OPEN HEARING ON
NEGOTIATED RULEMAKING

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

U.S. Department of Education
Auditorium
550 12th Street, SW
Washington, D.C.
MR. BERGERON: Good morning.

[Discussion off the record.]

I’m David Bergeron. I am Director of Policy and Budget Development in the Office of Postsecondary education. Welcome to the Department.

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

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

But with that, there are a couple little parts of the deal. And part of the deal is, when you leave the building, see one of the federal staff, and they will escort you out of the building. That’s to prevent people getting off on the wrong floors and ending up in the wrong part of
this building, which is not completely occupied by
the Department of Education. And some of our other
Executive Branch colleagues in the building get a
little concerned when they have uninvited—or
unintended guests on their floors.

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

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

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

We have a sense of urgency around getting
those regulations in place so that Program can
begin with good rules governing it. That Act also
includes some issues around some loan programs and
including the changes in repayment plans and
differential special allowance payments for lenders
depending on whether they are for-profit or not
for-profit.

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

I’m going to let my colleagues here at the
table introduce themselves. Throughout the day,
there will be different people sitting here, I’m
sure. I know that Danny and I have to make a trip
back to K Street later in the day for a little
while, and so, there will be different—we know,
this afternoon, there will be others sitting here.
I also know that Brian may not be here the whole
time either. So, if you’re here and you see us changing places, just bear with us.

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

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

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

I’m Dan Madzelan, Director of Forecasting and Policy Analysis in the Office of Postsecondary Education, and I’ve done this kind of thing before, not only the start of the process, these public hearings, but also the middle part of it, the actual negotiations, where we all get in a room and enjoy each other’s company and ideas, and then, at the end of the process, where we actually publish a proposed rule and, ultimately, a final rule.
And again, thanks for coming today. We certainly look forward to your thoughts and suggestions.

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

MR. BERGERON: And with that, I invite Sandra Robinson to come forward as our first witness—or first presenter. I don’t know exactly what we call you.

MS. ROBINSON: Good morning.

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

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

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

MS. ROBINSON: All right. I have been practicing speed talking, so I will slow down a little bit.
MR. BERGERON: You can slow down.

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

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

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

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

Today, I am speaking on behalf of American Association of Colleges of Teacher Education, representing nearly 800 public and private schools,
colleges, and departments of education at
institutions of higher education throughout the
nation and its territories, as well as affiliate
members, including state departments of education,
community colleges, educational laboratories and
centers, and online teacher preparation programs.

AACTE’s mission is to promote the learning
of all pre-kindergarten through 12\textsuperscript{th} grade students
through high-quality, evidence-based preparation
and continuing education for all school personnel.

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

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

It is a proactive measure that addresses
the critical shortage of teachers in every
discipline, especially in the high-need areas of
STEM and special education, and the need for highly
qualified teachers in hard to staff schools, which
we know a lot about in Florida.
With full support for the TEACH Grant Program, AACTE would like to raise the following issues of concern in terms of expediting and streamlining the implementation of the TEACH Grant program so that solutions to the problems that they address can be put quickly into place, and I have seven different areas to address quickly.

First, clarifying under the definition of “eligible institution,” what constitutes extensive clinical experiences.

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

In addition, the value of a supervisor’s extensive observation of a teacher-candidate’s interaction with children cannot be underestimated.
We recommend that the regulations include a standard of 450 hours of clinical experiences.

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

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

Third, clarifying the number of the TEACH Grants available. The TEACH Grant Program is supported through mandatory spending, thus, 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 clarify for students and institutions that the program will indeed accommodate as many teacher candidates as apply. This will enable the institutions to engage in extensive outreach campaigns without concern for over-promising or
over-promoting the scholarship opportunity.

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

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

While institutions of higher ed are equipped to track students during their period of enrollment, tracking transient students for an eight-year period after graduation would necessitate creating and monitoring a data system, the cost of which is not included in the TEACH
Grant, so which we are not asking for.

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

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

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

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

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

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

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

Thank you very much for the opportunity to present these recommendations.
MR. BERGERON: Thank you.

Can I ask a follow-up question?

MS. ROBINSON: Sure.

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

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

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

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

MS. ROBINSON: I think in terms of the requirements that the states have, it would be most
advantageous to the students themselves to
grandfather them in. Whatever the teaching
shortage area is when they begin their
preparation—because, for many of us, that is so
designed and dictated, frankly, by the states, that
once a student starts in a certain area, it would
be difficult to change.

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

MR. BERGERON: Thank you.

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

And at these times, I generally hand them
to Mr. Madzelan and say, "Danny, you can call our
next person to come to the table.

Dennis Patanazek [ph.]--close?

MR. PAKANIZZEK: I think it was pretty close. It is Pakanizzek. If the “z” were an “h,” it wouldn’t scare, but the “z” always scares people. It is really interesting.

MR. BERGERON: Yes. Thank you, Dennis.

