. I got pushed up on the schedule a little bit and wasn't prepared right away. So, I apologize for taking a minute to get up here. My name is Emily Singer. I am the Director of Disability Support Services at the Catholic University of America. I am also a Board member of the Association of Higher Education and Disability, and here representing that organization. Thank you for allowing me the opportunity to speak with you today. First, let me say that AHEAD fully supports the Higher Education Opportunity Reauthorization Act, which we believe will support the efforts of institutions of higher education and our core constituency to improve transition support and instructional services--services and instruction for all students with disabilities.

While 77 percent of students with disabilities hope to go to college, only 31 percent of students with disabilities actually attend. We are hopeful that these new regulations will increase the opportunity for all students with disabilities and thereby make higher education a reality for all. AHEAD is a professional membership organization of individuals involved in the development of policy and in the provision of quality services to meet the needs of persons with disabilities involved in all areas of higher education.

At this time, we boast more than 2,500 members throughout the United States and other countries. AHEAD is fortunate to have formal partnerships with 30 regional affiliates and numerous other professional organizations working to advance equality in higher education for people with disabilities.

AHEAD dynamically addresses current and emerging issues with respect to disability education and accessibility to achieve universal access. As such, it is 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 who attend to the fulfillment of this important mission. There are five key provisions that we want to emphasize today which impact higher education and disability. The first is preparing general education teachers to more effectively educate students with disabilities, Title II, Part B, Subpart 3, Section 251. AHEAD supports a structured multi-sensory approach as outlined by the national regional panel, which highlights the five pillars of literacy

that are critical to essential reading skills. As a part of this, AHEAD supports the use of research-based methodologies in determining the best approaches to instruction in reading and mathematics.

The education of teachers takes place within higher education. Our approach towards disability and accommodation form the foundation for the expertise of the future teachers and employers of "your peers." Because of the influence of climate and the importance of modeling best practices, AHEAD supports model demonstration projects, Title VIII, Part D, Section 760 to 765, to provide technical assistance or professional development for faculty, staff, and administrators in institutions of higher education in order to provide students with disabilities a quality education at all levels.

We also encourage the investigation of models whereby teacher preparation programs can more effectively model and assist in the accelerated training of those teachers who are recruited from model national service programs, such as Teach for America, who often come to teaching without any academic teacher preparation foundation. And our second provision is advisory commission on accessibility and instruction materials in postsecondary education for students with disabilities, Title VII, Part D, Subpart 3, Sections 771-772. AHEAD fully supports all efforts to make instruction materials in a timely and usable format accessible to all students with disabilities. This is particularly important to those students with print disabilities, as was outlined in the Wall Street Journal article from September 17, 2008, 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, development, and expansion of services to fill a void in alternatives to print, such as Bookshare.org, and has encouraged recordings for the blind and dyslexic--efforts to provide their materials in a digital format.

AHEAD member institutions have an obligation to ensure non-discrimination of all persons with disabilities in accordance with the language of the Americans with Disabilities Act and the Rehabilitation Act of 1973. Therefore, we feel that the current definition as listed within the Higher Education Textbook Act of 2007 referring to print disability would exclude or not sufficiently encompass all people with disabilities who would participate in or benefit from the use of books in electronic format. The definition needs to be revised to be based not on an outdated NLS definition, but on a definition that reflects today's scientific realities. As our

campuses are beginning to deal with issues confronting returning servicemen and women, the need to be broader in our ability to understand and address disability-related impacts to reading and other academic tasks is essential.

AHEAD believes that an advisory commission will be able to examine a broad spectrum of materials, and needs to encourage the common approaches and flexibility in format that will allow students to move between and within our educational systems. AHEAD looks forward to participating, consulting, and assisting in all such efforts. Third, the e-text clearinghouse model demonstration programs to support improved access to postsecondary instructional materials for students with print disabilities, Title VII, Part D, Subpart 3, Sections 773 to 775.

Through its e-text initiative, a collaborative project involving its members, the students and institutions they serve, publishers and numerous organizations, AHEAD has developed an understanding of stakeholder positions and current capacities. AHEAD supports the idea of a national clearinghouse for accessibility texts, seeing it as a necessary and efficient first step in the seamless provision of accessible digital text directly to students with print impairments.

AHEAD fully supports the goal and intention of this legislation to improve timely, usable access to printed instructional materials for people with disabilities. AHEAD absolutely realizes that, while this current Section is not the final answer to issues of text accessibility, it clearly provides for our critical first step in attacking a significant barrier to equality for people with disabilities in higher education, including many with learning disabilities, physical mobility, related disabilities, and blindness and visual impairments. As higher education seeks to most fully include persons with disabilities, legislation supporting that movement is tremendously important and we applaud the committee's efforts in assisting to build systems that can lead to systemic change that will ultimately benefit the hundreds of thousands of people with a varying array of disabilities seeking to have full and equal access to the benefit of higher education.

Data collection, Title IX, Part C, Section 1116. Colleges will be asked to report "percentage of undergraduate students enrolled at the institution who are formally registered with the office of disability services of the institution or the equivalent office as 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 or our identification of best

practices, and our ability to predict future resource needs. AHEAD sees this 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 other minority populations on campuses, deserve to be included and counted. Currently, there is no defined system or methodology in place to count college students with disabilities. Determining how this task will be accomplished is critical. Some of the 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 with the institution's disability office? If so, how do we ensure that we include students with disabilities who do not register for disability services, for example, the student who uses a wheelchair but is completely independent because the campus is accessible?

Question number two: How do we ensure that students who receive financial assistance through agencies such as vocational rehabilitation and use services with disabilities offices are not counted more than once?

Third, considering that not every disability fits neatly into a specific category, what will the tracking methodology be?

Fourth, in the end, what will the purpose of this data for the individual institutions as well as the government--are those schools with small enrollments of students with disabilities going to find themselves at greater risk of discrimination complaints? Are they going to get more funding to serve students? We are pleased to see the addition of this provision, because students with disabilities, like all other minority populations on campus, 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 effective and meaningful.

AHEAD would be happy to participate, consult, and assist in this discussion. We also would like to encourage all considerations in all provisions of the Act to consider the impact to students with disabilities.

Thank you again for the opportunity to speak with you today and to share the views of the Association of Higher Education Disability. We will be submitting written comments, as well, prior to the submission deadline today.

MS. GILCHER: Thank you, Emily. Next is Russell Kitchner.

MR. KITCHNER: Good morning. I'm Russell Kitchner. I work with the American Public University System in Charleston, West Virginia, and I appreciate the opportunity to speak this morning if only to take my mind off the woeful state of my 401k.

I'd like to speak specifically to Title IV, Part H, Section 495, which is associated with the recognition of accrediting agencies or associations, and specifically Section 496, which states the agency or association requires an institution that offers distance education or correspondence education to have processes through which the institution establishes that the student who registers in a distance education or correspondence education course or program is the same student who participates in and completes the program and receives the academic credit. At its core, this legislative provision appropriately addresses the issues of academic quality, accountability, and consumer protection. However, it goes beyond those values, appropriately so, in the sense that it represents an important mandate for ethical conduct and program integrity on the part of both learners and those who serve them.

Unfortunately, the scope of this legislation is restricted to but one segment of the education industry, and traditional classroom-based instruction is no longer immune to those same concerns of identity verification and academic integrity on which this rule is based. Furthermore, the number of traditional land-based institutions that are now offering coursework via distance education is increasingly exponentially, but the technology necessary to accommodate their responsibilities consistent with this rule has not kept pace with that growth. Consequently, I would ask that the agenda of any negotiating committee that is established to address HEOA provisions related to recognition of accrediting agencies and associations include consideration of appropriate regulations to implement the above referenced HEOA provision that reflect the complex and far-reaching scope of the underlying questions surrounding the integrity of learning in the face of current and emerging technologies.

Furthermore, I would ask that input be sought from various institutions, including colleges and universities that are land-based, those that combine traditional educational modes of learning, and those that offer strictly distance education or correspondence forms of learning.

Given the complexity of the issues inherent to these regulations, it is imperative that colleges and universities and the professionals who serve them that have the practical experience in these areas be included in the substantive rulemaking discussions. Representation on the negotiated

rulemaking committees from this diverse pool of educational professionals would certainly enhance the prospects for fulfilling the intended purposes for which this legislative provision was enacted.

I sincerely appreciate your willingness to consider the perspectives of a broad spectrum of the higher education community. The great of majority of those with experience in and a commitment to advancing educational opportunities utilizing emerging technologies are equally committed to maintaining standards of academic integrity in the course of advancing that objective. Please note that my professional colleagues and I welcome the prospect of assisting the Department in that regard. Thank you very much.

MS. GILCHER: Thank you, Russell. We're going to take a ten-minute break now. I would like--because we're moving a little bit faster than anticipated, if you are scheduled to testify early in the afternoon, would you talk with people at the table if you're able to do it at the end of this morning rather than early afternoon, so we can accommodate additional people on the schedule in the afternoon. Thank you. Yes, we'll begin with Elaine Neely when we return.

[Recess.]

MS. GILCHER: Okay. Elaine--Elaine Neely, that is.

MS. NEELY: Good morning. I am Elaine Neely, the Senior Vice President of Regulatory Affairs for Kaplan Higher Education. Kaplan Higher Education is the largest division of Kaplan, Inc., a subsidiary of the Washington Post Company.

The Higher Education division serves 85,000 students at more than 70 on-ground campuses and online through Kaplan University, which includes the Nation's only completely online law school. Our students range from individuals enrolled in diploma allied health programs, to classroom teachers pursuing master's degrees, and business professionals seeking MBAs and law degrees. Most of our students are women, and many are single working parents. What they all have in common is a need for education and training that will help them advance economically and that is provided with the scheduling flexibility and personal attention they require. We commend the U.S. Department of Education for moving swiftly to implement the HEOA. We are encouraged that you are soliciting public input regarding implementation issues, and that you will have the framework ready for the incoming administration, including plans for negotiated rulemaking beginning early next year. Kaplan Higher Education would like to raise three specific areas

which we believe need expedited attention so that our schools may serve students better.

The first area we would like to highlight is the provision in Title I of the Act which allows regionally-accredited for-profit institutions to offer programs that lead to a baccalaureate degree in liberal arts, provided those programs are in place by January 1, 2009. There is also a related provision that has the effect of delaying Title IV eligibility for students enrolled in such programs until July 1, 2010. We would, of course, have preferred a provision that would have allowed more time for relevant programs to be phased in, and that would have made Title IV eligibility simultaneously with the program's effective date. We also realize that you have to implement the law as written, and would appreciate any additional guidance you could provide in advance of the January program deadline. The second area we'd like to raise for expedited attention deals with the changes in 90-

10. We are pleased that the law now provides some additional flexibility, and would like to thank the department for its support for those changes. Temporary 90-10 provisions dealing with institutional loans and loan limit increases for unsubsidized Stafford loans became effective July 1st. Kaplan, like other companies in the sector, has moved to implement these changes into our operations, but the provisions are subject to negotiated rulemaking. We would urge that, if at all possible, expedited attention be paid to these provisions so that we do not learn a year from now that the provisions we have put into place need to be changed.

The third area we would believe needs expedited attention is private loans. In particular, the changes to the Truth in Lending Act on which the Federal Reserve Board of Governors is to regulate. We anticipate that the Department will be consulted in that process, since you have the expertise in dealing with postsecondary institutions.

Again, we would urge regulations sooner rather than later, and broad consultation in that process. We appreciate the opportunity to submit comments today, and look forward to additional opportunities to provide input as you implement the Higher Education Opportunity Act. Thank you.

MS. GILCHER: Thank you, Elaine. Next is Mark Pelesh.

MR. PELESH: Good morning. My name is Mark Pelesh. I am Executive Vice President of Corinthian Colleges. We have 93 campuses and 70,000 students in the United States, with our Everest and WyoTech divisions. There are two issues that I would like to highlight this morning in regards to the

forthcoming negotiated rulemaking: the first is 90-10, and the second is cohort default rates.

Let me begin with 90-10. First, I'd like to talk about some propositions that we think ought to guide the development of regulations in regard to 90-10. Congress expressly wanted to provide for-profit institutions flexibility to comply with 90-10 because of problems in the credit markets and substantial increases in federal aid. It retained the 90-10 rule so that institutions would have "skin in the game," as some members of Congress put it, but its aim was not to maximize the adverse impact of the rule. On the contrary, it recognized that the rule's impact should be ameliorated because of the disappearance in GAP financing for many low-income students, significant increases in loan limits and Pell Grants which would make 90-10 compliance difficult if not impossible, and undue restrictions in the application of the rule that are unrelated to the purpose of identifying legitimate institutions.

Secondly--second proposition in addition flexibility in regard to 90-10--is that, in contrast to previous versions of the HEA, Congress has addressed implementation of the 90-10 rule in detail. A number of statutory provisions plainly represent policy conclusions different from those in the Department's regulations. So, what are the implications, then, of those propositions for the development of regulations? Well, first, the Department should follow the statute closely and eliminate or modify those regulations in conflict with the statute. This would include the treatment of institutional loans through July of 2012, counting non-Title IV revenue as part of the 90-10 ratio, and also revenue from Section 529 accounts.

In regard to institutional loans, the statute specifies the use of accrual accounting in accordance with Generally Accepted Accounting Principles, or GAAP. We believe that the Department should leave the accounting treatment of institutional loans to independent CPAs with expertise in these concepts who will audit institutions' financial statements. One subject, though, that we do believe requires regulatory elaboration is the treatment of tuition discounts. Congress explicitly provided that they can be treated as institutional revenue in the same way as scholarships, but by their very nature, discounts cannot come from an outside source or be disbursed from a restricted account. Bona fide discounts based on scholarship-type criteria should be counted as institutional aid and non-Title IV revenue, in our view. The reasons for that: Tuition discounts do represent institutions having "skin in the game," the concept that I

mentioned at the outset. And throughout reauthorization, members of Congress called for increased institutional aid by for-profit institutions. Genuine tuition discounts represent the most feasible and direct way to accomplish this goal.

Let me turn to cohort default rates. The HEOA contains a package of statutory changes to the cohort default rate regime that will require changes to the Department's regulations. The statute changes how cohort default rates are to be calculated by extending the period of measurement, and it couples this change with a transitional regime so that institutions will have an adequate opportunity to accommodate the new method of calculation.

Overall, we believe the statutory changes shift the emphasis away from the use of cohort default rates as immediate indicators of institutional quality and integrity, and as the basis for punitive measures if default rate thresholds are exceeded. Going forward, we believe the HEOA places more emphasis on longer-term measurement of default rates, which necessarily will reflect less on an institution's responsibility for those rates and on default prevention. So, we would urge the Department to focus especially on the provisions in the statute requiring default prevention taskforces, reports to and technical assistance from the Department, and the earlier two-year appeal that the statute now provides. These provisions call for more of a partnership between institutions and the Department. We think it's important that the interaction between the institution's default prevention taskforces and the Department not simply be a paper-shuffling exercise, but a way to establish whether an institution is truly responsible for default rates exceeding the thresholds, or whether its default rates are actually a reflection of the economic circumstances of the student population it serves. This would provide a more rigorous way to establish other exceptional mitigating circumstances that would make ineligibility based on default rates inequitable, as the statute continues to provide.

I appreciate very much the chance to present these remarks to you, and I have copies of my remarks that I'd be happy to supply you with.

MS. GILCHER: Okay. Thank you, Mark. You can leave those copies either here or with the people at the desk in the entryway. Next is Harris Miller.

MR. MILLER: Good morning. I'm Harris Miller, President of the Career Colleges Association. I am pleased to address this Department of Education regional field hearing.

We commend the Department and Secretary Spellings for her leadership and vision in ensuring that the Higher Education Opportunity Act

Reauthorization yields meaningful and workable reforms to higher education in this country. We've waited a long time, and we're very excited about the improvements we expect. The Career College Association that I represent is a voluntary membership organization of accredited, private, postsecondary schools, institutes, colleges, and universities that provide career-specific educational programs. We have more than 1,450 members that educate and support over 1 million students each year in employment in over 200 occupational fields. Our schools provide the full range of higher education programs: masters and doctoral programs, baccalaureate degree programs, associate degree programs, and short-term certificate and diploma programs.

As you know, our sector now represents almost 10 percent of students in higher education, and last year, when the national baccalaureate degree numbers increased by about 3 percent according to Department of Education officials, our numbers increased by 20 percent showing the rapid growth in student attraction to the career college sector. All CCA member schools must be licensed by the state in which they are located, accredited by a regional or national accrediting body recognized by the Department of Education, and of course approved by the Department. Many also participate in many other federal, state, and local education and workforce training programs.

I'd like to focus on two issues of paramount importance in the new legislation that are paramount to our career education sector, some of which I'm sure you've already heard about in your other hearings: the 90-10 rules and revisions to the cohort default rate calculation. This is not to downplay the significance of the other provisions in this over 1,000-page bill, which we believe will bring much-needed improvements in areas such as borrower notifications, preferred lenders lists, college cost transparency, and student outcomes, and we will be submitting with our testimony a list of other issues we look forward to working with the Department on as this negotiated rulemaking process proceeds. At a time of, to state the obvious, great anxiety about the current and future status of credit markets, it is absolutely critical to the 2.8 million students in career higher education that reforms to the 90-10 rule be undertaken with surgical precision and exceptional care. For the many students who attend our schools coming from working class and lower-income backgrounds, often independent, working adults--the first in their families to attend higher education--access to private loans these days to pay for college has been hampered, even blocked, by the new stringent lending criteria.

