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HEARING FOR

U.S. DEPARTMENT OF EDUCATION

NOVEMBER 29, 2007
MR. BERGERON: -- having to receive public comment on the negotiated rulemaking for the 2008 year. I'm David Bergeron. I direct policy for the Office of Postsecondary Education. With me is Jeff Taylor from our office of general counsel department; and at some point this morning Diane Jones, the assistant secretary for postsecondary education, will join us. At that point we'll let her say a few opening remarks.

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

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

We're going to be -- I told you Diane would be here. I actually had got -- no, actually, she has -- somebody came along and took my cup and cleared it from my table before I got back, so --
I'll go ahead and let Diane say a few words and then I'll just finish the introduction and we'll get right to you all and your comments.

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

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

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

So not only are these comments going to be valuable to this rulemaking process, but we also learn things from you that we can do in other areas and in other aspects of
our work. And, you know, we need to hear from you because
you're the ones who are on the ground.

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

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

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

And this is all about your opportunity to provide
comments. I have a list of people who are already signed
up to provide their thoughts; and if you didn't have a
chance to sign up before you came in, or after you got in
the room realized you wanted to, please go out and see
Nicki and she'll sign you up for some time. We will go
and be here as long as we need to, within what the hotel will allow us in terms of this room today. And so, you know, we encourage everybody to take advantage of this opportunity.

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

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

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

I'm Paula Cordero, Dean of the School of Leadership and Education Sciences at the University of San Diego. We prepare approximately 150 teachers per year, many of whom
fill the critical shortage areas addressed in the TEACH grant program. We're a private urban university and we value our partnerships with the 42 school districts in this county as well as eight community colleges with which we have articulation agreements. We also partner with foundations and a variety of non-profit organizations, such as museums, in preparing highly qualified teachers and educational leaders.

Just so that you know, San Diego County has approximately half a million children in 655 public schools. And in addition to my work at the University of San Diego, I was appointed two years ago by Governor Schwarzenegger as a member of the California Commission on Teacher Credentialing, and the vision of the Commission is to ensure high quality educators for California's diverse students, schools, and communities.

California faces a persistent shortage of well-prepared teachers, especially in schools with high concentrations of non-native English speaking students.

We at the University believe the TEACH grant program will serve as a wonderful incentive for students to enter the teaching profession. Many potential California teachers choose not to enter the profession because teacher salaries are not sufficient to offset California's cost of living. These grants then bring
people into the teaching profession by making teaching a viable career option, one that they can afford. And this viability is crucial for recruiting teachers for these areas.

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

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

Another question: How many TEACH grants are available? It appears that as much funding as is required to meet the demand for applicants will be available. It would be helpful to have the regulations clarified for students and for institutions that the program will accommodate as many teacher candidates as apply, and this will enable us to engage in extensive outreach campaigns
without concern for over-promising or over-promoting this scholarship opportunity.

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

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

Fourth question: What is the reporting process for TEACH grantees during their teaching service commitment? Now, the universities are equipped to track our students during the time of enrollment and we do our absolute best to follow up on our students, but tracking transient students during an eight year period after graduation would create an incredible -- it would put an incredible onus on us that I'm not sure that we could carry that
out, and there's no funding for us to do that. And this is especially hard for a school like the University of San Diego because in spite of the wonderful weather in Southern California many of our students do go back to the states that they come from, so -- the parents want them to. So we really need to know about that commitment.

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

And again, you know, this is particularly important in an area like San Diego since we have many military families -- we have all of these young men and women returning from Iraq and Afghanistan and we want to get them into the teaching profession. Many of them want to become teachers in these shortage areas.
We have two suggestions for you. There's no mention made about how the Department is going to evaluate the TEACH grant program. In order to better understand its impact in addressing the serious and chronic teacher shortage not only in California but in the nation, it would be most helpful for faculty and administrators and schools of ed, as well as organizations such as the California Commission on Teacher Credentialing, if there was an annual report that was made available. And of course that kind of report would include all the good things that you normally include in your other reports, so I'm sure that's on your burner.

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

So the faculty of the School of Leadership and Education Sciences at the University of San Diego are committed to playing a vital role in spreading the word and sharing the fabulous news about TEACH grants with our -- not only our teacher education candidates, but also as
we work in the local schools. And we thank you very much for this opportunity.

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

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

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

MS. JONES: Sounds like maybe you were listening when we had our conversations over the past couple of months. Yeah, many of these questions have come up before
in these fora as well as internally. So you asked perfect questions that we've asked as well, and others, so thanks.

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


Great Lakes is a private, non-profit corporation that administers Federal Family Education Loan Program. Our mission is to make the dream of education a reality. We work with students, borrowers, schools, lenders, and community organizations to change lives for the better through higher education. As a leading guarantor of student loans for over 40 years, Great Lakes is a private, non-profit guarantee agency serving more than two million student loan borrowers, 2,700 schools, and 1,400 lenders across the nation. To begin with, Great Lakes would like to express our support of the testimony given by Shelly Saunders [ph] representing the National Association of Student Loan Administrators, otherwise known as NASLA. In particular, we support the call for the National Association of Student Loan Administrators to be represented in the
negotiated rulemaking activity.

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

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

Appointment of umbrella organizations or trade associations as direct negotiators would appear appropriate only when the umbrella organization represents constituencies too numerous to be separately seated, or who have no separate voice. Therefore, we encourage the Department to consider, once again, extending an invitation to the nation's guarantors.
Regarding the issues for negotiated rulemaking, we know that the Department has heard a variety of very important issues through these scheduled hearings which underscore the necessity of engaging in the negotiated rulemaking process. Great Lakes would also like to echo the testimony brought forth by our guarantor members of NASLA, one of which will be following me. Our NASLA colleagues will be covering a number of the items that also appear in our written testimony document, and so for the interest of brevity I’m only going to cover three of the mini-list that I will be submitting to you in writing.

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

As a result of Great Lakes' recent efforts to promote teacher loan forgiveness program we have received a number of applicants that have indicated that they are employed through consortiums or cooperative arrangements -- or co-ops -- that allow teachers, particularly special
education teachers, to teach at a number of schools. These types of arrangements help schools that do not have enough students to warrant employing a full time teacher in a certain curriculum.

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

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

The second issue we are hoping that the Department will add to the negotiated rulemaking agenda is with respect to establishing repayment terms after rehabilitation. Defaulted borrowers who request rehabilitation will provide to us as a guarantor
documentation establishing that their reasonable and affordable payment does not meet the $50 dollar minimum, and this creates a problematic situation for us under the FFEL. Now such a payment will assist the borrower in regaining Title IV eligibility. This monthly payment amount is not sustainable after the loan is rehabilitated and sold to a lender as there is no flexibility to the lender to establish a monthly payment amount below the $50 dollar minimum or any amount of accrued interest, whichever is greater; we know this.

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

We contend that in many cases the borrower's post rehabilitation repayment plan choice is information that could be secured prior to the completion of the borrower's rehabilitation period. This information could then be relayed to the purchasing lender at the time when
the loan is sold, allowing the lender to honor the borrower's choice immediately, as well as ensuring the repayment terms are appropriately aligned as possible with the monthly payment amounts required during the rehabilitation period.

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

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

Toward that end, we advocate that the Department add a regulatory language to define "demobilization" and define that as it is based upon the date that a borrower arrives back home from a tour of duty as stated in the
borrower's military orders as we -- this is documentation we already have. This definition would allow a borrower to utilize this benefit without requiring additional documentation. In addition, we encourage the Department to allow the 13-month post active duty deferment to be consecutive and not concurrent with the 180-day transition period as provided for in the statute.