The simple fact is there's been a sea change, as you know, in availability of private student loans to students of lower incomes and lower credit scores over the past year. The loss of these private loan sources has placed great pressure on the ability of many institutions to serve both less-affluent populations and, at the same time, to meet the 90-10 funding threshold that Congress has established. Congress wisely realized the impact of this credit crisis on America's working students, and lawmakers crafted important changes to 90-10 in this legislation that serve as a temporary relief valve to relieve some of the pressure on the lending system. Now, we need to make sure that we get the lending implementation right through the regulations. For instance, in the past, career colleges have been limited in their non-Title IV program revenue, the so-called 10 percent. The HEA reform allows revenue from non-Title IV programs that have been approved by a state or by an accrediting agency. As a practical matter, however, the state or accrediting agency may not perform a program-by-program review.

Therefore, we recommend, in developing the implementing regulations, the Department adopt the rule that allows program revenues to be included in the 10 percent so long as such programs are considered part of the overall institutional accreditation, or the programs do not otherwise require a specific state approval. The reforms of the legislation also allow non-Title IV program funds to be included in the 10 percent calculation for programs that provide an industry-recognized credential--"industry recognized" is actually in the language. But of course, the interpretation provided by the Department through the regulatory process is apt to vary among competing professional and certification testing bodies. We suggest, therefore, that the Department allow the marketplace to be the arbiter, and allow any credential recognized by some segment of the given industry.

The Department will also be addressing difficult, and if developed without sufficient care, potentially damaging accounting rules for institutional loans. I've had to learn more about accounting in my year-and-a-half at CCA than I ever hoped to know, but it is critical to your oversight and to the operations of our schools to make sure they're in compliance.

To help relieve the situation brought about by the credit crunch, the new legislation allows institutions to include the net present value of loans they themselves make to students between July 1, 2008, and June 30, 2012, in the 10 percent calculation. In other words, many schools, because their students have been unable to get private loans in the marketplace anymore because of the credit crunch, are now themselves becoming the lenders to the

students. And what the legislation says is, the net present value of those loans can be included in the 10 percent calculations. However, as you go about writing these regulations, the Department must focus on the fact that career colleges initiate multiple class starts throughout the year. I think, as you well know, we are not schools that believe in the magic words "June, July, and August." They mean nothing to our schools. Schools don't always start in September; they start in January, February, March, April--they start whenever the students are available and the schools have the faculty and training to provide it. So, with those multiple class starts, how these calculations are made is going to be very tricky. Requiring schools to disburse funds on a class-start by class-start basis will be, frankly, an accounting nightmare, causing confusions and delays for students and unwarranted costs for institutions and probably will, frankly, be confusing to you and others involved in the oversight.

A far better course will allow institutions to provide a single loan at the beginning of the student's academic year, with the loan itself spread over the institution's fiscal year. While the new law states that loans must be subject to regular repayment and collections, payment deferments until after graduation, if in keeping with existing institution practice, should be allowed to give the student every chance of completing his or her academic program. Many schools currently, though--even before the passage of this law--have been following the existing regulations. While we welcome the changes in the new law, we believe that the schools who've been operating under the old accounting rules should be allowed to continue to maintain those in order to, again, have simplicity for their operations and simplicity for you in your oversight role of these institutions.

The new Higher Education Act also allows the recently enacted increase of \$2,000 in the unsubsidized Stafford Loan limit to be included in the 10 percent. Again, to achieve what we believe is the added flexibility lawmakers intended, the Department must be very careful in crafting your regulations. Federal financial aid, as you know, is divided into multiple disbursements, and this extra amount--this extra \$2,000--will overlap fiscal years. We suggest that the accounting rules you establish in the rulemaking process allow the extra amount to be attributed to each payment period in proportion to the total loan as originally packaged. Should the student drop out before the funds are disbursed, the full extra amount should not simply be reattributed back to the original loan and therefore excluded from the 10 percent. As a final point on 90-10, we ask the Department include in its

negotiated rulemaking process on this critical issue for our sector, only those stakeholders directly affected by 90-10 restrictions. And in terms of higher education, that means only career colleges. Allowing others without a direct connection to this issue participate is like allowing non-pilots to help fly the plane. They may have a point of view, they may find the proceedings interesting, but giving them a seat at the controls would simply be wrong for the millions of students depending on career education as their flight path to a better life.

Career colleges serve a population that is largely underserved by traditional higher education. As I mentioned before, they tend to be the first in their families to pursue higher education, much more likely than so-called traditional students to be economically independent, older, and more likely to be juggling the conflicting realities of a job, of a family, and of school. Little surprise, then, that they are also more likely to default on their student loans. While I've been pleased to see the overall trend over the last ten years towards--dropping in these--default rate in our sectors--with other sectors--until the recent uptake in the most recent numbers, we have the reality that, because our students are from tougher backgrounds, it is not astonishing that their default rates are somewhat higher than traditional higher education institutions. So, any change to the cohort default rate calculation hits our students and our institutions particularly hard.

Empirical data tell us that increases to the CDR are the product of student behavior, not necessarily the failure of institutions to deliver quality education. Earlier this year, a study commissioned by our association and conducted by Professor Dawn Hostetler at the Indiana University School of Education found no linkage between the type or quality of educational institutions and the rate at which borrowers default. Let me repeat that: no linkage between the type or quality of educational institutions and the rate at which borrowers default on their student loans, according to Professor Hostetler's study.

They looked at 41 studies of student loan default that have been done in higher education between 1978 and 2007. So, they looked at all the literature that was out there and could find no linkage.

Even so, many critics of career education continue to view the CDR as indicative of the institutional quality, and they have pressed to have the scope of the calculation expanded. The new law adjusts the time horizons for calculating the CDR, extend the period from one to two years, beginning in FY

2009. They also increase the threshold for imposing sanctions from 25 to 30 percent.

The career education sector understands the need to minimize cohort default rates, and we are committed to working on that. We have been working for several years in conjunction with the Department on a taskforce that we have on a default prevention initiative. At the same time, however, as you develop your regulations on the CDR, we ask that you understand the root cause of student loan defaults, and how a less-affluent student population with fewer resources to repay student loans at the outset, is likely to be buffeted by a weak economy going forward. We urge the Department to adopt a policy of wide latitude and reasonable forbearance in imposing sanctions on schools that exceed the CDR threshold. Any other policy is apt to foreclose access to higher education for those most dependent on career education for upward mobility.

Thank you very much for the opportunity to provide these remarks. We will be submitting them for the record. We look forward to working with the Department and all your officials in the negotiated rulemaking process going forward, in developing regulations to implement this new law that best serve the interests of students, institutions, and a globally competitive 21st century workforce in the United States. Thank you.

MS. GILCHER: Thank you very much. Next is Richard Thema [sic.]--oh, sorry, Them.

MR. THEM: Good morning. My name is Richard Them. I am Senior Vice President of Education Management Corporation. I work in the student financial services area, which includes financial aid, whether institutional or federal or state. We operate 88 locations in 28 states and two Canadian Provinces. We have approximately 96,000 students in school as of fall of 2007, that was last year, and we have about 13,000 students who are enrolled in online courses only. We have a mix of schools, of--South University, Augusta University, Brown Mackie Colleges, and the Art Institutes. We offer everything from certificate programs all the way up to doctorals in pharmacy and some other programs--psychology.

We have our--our schools range in default rates from 1 percent up to 11, with about a weight average 5.6. Our 90-10 rates run from 50 to 84 percent, with a weight average of 64 percent. So, we're pretty diverse in our student--offering of programs and our students.

In the last year, we approximated \$370 million of alternative loans that our students received while going to school. The market, of course, has

been terrible in that, and we've lost some of those--access to those programs. We wanted to talk about two items: one is 90-10, and then preferred lender list and private loan requirements. We think that preferred lender lists, especially in the private sector, private loans, are still a very important tool for students to understand their rights and responsibilities as they go to school. We do monitor the lenders that are on the list, and we make sure that the loans are appropriate for the students. We obviously are doing the same with the federal loans also.

We are hoping to make sure the students just don't get the predatory loans that are out there, that are marketed, as you know, on the Web and in other means. The HEOA did not ban use of opportunity loans to students. It basically clarified some of the requirements of it that we could not, in exchange for the institution providing concessions or promises to the lender on volume of loans, include any lender on the preferred lender list. Obviously, we don't do that. We wanted to make it clear that the HEA conference report states that private party recourse loans are not considered opportunity loans, and that the "conferees intend that the institution may request and accept an offer of recourse loans that only if such request and acceptance is not conditioned on the institution providing a lender with a specific number of loans or loan volume, or a preferred lender arrangement for Title IV loans."

In implementing those provisions, we ask the Department of Ed keep in mind the credit crisis--enough said on that, I guess--that is going on right now. FFELP lenders, and especially private lenders have left the market very suddenly, and sometimes they--well, many of them have actually increased the requirements for students to get loans--it's become much more difficult for the students. Therefore, we have to go out and we work with the lenders to see if we can help our students get more private loans. We, of course, only use the private loans when Title IV aid and state aid and institutional aid is gone or exhausted to help fund our students. We do ask the Department of Ed to codify the statements in the Higher Education Act conference report that recourse loans are not precluded by the Higher Education Opportunity Act, that a clarification is required because current regulations of 682-704 arguably create a rebuttable presumption that, if a lender is making recourse or other types of alternative loans to school students and that lender is on a school's preferred lender list, the placement on that lender list was in return for the alternative loans. We ask that that be placed into the regulations. I want to talk about 90-10 for a few minutes. Obviously, you've

heard some other comments about it. We were all appreciative of the extra \$2,000 of unsubsidized loan. Obviously, it's an accounting issue as we go forward calculating 90-10. The Higher Education Act contains temporary relief for loans disbursed from July 1, 2008 to June 30, 2012, by permitting the institution to treat as cash, non-Title IV, the revenue that's received from those extra \$2,000. We believe the best way of doing that is to use the proration of the loan. If you're on payment periods--everybody is on payment periods, so that--by disbursement periods, that you compare what the student could have received under the Act before the increased \$2,000 to what they currently can receive, and that increase--loans, if they're accepting it, would be used for cash purposes and 90-10 for that particular term. There would be no retroactive going back and changing or reassigning that portion of the loan.

An example would be if a student--a first year freshman was getting \$7,500 in Stafford Loans as an independent student, now they would be getting \$9,500. If you were getting it in equal quarterly disbursements, a third each time, but prior to the Ensuring Continued Access to Student Loan Act, a student would have been receiving \$2,500. If they were receiving \$3,166, which is a third of the \$9,500 during the term, obviously the \$666 difference is the new money or the extra unsubsidized loan. We believe that that can be put into the regulations so that it would be clear to schools how to calculate the rate.

We also believe that when a student ceases attendance and if there's a return to Title IV, the return money should be prorated as it's returned back in the same fashion that it was received. We--in summary, we are asking that the Department of Ed codify the statements in the Higher Education Opportunity Act conference report that recourse loans are not precluded by the Higher Education Opportunity Act.

We ask that the Department clarify that a private lender, if it's also on the FFELP lender, does not create an automatic presumption that the lender made private loans available in return for being placed on a preferred lender list. We ask that, for 90-10 purposes, that the most appropriate method of handling the new Stafford loans is to attribute the extra unsubsidized loan, as we--before--on a prorated basis based on disbursement periods or payment periods, so that it is clear how to calculate the rate. That concludes my testimony. On behalf of EDMC and my colleagues, I look forward to continuing dialogue on this. Any questions?

MS. GILCHER: No. Thank you, Richard. Jane West.

MS. WEST: Good morning. My name is Jane West. I'm Senior Vice President for Policy Programs and Professional Issues at the American Association of Colleges for Teacher Education, AACTE. Thanks to the Department for this opportunity to speak with you and to submit written comments. I've provided them there for you. AACTE is a national alliance of educator preparation programs dedicated to the highest quality professional development of teachers and school leaders in order to enhance K-12 student learning.

The 800 institutions holding AACTE membership represent public and private colleges and universities in every state, the District of Columbia, the Virgin Islands, Puerto Rico, and Guam. AACTE's reach and influence fuel its mission of serving learners by providing all school personnel with superior training and continuing education. As the regulation process begins to get under way, we hope that this is a strong beginning to the partnership between the Department and the many stakeholders who will be impacted by the provisions in HEOA.

My comments that follow will be focused on the provisions in HEOA that impact educator preparation programs. I'll structure my recommendations around five key areas: first, the accountability provisions for educator preparation programs in Section 205, second, the amendments to the TEACH Grants in Section 412, third, the teacher quality partnership grants in Section 202, fourth, the authorization of Teach for America in Section 806, and fifth, a new data provision. Our first recommendation to the Department, and probably the most important one, is for the Department to develop working groups to advise it on how to implement the accountability provisions in Section 205. This is the Section that requires institutions, states, and the Secretary to report on the quality of teacher preparation programs. There are numerous changes to the reports that institutions of higher education and states must submit to the Department. There are significant differences across institutions of higher education and among the states regarding the types of data on teacher preparation programs that they collect.

When the accountability provisions were first enacted in 1998, the Department formed working groups and consulted closely with stakeholders about how to operationalize these accountability provisions. The regulations that resulted from these consultations reflected the abilities and limitations of both IHEs and states to collect the data required by the Higher Education Act. A similar process for information gathering should be followed for implementation of the provisions in Section 205 so that the Department has a good understanding of how information is collected and

reported in the states, and what kind of data is reasonable to expect institutions and states to collect. Our second recommendation is that the Department should require that non-higher education-based teacher preparation programs should be held to the same reporting requirements of higher education-based preparation programs. In Section 205(b)1(E), states must now report on non-higher education-based teacher preparation programs. The regulations should require states to name each of these programs and to report on the pass rates and scaled scores of the teacher candidates who go through these programs.

Additionally, as required of higher education-based educator preparation programs, these non-higher education-based programs should report on how they ensure that their candidates are prepared to teach children with disabilities and English language learners, and how the programs infuse technology and universal design into their curriculum and clinical experiences. Our third recommendation is that the regulation should define several terms in Section 205 of HEOA. There are several definitions that need to be clarified or developed related to the accountability provisions in this Section. The first recommendation is to clarify what is meant by "program" in the statute. Is it the entire teacher education program at the institution of higher education, or does it refer to a specific program area, such as special education or math education?

Secondly, "student" should be defined as the teacher-candidate.

Third, regulations should allow the institution of higher education to define those candidates who have completed all of their non-clinical coursework. HEOA wants institutions to report on the pass rates on this category of candidates. As preparation programs are so differently structured--some offer a clinical internship after all the coursework is completed, and some offer simultaneous coursework and clinical internships. They should be able to determine which of their candidates fall into the category of completing all non-clinical coursework.

Fourth, the regulations should use the same definition or determination for urban K-12 schools and rural K-12 schools that is used in the No Child Left Behind Act.

Fifth, the regulations need to define "alternate route."

Our next recommendation has to do with the TEACH Grant amendments. HEOA amends the TEACH Grant program so that a recipient can teach in a state-listed shortage field, regardless of whether that field remains on the shortage list. AACTE is very pleased with this amendment and recommends that

the agreement to serve that every TEACH Grant recipient must sign include a place where the applicant can indicate in what field she or he intends to teach, if that field is on the state-listed shortage list so that the recipient can adequately satisfy the service obligation. This will provide some documentation for that applicant should the field fall off the shortage list. The following recommendation addresses the Teach for America authorization in HEOA. Regulations should require Teach for America to report on the same data required of institutions of higher education in Section 205.

Section 806 authorizes the Teach for America Program in terms of the data that Teach for America is required to report to the Secretary. AACTE believes the required data should mirror the data that higher-education based educator preparation programs must report. Thus, AACTE recommends that the Department collect data on the average scaled scores and pass rates on the certification or licensure exams taken by Teach for America candidates, or report that the Teach for America members did not take such tests. Teach for America should set goals towards preparing teachers in shortage areas, just as the higher education programs are required to do. Teach for America should provide assurances to the Secretary that its candidates are prepared to teach children with disabilities and English language learners. Additionally, Teach for America should report not only the number of teachers it has provided to LEAs, but also the fields in which those teachers are teaching.

Another recommendation addresses the Teacher Residency Program authorized in the Teacher Quality Partnership Grant Program in Section 202(e). Regulations need to address how institutions should define the living stipend that the partnerships are required to provide. AACTE is very pleased with the restructured Teacher Quality Partnership Grant Program in HEOA. Grants can either be used to strengthen pre-baccalaureate preparation programs or to create teacher residency programs at the graduate level.

The Teacher Residency Program is a new component to the grant program that holds significant promise for preparing highly effective teachers. As the Department develops regulations to address this component, we ask the Department think carefully about how it defines the living stipend requirement, as this is new to Title II, and it may be one of the more expensive parts of the program.

Finally, I'd like to mention Section 208(c), which is release of information to teacher preparation programs. This is a very important new provision in the law that our members were very eager to have included. It requires that all states that receive funds under the Act release any data

requested to allow the Teacher Preparation Program to evaluate its effectiveness, including information about its graduates who have become teachers. These data are essential for teacher prep programs so that they can track their graduates and assess their effectiveness in the classroom. And I'd like to point out specifically that it requires all states funded under the Act, not just states funded under Title II.

My final comment to you is to request to include AACTE members in the negotiated rulemaking committee that will be developed to address the provisions in Title IV and Title II. AACTE was pleased to be at the table during the TEACH Grant Program, and we were--we're very impressed with that process and the outcome of that process. Our expertise in the area of educator preparation informed the committee's development of regulations and the resulting regulations reflect a good understanding of the structure of higher education-based educator programs. Given the expertise that AACTE brought to the development of regulations for the TEACH Grants, AACTE would like to be at the table again as new regulations are developed for the TEACH Grant amendments, the loan forgiveness program impacting teachers, and other school personnel, and for the new Title II provision requiring institutions to provide transitional assistance to students in teacher preparation programs whose state approval has been rescinded. These provisions impact our members significantly, and our perspectives would contribute to the process.