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

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

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

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

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

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

The lenders have the expertise and can provide the additional human resources to increase the counseling to students, and they have done so historically. The
Department, Congress, and our schools are also guest on ensuring that these students have the best loan package available to them. Student loan default rates should continue to go down and prohibiting lenders from providing this in-person loan counseling prevents students from having direct access to these experts who can provide them with the best information about interest rate repayment options and debt management.

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

In these cases if the institution discloses the requirements and criteria used for selecting lenders to be placed on this preferred list, and only one or two lenders meet that criteria, such as providing the permitted borrower benefit, we believe these institutions should be provided a waiver for the number of lenders
required on the list. They can apply to the secretary for
other waivers. If they go through this process, they
provide that information to the secretary, waivers could
be granted on a case-by-case basis to institutions.

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

Also, if a recipient should change his or her major
from teaching to another field and the grant would
convert to loan, this could put that student over his or
her loan limit. It's a very real scenario that such a
student in this situation would be forced to leave school
because without the traditional financial aid package of
grants and loans, that he or she would have been eligible
for before the grant to loan conversion, he or she will
not be able to attend school. Students who do not complete their programs also tend to be those students who default on their loans.

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

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

Finally, we encourage the Department to add the financial responsibility regulation to the negotiated rulemaking agenda. There have been a number of changes to GAAP and new accounting policies that have had a significant impact on the current financial ratio analysis. The current regulations do not properly account for some of these changes. During the negotiated
rulemaking sessions stemming from Fed Up legislation in 2002, this topic was not discussed because of the already ambitious agenda.

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

Thank you for the opportunity to discuss this. We hope to provide further assistance to you as the negotiated rulemaking sessions unfold. We feel that with the input of committee members on the negotiated rulemaking teams -- who are knowledgeable about their topics and represent a very definitive section of postsecondary education, enabling them to speak with authority on behalf of the constituency they represent -- that we can arrive at good regulations.
Thank you. And always, you know, you can call me
with any questions.

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

MS. HALLIGAN: Very good to know.

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

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

MR. BERGERON: Thank you, Tammy.

MS. HALLIGAN: Thank you.

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

MR. HENDRICKS: Good morning. I'm Bob Hendricks and
I'm the Associate Dean at College of Education,
University of Arizona. And I, too, would like to applaud
the legislation that has led to the authorization of the
TEACH grant initiative. And we're truly hopeful that it
will provide incentives for more students to consider the
profession of teaching, that it will in fact increase the
teacher candidate pipeline, and particularly in high-need
content areas.

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

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

We know there are many configurations; ours is only
one of them. Some are four-year programs. There's the
consideration of the community colleges, many of whom are
offering associate degrees. In our case, a third of the students who come into our program are transfer students who come to us after their sophomore year. There are post-bac programs, there are fast track programs, there are mid-career programs, there are alternative certification programs, there is really a tremendous mix and it isn't one size fits all. So that whole area of interest I think is really something that you're going to have to wrap your hands around and decide how that's going to look.

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

So, you know, we deal with that every day and so if that level of interest doesn't match our interest, it's going to lead to frustration, it's going to lead to unfulfilled promises, it could even lead to award of
monies that at some point you're going to have to get back. And so I go back to that issue of, you know, what do we -- at what point do we warrant that interest in something that's validated?

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

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

For example, if you're going to invest and support
these candidates, do we know that it's going to make any
difference first of all in the number of additional
candidates that we're introducing to the pipeline? Are we
simply competing with those people out there already who
want to become teachers? The goal ought to be to increase
the number of candidates.

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

    The state infrastructure, and our institution
infrastructure, for tracking this information is really --
- I wouldn't even say it's broken. I don't think it's
even in operation. It's been very difficult. So I would
encourage you not only to do that, but to work hand in
hand with the state agencies because I think there's an
added value of the benefit to the states if you're
collecting this information, that it will be helpful to
the states as far as them tracking as well, you know, what their teacher initiatives are producing.