I want to conclude my remarks by noting that AACTE is very pleased with the many amendments and the new provisions in the Higher Education Act. We are eager to roll up our sleeves and work with you in helping to ensure a successful implementation. Thank you.

MS. GILCHER: Thank you, Jane. Next is Matt Gerson.

MR. GERSON: Good morning. My name is Matt Gerson, and I'm Executive Vice President of the Universal Music Group. Universal is the world's largest music company, with recording and publishing operations all over the globe.

I want to thank the Department for allowing me to speak to the HEA provisions that address the use of university computer networks to steal copyrighted materials. It's clear that technology is essential to higher education, and that technology will define how students live and earn their livelihoods. Technology in the form of innovative, online, and mobile music services will also ensure our industry's future. And technology, thoughtfully applied, is no less essential to stemming online piracy. The theft of copyrighted music is not just an industry problem. While it has taken billions of dollars away from record labels, songwriters, aspiring artists,

retailers, graphic designers, sound engineers, and everyone else who brings a song to the marketplace, it's also taken its toll on the U.S. economy. This illegal activity is by no means victimless.

The piracy epidemic on college campuses is untenable. A recent report from Carnegie Mellon University based on studies at Illinois State University found that in just one month at a moderate-sized campus, at least 42 percent of the students were using peer-to-peer networks to commit at least 119,000 copyright infringements. It stands to reason that other schools look the same way. That's why we urge the Department to ensure that the HEA provisions enacted to address this problem are enforced. Now, many schools have already implemented some of the HEA requirements. Indeed, most have updated their computer use policies to condemn illegal file sharing, and schools are doing a better job of informing students about the policies and the penalties for violating them. But how many schools are actively enforcing their policies?

The HEA should encourage schools to create acceptable use policies, communicate them frequently, and enforce them to let students know that the consequences are real. Many schools have also implemented legitimate online music services that gives students an alternative to theft. One such service, Ruckus, is offered for free to the universities through an advertisement-based model. Students can also access other legitimate services, from online downloads to subscriptions through a cell phone, to options on MySpace and Facebook that are free to the user. The bottom line is that, today, it's very easy to lawfully acquire all the music one could every want.

I want to highlight what we see as the critical component of the new HEA: that which requires schools to develop plans to effectively combat the unauthorized distribution of copyrighted materials, including through the use of a variety of technology-based deterrents.

Enforced computer use policies, and legitimate services help to reduce illegal files haring, but they're truly effectively only when used with technological deterrents that filter or block. Schools like Howard University, the University of Maryland, Ohio University have chosen to block or filter illegal file haring. Others credit new technologies with saving significant taxpayer and tuition dollars. I know that you've heard concern about the costs of these technologies, but the University of Florida reported that it saved \$1.5 million by implementing a filtering system. The University of Utah has reported that implementing filtering and blocking technology saved \$1.2 million in bandwidth costs, and about \$70,000 in personnel costs.

Anti-piracy technology such as Audible Magic's CopySense, in use at over 80 universities, and Red Lambda cGRID, a product developed at a Florida university, has proven not only effective, but economical. Since a substantial number of schools have successfully implemented piracy blocking or filtering technology, there's a track record to reassure doubters that such technologies will not pose a risk to privacy, squash the First Amendment, limit academic--or impose crippling costs.

Unfortunately, the vast majority of schools have not yet tried technological solutions, or have addressed the problem only by using a bandwidth shaping tool. Given the relative small size of music files, even limiting bandwidth still enables hundreds and thousands of copyrighted songs to be illegally distributed. In addition, schools that, during the daytime, decrease the bandwidth that can be used for files haring often drop these restrictions at night. This approach sends the unfortunate message that illegal file sharing is acceptable as long as it's done during permitted windows of infringement, teaching precisely the wrong lesson to our citizens of tomorrow.

The HEA is an opportunity for the education and entertainment communities come together on an issue of economic, ethical, and cultural consequence to our Nation. I don't think it's old-fashioned or corny to emphasize that young adults have to understand that stealing is stealing, and it's wrong. We look forward to working with the higher education community, and with the Department, to make sure that the regulations fulfill Congress' intent that universities address piracy aggressively with the many tools at their disposal. Thank you very much for your time.

MS. GILCHER: Thank you, Matt. Is Tammie Plickusimler [sic.] here? You're going to have to correct the pronunciation of that, I'm certain.

MS. PICKELSIMER: It's Pickelsimer. I'm a high school teacher, so the kids had a lot of fun with that. A lot of tunes to go with that.

Good morning. My name is Tammie Pickelsimer, and I am the Disability Policy Fellow for the Association of University Centers on Disabilities, and a doctoral student in disability policies at the University of Hawaii. Before coming to Washington, I was a high school special education teacher and a researcher at a center for postsecondary education, focusing on access and opportunities for students with disabilities.

AUCD is a national organization representing 126 university centers that conduct research, provide interdisciplinary training, and services to individuals with developmental and other disabilities. Across the country,

many of our centers have begun to develop model postsecondary programs for students with intellectual disabilities within their state. AUCD strongly supports the provisions within the Higher Education Opportunity Act that will expand opportunities for students with intellectual disabilities and access to financial aid.

On a personal note, as a high school special education teacher, I am thrilled about these programs that are offered, knowing that the school bus does not stop when they graduate. This is very exciting for me. AUCD strongly recommends the following: that the Higher Education Opportunity Act negotiated rulemaking team should include individuals with expertise in higher education programs for students with intellectual disabilities, including families and students with intellectual disabilities. In developing the regulations, it would be necessary for the Secretary to waive a number of financial aid requirements to ensure that the institution of higher education enrolling students with intellectual disabilities may receive such assistance.

AUCD also recommends utilizing the following principals when writing the regulations:

The application process for financial aid should be as similar as possible to non-disabled peers. The process for identifying whether an individual meets the definition of a student with intellectual disability should be determined by the admitting institution of higher education and should be minimally burdensome for students, families, and the IHE.

Whenever possible, existing documentation should be utilized from school records or sources such as previous evaluations conducted for public agencies to determine eligibility for disability benefits. Rather than a complex application process, institutions of higher education should provide assurances that they offer a program that meets the criteria of a comprehensive transition and postsecondary program for students with intellectual disabilities, and this process should be as streamlined as possible.

As a point of clarification, if an institution of higher education desires to design a program around a single student with an intellectual disability, this should be allowed, as long as it meets the criteria of a comprehensive transition and postsecondary program for students with disabilities. An institution for higher education should determine if the student maintains satisfactory progress based on standards the institution of higher education sets. Also, the Secretary should further clarify that

participating on not less than half-time basis, as determined by the institution, means that the amount of time the student participates should be similar to the clock hours and credit hours for non-disabled students; however, programs such as work study and mentor programs should be considered into half-time requirements as determined by the institution of higher education.

In addition to this brief summary, I've also submitted written comments that were done in collaboration with the National Down Syndrome Society and other disability organizations. I've left it here at the table for you.

And again, I just want to thank you for this opportunity to provide comments and to the negotiated rulemaking process for Title IV of the Higher Education Opportunity Act as it concerns access to financial aid for students with intellectual disabilities, and AUCD and the disability community looks forward to working with you in the future on this.

MS. GILCHER: Thank you, Tammie Pickelsimer. Dialo Sumbly.

MR. SUMBY: Good morning. Forgive me if I'm a little nervous. I'm much more comfortable speaking in front of a group of students than I am here, but--

MS. GILCHER: Well, we could slouch.

[Laughter.]

MR. SUMBY: --I'll do my best. First, it gives me great pleasure to stand before you today as the current President of the District of Columbia Consolidation for Educational Services, which is a grassroots nonprofit organization comprised of all the Washington, D.C.-based TRIO programs right here in the Nation's capital.

I also want to thank you all for the opportunity to come here and provide some suggestions on this reauthorization on behalf of our national TRIO community. Specifically, what I'd like to do is offer suggestions in three areas that directly affect TRIO, one being Talent Search, which is also a program that I coordinate here in Washington, D.C. at the city's only public institution of higher learning, which is the University of District of Columbia, the other would be Student Support Services, and the revision in distribution of all annual performance reports.

With regard to Talent Search, the legislation has modified the purpose of the program to include college completion, expanded prior experience points to examine whether students pursue rigorous programs of study, whether they receive their diploma on time, and if students enrolled and graduated from a postsecondary institution. Furthermore, the reauthorization also

creates a required services section to specify--or specifying that projects must have high-quality academic tutoring, proper guidance in secondary and postsecondary course selections, and assistance in completing college entrance exams, admissions, and financial aid applications. I think I speak for all TRIO personnel in Talent Search when I say that this is an exciting challenge, and we are excited about the opportunity to address those challenges; however, that excitement is only real when it's underscored by a reduction in the minimum number of participants to below 600, and when there is an increase in the cost per students allotted for Talent Search participants. According to the ASCA in 2004-2005, they recommended that the counselor-to-student ratio be 250-to-1. In Washington, D.C., it's 224-to-1 for high schools, and 2,711 for K through 12.

With all due respect, the Talent Search programs would be asked to do something as an outside program working with schools with an equal or larger counselor-to-student ratio that the schools themselves couldn't do. We would necessarily be required to fight all of society's ills, or battle those ills with the students, to assist them in pursuing a postsecondary education and follow them through college to ensure their completion, which would almost be virtually impossible unless the authorization reduced the number of Talent Search participants to below 600, while at the same time--increase the cost per student allotted for participants. So, again, I just want to underscore that TRIO programs are excited about the challenge; however, we will be doomed to failure without those other measures of reducing the numbers to below 600 for the minimum number of participants and to sufficiently increasing the cost per student allotted.

With regard to the Student Support Services Program, it is our understanding that the Department is also considering to delay the next Student Support Services competition for three to four years in an effort to bring all of the Student Support competitions grantees into sync with those have had five-year grants due to their high scoring. This is something that the TRIO community is strongly opposed to delaying for greater than one year. To delay this for greater than one year, it would extensively limit the opportunities for students at institutions that would be eligible to host Student Support Services projects, as well as those institutions that already have Student Support Services projects. Any delay of these services to students who are already dealt pretty much an unfair blow due to multigenerational poverty and lack of access to postsecondary institutions, would be dreadful. So, again, we encourage the Department that, if that delay

is to happen, that it not be greater than one year so that the participants at the various universities around the country who need Student Support Services, because they've already made it into an institution and they need that assistance to complete the postsecondary institution--that that delay is not greater than a year.

Finally, we encourage the Department to revise all of the TRIO annual performance reports and distribute them to the community as soon as possible. That's extremely important for the TRIO community so that we can really prepare the data that we need to submit to the Department, and really focus our priorities on the work, which is assisting the many, and unfortunately continuing growing number, of low-income and first-generational students who don't have the opportunity to pursue postsecondary education.

Thank you guys very much.

MS. GILCHER: Thank you. Shelly Saunders.

MS. SAUNDERS: Good morning. My name is Shelly Saunders, and I am Vice President of Strategic Services with the American Student Assistance, or ASA, and I'm speaking on behalf of ASA and my fellow guarantee agencies in the National Association of Student Loan Administrators, or NASLA.

NASLA is a private, nonprofit, voluntary membership organization that represents the interests of FFELP guarantee agencies. A core focus of guarantee agencies is to maximize the success of borrowers in repaying their loans. As administrators of the FFELP guarantee agencies work closely with the Department, students, families, schools, lenders, and loan servicers throughout the life of their loan. Inclusion of a guarantee agency voice in the negotiations will promote a broad-based, well-informed discussion as rules are developed. NASLA proposes the following list of issues for negotiation for both the FFELP and the Direct Loan Program--Default Reduction Program.

The Higher Education Opportunity Act requires that, upon the sale of a rehabilitated loan to an eligible lender, the guarantee agency and previous holders of the loan must remove the record of default from the borrower's credit history. NASLA supports this incentive for borrowers to rehabilitate their loans. However, we are concerned that some borrowers misunderstand the actual result when a default trade line is removed but the pre-default delinquency history remains. NASLA believes guarantee agencies and lenders that provide borrowers with information on the rehabilitation program should be required to disclose in a conspicuous manner that the removal of the

default from the credit history does not remove any history of pre-default delinquency that has been reported for the rehabilitation loans.

Information provided to borrowers having difficulty making payments. The HEOA requires that, when a borrower notifies his or her lender that the borrower is having difficulty making payments on a loan, that the lender provide the borrower with repayment option information in simple and understandable terms. NASLA believes that these disclosures should include the applicable guarantee agency's contact information and notice that the guarantee agency may be contacting the borrower to assist in resolving the delinquency. The addition of this disclosure information ensures that the borrower knows he or she may be contacted for default aversion purposes, and also enables the borrower to contact the guarantee agency directly to help resolve issues that arise during repayment. With respect to the cohort default rate, the HEOA requires that an institution with the cohort default rate of 30 percent or more to establish a default prevention taskforce to prepare and submit a default prevention plan to the Department. NASLA feels strongly that guarantee agencies can play an important role in assisting such an institution by being included in this taskforce, and suggest regulations be written to require a FFELP school to request the guarantee agency's participation on the school's default prevention taskforce.

Guarantee agencies have consistently demonstrated that they play an important role in assisting students in managing their student loan debt successfully. In recent years, a number of guarantee agencies, particularly those with voluntary flexible agreements, have explored new approaches to delinquency and default aversion activities, providing additional insights about how to improve borrower success in loan repayment with assistance tools and information available through schools, lenders, and guarantee agencies.

In addition, since guarantee agencies have observed innovative and permissible, as well as overreaching and impermissible default managing practices, we encourage the Department to facilitate periodic forums with guarantee agencies to exchange frontline useful information and to promote a consistent understanding of permissible approaches for schools. The Department is in a critical position to ensure that guarantee agencies, the Department, and the Department's FDLP servicer are all on the same page regarding the provisions of clear and consistent default management guidance for schools.

In deference to time, please refer to our written testimony for comments regarding loan forgiveness for service in areas of national need,

teacher loan forgiveness, total and permanent disability, eligibility criteria, school code of conduct, entrance and exit counseling. NASLA appreciates the Department's consideration of this testimony, and offers itself as a resource to the Department on these and other issues that the Department may consider in the negotiated rulemaking process.

Thank you.

MS. GILCHER: Thank you, Shelby. Nancy Broff.

NANCY BROFF: Hello. My name is Nancy Broff, and I'm here today representing ITT Educational Services Corporation.

ITT Educational Services appreciates the opportunity to provide input to the Department as it begins the process of developing regulations to implement the Higher Education Opportunity Act. ITT is a leading provider of technology-oriented postsecondary degree programs. As of September 1, 2008, ITT operated over 100 ITT technical institutes and nine learning sites in 36 states, predominantly providing career-focused associates and bachelors degree programs of study to a total of approximately 53,000 students.

I'm going to cover a number of issues quickly this morning, and I will provide additional written testimony and I will do my math word problems-- they're in the written testimony, but I'm not going to get into them here today orally. The first issue I wanted to talk about briefly is one that hasn't been mentioned yet today in very much detail, and that's the year-round Pell Grants. ITT technical institutes operate on a year-round schedule throughout the year. We provide four quarters a year, and allow students to complete their education in a shorter calendar period of time by continuing throughout that entire period. This schedule generally provides students, many of whom are non-traditional students, with the flexibility to attend school while they're employed. Under this schedule, our full-time students can complete an associate's degree in eight academic quarters over two calendar years and a bachelor's degree in 15 academic quarters over three and three-quarters calendar years.

Under current Pell Grant rules, these students have a number of payment periods where they're unable to access Pell Grants because of the limit to one Pell Grant per award year. And because we do more than one complete academic year of education during an award year, there's been a gap for our students. The HEOA remedies this, but there will be a couple of implementation issues in determining how exactly this provision will be implemented. We would like to make sure that the provision is implemented in the way that will be the most flexible to allow students the best opportunity

to have access to these additional funds. And one way to do this is to give the institution maximum flexibility in attributing a payment period either backwards to the current award year or forwards to the following award year when you are deciding whether that student is going to be eligible for that extra bit of year-round Pell. And the reason this makes a difference is two things.

One is, the student has to have been at least half time during that award year, and students, because they sometimes change how much they're doing in a given period, that could influence whether they're meeting that standard or not in a given year.

Second, things economically change for a student from year to year, and they might increase or decrease their estimated family contribution from one year to the next. So, being able to attribute the payment period to the one with the lower estimated family contribution would allow them to get the additional amount of Pell. On the issue of cohort default rates, we agree with much of what many of my colleagues have already talked about this year with the change from the two-year to the three-year cohort default rate. The transition period is going to have to be handled very carefully, and the period once we're fully using the three-year rates. One issue that I'd like to talk about that hasn't been raised yet is the provision in the regulations currently that is not something that is required by law where the Department views institutions that have a single-year cohort default rate of over 25 percent as not being fully administratively capable, and puts these institutions, sometimes, on provisional certification.

I would cite, again, the CCA study that Harris referred to in his testimony that showed really that there isn't a link demonstrable by the research so far that demonstrates the cohort default rates--really tell you much about institutional quality or about the administrative capability of an institution, and we would urge that this provision in the regulations be deleted. And in the alternative, if the Department thinks that this is something you need to keep, we would urge that the new trigger comply with the 30 percent trigger that will be used for all other purposes for the cohort default rates. There are a number of provisions related to 90-10 that I talk about in my written remarks. I want to just talk about just one or two here today.

One is the issue between the accrual loans and the cash basis loans. We believe that the Congress very much wanted to ensure as much flexibility for institutions as possible as they move forward in implementing this. And

institutions should be allowed to treat loans on a loan-by-loan basis, either on the accrual basis or on the cash basis, because they're not going to be allowed to double count the loans. The law says if you use this accrual basis temporary provision during the phase-in period, you cannot use the income that comes in on those loans later on. We think it's very important to allow schools to determine how they're going to make their allocation in a given year as between which loans they want to count on an accrual basis, and which ones they want to save for out-years to be able to count on the cash basis. So, that would be an additional. And then, we also agree with many of our colleagues that have talked today about how the extra \$2,000 in the unsubsidized loans should be counted. I do have a math word problem in my written testimony that will kind of walk through what the issues here are. There are issues both in how you count the money initially, and in how you treat this loan if you have to do a return of Title IV funds and how that will impact on the 90-10.

Okay. On the issues of some of the consumer information provisions that have been enacted in the law, we very much support enhanced consumer protection and advanced consumer information. There are a number of issues that are going to arise in how you actually implement that.

Retention rate, for example, is something that institutions have not had to report before, and there are going to be some very difficult issues in figuring out how best to report a retention rate. One issue particularly arises in the context of year-round institutions, which is that a lot of times, students will choose not to continue through their academic program term by term by term. They might stop out for a term, particularly over the summer, because their kids are home and they want to be at home a little bit more with their kids. Depending on how you do the calculation of a retention rate, we want to be sure that students who have just stopped out for a term but are intending to return are not counted as dropouts, which would artificially inflate your withdrawal rate and decrease your retention rate, so that--we think that that is an important issue.

On the disclosures relating to cost of textbooks--I know you're not supposed to be regulating on this. We would appreciate some sub-regulatory guidance for institutions who include the cost of books and supplies within the cost of their tuition. We think that presents a particular issue, and would be happy to work with you offline in creating some guidance that we can give to institutions to deal with that.

Finally, on the loan issues--again, I don't want to repeat much of what has already been said here--we think it is very important to make sure that institutions are giving clear road map on how they can use recourse loans in ways that will comply with what the HEOA permits to make sure that institutions are capable of continuing to do recourse loans, but doing them in a way that makes sure that they are done properly. We would very much like to also make sure that the new provisions dealing with private lender preferred lender lists are explicitly explained in the regulations, again, so that schools have a road map for how to comply with their private lender relationships. It's getting more and more difficult to have private lender relationships right now because of the dislocations in the credit markets, and we want to be sure that, if an institution only has one lender, private lender, who is willing to make loans to their students, that this is not something that violates the provision that requires that you have two private lenders if you are going to have a private lender list.

Thank you very much for the opportunity to talk with you all this morning, and we do look forward to continuing in the process with you as negotiated rulemaking proceeds. Thanks.

MS. GILCHER: Okay. Nancy, thanks. We're going to take just one more person this morning and then we'll break for lunch. Cindy Littlefield.

[Pause.]

MS. GILCHER: Okay. I guess Cindy has stepped out, so we will all step out. Please return within an hour so we can get started immediately--oh. She got in under the line, it looks like. Well, Cindy, that was impressive, here.

MS. LITTLEFIELD: Yes. I got my workout. I think I can still say good morning to the Department of Education. And I'm sorry I'm a little bit out of breath. I didn't know I was up next, so I thank you for that indulgence.

Today, on behalf of the Association of Jesuit Colleges and Universities, I want to thank the Department for once again convening these most interesting and illustrative negotiated rulemaking listening sessions.

AJCU represents 28 institutions across the U.S. in 19 states, and we are affiliated with over 100 institutions worldwide. In--I still haven't caught my breath, I apologize. In this new reauthorization of the Higher Education Act are 100 new regulations for colleges and universities. Not all will be negotiated in our negotiating panels. Thank heavens, I think we all would have to say.

Today, I'm going to make a few just general comments on a few issues of concern. On Title IV, the soul of the Higher Education Act is always the

implementation of our federal student aid programs. Certainly, AJCU was very happy that our Pell Grant authorization levels were increased, and the preservation of our campus-based aid formula program stayed intact.

On Pell Grant, we concur with our colleagues that the year-round Pell Grant is an excellent achievement to try to secure and encourage more students to graduate earlier. In doing so, we will be saving taxpayer dollars in the process. There are, however, two areas in Pell Grants where institutions will need some further guidance, and one in particular is the added addition of the parents of--who may die either in Iraq or Afghanistan. Their students, if in college, would then receive a full Pell Grant maximum award payment. That is in the newly-developed law. While this is a very positive development, problems for colleges and universities would be, how would they find out about this particular development. So, obviously, we need a process and verification procedure with the Department of Defense to make sure that that program is adequately in place.

Second, there is another added area of concern, certainly by members of Congress, in not allowing sexual offenders any Pell Grant funding. In that regard, again, process and procedure would be helpful to colleges and universities. Another important program is the Federal Work Study Program. We approve of adding the civic participation as a new area for Federal Work Study students. We can think of numerous entities, certainly in the Washington, D.C. area where numerous of internships of students from around the country come here to participate in really very worthwhile adventures and internships. And so, further clarification, I think, not only on those areas here in Washington, but certainly across the country would be in order.

And we are very happy that there was an additional flexibility offered for Federal Work Study students who are impacted by major disasters in the United States. This is the direct result of Hurricane Katrina in 2005. And we want to, again, commend the Department of Education who is an excellent partner in trying to assist the Gulf Coast colleges and universities, or who are heavily impacted in that regard. A discussion on negotiated rulemaking would not be complete without talking about campus crime. In 1999, AJCU was a negotiator on campus crime, and that was the first year, in essence, that colleges and universities had the opportunity to discuss these very worthwhile legislative mandates in making sure and assuring that our reporting requirements were accurate and not too cumbersome.

We recognize the need in some complications, particularly on emergency notification--in emergency notification, certainly every college and

university across the United States recognizes the need to notify students should an incident occur. But we also recognize the need that one cannot clearly articulate every imaginable incident that would ever occur on a campus in this country. And as a result, we concur with our colleagues who have mentioned before the need for strict and open flexibility provided to colleges and universities provided through a regulatory language. Another area of concern to our association is the peer-to-peer file sharing that has also been articulated before. We want to associate our comments with that made of EDUCAUSE here before. AJCU, our Jesuit institutions, have been in compliance with listing the legal limitations of the copyright laws on our Web sites for over two to three years. And so, I'm happy to report, we're already in compliance with some of those provisions.

However, we share concerns about adopting regulatory language in regards to planning on how to stop the illegal use of these copyrighting infringements. We are interested in this area because AJCU developed over eight years ago, Jesuit Net, our distance education consortium among our 28 colleges and universities. Because of that, we have over 400 institutions--400 courses, rather, excuse me--offered online on graduate programs and degrees, and we have had the opportunity to work with the Department on distance demonstration programs in the past, as well as the once authorized LAAP Program, which no longer exists. So, that is an area of interest that we share.

On TEACH Grants, I also would be remiss if we did not mention this, AJC was also a negotiator in the TEACH Grant negotiating process this past year. And through this process, we were able to realize, as the Higher Education Act Reauthorization process was also going on simultaneously, that there were some areas in particular that needed to be addressed in legislative language.

So, we are grateful that the language we submitted to Capitol Hill was adopted in HEOA. And as a result, we concur with the remarks also made by AACTE that these amendments that would allow students who were majoring in a specific academic area and then later found out after graduation that their academic area was no longer a high demand--that they would not be lost in the system, and the TEACH Grant Program would not be automatically converted to a loan program. We think that this is an important initiative, and also to encourage students as well as institutions of higher education to utilize this very important TEACH Grant program.

Now, we recognize that, most likely, elements in Title I and other Titles will most likely not be negotiated in the negotiated rulemaking

process, in all likelihood. One of the larger issues in Title I for all of us in higher education has been the issue of college cost. I will not get into that issue today because it is a very complicated one. Many of the new reporting requirements for colleges and universities are really not new--that will be required and listed on college Web sites provided by the Department of Education. Most of that information is now currently given either through IPEDs or FISAP already. However, there is a new area of net tuition pricing that is not. And as a result, the legislative language clearly indicates that the Secretary should be in consultation with institutions of higher education and interested parties over formulating the definition of net tuition price. And AJCU would want to recommend once again that that consultation indeed occur, and we would be most happy to work with you in whatever forum you believe appropriate, but we strongly endorse that measure.

And finally, I couldn't be standing here unless I would mention the Education Disaster Loan Program. On August 29, 2005, Hurricane Katrina ravaged the Gulf Coast Region of the United States. Fifteen colleges and universities in five states were damaged, some substantially. Since that time, AJCU has been working extensively with the New Orleans institutions--one of ours, Loyola University in New Orleans was damaged, in addition to Tulane University and the University of New Orleans. The four of us have been in partnership in trying to secure funding through three emergency supplementals.

We were able to secure \$280 million in that process, but that's a far cry from the \$2 billion losses that occurred from this devastating hurricane.

In the second emergency supplemental, we included an education disaster loan component, and we had secured approval of everyone in the Senate and House side, from appropriators to authorizers, as well as the Department of Education, at that time, and were stopped by the OMB because this program was not authorized at that time.

So, naturally, we authorized this program, with the help and support, I might add, of other higher education associations who, indeed, signed our letter asking for this inclusion. Now that the Education Disaster Loan Program has been included, we face a hurdle. And the hurdle we face is the fact that we have been told by the Department of Education of your desire not to do any new regulatory language on any new program unless it is funded by Congress. While we understand the necessity and the practicality of that statement, we also have to disagree, and in particular for the Education Disaster Loan Program. It does not have to be stated here enough about what

has already happened this year from Hurricane Gustav and Ike. Texas institutions and Louisiana institutions have incurred over \$800 million in damages just in this one-month timeframe this year. And combined with the fact that Hurricane Katrina institutions, again, who were shut down for over a full semester, are still in dire need of this funding. We respectfully request from the Department not to do a negotiated rulemaking session, but to somehow find a way and a means to come up with regulatory language so that these institutions who were impacted over the last three years, much less those institutions who will be impacted from a major disaster in the future, have this as an opportunity for them to recover.

Now, we have learned from these disasters that colleges and universities are the economic epicenters of a city or a town. And as a result, we believe that it is vitally important that this Education Disaster Loan Program legislative language that's already adopted be adopted somehow through some regulatory process. And I know I share the interests and concerns by the Katrina-impacted institutions by saying that AJCU and those institutions would be willing to work with the Department in trying to find out how in the world we could come up with regulatory language in a way that is not too cumbersome for the Department, but in a way that allows us to try to secure funding on Capitol Hill.

So, I thank the Department for this wonderful opportunity, and we hope that AJCU can once again be part of this very important process.

Thank you.

MS. GILCHER: Okay. Thank you all for your patience and attention.

We will reconvene--we'll try for 1:00, because we have a full schedule for the afternoon, as well. Thank you.

AFTERNOON SESSION

MR. BERGERON: Good afternoon. Welcome back. We have a lot fewer--many fewer people here this afternoon. We were saying we should have found a different venue with more--that was larger, but maybe not if we stay at this level of people in the afternoon. Our first person speaking this afternoon is Phil Day. Phil, if you could indicate who you are and where you're from, that would be great.

DR. DAY: Thank you very much. My name is Dr. Phil Day. I am President and CEO of the National Association of Student Financial Administrators here to talk with you today about the topics for negotiated rulemaking.

On behalf of the nearly 3,000 postsecondary educational institutions that are a member of the National Association of Student Financial Aid Administrators, I would like to express NASFAA's strong support for the negotiated rulemaking process. We believe that the community participation in the regulatory process allows us to work together to protect student access and choice in higher education, provide workable procedures, and ensure that statutory boundaries are maintained. Although the Higher Education Opportunity Act advances the goals of the federal student aid programs in many ways, it also presents challenges that require careful analysis and a deliberate plan of action.

In implementing the HEOA, we urge the Department to regulate only when necessary in order to ensure understanding of and compliance with the law, and to preserve the integrity of the student aid programs. We also urge you to negotiate all regulations that impact on institutional operations or student decisions. Allow us to focus institutional resources towards serving students rather than feeding an insatiable but meaningless data machine.

Consolidate and standardize disclosures to avoid confusing students and their parents, and take a wide view towards provisions that encourage families to think early of higher education as an attainable goal. Our written submission lists the provisions from the Act that we feel should be negotiated. We also ask that the Department take this opportunity to revisit existing regulations that, now that they have been tested through implementation, may need some fine-tuning. We have included some recommendations for regulatory areas to review. Today, I would like to highlight a few general areas of special concern. In its approach to reporting and disclosure requirements, the HEOA takes a shotgun approach

asking institutions to produce as much data as possible without any clear or meaningful purpose. Unless carefully orchestrated, the effort required to comply will divert resources and detract from the time schools would otherwise focus on services that more effectively help students and contribute to their success.

We urge the Department to consult information and research specialists to assist the data and design its presentation. To the extent possible, consolidate reporting so that it is unduplicated and derives as much data as possible from reports already being submitted. We also should point out that the information burden is not limited to schools. Students are the targets of so many scattered and duplicative disclosures from schools and lenders, it is no wonder they become frustrated and ignore them. Disclosures to students and their parents should be coordinated, unduplicated, unless absolutely necessary for comprehension, and at the very least, consistent and straightforward. The HEOA places a good deal of new disclosure and reporting requirements under Title I of the Higher Ed Act. Although negotiated rulemaking is not required for Title I, we ask the Department to use that process to ensure the most effective regulatory results. We make the same requests for Title X provisions. A number of HEO provisions reflect recent attention to ethical integrity. We all have a stake in ensuring that the federal student aid programs are viewed as a good investment of public funds, but that should be achieved through a rational dialogue that ultimately helps us help students.

We hope the Department will take this opportunity to establish that federal student aid is subject to federal requirements that take precedence over other jurisdictions and resolve ambiguity in the law about the permissible uses that institutions may make of the expertise of lenders and guarantors in their efforts to educate students about loan provisions, debt management, and financial literacy. The HEOA also opens the door to simplification of both application and the verification processes. Although NASFAA believes the true need for simplification is in the EFC formula itself, we hope the Department will take up the HEOA authority to try out a prior prior-year basis for need analysis among a limited number of applicants, together with an IRS database match. We also urge the Department to use whatever resources it can, including negotiated rules and procedures with the TRIO and GEAR UP Programs to implement HEOA recommendations regarding early application and analyses to make--to help make low-income

families more aware of higher education--that higher education is possible for them.

Thank you for this opportunity to comment. NASFAA is looking forward to working productively and proactively with the Department to achieve the best results possible, and we're hoping to encourage as many members of our association to step forward and volunteer, as I've already indicated to Dan.

Thank you very much.

MR. BERGERON: Thank you. I'll just make one observation.

The way in which the Department develops its data collections principally related to the Title I requirements is through not a negotiated rulemaking process, but through technical review panels that are conducted by the National Center for Educational Statistics.

DR. DAY: Right.

MR. BERGERON: And then, as part of that, they post on their Web site the results of those technical review panels and solicit public comment on the plans. And then, also, there's the Paperwork Reduction Act process with OMB.

So, there's lots--actually, in some sense, more involvement from the public in those collections, although the points you made about consolidating and making it as least burdensome as possible, you know, we hear that. Thank you.

DR. DAY: We understand that those processes work concurrently. And in fact, I've been invited to sit on one of them myself, because my background--former background in an earlier life was institutional research and evaluation. So, I look forward to that opportunity.

Thank you very much.

MR. BERGERON: Yeah, they're actually very good experience--learning opportunities.

DR. DAY: I heard all about them. I met some of the folks as well. Thank you very much.

MR. BERGERON: Thank you.

DR. DAY: And I have to apologize. This is a little bit of a comedic aside--on our way over here, and I'm a little bit embarrassed by this because I don't usually perspire like this, but I found out from my associate over here that IDs were required, so I ran--literally ran--all the way back to my offices and back only to find out that they weren't taking IDs.

[Laughter.]

DR. DAY: So, my pulse rate is a bit high. Thank you.

CROWD: They like to keep you on your toes.

DR. DAY: They sure do.

MR. BERGERON: Thank you, Phil. Christine Johnson. Again, if you could say what organization you're from, that would be great.

MS. JOHNSON: Good afternoon. My name is Christine Johnson, and I'm the Director of Government Affairs for Capella University. I appreciate the opportunity to present to you some of Capella's thoughts and suggestions regarding the implementation of Title IV of the HEOA. And just a quick note on Capella, we're based in Minneapolis, Minnesota. We are accredited by the Higher Learning Commission of the North Central Association. We serve 23,000 students, and we are primarily an adult-serving online institution.

In the interest of the issues pertaining to HEOA, we'll be talking about distance education, accreditation, and access to student loan programs. On the distance education provision, Capella is pleased that the Act defines the term "distance education," and distinguishes it from correspondence programs and other delivery methods. We support the definition for its flexibility, recognizing that a number of modes of technology are utilized. In particular, the Department has already interpreted that the statutory term "regulatory and substantive interaction between students and the instructor, synchronously or asynchronously" to mean an interaction that should take place at regular intervals and not be trivial.

We support this interpretation, and even though not a subject for negotiated rulemaking, I want to take this opportunity to suggest that the Department's interpretation be included in the regulations implementing this new definition of distance education.

Capella also wants to applaud Congress for defining the term "diploma mill." It's not a perfect definition, but as all of us in the distance education field know, it's not an easy task. We're grateful that the HEOA requires the Department to continue its coordinated federal efforts to combat the diploma mill problem. Like many other legitimate high-quality distance education institutions, Capella University finds it essential to continue the battle against these illegitimate entities and hope that the Department will seek any guidance or assistance from institutions like ours.