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

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

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

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

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

Item one is simply support for negotiated rulemaking
NCHELP believes that negotiated rulemaking provides a valuable opportunity to engage stakeholders in the regulatory development process. We believe that active, in-person negotiation allows for real input and that the ultimate result is better rules. For these reasons we commend the Department for undertaking this negotiated rulemaking endeavor.

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

Item two, composition of the negotiated rulemaking committee. Approximately 80 percent of federally sponsored education loans are made in the Federal Family Education Loan Program, the FFELP. NCHELP recommends that the negotiated rulemaking committee include representatives of each of the principal constituencies within the FFELP, specifically guarantee agencies, guarantee agency servicers, collection agencies, for-profit lenders, non-profit lenders, and loan servicers.
NCHELP will be making specific nominations to the
Department for negotiators from each of those groups.
Also, we recommend that the school representatives at the
negotiated rulemaking table include a representative
group from those schools that participate in the FFELP.

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

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

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

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

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

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

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

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

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

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

And the final item has to do with reauthorization. The October 22nd notice states that if legislation to reauthorize the Higher Education Act is completed prior to the first negotiation session, the Department may also include on the negotiation agenda additional changes to the regulations.
While it is possible, if not likely, that HEA reauthorization will not be completed prior to a January negotiating session, we believe in any case that final legislation will be enacted soon thereafter. NCHELP recommends that the Department consider expanding the negotiating agenda even after the first session, if legislation is enacted. These negotiations are major undertakings by the negotiators and by the organizations they represent. It would be unfortunate if the Department failed to take advantage of the negotiation in progress to address additional regulatory issues stemming from the reauthorization.

Thank you for the opportunity to provide these recommendations.

MR. BERGERON: Thank you, Mary.

(End of Tape 1, Side A)

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

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

MS. DIAZ: Thank you.

MR. BERGERON: You're welcome. You said you wanted -
MS. DIAZ: I wasn't expected to --

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

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

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

So I receive a lot of support from them in training in default prevention initiatives. We have been establishing different programs with my different schools and working together we have been able to review one school in particular that we have been working with for the past two years with a new project. In collaboration
with the guaranty agency we're able to reduce the default rate from 14 percent to five percent. So I'm really happy about that, but at the same time very concerned with the fact that they will not be able to provide the support that they have been providing to us right now.

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

My second concern comes as a parent. I do have a teenage daughter who started school last year just in time when the interest rate went up to nine percent. And here we are competing with credit cards giving us a lower interest rate. So that was very discouraging for me as financial aid director having to know that I'm getting a better chance of paying for my daughter's education through a credit card because the interest rate is lower than what the class loan can offer us. Yet I don't see any conversation right now in terms of trying to lower the interest rate of class loans.
The -- not taking in consideration the fact that as financial aid officers or directors we have to promote diversity between lenders, yet as a parent I have to go with what the government is going to choose for me on my behalf and have no choices, basically, providing better education for my daughter. So I'm very concerned as a parent with the class loan interest to be in with -- in the limitations of the choices that we're going to have.

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

Thank you for the opportunity.

MR. BERGERON: Thank you. I'm going to step out for a minute and see if there's anyone else signed up to speak this morning. If there is somebody that's in the room that is, you can come to the microphone, but I'll go
check with my staff and see if they have any new folks
signed up for the morning.

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

(End of Tape 1, Side B)

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

MR. BERGERON:  Good afternoon.
MS. KOWALSKI:  Good afternoon. My name is Laura
Kowalski. I'm the Assistant Manager of Policy and
Regulatory Affairs with Texas Guaranteed Student Loan
Corporation. TG is a public, non-profit organization
serving as a guarantor in the Federal Family Education
Loan Program. I'm speaking today on behalf of TG and also
in support of the testimony offered by the National
Association of Student Loan Administrators, NASLA, at the
Department of Education's regional hearing in Washington,
D.C. on November 16th; and also the testimony that was
offered this morning by my NASLA colleague from Great
Lakes.
Because of the importance of recent trends in changes to student loan borrowing, and the fact that the FFELP is by far the largest source of federal student aid, TG believes it is important that guarantors participate as both a lead and an alternate negotiator in negotiated rulemaking. A core focus of guarantors is to maximize the success of borrowers in repaying their loans. As an administrator of the FFELP, a guarantor works closely with the Department, students and families, schools, lenders, and loan servicers throughout the life of the loan. Inclusion of a guarantor voice in the negotiations will promote broad-based, well-informed rules.