Finally, included in Title XI of HEOA is a provision requiring the independent evaluation of distance education for which the Department of Education must rely on the National Research Council within the National Academy of Sciences. Capella welcomes this evaluation, and particularly its review of how the quality of distance education and student achievement in the distance education environment is assessed. We hope that Capella would be

able to provide helpful information to the Department and to the NRC as this evaluation occurs. On the accreditation provisions of Title IV, there is a provision that requires an institution that offers distance education or a correspondence education to have processes through which the institution establishes that the student who registers for the course or program is the same who participates and completes the program. There have been suggestions that this provision requires the installation of sophisticated verification technologies by institutions and students, and that they have the ability to infringe on the students' right to privacy. This was very clearly not what Congress intended, and the accompanying legislative history to both HEOA and the initial House bill that included this language was clear in setting forth Congress's expectation. The conference report to HEOA states that Congress expects institutions offering distance education to have mechanisms such as identification numbers and password information in place when students participate online.

With regard to future use of newer technologies, Congress defers to the institution and Accreditors' considerations of whether those technologies are cost effective and appropriate. In no circumstance should the use of any technology infringe on the right to privacy of students.

Capella would urge the Department and Accreditors to respect the intent of Congress when implementing the supervision. And again, we would be happy to share our experience and efforts to ensure student verification, which we believe are equal to and perhaps surpass the efforts of our on-ground colleagues.

Secondly, Capella supports a new provision which requires that accrediting agencies train their evaluators specifically on distance education. While we believe that our Accreditors already take such steps to ensure that the evaluators who visit Capella have some experience and knowledge in the area of distance education, we believe that a federal policy supporting this concept will provide some consistency and assurance that all institutions offering distance education are being evaluated by site visitors with the appropriate experience and training. On student achievement. While Capella believes that the accreditation provisions on student achievement maintain the appropriate balance between the responsibility of the institution and the Accreditors, the discussion during the congressional debate left some impression that institutions may not be prepared to have their outcomes data evaluated in a consistent and a comparative manner with other institutions.

I would like to state Capella's unequivocal readiness to not only disclose to--student achievement data, whether quantitative figures like graduation and job placement rates are qualitative, but also to provide students the ability to view that information in a comparative fashion with other institutions. That is why Capella has played an instrumental role in the formulation of Transparency by Design. Transparency by Design is the result of a collaborative effort between fourteen regionally accredited institutions, all of which offer their education at a distance. Beginning in 2009, these institutions will issue regular reports that disclose comprehensive data on student demographics, cost, and student outcomes, including completion and progress rates, program-level earning outcomes, and alumni feedback. I mention Transparency by Design and the issue of data disclosure, because in addition to the role of the accreditor, HEOA includes several disclosure provisions relating to student achievement and outcomes.

There are several significant amendments to the Title I disclosure requirements on IPEDS relating to graduation and completion rates, and there are also similar but not identical provisions amending the public disclosure requirements in Section 485 of the Act.

The Department has already issued a notice for comments in the implementation of new guidance for IPEDS. As I noted, Capella strongly supports the disclosure of outcomes data to the public. However, we also believe that the multiple manners in which the information is disclosed should be as consistent as possible so as not to confuse the student consumer. I strongly urge the Department to seek consistency between its IPEDS requirements, which will implement through notice and comment, and the new requirements of Section 485, which will implement through negotiated rulemaking. These two provisions require a coordinated effort on the part of the Department. On Title IV funding, Capella strongly supported amendments to permit students access to Pell Grants on a year-round basis. By enacting this provision, Congress has recognized that achieving higher education no longer occurs on a nine-month, per-year basis. Our students at Capella are enrolled year-round, and this amendment will significantly help many of them.

We ask that, as the Department implements these amendments, that it provide maximum amount of flexibility in determining on a student-by-student basis the distribution of these funds. Capella would also like to applaud Congress for relaxing the provisions on 90-10. We believe that these restrictions serve a very limited, if any, public policy purpose, and has the detrimental impact, in some cases, of denying access to those students that

may need an education and training the most. The provisions included in HEOA on 90-10 are extremely helpful but also complicated and will require some interpretation by the Department. Again, as the Department begins the negotiated rulemaking process, we urge the Department to include institutions with specific knowledge on how 90-10 affects students.

I appreciate the opportunity to speak today. On behalf of Capella, that concludes my testimony. Thank you.

MR. BERGERON: Thank you very much. Ginger Rushing. Good afternoon.

MS. RUSHING: Hello. My name is Ginger Rushing, and I'm here on behalf of the Recording Industry Association of America. The RIAA is the trade group that represents the United States recording industry, and its members create, manufacture, and/or distribute approximately 90 percent of all legitimate sound recordings produced and sold in the United States. As you can understand, we've been extremely concerned about the rampant illegal file sharing occurring on college campuses across this country, and we're therefore pleased to see provisions to address this problem included in the HEOA. For several years, we have worked together with the higher education community including the Joint Committee of the Higher Education and Entertainment Communities to find reasonable and effective solutions to this problem. Our discussions with schools and observations of successful strategies have led us to advocate for the adoption of strong, acceptable use policies, consistent enforcement of those policies, implementation of technology to deter illegal file sharing, and the adoption of legal services for music and movies.

This combination of efforts has not only helped to reduce illegal file sharing on school networks, but has, in many cases, increased network efficiency, reduced exposure to viruses, and saved schools money through reduction of personnel and network operating costs. In short, taking these steps is the best interest of content creators and education institutions alike. We greatly appreciate the efforts that schools are already taking in implementing these measures, and welcome HEOA's recognition of their leadership in guiding others to do the same. In particular, we acknowledge Section 488 of the HEOA's requirement that schools create institutional policies against copyright infringement and inform students of the penalties for violation of these policies of federal copyright laws. It is important for students to understand and appreciate the dangers of illegal file sharing and to know that the school does not condone and will punish such activity.

We have, in fact, prepared a number of sample policies and best practices often in cooperation with universities, and would be more than happy to work with the Department and institutions to help apply them. We also appreciate Section 493's inclusion of legitimate services and technology-based deterrents. Services such as Ruckus have worked with a number of schools to offer administrations and their students the ability to legally offer and access both movies and music, and companies such as Audible Magic and Red Lambda offer technologies that have helped schools regain control of their networks and save thousands, even millions of dollars in the process. These Businesses are eager to work with schools, and we encourage the Department to keep them in mind as possible. We would be able to--we would be glad to provide context and additional information on these vendors.

Once again, I wish to thank the Department for holding these hearings. These forums allow us to convey the importance of these sections in the HEOA and provide an opportunity to ensure the requirements are fulfilled appropriately and effectively. We look forward to our ongoing cooperation with schools and to assisting the Department in any way we can. Thank you.

MR. BERGERON: Thank you. We are a little ahead of schedule. Is Nancy McNabb in the room? Hi, Nancy.

MS. MCNABB: My name is Nancy McNabb and I'm the Director of Government Affairs for the National Fire Protection Association. The National Fire Protection Association urges the Department of Education to enact regulations that keep the intent of the Campus Fire Safety Right to Know Act legislation part of the Higher Education Opportunity Act intact.

NFPA was founded in 1896, and for more than 100 years, we have influenced the safety of the built environment through our codes and standards, which have changed the regulations that drive building construction and operations. This legislation to require the disclosure of fire safety standards and measures at eligible institutions makes sense because the lessons that students learn about fire safety while at college will stay with them for the rest of their lives. Crafting regulatory language to set forth the requirements mandated in the student right to know portion of the HEOA will not be easy, if the required institutional reports are to provide useful actionable information to students, applicants, and their families. These reports need to be more than routine checklists and they need to be in a format that supports consistency and comparison between campuses.

Historically, the lessons learned from fires resulting from a major loss of life have driven important changes in fire protection and fire

prevention practices. Few lessons have been learned as thoroughly as the one from the Our Lady of Angels fire of 1958 which killed 95 people but resulted in many new requirements for fire protection and fire prevention at the K-12 level. NFPA hopes that these new Department of Education regulations will encourage a similar wave of change for higher-level institutions.

In response to the Department of Education's request for public input in this matter, we offer the following specific comments. We suggest that the reporting begin with guidance on what is included in on-campus housing. We suggest reports should indicate what fractions of students live in designated on-campus housing facilities versus other properties. Otherwise, the university that is working to control the living environments of its students wherever they live could be held to a higher standard than a university who has no on-campus housing and provides no oversight of any other student housing. For example, although fraternity and sorority houses are not technically on-campus housing facilities in terms of location or ownership, many universities dictate very specific rules for the operations of such policies. Guidance is also needed on definitions and reporting details for each of the specific requirements. We encourage the Department to ask for such guidance from the U.S. Fire Administration National Fire Data Center, agency to agency. NFPA would be pleased to work with the Department on such guidance, but believe that USFA has the expertise and the authority to make it the appropriate body to coordinate the work. We suggest the use of standard shortlist of causes, or else there will be no way to compare results from different campuses, or even from one reporter to another on a single campus. We note that communities differ in how they refer exposed people to a medical facility. The Department should specify how long a follow-up will qualify for a late reportable fire death. The U.S. official view is a year, but most communities aren't set up to track that far out.

The Department should consider what they wish to count as property damage, and how the value is to be determined. Does the cost of temporary housing for displaced students count? This is not direct damage, but it may be reimbursable loss under some insurance policies. We encourage the development of a scope and coding categories for the elements of a facility fire safety system. A fire protection system might be generally understood to mean only active systems, primarily sprinklers and smoke alarms, but also any other fire detection alarm systems and smoke control systems, if any. The somewhat vaguer fire safety system might be understood to include automatic door closers, exit signs, any illumination or other equipment used to support

paths, et cetera, as well as fire prevention rules such as controls on hot plates or other fire safety technologies, like AFCIs or ranges that shut off when they sense an incipient fire. It is not clear what "regular," "mandatory," or "supervised" mean in this context. If "regular," means scheduled, then they may miss the opportunity to check readiness through unannounced drills which is the best way to see whether people will really react as they should. "Mandatory" could mean mandatory for the university, the students, or the managers of the facilities. "Supervised" could mean supervised by student floor wardens, student facility leaders, resident faculty, campus fire safety personnel, or the local fire department.

The Department should clearly establish the meanings of these terms so that it is clear who is being mandated and counted as the supervisor. NFPA urges the Department to provide some reporting structure. This would make the difference between of a stack of narrative reports and a database amenable to statistical analysis. The latter would allow one to say, for example, what fraction of campuses has hot plate policies, while the former would make that very difficult to do. The Department should provide guidance on the necessary elements of a plan. It should specify what is being added, budget cost, and schedule. Absence such compliance, the Department might give credit to universities' plan for improvements as no more detailed than, for example, "One of these days, we really ought to sprinkler those dorms." The students should clarify what is meant by--the Department should clarify what is meant by the nature of the fire. Is this term intended to be another word for "cause"? The Department should carefully consider the requirements for publishing. Will each campus publish its report for distribution to designated members of the campus family, that is students, their parents, applicants--their parents, faculty, staff, legislators, local officials?

Although the Secretary is charged to annually report on compliance, what kind of reporting will be available to the Secretary to make that determination? The results may range from a simple e-mail from the campus that says, "Here's what we're doing," to a more meaningful national collection and analysis of the data. NFPA favors the latter. At NFPA, we believe that safety is everybody's business, and encouraging campuses to invest more in fire safety policies, procedures, programs, and practices is important. Effective campus right-to-know regulations will provide meaningful information that will enable prospective parents and students to select a safer school.

Properly crafted regulations have the potential to significantly reduce fire-related injuries and deaths in student housing, dormitories, and other campus buildings, and decrease the amount of property loss associated with the fire incidents. In order to achieve the intent of the enabling legislation, the Department will need to define a project to fill in the necessary details to disseminate the information to campuses, and to do quality edit checks on submitted reports, or at least on a sampling basis. NFPA encourages the Department to coordinate the student right to know project with and through the U.S. Fire Administration without providing an unfunded mandate in the process. NFPA is committed to assist where appropriate in these activities, and for all these reasons, we support the Campus Fire Safety Right to Know Act.

Thank you for your attention and the opportunity to be heard on this important issue.

MR. BERGERON: Thank you. I've got one question. As I read this provision, the only information the Secretary would receive is the statistical information. We wouldn't receive the plans for future improvement. We wouldn't receive the policies and procedures. We wouldn't receive a description of each on-campus student housing fire safety system. The statute is fairly clear that what we are to receive is the statistical data. Am I missing something?

MS. McNABB: Well, you have to craft the regulations on how to--how they receive--they are to give you that statistical data, and our advice is, to you, to get that statistical data in a form that is comprehensible.

MR. BERGERON: Today, we collect campus crime statistics. We do it on--in a Web-based tool and make it available to the public using that same kind of tool. It would seem to me that the data we're required to collect under the law is easily collectible in that kind of a system. What the law--what our system would not collect is narrative form content of--in the nature of the other things that are listed here. And I'm not sure what we would do if we got it. And the specific requirement of the statute is that we collect the statistical data.

MS. McNABB: Right. I'm just giving you advice on how to collect that data so that it's meaningful.

MR. BERGERON: Okay.

MS. McNABB: Because fire data is not crime statistic data, and it's, you know, collected differently than crime data.

MR. BERGERON: Thank you.

MS. McNABB: You're welcome.

MR. BERGERON: Is Richard Williams in the room? Good afternoon, Richard.

MR. WILLIAMS: Thank you. Good afternoon. My name is Richard Williams, and I am the Higher Education Associate with United States Public Interest Research Group, or US PIRG. The PIRGs are a nationwide network of state-based, non-partisan nonprofits that work with students on 200 different campuses and 30 states.

We work on federal higher education issues on behalf of college students and their families. We believe that American colleges and universities play a pivotal role in training the Nation's citizens, leaders, innovators, public servants, and educators. In today's economy, a college education is practically a necessity. Millions of high school students strive for its promise and the benefits it brings for both the individual and society. As such, we aim to keep college affordable and accessible. Today, I would like to thank the Department of Education for allowing me to relate our concerns regarding the implementation of the Higher Education Opportunity Act as well as other pieces of higher education legislation passed recently. I have submitted more extensive written comments, and will limit my statement to three items of concern.

Our first area of concern is the subject of the provisions related to textbooks. The most significant reform the bill contains is the provision that focuses--that forces publishers to disclose the wholesale price of the textbook to a faculty member in all sales interactions. The disclosure provision is critical to help faculty take price into account. But due to the language of the provision, which instructs against the Department to write the regulations, the Department may conclude that it has no role to play in guiding the implementation and enforcement of this provision. To the contrary, the provision recognizes the means that the Department has at its disposal to publicize the new law and to broadly disseminate the information to colleges, universities, and other relevant stakeholders.

More significantly, the successful implementation of the rules provision necessitates strong departmental enforcement. If the Department fails to put tough enforcement mechanisms into place, then the new provision will fail to accomplish its goals of lowering college costs for students when and if a publisher is found to be breaking the law. We urge the Department to devise and enact strong enforcement mechanisms for the textbook provisions.

Our second area of concern is the new self-certification process that the reauthorization bill creates. If not implemented correctly, the process occurring through college financial aid offices could allow students and their families to be exposed to a conflict of interest between colleges and lenders. The process by which students must report his or her private loans to the college could facilitate further deception about private loans, could increase student and family confusion, and it may even promote more borrowing. We urge the Department to ensure that this new process protects students and families from these potential pitfalls by tightly controlling the content of this process and supervising it.

Finally, we are concerned that no information is given to college students about the income-based repayment and public service loan forgiveness programs. The creation of the income-based repayment and public service loan forgiveness programs over the past year has been enormously encouraging to students and families looking to keep college affordable. However, information about these programs is not currently integrated into the full range of required information that colleges must ensure that students receive about the federal loan programs. As a result, borrowers can leave college unaware of the assistance that these programs can provide, and on the front end, incoming students and student aid recipients may make major and career choices based on the knowledge--on the lack of knowledge about the flexibility of repayment options that await them upon graduation.

We urge the Department to modify student aid counseling regulations to accommodate information about these two important programs. On behalf of US PIRG and its members, thank you very much for your time.

MR. BERGERON: On textbooks, just for a second--the Department of Education Organization Act has a general prohibition against federal--any federal education official getting involved in a list of things. One of the things on that list is textbooks. So that, taken with the requirement here, that we not regulate, seems to place the Department in a position where what we can do is tell institutions and tell publishers what the requirements of the law are, but I don't know to what extent we have a lot of flexibility to go beyond that. Is there something in the law that I'm missing that we should look at?

MR. WILLIAMS: Yeah, I can definitely keep in touch, but we strongly encourage the Department to use any flexibility at its disposal, and I'll definitely get back to you on specific areas.

MR. BERGERON: That'd be great. Thank you. Jean Morse. Good afternoon.

MS. MORSE: Somebody left a watch here.

CROWD: You've got a new watch--

Thank you for inviting us--

CROWD: Somebody's got a new watch.

[Simultaneous discussion.]

MR. BERGERON: You know, that's on the record now, right?

MS. MORSE: Thank you for inviting us to testify.

MR. BERGERON: Thank you.

MS. MORSE: My name is Jean Morse. I'm the President of the Middle States Commission on Higher Education. We accredit over 500 colleges and universities serving over three million students in our region, which includes Washington, D.C.

We participate in C-RAC, which is the Council of Regional Accrediting Commissions. C-RAC meets regularly to develop common policies and positions for regional accreditation. The seven regional accreditation commissions accredit all of the major public and private universities in the U.S., over 3,000 institutions serving 17 million students. On behalf of both MS CHE and C-RAC, thank you for this opportunity to testify. The representatives of C-RAC have testified at each of the preceding hearings, so, I will try not to repeat what you've already heard. While we work to meet U.S. DOE requirement regulations, we strongly support the non-governmental peer review character of accreditation as truly essential to maintaining and improving quality in higher education.

We can be and are tough when needed. For example, the number of warnings and probation actions issued by my commission has more than doubled in the last two years, and we ask for some type of follow-up in 50 percent of the actions that we take. We need to have the flexibility to take appropriate action when serious problems are found, considering the context, and not be spinning wheels for situations that we don't think merit it. We've been working very hard to improve the quality of student learning and student learning assessment. We've offered almost 30 workshops during the last three years on various aspects of assessment and planning.

I'd like to comment on a few general approaches in regulation before commenting on specific aspects of the new legislation. And the first has to do with focusing on practicalities of implementation. I think that we realized in the last neg-reg hearings that we--it would be helpful for us to

have input in--and the institutions about what the actual, on-the-ground consequences of some of these regulations might be, what's possible, what isn't possible. If we don't have regulations that aren't needed that will, of course, reduce cost. And sometimes, we and the institutions just don't have the staff, the technology, or even the data to implement complicated new regulations. Those kinds of regulations also inhibit the kind of innovation and accreditation in higher education approaches that were recommended by the Spellings Commission. We would like to be flexible and adventurous in trying new ways, but we're already overloaded and constricted by existing regulations that are extremely detailed about areas that standards must cover--things as small as academic calendars--how institutions must be reviewed, the self-study, and what types of substantive change must be reviewed. In fact, I don't know if this is possible, but it would be extremely helpful if the Department would consider adding flexibility to existing regulations to encourage innovation while you're looking at the regulations.

I'd like to give an example of this as substantive change, where the regulations are so specific that we really can't tailor their application where it's needed. Congress, in legislation, named a couple of areas, branch campuses and change of ownership, where regulation was needed. Obviously, that's--those are important areas. The regulations then added six substantive changes, including, for example, additional locations with more than 50 percent of a degree. This means that our institutions are having to submit what are actually rather lengthy applications. We're having to gather a Committee. Everybody is supposed to meet, the Commission has to meet if they're offering a program in a high school for one year, and that's a real example. So, it's not something that we can tailor, and it means that we are really doing a lot of work that we don't need to do. Related to that, a variation of that, is creating regulations that permit multiple approaches rather than one-size-fits-all. One of the strengths of accreditation and of higher education is diversity. In order to allow each agency and institution to find the approach that best fits its context, the regulations should allow flexibility. We commit ourselves to finding appropriate approaches in a timely and effective manner. That's why I mentioned earlier the extent of enforcement that we're doing.

Lastly, I would like to comment about having the right people at the table. The group that considers new regulations should include fair and representative participation of regional, national, and specialized

Accreditors engaged in proportion to the number of institutions and students affected. We are the ones who can speak best to our current standards and processes, as well as to the impact of the proposed new regulations.

Institutional representatives should be truly representative of the major institutional types of American higher education in relation to their proportional enrollment of students, and should include participation of representatives of the national associations representing the different sectors. We feel that there would be greater buy-in and perhaps more mutual sharing of information if that kind of representation were included. We would also suggest that accreditation not be lumped in with all of the very many other subjects that are included in this Act. I know you're setting up committees right now, and given the importance of accreditation during the legislative process, we think that perhaps it needs to be considered separately. With respect to specific provisions, I know you've heard these before--the first is due process. We feel that we already have very good processes in place. We always feel caught between--well, you've got to protect the students, immediately, right now, and, well, you've got to let the institutions have a long time to have all of their appeals and everything. It's a difficult balancing act. We think that the provision allowing new information to be considered seems clear as drafted, and we suggest that regulations do not go beyond what is stated clearly in the law. We support allowing each agency to implement the HEOA provision, permitting legal counsel, rather than adopting highly detailed and prescriptive rules. That's partly because we do have different appeals processes, all of them complying, but we would have to tailor it to ourselves. And by the way, Middle States already does allow submission of additional financial information.

Next one is transfer of credit. Again, we feel the law is clear. Institutions must have and publish their policies on transfer of credit and the criteria they apply in making transfer decisions. Given the directness of the language, we do not see the need for further regulation or interpretation and I noticed that earlier testimony today by a national accreditor agreed with that. Distance education has been discussed a lot today. The report that went with the new legislation says, as new identification systems are developed and become more sophisticated, less expensive, and more mainstream, the conferees anticipate that accrediting agencies and associations and institutions will consider their use in the future.

We think that the conferees clearly were calling for flexibility, and we concur with that. The regional Accreditors have called together a group of institutions to ask for suggestions, state of the art, what's the best thing we can do now, and we hope to get together in our approach. And finally, monitoring institutional growth is new language in the law requiring accrediting agencies to monitor the growth of programs that are experiencing significant enrollment growth. Any single metric as to what constitutes "significant growth" is problematic, and we urge a flexible response. Much depends on institutional size and context to determine how to implement this provision, and Accreditors are equipped to consider each change in the appropriate context. I would also note that the regulations already require us to monitor rapid growth of additional locations.

In conclusion, when it comes to rulemaking on accreditation issues, we urge the Department to keep two overarching principles in mind: consultation and flexibility. We look forward to working with the Department as the regulatory process proceeds.

MR. BERGERON: I have a question. How large do you think the negotiating committee should be so that we can get proportionality? If you think about the nine sectors of higher education and the multitude of Accreditors, you'd have to have a committee of, what, a hundred?

MS. MORSE: Well, you know, the people who were attending the hearings and kind of complaining "so, the votes you had last time" [ph.]--were some of the groups of universities that didn't feel--and colleges that didn't feel that their national associations were included. So, I think as a minimum, it would be helpful to have those national associations.

There were some Accreditors on the committee last time. There was some question as to whether the particular institutions that were chosen were really representative--as representative as they could have been. I think the size of the committee last time was fine--maybe even too big, considering that we don't have that many issues outstanding, but I think that the composition might be different.

MR. BERGERON: Thank you. Donald Spicer. We're still running a little ahead of schedule. How are you?

DR. SPICER: Good afternoon. I'm Dr. Donald Spicer, Associate Vice Chancellor and Chief Information Officer for the University System of Maryland.

The University System of Maryland consists of 13 public universities, with a combined student population in Maryland of over 135,000 students, and more than 50,000 additional students on all seven continents of the world.

I also have an appointment as a Senior Fellow of the EDUCAUSE Center for Applied Research. I wish to submit oral comments regarding the peer-to-peer file sharing and copyright infringement provisions in Section 493 of the HEOA. In general, my observations give emphasis to those on this topic made in the conference report of the House Senate Conference Committee. The conferees clearly understood the diversity of American higher education and the need to develop rules that are flexible enough to allow varied institutions to deal with the problem and to meet the expectations of the law as appropriate to their local needs.

While the university system of Maryland consists of only 13 institutions, they vary widely in their mission, demographics, geography, and character. Two are research-only institutions, with a community consisting only of graduate students and researchers. One institution has only professional schools, largely populated by graduate students. Several institutions are more traditional, with undergraduate and graduate residential and commuter students. And two of our institutions have focused on non-traditional age students with place-based and online programs. These institutions are located in the full range of locales: inner city, suburban, rural locations, as well as fully online. In the University System of Maryland, we've worked for years to address the issues of copyright infringement via illegal downloading. Our framework, which agrees with that presented by a previous commenter, includes education programs, policy and its enforcement, technology approaches, and offering legal alternatives. However, we recognize that, given the diversity of our institutions, each institution before us has needed to adopt approaches within this framework appropriate for its individual circumstances.

This is particularly true regarding the expectations for plans and for the use of technology. How one might plan if the institution has few if any residential students is quite different than planning for an institution with a large number of residential students, and this is largely a residential student problem. Regarding technology, most of our institutions using packet-check technology such as Packeteer. A few have adopted Audible Magic's CopySense. One research university feels that any such technologies potentially interfere with legitimate research applications of peer-to-peer technologies.

There are also serious concerns regarding technologies that do content inspection as potentially compromising privacy, as well as being a security point of failure. Further, our experience with technologies has been that technology filters can be easily foiled by means of encryption, and therefore, any investment one might make at the current time would be soon worthless.

Given the fact that we've used a wide range of technologies, some of our experience might be of interest. One of the previous commenters mentioned one of our institutions as having used technology to filter out peer-to-peer traffic, and that is correct, but the nuance on that is that they filtered out only two of the peer-to-peer protocols that have no known current applications, and they use the technology that, in fact, was perceived by that commenter as being ineffective, which is using packet-shaping technology. One of our institutions that's using CopySense has in the end received a disproportionate number of DMCA notices and other legal notices.

The institution that did not apply technology for reasons that I mentioned does receive DMCA notices, but it's proportionate to the size and the character of its residential population as compared with our other institutions, but it stringently applied policies and severe sanctions whenever a violation has been found, and they have a very low rate of recidivism. Which brings me to the issue of how to measure the effectiveness of institutional approaches to dealing with infringement. Historically, there have been proposals put forward in previous versions of the bill that use the number of DMCA and other legal notices as an appropriate metric. Our experience is that these notices are episodic and generally are not related to anything we see happening on the campus.

Also, these notices are externally generated by an opaque process, and do not appear to take into account any measures that we might be putting forward to deal with the problem. We strongly feel that a more valid measure of success or failure of our efforts is the amount of recidivism, i.e., the number of repeat offenders who receive notices. This is something we can measure and deal with through our internal judicial systems. Admittedly, our experience is that stringent enforcement will lead to a very small number of repeat offenders, but that's the point of the law.

Finally, we have had, long in place, a legal alternative to illegal downloading. We have currently over 21,000 subscribers system-wide, which is a substantial number of our residential students. That being said, the first company with whom we contracted has left this business, and we had to go out

and redo a contract with a new company, and I've now been told that the second company is no longer offering such institutional contracts. It should also be observed that not every institution in the university system has offered this service to its students. In particular, the two institutions focusing on non-traditional age students, whose students--none of whom live on campus, and may not even be in Maryland or the United States, for that matter--do not feel that investing in such a service serves a need. And in fact, investing in that service might be seen as being in conflict with a growing number of commercial alternatives for online music and movie services. Thus, while our experience is with a small sample of institutions-- I hope it is sufficient to indicate that a flexible rather than a prescriptive rulemaking will be necessary in applying this law.

I recognize you have a difficult task, and I wish you well in creating rules that will apply appropriately to the breadth of American higher education institutions. I might also say that these are complex and ever-changing technological and marketplace factors at play here. We support the suggestion that you include professionals from EDUCAUSE in the negotiated rulemaking.

MR. BERGERON: Thank you. One of the things that we've heard some mention about is the role that institutions play as an Internet service provider, and that has implications for some of the things that you could do as an institution. Does the University of Maryland serve in that role, and if so, do you see that is an issue?

DR. SPICER: I'm a little hard of hearing. Was it us contracting with a service provider?

MR. BERGERON: No. Some institutions are themselves an Internet service provider, and therefore there are additional issues for them in terms of what they can do--they can't restrict content.

DR. SPICER: The answer is a little complicated, but we are an institution-centric system. We do run--my office does run the inter-campus network, and we hold a number of the Internet protocol addresses for--is that me? We do hold the IP Addresses, and we occasionally get notices, but we pass them on to the institutions.

MR. BERGERON: Okay. Thank you. Our next speaker is Wendy Fox, if she's in the room. Hi, Wendy. Take your time.

MS. FOX: That's the fastest hour I've ever...

MR. MADZELAN: Time flies when you're having fun.

MS. FOX: I guess so, yeah. My name is Wendy Fox, and I am a member of the National--of my national association, the American Speech Language Hearing Association. And the reason I am here today is because I hope to give some testimony that will help to dramatize the importance to find the funding that has been extended to disciplines where national shortages exist. It will also help to recognize the importance of supporting the training programs for designated professions where the shortages exist. And in addition, I hope to also show for you the importance of speech language pathologists' roles in the school system, and what we seem to be involved in. Over the past 30-plus years, I have practiced my profession in a variety of medical and educational settings both in the United States and abroad. Within the past 20 years, I have seen firsthand that our professional responsibilities in the school setting have steadily grown to an increasingly significant degree of importance.

The responsibilities to our students are quite comprehensive and demanding as we take on increased numbers with our caseloads. These responsibilities include but are not limited to the following tasks that require evaluations, comprehensive testing, active participation at student studies and participation in eligibility teams. Additional time is spent at IEP meetings where we develop relevant programs for our students. Needless to say, the speech language pathologist schedules and delivers the students' programs. And in addition to this, time is carved out to consult with our faculties and parents while simultaneously merging the other responsibilities intrinsic to each school. And if that is not enough, there is the ever-increasing and timely documentation required for meeting of regulations at the local, state, and federal levels, as well as the ongoing credentialing for improving our skills. Speech language pathologists, as well as educators, have very demanding jobs. They're considered as part of the educational team, and thus should be given this respect in accordance to the Higher Education Opportunity Act.

However, given the climate of reduced funding and fewer training program options for students who would be attracted to the field of speech language pathology as well as educational audiology. We're finding an ongoing challenge to meet the current and future shortages of speech language therapists, as well as educational audiologists daunting. Our profession's visibility by the Department of Education for support is currently diminished. When reading the survey that the Bureau of Labor Statistics reveals, we find that in the next ten years, our Nation's public schools are

going to need to fill over 14,000 additional speech language pathologist positions and 3,000 additional educational audiologists nationwide. This is a 15 percent increase. Concurrently, over half of the speech language pathologists now employed by our Nation's schools will be retiring by 2017. This will exacerbate that shortage.

Given that most of us here at this hearing work tirelessly to provide quality services in the field of education, we acknowledge the importance of a comprehensive educational program. We know the important role we play today and will need to play in the future for all our students. Professional shortages in the area of communication disorders should be more strongly considered by this United States agency. Anecdotally, I continue to hear stories from colleagues and from students who cannot afford the tuition to complete the two-year master's program in state university programs, and in even more costly private universities whereby the cost for undergraduate and graduate school over this period may exceed in excess of \$80,000. In a profession where the mean starting salary, with a master's degree, nationwide, hovers around the \$40,000 range, this investment may not be particularly attractive in these current economic times. Speech language pathologists in the school setting should be treated as educators with regard to funding to offset their academic schooling. To give you more insight, this past year, I had worked with two specific graduate students amongst others. One woman was concerned that she could not afford to work in this field after graduate school, as her debt was so high. She was seeking work elsewhere despite her completed master's degree program. This capable professional was not feeling confident that she could pay back her loans. Her parents were Korean immigrants and worked entry-level positions at local cleaners in their hometown community. She had no cushion to get temporary support.

Another student with whom I worked was coming from a small community in North Carolina where he was a first-generation graduate from college. His parents worked at factories where they too had limited resources and could not help him out. His debt for college and graduate school was well in excess of \$70,000. He knew that the school districts in his home state did not pay the salaries that he would need to work locally, and thus sought work elsewhere. Had each of these students had the opportunity to gain access to postsecondary loan forgiveness in a program like the Title IV program, these exceptionally qualified students would have had more than likely sought positions in the school setting, where there are and will be ongoing shortages.

Had each of these students had access to a postsecondary loan forgiveness program, I sense that each of these students may have more strongly considered going back to their hometown school district communities, which both have Title I programs. One district was in a major metropolitan area with a large inner city school district, and the other in a rural setting. We all know that one of the hardest battles for each of these settings is in retaining qualified personnel in their districts. Had this option been available to these fine young people, it may have been a beginning to pave the way for young professionals to get debt relief.

At the same time, they would be gaining excellent professional experience, which may have been self-fulfilling and grounding for pursuing their professional career paths. And equally important, they would, in turn, be exposing their young students to accomplished and motivated young professionals who may have been influential role models. Speech language pathologists do student teaching and meet parallel standards to teacher training, as well as participating in a clinical fellowship year after graduation. They take the relevant practice exams as well as the required state educational exams such as the CBEST in California. With all of this being stated, it should now be more clearly understood that the interconnection of the speech language pathologist and the educational audiologist in the educational setting should be included in the teacher training opportunities of the Title II programs and the loan forgiveness program for the Title IV program. I appreciate you taking the time to allow me to address my views on this important matter. hope that my input and the input from other colleagues will encourage your recommendations to enable us to seek some relief from the existing shortage of speech language clinicians and educational audiologists in the public schools setting.

Securing the funding needed for loan forgiveness and training programs would be welcome opportunities to further the importance of higher educational outcomes of all of our students across the United States.

Thank you.

MR. BERGERON: Linda Sickman.

MS. SICKMAN: Good afternoon.

MR. BERGERON: Good afternoon.

DR. SICKMAN: Good afternoon. My name is Dr. Linda Sickman. I am a certified speech language pathologist by the American Speech Language Hearing Association, and I am licensed by the State of Maryland Board of Examiners in Speech Language Pathology. I am an Assistant Professor in speech language

pathology at Towson University. My area of expertise is in child language and literacy development disorders. I have 16 years of experience, even though I don't look like I have 16 years' experience, I do have 16 years' experience working in a variety of settings, including early intervention, the public schools, and Head Start. I am here today to speak to the issues that are important to speech language pathologists, or SLPs, and audiologists, particularly those who are new to entering the field of communication sciences and disorders. Loan forgiveness is one such issue. This tool can be used by states and school districts to assist in the recruitment and the retainment [sic.] of ASHA certified school-based SLPs and audiologists.