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

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

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

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

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

The second topic I'd like to talk about is the pilot
PLUS auction program. This program raises several issues that will need to be addressed in regulatory language. As others have already testified, almost all of these issues concern borrower choice, and just a few examples include: situation where borrower's dependants transfer from a school in one state to a school in a different state; consolidation rights, where the borrower has loans with multiple lenders due to multiple dependants attending schools in different states; and whether a borrower would be able to borrow from a lender other than one of the two winning lenders for a particular state, thus preserving the potential serialization benefits of a single PLUS master promissory note that we've had for the last several years.

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

And the third topic I'd like to highlight is having to do with economic hardship. We would like to advocate for the continuation of the debt burden test that the secretary retained in regulations, even though the test was removed from the Higher Education Act in the CCRAA. Indications from the Department are that this debt burden
test will remain in regulations for the time being, and we strongly support the test being retained permanently.

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

Those are the only three I'm going to talk about this morning, so in conclusion I just want to say TG 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 for your time and consideration.

MR. BERGERON: Thank you. The reason we have indicated that we're retaining at least for this time is that we wanted to make sure that whatever we do with regard to the income-based repayment option, that was also provided for in the CCRAA, is somehow --
MS. JONES: There's not a gap there.

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

MS. KOWALSKI: You're welcome.

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

MS. FERNLUND: Thank you.

MR. BERGERON: Thank you.

MS. FERNLUND: I appreciate this opportunity to provide suggestions for the development of the regulations for the TEACH grants. I'm Phyllis Fernlund, Dean of the College of Communication and Education at California State University, Chico, located in Northern California and serving a region about the size of Ohio. The School of Education at Chico State graduates approximately 450 new teachers every year and we are collaborating with our College of Natural Sciences on several projects to increase the number of teachers in
the critical STEM fields.

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

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

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

First of all, clarifying who is eligible to apply for the TEACH grant. You probably know that most of the teacher candidates in California are post-baccalaureate students. They come from a variety of majors in their
teacher preparation program and it's important that our institutions can accurately advise our students as to their eligibility for the TEACH grants. So let me give you several examples of areas where we would have some questions.

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

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

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

The CSU system recommends that the Department of Education's regulations clarify these issues regarding
eligibility to receive a TEACH grant.

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

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

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

A fourth area, clarifying the payee of the TEACH
grant program and the timing of the distribution of
grants. We need timely confirmation of tuition support
prior to the beginning of fall semesters. We recommend
the institutions be able to apply for additional funds
throughout the year. Students, particularly our non-
traditional students, tend to enter our institutions
throughout the year.

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

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

Thank for the opportunity to present these comments.

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

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

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

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

I'll start with the maximum repayment period. The secretary has the authority to set the maximum repayment period for IBR at anywhere up to 25 years. We recommend that she set the maximum at 20 years. A 20 year rule would reduce the risk that loan payments would permanently displace critical savings for retirement, children's education, and other costs that families need
to meet in order to function. Also, after 25 years of qualifying payments, any remaining balance is likely to be only or mostly interest. They would have paid off their principal probably more than one time over.