Today the need is great in our schools, and I'm going to echo exactly what Wendy said. The Bureau of Labor Statistics estimates that between the years 2004 and 2014, more than 14,000 additional SLPs will be needed to fill job vacancies, which is a 15 percent increase in that decade. This increase coupled with almost half of all school-based SLPs who will be eligible to retire in 2017 make this issue of utmost importance. And this last statistic was from the U.S. Department of Education's 24th Annual Report to Congress on the Implementation of IDEA. In addition, 3,000 more audiologists will be needed to fill the demand between 2002 and 2012, which is a 29 percent increase according to the Bureau. Currently, in some locations in the United States, there is only one full-time audiologist for every 10,000 children between the ages of birth and 21 years of age. The bottom line is that there will be a severe shortage; it's inevitable, and it will happen soon. And one way to combat this shortage would be through the new loan forgiveness program under HEOA.

The federal education statues and regulations on student loan forgiveness are incongruent and need to be harmonized, and this issue may seem very costly monetarily, particularly at this time in our country, but I'd like to ask you this question: Would it not be more costly for our children not to have qualified SLPs and educational audiologists in our schools? I have taken an informal poll among the students of the three courses that I have at Towson University. Two courses are graduate courses where they are in their first year, and that's 45 students. The other course is my undergraduate course with 36 students, and they're in their sophomore and junior years of school. Overwhelmingly, the undergraduates were in absolute favor of loan forgiveness, and the graduate students were approximately 50-50 split on the idea of providing a specific amount of time in service for loan forgiveness.

Can you imagine how many new and qualified SLPs can be hired into schools across the country to support IDEA with loan forgiveness? Can you imagine the number of educational audiologists who can address school-based hearing screening programs, auditory management needs, and ensure the education, communication, and psychosocial needs of children with hearing loss? So, I strongly encourage you to consider this issue. One of the reasons why I went into Head Start was because my loan program offered me the opportunity to have loan forgiveness if I worked with low-income children. So, I strongly believe in this program. Another issue which ASHA supports is the current accreditation statutory requirements. I am making a request that the Department of Education not consider accreditation as a part of the negotiated rulemaking. Judgments about student achievement should remain in the hands of institutions. Accreditors' activities are focused on standards to support the student acquisition of knowledge and skills, and on protocols for how programs can demonstrate that students are achieving the necessary outcomes. The process of accreditation is highly successful, and a well tested system of quality assurance and quality improvement.

The final issue I would like to discuss today is to request the inclusion of SLPs and audiologists among the providers eligible for funds under professional preparation programs in Title II. The induction into teacher training and recruitment efforts should be extended to SLPs and audiologists as they're an integral part of the special education team, which Wendy also highlighted. Providing SLPs and audiologists the same access to training and educational opportunities is important because they are a part of the student educational team. The services provided by these professionals help students in both general education setting and in the special education setting so that they can succeed in school. States should be given the flexibility to utilize funds to provide training opportunities to all professionals who are providing services to children in schools. By allowing SLPs and audiologists access to professional preparation funds under Title II, this is another way by which to retain and recruit these professionals who have been identified by Congress as a professional area of national need.

Again, I encourage you to consider these issues under HEOA which are important to speech language pathologists and audiologists. The loan forgiveness to recruit and retain qualified professionals in the schools, keeping the current statutory requirements related to accreditation, and include SLPs and audiologists among the providers eligible for funds under professional preparation programs in Title II.

It was an honor for me today to represent ASHA and Towson University this afternoon, and I thank you for your time.

MR. BERGERON: Thank you. Linda.

DR. SICKMAN: Yes.

MR. BERGERON: Why don't you stay there for a second. I was wondering if you could speak to how you think that states and local governments can use this loan forgiveness to recruit and retain students, especially since the way that this program is structured, it's on a first-come, first-serve basis where there's no guarantee that anyone would receive the benefit.

DR. SICKMAN: Well, there are some identified areas of need in the United States, such as West Virginia. That is a state where we are actually doing teleconferencing for speech language pathology services rather than actually having a physical body there. And in order for the states to do a first-come, first-serve basis, I think if they were allowed to know what was going on, they could--

MR. BERGERON: But this is a federal program where the federal government would be delivering the loan forgiveness on a first-come, first-serve basis.

DR. SICKMAN: To the actual students who are participating?

MR. BERGERON: Yes, yes.

DR. SICKMAN: Well, what would happen is, through ASHA, we would let them know in those high areas of need where, if they are working in specific sites, that they can apply for that loan forgiveness. And what would happen is, the students--I have a couple of students who are actually from West Virginia, and they would like to go back home and work. And if this was an opportunity, it would entice them to go back and actually provide those services in their state. Am I getting at the heart of your question, or not really?

MR. BERGERON: Not really. The way that this program is structured is that people apply for the loan forgiveness, and they get on a first-come, first-serve basis, and audiologists and speech pathologists are among other groups--early childhood educators, occupational therapists, nurses, and on and on the list goes.

DR. SICKMAN: Right.

MR. BERGERON: Right. So, they're competing, essentially, on a first-come, first-serve against all of those other students. Contrast that to our teacher loan forgiveness where there is mandatory money available and anyone who qualifies gets the benefit. I'm having a hard time understanding how this

first-come, first-serve program would serve the needs of state and local governments and recruiting people to be audiologists or speech pathologists. I'm just having a hard time understanding how that would work.

DR. SICKMAN: Well, first of all, we would need to allow the students to be aware of the fact that this was a program that existed, and to identify the areas in which there is a need, which ASHA would fulfill that role, I assume, in letting these students know where these areas of needs are. Now, as far as state and local governments, if--I'm not clear about how they would go about signing up for the funds or anything like that, but I would assume that, if the state is aware of the fact that they can have these loan forgivenesses for certain areas of need, that they could also advertise that as a fact in their job positionings. Does that make sense?

MR. BERGERON: See, this is--I guess I've heard this testimony a couple of times and I'm trying to meddle around with it in my brain a little bit. And it seems to me, that if a state or local government wanted to offer loan forgiveness in order to use it as a recruitment benefit, they could do that and be effective in using it to get people to come and work for them.

DR. SICKMAN: Right.

MR. BERGERON: I'm having a hard time understanding how a federal program would accomplish that goal, because it's first-come, first-serve, it's for a whole range of possible fields--this is just one of them.

DR. SICKMAN: Right.

MR. BERGERON: So, there's no guarantee that anyone who is an audiologist would ever get the benefit.

DR. SICKMAN: Right.

MR. BERGERON: Even if they did everything right--everything that you'd want to do and were working in a low-income school and in a community with lots of needs for these kinds of services--but I don't--but they would not necessarily end up with a benefit. It's just as likely someone who's a nurse might get that benefit instead. And I don't understand how that would quite work. So, that's why I'm asking the question. Just don't understand.

DR. SICKMAN: Okay. Well, I guess that's an issue that's beyond my control, then, as far as that goes. But I would think that, if the opportunity was there, that the recruitment would increase. And even if the student was put into a hopper and said, "You may have the opportunity to have this," it's a lot better than having them go into the medical field, where they're assured of possibly getting a car, a cell phone, a sign-on bonus, and that type of thing. I mean, that's what we're competing with. I was talking

to my students, in fact, today about this very issue, and I said, "You know, you've got all these rehab hospitals and medical places who are saying, 'I'm going to give you a car. If you sign on with us today, you're going to get a \$5,000 bonus, you're going to get a car, and you're going to get a cell phone.'" Now, granted, they're going to get--have to do other things with those. I mean, it's not just, you know, have that as a plaything and that's it. But when schools are competing with that type of a thing, I hate to tell you what these grad students are thinking. I mean, I had one student who was like, "Woo-hoo. I'll go there. I don't care."

And I'm like, "Do you realize you would be on 24-hour notice?" And it didn't matter to them. So, at least giving some sort of an incentive, whether they actually will come through with that--you know, I see where your question is, but we have to start offering some sort of an incentive, or else we're not going to get that pull into the schools of the really bright students who really want to help a lot of people. We've got to have some sort of an incentive, and we've got to start someplace.

MR. MADZELAN: Yeah. I think the issue that we're grappling with here is this notion of an empty promise, because, as David said, we may be in a circumstance where an individual does everything they're supposed to do, and, you know, they may be the five thousand and first person in line--

DR. SICKMAN: Right.

MR. MADZELAN: --and the first five thousand get the benefit. I mean, that's what--

DR. SICKMAN: Right.

MR. MADZELAN: And that's the kind of thing that we're struggling with here.

DR. SICKMAN: Sure. Well, we can do as much as we can at the university level, and we can do as much as we can at the professional level--organization as well to try to ensure the notification of when the deadline is and how it would work. I do know that would be in place.

MR. MADZELAN: Okay.

MR. BERGERON: Thank you. Appreciate it.

DR. SICKMAN: You're welcome.

MR. BERGERON: Pam Fowler.

MS. FOWLER: Good afternoon.

MR. BERGERON: Good afternoon, Pam. It's nice seeing you.

MS. FOWLER: I just made it. I have to leave. I'm Pamela Fowler, Executive Director of Financial Aid at the University of Michigan. I am here today representing the Financial Directors of the University of the Big Ten.

Many people know that the Big Ten is a major athletic conference founded in 1896 comprised of large research universities in the Midwest. However, the Big Ten I represent today is also a group that is part of the Committee on Institutional Cooperation, or the CIC, a consortium of 12 research universities. With campuses in eight states, CIC universities enroll more than 300,000 undergraduates and 76,000 graduate students, and employ some 33,000 full-time faculty, and 139,000 full-time staff. Our mission is to advance academic excellence by sharing resources and promoting and coordinating collaborative activities across the member universities.

Our comments are restricted to three areas of the Higher Education Opportunity Act that we deem of high importance and that eleven people could agree on; not always easy. Section 483, improvements to paper and electronic forms and processes, early estimates. The Directors of the Big Ten have long been interested in providing notifications of aid eligibility to students, especially low-income students, much earlier than the current system allows.

In April 2007, we offered our services to Under Secretary Sara Martinez Tucker for a pilot program using prior prior-year data to determine aid awards so prospective students could be notified of their eligibility for aid at about the time they learn of their admission to the university. We believe moving the start of the aid application process back to the fall of the year will give us more time to work with low-income and other high-risk populations to make their transition to college smoother. A pilot project was not specified in Section 483; however, our interest in earlier award notifications to students remains strong. We would welcome the opportunity to work with the Department in any capacity to ensure early notification to needy students and thereby--to thereby assure them that college is possible.

Second is Section 494, regulatory relief and improvement. Eight universities of the Big Ten have participated in the experimental sites initiative since its inception. We participated in this initiative because we believe the regulations from which we sought relief did not improve the administration of the programs, enhance the students' educational experience, or produce measurable improvement in student outcomes. We believe our experiences have substantiated our initial assessment; therefore, we support the continuation of these experiments until such time they are proved to be ineffective or become part of new legislation. As a group, the universities

of the Big Ten participate in nine out of thirteen experiments. Although we do not participate in all experiments, we strongly support the continuation of all that have proven to be successful. The reason for this initiative is just as relevant today as it was when it was authorized. The initiative addresses concerns that federal requirements place unnecessary burdens on postsecondary students and institutions, and may foster unintended consequences counter to the goals of the Higher Education Act. In the last two academic years, four new aid programs have been introduced, creating confusion for students, parents, and aid administrators, and increasing the administrative burden of aid officers throughout the country. If there were ever a time to eliminate unnecessary burdens, it is now. We are interested in the development of measures and standards by which the existing experiments will be reviewed and evaluated. We suggest the Secretary establish control groups, develop and publish reasonable analytical measures so participating institutions can assess their progress prior to the official reporting timeline.

For example, entrance and exit counseling and loan proration are two experiments we believe can be evaluated in this manner. Comparing the cohort default rates of experiment schools to that of a peer control group would provide meaningful data to the Secretary. If the data show that the experimental site universities had default rates lower than or equal to the rates of the control group, one could conclude that the experiment was successful. For the fiscal years 2003 to 2005, the cohort default rate of the Big Ten Universities was half that of the national average for four-year public universities. Therefore, we suggest that we improve in our experiments with entrance and exit counseling and loan proration to be a success. The third one is the private education loan disclosures and elimination, Section 1021. We strongly support any regulation that requires intervention by the aid office before a private educational loan can be obtained by a student.

In our experiences, far too many students have borrowed at exorbitant interest rates and/or fees when lower cost options were available to them. Any means of notifying the aid office in time to intervene and advise students of their options is in the best interest of the student. However, we do not want the self-certification process to become unwieldy for both families and aid offices. The process should be standardized regardless of lender, and should be Web-based for maximum processing efficiency. Most of the information required in Section 155 can be found on an award letter if the student applied for aid and/or the institution's Web site. If the student

did not file for aid, the EFC is unknown an estimated aid beyond an unsubsidized loan--beside an unsubsidized loan cannot be readily determined.

One suggestion is a certification statement that states the student is aware of his or her eligibility for an unsubsidized loan but chooses to forego this option for the private loan. The development of this statement is very important from our perspective, and we look forward to providing suggestions and comments on the self-certification form during the negotiated rulemaking process.

On behalf of my fellow Big Ten Universities, I thank you for the opportunity to present our primary concerns and comments to you today.

MR. BERGERON: Pam--and I call your attention to Section 894 of the Higher Education Act as amended by the HEOA, which authorizes that early Federal Pell Grant commitment demonstration burden.

MS. FOWLER: Oh, okay.

MR. BERGERON: It just didn't--it just isn't in Title IV. It migrated back to Title I.

MS. FOWLER: Well, good.

MR. BERGERON: The other--just so that you know that it's there, and we'll--I'm sure we'll have opportunities to talk about it. The thing I was going to ask is, when we look at the statute governing X-sites, it seems clear to us that the measure of success of an experiment that's conducted under that is that the experiment results in changes to the law and regulations. And Congress has had opportunities over the last several years to change the law to adopt the X-sites and--

MS. FOWLER: And some of them have been adopted.

MR. BERGERON: --and some have been and some haven't. Similarly, we've had a few rounds of regulatory activity, and in the--they didn't get changed, and that--those--that context, either. So, that's kind of our view, and I'm not really necessarily looking for a response, but that's kind of our view of what constitutes success in X-sites.

MS. FOWLER: Well, you know, in my view, success is not always the same in all institutions.

MR. BERGERON: Thank you.

MS. FOWLER: There are differences in institutions, and therefore differences in the success of those institutions.

MR. BERGERON: Thank you very much. I appreciate it.

We're going to take a break and reconvene at 3:00--okay, 2:40. We'll reconvene at 2:40.

[Brief recess.]

MR. BERGERON: Good afternoon, again. We're going to go ahead and reconvene. Our first person speaking this afternoon is Gregory Cendana, and if you could say where you're from and state your name for the record, that would be great. Thank you.

MR. CENDANA: So, good afternoon. My name is Gregory Cendana. I currently serve as the Vice President for the United States Students Association. USSA is the country's oldest and largest national student association, and represents more than 4.6 million students. We have been the official voice of students to the Department of Education, the Capitol Hill, and White House since 1947. So, thank you for the opportunity to speak with you on behalf of the current and future students of this country.

The focus of today's hearings, implementation of the Higher Education Opportunity Act, is vital to continued access to higher education in America. The HEOA has the potential to increase student protection, and work towards the all-important goal of making college more accessible and affordable. However, there are several areas that will require attention during the implementation process to ensure the program's success. My intention this afternoon is to highlight two of these areas and share some personal stories that may help--that may help members of the negotiated rulemaking committees keep the student perspective in mind as you all move forward. So, I'll start off with the Pell Grant. In addition to the incremental increases to the maximum Pell Grant award amount over the next six award years, the HEA includes language that would allow Pell Grant eligible students to receive two grants during a single award year.

This addition is seen by some as giving students a chance to attend college year-round and speed up their progress towards graduation. However, the addition of two grants in a single year does not clearly address the issue of year-round school attendance. Greater explanation is required to this item in Section 401, Title IV. The idea of a Pell Grant covering the cost of fall and spring semesters, plus an additional grant during the summer semester is ideal for many students on a fast track to earning a degree. However, if this is the intention, it is not clear in the current law. It is necessary that the rulemaking process discuss the logistics and practicum of this measure to ensure the express goal of the year-round Pell Grant is reached.

As a past Pell Grant recipient, I cannot begin tell you how beneficial it would have been to receive two Pell Grant awards in one year. As a student that had to work 30 hours a week during the school year and more than 50 hours a week during the summer, and still graduating with more than \$30,000 in debt, the additional Pell Grant would have helped with my work and loan burden. Additionally, more institutions are beginning to implement policies that require minimum unit progress each semester, and are pushing students to graduate at faster rates, even though they may not be able to handle certain workloads at one time.

So, these policies are making summer sessions and summer school a must in order to meet the minimum standards, and thus make the year-long Pell Grants a necessity for students who are already working numerous hours and taking out thousands of dollars in loans. Please ensure that the year-long Pell Grant is implemented through the rulemaking process. Last year, more than 5.3 million students received a Pell Grant and are looking forward to the additional support from the program. The second thing I'd like to talk about is loan forgiveness programs. With the widespread discussion of Americans doing more in areas of public service, the addition of student loan forgiveness programs in the HEOA is timely and beneficial to students in their communities.

The loan forgiveness programs have the potential to have far-reaching benefits, and it is important that the implementation of such programs includes clear methods to educate students on the details for service-based loan forgiveness programs. The rulemaking committee must outline the criteria for a student to qualify for loan forgiveness as a public servant. We would like to see a list of job categories or an application process for a student to have their job of choice included in the loan forgiveness program.