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

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

We believe the rules must be very clear about the payments and period that qualify towards the maximum repayment period and we support rules that make sure that borrowers who act in good faith are eligible for the benefit that IBR is supposed to provide. To that end we suggest that qualifying payments also include payments made under any other payment plan that equal or exceed
what the borrower's payment would have been under IBR or ICR, whichever would have been lower. That would include payments of $0 if those would been the payments required under IBR or ICR. And we also think that that same rule should apply to payments made while the borrower is in forbearance, rehabilitation, or any other repayment status.

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

We also believe that there needs to be a simple process for income confirmation that needs to be as easy for borrowers as possible. We suggest that it be no more complex and require no more information than it takes to currently complete the IRS form 4506-T, which is how you request to have your IRS tax transcript sent to a third party, which would include the Department of Education. And I have a whole report about how that's okay, but it could certainly be worked out that the amount of data to be refined to just give you what you need. Right now the ICR program uses a very simple form even shorter than the 4506-T to get the necessary income data to calculate payments. That form could potentially be extended to IBR
and an improvement would be to allow the applicant to use an electronic signature and not just a hard signature to that end.

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

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

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

On the maximum repayment period, we recommend that it be the same as we recommend for IBR, 20 years rather than 25 for the same reasons. Rights for borrowers in
default should be the same under both programs. Currently borrowers can exit default by consolidating their loans into direct loans and then entering ICR to repay the consolidated loan. This is a critical lifeline for borrowers who would otherwise find it impossible to ever rehabilitate their loan. We think they should have the same rights upon entered IBR regardless of whether they consolidated their loans in direct or in FFEL.

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

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

The current ICR rules allow capitalization until the added interest equals 10 percent of the original
principal, and after that it's treated as not
capitalizing until they exit. We think that they ought to
be made the same so that ICR conforms to IBR and that 10
percent goes away.

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

On protected income, the intent is to keep loan
payments from causing undo hardship. The level of
protected income in IBR is mandated at 150 percent of the
poverty level for the borrower's family size and 85
percent of income above that baseline. We believe that
ICR should conform to that standard as opposed to the lower one at 100 percent poverty and 80 percent of income above that level.

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

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

For confirming qualifying employment we think borrowers should be able to confirm their qualifying employment on a yearly basis. That would help avoid very
difficult paperwork at both ends if, after they've completed their 10 qualifying years -- perhaps in 10 years, perhaps in 20 -- they have to go back and find accurate and valid documentation for that entire period of time. We would urge the Department to set up a user-friendly system for year-by-year employment confirmation for people who are participating in the program.

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

There's no minimum qualifying period specified in the law. If the statute is clear that the 10 years of qualifying employment don't have to be consecutive, we think the minimum should be set at two months, or eight
weeks, that could add up to a year, that could add up to 10 years.

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

So on the due diligence front, we recommend that lenders, servicers, and guarantors should have a clear and enforceable responsibility for helping borrowers identify the best repayment plan for their circumstances, as well as informing borrowers that they can change plans if their circumstances change. If lenders fail to do so, they should lose their guarantee. And any borrowers who receive a real runaround from lenders should be able to consolidate or reconsolidate into a direct loan where all options are available.
To prevent defaults the due diligence regulations should be amended to require lenders, when a borrower is first delinquent on a loan, to notify the borrower of the availability of IBR, as well as the ability to consolidate into ICR through direct loans. The Department should also require lenders, servicers, and guarantors to provide information to all borrowers about available loan forgiveness programs.

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

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

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

If a student has any financial need and isn't absolutely sure that they're going to succeed in meeting all of these criteria, including being a good teacher,
they'd be better off with a subsidized Stafford loan. If they take the unsubsidized Stafford TEACH loan and don't meet all the criteria for forgiveness, they will owe nearly $3000 dollars more because of capitalized in-school interest and then also be subject to higher interest rates in repayment because the new interest rate only applies to subsidized Stafford loans.

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

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

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

On the more technical side, fixing the medical review process for disability discharge requests. Right now, doctors are often given unrealistic time tables to respond when the Department seeks additional information to determine whether someone is sufficiently disabled to qualify. Borrowers are not notified if the doctor fails to provide follow up information in the allotted time.
They only find out when they receive a denial based on medical review failure, which is the doctor's failure to respond. And doctors who fill out the forms in good faith are not alerted to the likelihood that they'll probably have to submit more information or given a chance to submit it at the time that they get the request.

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

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

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

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

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

MR. SWARTHOUT: U.S. PIRG. And then [inaudible].

Hello and thank you. My name is Luke Swarthout. I'm the higher education advocate for the U.S. Public Interest Research Group. U.S. PIRG is a national network of state-based non-partisan, non-profit organizations. We have chapters on about 100 campuses around the country and organizations in 30 states, and for the last 15 years have worked at the federal level representing students on issues of higher education access and affordability.

I'm going to first speak on behalf of PIRG, but then I've also been asked to speak on behalf of Deanne Loonin from the National Consumer Law Center. And many of our comments are going to be the same, so I'll actually probably associate here with a bunch of comments on ICR,
IBR, TEACH, and public loan forgiveness; and then she
wanted me to -- wants to put a couple of other issues on
the table for the negotiating sessions.

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

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

Would also note that we hope throughout the process
the Department looks to regulate these rules in the
interest of students. I think that's overwhelmingly been
the intent of Congress and I think should be the intent
of the Department as we move through.
I'd like to highlight three main issues. The first is income-based repayment, the second is the TEACH program, and the third is public service loan forgiveness.

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

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

I have made notes about making sure that we're clarifying qualifying payments so that there's clear -- that periods in IBR, ICR, economic hardship, and standard
repayment all count towards IBR repayment clock and that
we count previous ICR payments towards IBR in the overall
calculation of forgiveness. Just as Lauren spoke before,
making sure that there's an easy way to confirm income
through the IRS will greatly aid students in easily
qualifying for IBR. And finally, we encourage the
Department to shorten the time of repayment in income-
based repayment and income-contingent repayment to 20
years. It's on the discretion of the secretary to shorten
this length from the 25 year window that it currently
exists at. Most borrowers will repay their loans short of
the 25 year timeline and this will provide serious
assistance to those students for whom the investment in
higher education winds up not yielding greater economic
opportunity.

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

Second, I'd just like to briefly touch on the TEACH
program, which I know has received a lot -- duly received
a lot of attention in this and previous hearings, and I
know is a top priority for the Department. The TEACH
program has the opportunity to provide some students with
financial assistance on their path to becoming teachers,
however, the program may also unexpectedly saddle
students with serious debt burdens.

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

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

Third, I'd like to briefly touch on the public
service loan forgiveness. The first suggestion is one
that I think may go beyond the scope of normal rulemaking
but I think is a valuable service the Department can
provide in the time between -- up until final rules are
promulgated. One idea is to provide a registry where students can sign up to get information and be updated as the rules change or as information becomes more available. There is a serious interest in this program and there is mixed information about how students can take advantage of it and what opportunity it provides for borrowers. The Department could have a very positive impact in providing greater information.

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

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

MR. BERGERON: Before you go to --

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

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

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

MR. SWARTHOUT: Certainly. I put it forward as a -- more as a problem looking for solution that works for
everyone than with sort of a particular attachment to
that solution. So that -- I would look forward to that
discussion.

MR. BERGERON: Great. Thank you.

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

MR. BERGERON: Unlike the other time, definitely.

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

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

The intent of these proposals is to make the process
more transparent for borrowers, physicians, and loan
holders. Specifically, we propose adding the following
topics to the agenda. One is medical review failures. A second is due process rights in response to offset. And the third is repayment terms after rehabilitation.

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

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

Now our own experience representing borrowers confirms the difficulties involved in communicating with doctors and explaining to doctors that previous determinations of disability by federal or state agencies carry no weight with the Department of Education. There is no sigh of relief once a doctor fills out the form because we know that at some unanticipated point in the
future the doctor will get requests for more information
or in many cases simply resubmit information already
provided.