It is also important that institutions of higher education are encouraged to share the information about loan forgiveness programs with students at all levels of the aid process. These are just some suggestions to be discussed during the rulemaking process. A clear understanding of the loan forgiveness eligibility may give students the chance to major in and work in areas of public service without fear of paying back unmanageable loan debt. The average student graduates with \$19,000 in debt, and with such high amounts of debt, many choose to forego bachelor's degrees or working in public sector to ensure that they're making enough to pay back their loans.

Students are excited about the potential of the loan forgiveness programs and what it may mean for their futures as public servants and

community members. We ask that, during the rulemaking process, clear and detailed methods be discussed. These are just some of the issues concerning my constituents. Members of the United States Student Association have been invested in the Higher Education Act for decades. We will continue to push for measures that protect students and reduce the cost of receiving an education.

Thank you for this opportunity, and USSA looks forward to working with the Department of Education as this paramount legislation moves into its final stages.

MR. BERGERON: Thank you, Gregory. Angela Peoples. Angela knew she was next. How are you, Angela?

MS. PEOPLES: I'm doing very well. How are you?

MR. BERGERON: Doing great, thanks.

MS. PEOPLES: Thank you. Good afternoon. Good afternoon, and thank you for allowing the time for public comments on the Higher Education Opportunity Act. My name is Angela Peoples, and I am Legislative Director of the United States Student Association. This fundamental legislation includes some great additions in the regulation of higher education. On behalf of the members of the U.S. Student Association, I want to say we are very pleased to see the Higher Education Act reauthorized after ten years. I would like to take a few minutes to submit some areas of concern that should be examined during the negotiated rulemaking process.

USSA has been advocating with and on behalf of students since 1947. Our membership is diverse and far-reaching. We believe that students need assistance in all aspects of higher education. The concept of a certification process for students taking out private loans seems to be a positive step towards encouraging students to exhaust all possibilities before turning to private lenders who offer fewer protections than federally-certified lenders. However, the certification--the self-certification outlined in the reauthorization of the HEA does more to hinder student protections in this process. Attempts should be made to give financial aid officers more flexibility in the certification process. A certification process that requires a school's financial aid officer to verify that a student has utilized all federal and state aid available before turning to a private lender will cut down on the number of students accessing private loans unnecessarily.

However, the process for students reporting private loans to colleges could also facilitate further deception about private loans. It is important

that this process be reviewed during the negotiated rulemaking process to ensure that students are protected and that this new process is as streamlined as possible. I would also like to echo the sentiments of my colleague, Mr. Cendana, in saying that the addition of the loan forgiveness for public service in areas of need is very exciting for our members. However, we urge the Department of Education to consider the process by which students are informed of these new programs, as well as the types of careers that qualify for loan forgiveness under the program. Finally, I would ask the Department of Education to consider measures designed to simplify the Free Application for Federal Student Aid. The creation of the EZ FAFSA form targeting families that qualify for an auto-zero family contribution is a step towards simplifying the aid process, which will lead to increased access to college for many first-generation and low-income students. However, efforts should be made to further simplify the aid process by allowing all students to file a simpler, shorter FAFSA form, not just auto-zero qualifiers. The HEA reauthorization also gives the Secretary of the Department of Education the opportunity to work with the IRS to share tax information for students and families that would minimize the number of questions in the FAFSA to about half the current number. These two provisions in the student aid process must be reviewed by the rulemaking committee to ensure that the goal of simplifying the federal aid process is in fact reached.

The U.S. Student Association is committed to working on these and other issues that have been proven to affect both college access and affordability.

Thank you for the opportunity to share the concerns and perspective of students on the Higher Education Opportunity Act.

MR. MADZELAN: If you will, I have a question or two.

MS. PEOPLES: Sure.

MR. MADZELAN: Going back for a moment to the notion of the so-called private label loans and the self-certification by a borrower--and I think you suggested--and we heard others suggest that perhaps the college, university, or the financial aid office ought to be somewhat more involved in that. And I think I heard you say something to the effect that--you know, just to make sure that the student has availed her or himself of all of the federal opportunities. I guess my question is, what--in your mind, what additional heft might the aid administrator bring in terms of having--ensuring that the student has exhausted all the federal opportunities, given that you can't make somebody take a Pell Grant--of course, why wouldn't you? You can't make

somebody borrow under the Stafford Program, that kind of thing. We all know that the federal loan programs are the best deal out there. But again, you know, this notion is you can't force someone to borrow from the person you want them to borrow from. So, that's one of my questions--is, what's the added value there of the third party involvement--the financial aid administrator involvement? Do you think--

MS. PEOPLES: Sure. Yeah, I think that, in cases where a student, however rare I think they are--that students just absolutely want to take out private loans, it will be difficult for a financial aid officer to keep them from doing that. However, it's been my experience that a lot of students are just unaware of all the opportunities they have under federal loan programs.

Students are not aware of, for example, a PLUS Loan that their parents may be eligible to take out for them, and so they just feel like, automatically, they have to go to a private loan, when, in all actuality, they have other options, and it's--and if the financial aid officer has more ability to--or more flexibility for a certification process, they'll be able to say, "Oh, well, this student hasn't--they have applied for the following loans, but they haven't gotten x, y, and z loans. So, these are still options for you before you head to the private loan."

MR. MADZELAN: Thank you. Another quick one on the Free Application for Federal Student Aid, that is--it's technically not a subject for negotiation, because basically it reflects the federal need analysis formula which, by law, we cannot regulate.

There are, obviously, opportunities to comment. We still have the Paperwork Reduction Act process where you can comment on the FAFSA. But I think where we are--and this is born out certainly by the announcement that Secretary Spellings made a week ago up in Cambridge about, you know, some of the ideas that the Department has put out there about a greatly simplified FAFSA by greatly simplifying the eligibility formula. So, you know, given the formula that we currently have in statute, which we cannot regulate--or at least regulate in a straightforward manner, you know, there may not be a whole lot more that we can do with the FAFSA. I think our student aid office has done a pretty good job over the past couple of years, certainly on the electronic side, because, you know, we have the targeted questioning and the skip patterns and all that kind of stuff. You know, you're only presented with the questions that you need an answer. But that's just something that we've been struggling with.

And of course the reauthorization legislation does direct the federal government look at alternative measures of, my words, family ability to pay or unexpected family contribution calculation. But again, I'm just suggesting that we may have gotten as far as we can go with FAFSA simplification, given the other constraints around eligibility determinations.

MS. PEOPLES: Yes. And while that may be the case, I think it's important to further encourage the federal government to work to exhaust all possibilities, and especially working to include tax information that families have already filed with the government in the federal application process.

MR. MADZELAN: Thank you.

MS. PEOPLES: Thank you.

MR. BERGERON: Stewart McLaunin. I would note that we have just two more individuals signed up to speak this afternoon. If anyone does want to speak and hasn't checked in with Mary or Patty or Nikki, I'd encourage you to do that. Thank you. Thank you, Stewart.

MR. McLAURIN: Thank you. Good afternoon. I'm Stewart McLaurin, Executive Vice President of Education Affairs for the Motion Picture Association of America.

I appreciate the opportunity to provide comments as the Department begins the negotiated rulemaking process for the Higher Education Opportunity Act. We look forward to continuing discussions, and respectfully ask that the entertainment community, along with others seeking to protect intellectual property, be adequately represented on rulemaking committees regarding the campus-based digital piracy issue. The MPAA stands ready to work with the higher education community on a common sense approach that will actually help institutions develop anti-piracy plans and that will reduce theft and improve network performance and security in a cost effective manner.

With the passage of the Higher Education Opportunity Act, institutions of higher education will now be asked to focus more intently and responsibly on how their networks are being used. For the first time, institutions of higher education must develop plans to "effectively combat the unauthorized distribution of copyrighted material included through the use of a variety of technology-based deterrents." There are examples of this being done successfully on campuses around the United States currently. Effective and proven technology-based deterrents are currently available to universities through a number of private vendors. These technologies can be deployed

according to the individual needs and sensitivities of the campus community. Here are just two examples:

The University of Utah, which utilizes Audible Magic's CopySense Network Appliance has saved over \$1 million in Internet bandwidth charges, and an estimated \$70,000 per year in personnel costs. That would have otherwise been required to investigate and respond to copyright infringements. The University of Florida has also saved over \$1 million by implementing Red Lamda's Integrity program, and has seen dramatic improvements on their system because they have essentially eliminated illegal file sharing on their network. Those two examples are from the congressional testimony of those two institutions. The fact is, an effective technology-based plan to combat unauthorized distribution of copyrighted material can ease the burden on university technology infrastructures. It saves money for universities and for taxpayers who help subsidize considerable university research, reducing digital piracy on campus networks, save staff time and resources of personnel designated to deal with responding to complaints of illegal activity. Preventing piracy maintains the integrity and security of campus networks. Finally and perhaps most importantly, a proactive technology-based plan to fight piracy on campus networks sends a clear message to students that illegal peer-to-peer file sharing is wrong. It's illegal, and illegal activity must not be tolerated.

Technology-based responses ensure that university computer networks, the bulk of which are funded by taxpayer dollars, are available to help fulfill their core educational purpose, and not to help facilitate illicit activity. The MPAA stands ready to work closely with leaders in the higher education community to implement the digital piracy prevention components of the Higher Education Opportunity Act. As part of our proactive effort to work together, this month, in October, we will provide colleges and universities a campus briefing book that will include information on the new law, and how to meet the new requirements. The materials will also include information on peer-to-peer file sharing, examples of technologies that can be used to detect infringing activity, and a list of Web sites that provide legal content such as movies and television shows. And on October 21st, in partnership with the University of California system, the California State University system, and the University of Southern California, MPAA will host a conference with leaders of higher education, the entertainment industry, and technology companies to discuss entertainment issues and challenges currently faced by campus communities.

Thank you again for the opportunity to participate in this process. The MPAA looks forward to working with the Department of Education, the Congress, and postsecondary institutions on this vital economic issue. We are confident that this can be accomplished in a way that meets the needs of the higher education community and their sensitivities, while also protecting our hard-earned intellectual property and the workers in this industry. As Chancellor William Kerwin of the University System of Maryland acknowledged before the House Committee on Education in the Workforce in 2006, and I quote: "There are many compelling reasons why higher education must address this issue. First and foremost, if members of our community, the education community, are using our resources to do something illegal, we have an obligation, a fundamental obligation, to respond and address that matter."

"Also, intellectual property is one of the coins of the realm of higher education. We want to raise a new generation of people who have a great respect for and value the sanctity of intellectual property. So, it is an obligation on our part to ensure that our students are educated properly in this way."

Thank you very much for the opportunity to be with you today. Thank you.

MR. BERGERON: Thank you. George Nunez. How are you, George?

MR. NUNEZ: First of all, thank you for the opportunity to address this Panel and provide input into the process. I am George Nunez. I am the Supervisor for Operations and Partnerships with the Office of Public Safety and Emergency Management at the George Washington University here in D.C., just down the street. And I'm also a member of the International Association of Emergency Managers, specifically with the Universities and Colleges Committee. But today, I come before you and offer comments as a private citizen, which is very different from everyone else who has come before you, and also a practitioner of emergency management in higher education.

I come before you with comments on Section 488 of Title IV, Part G, specifically to request that the Department establish a separate committee to address this Section due to the specific and complex matters in this Section.

As you may know, this Section covers a wide area of--a wide breadth of topics, especially when it comes to campus safety and security, and certainly the area also covers a wide breadth of incidents that could occur on any of our college campuses, including natural disasters, public health incidents, as we had here in D.C. recently, and also law enforcement incidents. However, we need to be able to take special consideration into the uniqueness of each

of our campuses, whether it's our location, our size, or whatever else may be unique to our campuses. I, along with my other emergency manager practitioners and our safety personnel, encourage the appropriate personnel be brought to the table, certainly, the Association of Emergency Mangers is a perfect resource to offer its expertise. This is a similar practice, and service that is offered to other legislative bodies, executive agencies both at the national, state, local and also international level. So, again, I just encourage the establishment of this committee to look at these specific comments and certainly thank you for this opportunity. Written comments will be provided, and I know some of my colleagues that are out in the country have also provided testimony and written comment as well.

MR. BERGERON: Just to clarify, when you speak for the aid, you're speaking of E, criminal offence reported and--as well as the disclosure for fire safety?

MR. NUNEZ: Right. And that's also--there are several sections, including for campus safety reporting, fire safety. I believe the bulk of it is in Section 488.

MR. BERGERON: Right. Thank you. Just wanted to make sure.

MR. NUNEZ: Thank you.

MR. BERGERON: Thank you. Is Mollie Benz here? Hi, Mollie.

MS. BENZ: Hi.

[Off microphone.]

MR. BERGERON: Well, we're not sure you're last, yet. We won't know you're last for sure until about 4:00.

MS. BENZ: Okay. Well, good afternoon. am Mollie Benz, the Assistant Vice President for Federal Relations at the Association of American Universities, representing 60 of the leading public and private research universities in the United States. I very much appreciate the opportunity to provide comments on the proposed negotiated rulemaking process to implement the Higher Education Opportunity Act. And these comments are really intended to supplement the comments that have been provided by a lot of our member institutions at numerous negotiated rulemaking hearings outside of Washington, D.C. Written testimony has also been submitted.

Overall, AAU believes that institutions are taking their new obligations under this Act seriously, and are making a good faith effort to comply as they would with any federal law. We recognize that the Secretary of Education is obligated to conduct the negotiation process in a timely manner, and thereby plan to identify the appropriate campus experts who will be able

to provide the advice and recommendations concerning the necessary regulations regarding Title IV of the Act. So, we very much look forward to working with the Department to clarify existing ambiguities in the Act, and to streamline new regulations in a manner that minimizes the cost burden and maintains maximum flexibility for institutions of higher education. Now, with respect to new federal requirements under Title IV, AAU recognizes and appreciates that the federal government must set appropriate conditions and requirements to ensure that federal student financial aid funds are used effectively to help finance a very high quality higher education system.

However, we remain concerned that many of the new reporting and regulatory requirements are duplicative, and may create costly new administrative burdens on colleges and universities. We want to work, again, with the Department to try to streamline these provisions, recognizing that institutions already comply with a multitude of reporting requirements. In light of the long list of new requirements, AAU plans to actively work with Congress to secure funding for a particular provision in the Act authorizing a study of all federal regulations with which colleges and universities must comply. We believe that the results of this study will be very valuable in informing policy decisions in the future.

AAU research institutions are particularly interested in the implementation of the following new regulations: copyright infringement, peer-to-peer file sharing, which we've heard many testify on today, alumni reporting and graduation rate reporting, campus safety reporting, and private education loan disclosures. So, as a function of time restraints, I will provide very brief comments on the P2P provisions as well as campus safety, and perhaps mention the cost provisions, even though it's not included in negotiated rulemaking. With respect to P2P file sharing, AAU understands and appreciates the need to reduce illegal uploading and downloading of movies and music. In fact, the higher education community has long been committed to working with others to find workable solutions to the problem. The law now requires institutions to certify to the Secretary of Education that they have developed plans to effectively combat the unauthorized distribution of copyrighted material and offer alternatives to illegal file sharing.

In fact, many institutions already provide regular notices to students explaining that the illegal distribution of copyrighted materials may subject them to criminal and civil penalties. As the Department works to interpret this requirement, it is very important in our mind to keep in mind that the software and technologies for monitoring and discouraging unauthorized

distribution and the new approaches for legitimate distribution of digital entertainment are constantly emerging. Technologies that may, for example, be effective in one setting may not be effective in another setting. For that reason, rules on policing P2P file sharing should maintain maximum flexibility. With respect to campus safety reporting, AAU is particularly interested in the new reporting requirements related to the disclosure of fire safety standards and measures, criminal offenses, emergency notifications, missing person procedures, memoranda of understanding with local law enforcement agencies, and emergency response and evacuation procedures among a few others. With so many requirements, it is critical that certain terms are clarified during the negotiated rulemaking process. AAU's written testimony outlines a list of such questions that campuses have identified with respect to the new reporting requirements. Again, we look forward to working with the Department to develop rules to implement these requirements that are both practical and provide real protection for students, faculty, and staff.

With respect, very briefly, to the college cost requirements, as noted in previous communications to Congress and the Department, AAU supports institutional as well as targeted federal efforts to provide improved user-friendly information to students, families, and taxpayers about college tuition and financial aid.

As a practical matter, AAU is very interested in the additional guidance from the department that will be necessary to determine the full extent of these requirements. In particular, AAU is interested in the cost provisions related to the net price calculator, the multiyear tuition calculator, and the Federal College Affordability List. It is very worth noting that several AAU members have already developed a net price calculator as a means to provide the public with information on financial aid packages and net costs using institutional state and federal resources. AAU hopes the Department will draw on the expertise of these institutions. Overall, we look forward to identifying the appropriate campus expertise to help the Department sort through the multitude of issues related to the college cost provisions.

In conclusion, thank you again for this opportunity. AAU intends to work with its higher education colleagues in the coming months to identify and nominate campus experts for the various negotiated rulemaking panels.

Overall, we look forward to working with the Department, Congress, and the broad higher education community to help ensure practical and cost effective implementation of the new law.

Thank you.

MR. BERGERON: Thank you, Mollie. I don't have any questions. Thank you. Right now, we don't have anyone signed up to speak--I don't think so. We'll just hang out for a minute while Danny goes to check to see if anyone has signed up.

[Brief recess.]

MR. BERGERON: We have no more witnesses who wish to testify, so we're going to go ahead and adjourn the hearing. We will next have a hearing in Cleveland, Ohio, on the 15th. Thank you. Thanks, everybody who participated today.

[Whereupon, at 4:00 p.m., the hearing was adjourned.]