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

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

We urge the Department to address at least the
following key issues in the next round of rulemaking:
first, unrealistic and unreasonable deadlines for follow
up document submission by physicians; second, failure to
notify borrowers when a doctor has failed to provide
follow up information; and third, inadequate information
about the process. On this third problem, we recommend
requiring the Department to notify doctors they will
likely be contacted for additional information after
completing the discharge forms and requiring the
Department to develop a system that would allow doctors
to provide this information with initial applications.

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

With respect to due process rights in response to
offset, currently a borrower's right to request a
reduction in collection due to hardship, or to raise
hardship as a defense to collection action, may or may
not exist and may be evaluated differently depending on
the type of collection action. This makes no sense. All
borrowers should have the right to raise hardship and should be able to be evaluated under a similar standard. At a minimum, we urge the Department to ensure that all borrowers have the same rights when facing collection. Currently the regulations for wage garnishment through the Debt Collection Improvement Act, specifically provided at -- a quote that you can read -- that, quote, "we consider obligations -- objections to the rate or amount of withholding only if the objection rests on a claim that withholding at the proposed rate or amount would cause financial hardship to you or your dependants." The same language should be added to the guarantee agency wage garnishment hearing provisions, to the tax refund hearing provisions, and to the offset regulations.

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

And the third point, repayment terms after rehabilitation. The right to a reasonable and affordable rehabilitation payment is often wrongly denied. The problem arrives in part from the system established by the Department which provides compensation to collectors for setting up rehabilitation plans only if the plans...
require borrowers to make certain minimum payments. Collection agencies may also have their own incentive system for employees.

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

(End of Tape 2, Side A)

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

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

Further, the FFEL regulation prohibit the imposition of a minimum payment. Documentation is required if the payment is below $50 dollars, but these payments are clearly allowed if that is what is reasonable and affordable for a particular borrower. Thus, a very low
income borrower should be able to set up a rehabilitation plan with very low payments, even $0.

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

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

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

We believe that a lender's post-rehabilitation
repayment plan choice is information that in many cases
the guarantor may be able to secure prior to the
completion of a borrower's rehabilitation period.

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

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

Thank you for your consideration on these and other
issues.

MR. KERRIGAN: I've been instructed to introduce
myself. My name is Brian Kerrigan. I work in the Office
of Postsecondary Education along with Danny and David.
And I guess David's gone for a while and I'm here to make sure someone has someone to speak to in case anyone else leaves. Do we have anyone else that's coming up?

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

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

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

First off, you know the College Cost Reduction Act of 2007 was a great step in increasing affordability and access of higher education. We need to make sure that we're continuing to support the CCRA and that the Department of Education is supporting and strengthening it to the best interest of all students. One of these
ways is about income-based repayment and income-contingent payment, and in your rulemaking to mitigate the disparities between IBR and ICR so that both are accessible, for example, so that IBR-2 is accessible to – is for those whose income is about 150 percent over the poverty income, as well as ICR is. Basically because without income-based repayment guidelines, loan forgiveness is basically ineffective because people will be paying unmanageable amounts every month.

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

Twenty year rule also reduces the risk that loan repayment would permanently displace critical savings for them to buy houses, for their children's education, in households with little or not financial security. We want to make sure that we're strengthening our economy, not harming it and those who are fighting to give back to it by, you know, participating in public service as a
career. Debt should not be punishment for trying to access one of the most basic rights of the country, which is education.

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

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

Another factor is for the three years of government paid interest after graduation to be -- use that any time
during that — during the repayment process, not the automatic three years after because somebody might have a job right after school graduating. Then their parents may be able to pay a little bit more, but then later on they really will need that interest to be paid if maybe they start a family or buy a house.

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

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

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

(End of Tape 2, Side B)
MR. KERRIGAN: Okay. Being that it's 3:00 o'clock, or very close to it, the hearing is officially closed.