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

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

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

Maryland, like many of the states, has what is called “an extreme teaching shortage.” We, last year, hired 6,500 new teachers in the state,
and Maryland institutions prepared somewhere around 2,600. So, we had to find teachers from a lot of other places. So, we’re very excited about the TEACH Grants as a way to provide incentives for teachers to enter the field.

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

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

The question that I think we need to consider is—we know that the pipeline for a four-year degree in teacher education often involves, for many, many students, beginning at the community college level. So, we need to figure out--one of the questions to figure out is how do community
colleges fit into this equation for extensive clinical experience. So, that’s one area that we share in common.

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

We need to have programs that focus on career changes. So, my concern is that we make sure that—here’s what we don’t want to end up with.

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

So, I think my recommendation would be that we talk about—that these will be for people who enter a program and finish that program, rather than people who sort of shop around for the most
convenient course that fits into their life. So, it is another area, I think, to get some clarity about.

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

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

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

Certainly another area is eligibility, and this sort of relates to the whole business about the shortage fields. Does one become eligible simply by declaring a major in one of the high-need areas? That’s the first thing. We need to make sure that institutions can verify that eligibility. And it seems another piece that we need to make
sure—we are talking about, literally, people who would be high-school seniors in some cases.

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

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

Let me give you the Maryland example. Today, in Maryland, early childhood education is a critical shortage area. Will it be in five years when the student finishes the program? We don’t know that. So, we need to solve that problem. And I think that—it is sort of, like, if you sign on the dotted line that you are entering a shortage area that has been identified by the state that, in fact, the deal would be a deal, that if you continue and follow that path and teach in that
area, that we should probably honor our promise.

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

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

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

So, I think that, you know--I also have attached to my testimony some comments from our financial aid director that get into a level of detail that goes way beyond the expertise of a dean, and I am attaching that because I think it is important to you, but I would be delighted to answer any questions that you might have or address anything further.
But thanks for the opportunity, and I wish you well in the negotiated rulemaking. It is going to be quite a process.

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

MR. PAKANIZZEK: A rapid process.

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

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

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

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

I know in our state, for example, students will usually leave the community colleges with at
least 100 hours of such experience through three or four courses.

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

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

So, that would be my take.

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

MR. PAKANIZZEK: Yes. Either institutions or institution. In Maryland, we have a statewide agreement that we have all agreed to accept the
associative arts degree in teaching as an articulated program.

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

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

MR. PAKANIZZEK: I think so.

MR. BERGERON: Right, right.

Other questions?

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

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

And you, you know, talked about a promissory note or some sort of agreement, or
something like that. And again, these are the same kinds of issues that we’ve been discussing back in the office.

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

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

I mean, we can do a little bit of that upfront in a sort of FAFSA screening and stuff like that, but that’s a real concern for us, that we don’t have individuals—we don’t have students that say, “Wow. A free $4,000.”

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

It is a critical piece in a couple of ways
also, because it seems to me that receiving a TEACH
Grant, then, is computed into a student’s overall
eligibility for other awards, and so, the timing
becomes critical. The accuracy of the information
that the student receives becomes critical. And
that is all a timing issue, also, and that is why
the Department needs to move forward with more
deliberate speed than we in higher education have
ever imagined.

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

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

But the reality is we really do have to
going clear and pretty quick so that we
can actually make it available for prospective
students in the fall.

MR. BERGERON:  When we implemented
Academic Competitiveness and National SMART
Grants--it will be two years on July 1st--we did it through a process that involved us publishing an interim final regulation without negotiated rulemaking and the normal customary public comment process.

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

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

And then, we did do--go through a process of finalizing the rule, and then doing a Neg Reg.
We’ve had lots of comment on that. But this will be a process that we’ll have to all be working very closely together and moving very quickly.

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

MR. PAKANIZZEK: Good.

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

[Recess.]

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

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

How are you? Good to see you again.

I was looking for a first name, and there wasn’t one.

MS. SAUNDERS: Shelley.

MR. BERGERON: I know that, Shelley.

MS. SAUNDERS: So, good morning.
As we discussed, my name is Shelley Saunders, and I am Vice-President of Strategic Services with American Student Assistance, and I am here on behalf of ASA and my fellow guarantors up in the National Association of Student Loan Administrators.

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

NASLA is organized to ensure consistent and reliable delivery of student loan services to America’s students, parents, and post-secondary institutions.

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

Because of the importance in these trends
and changes in student loan borrowing, NASLA believes that it is important that guarantors participate as both a lead and backup negotiator on the loan issues team in negotiated rulemaking.

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

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

Our first issue is federal preemption. We believe the Department of Education should provide explicit and total preemption of state laws which regulate the conduct of Title IV institutions to allow for consistent administration of the Title IV student loan programs throughout the Nation.
The Secretary’s comments to the final Title IV regulations, implementing changes under HERA and CCRAA published on November 1st included language which clearly reiterates that federal regulations preempt any state statute or regulation which stands as an impediment to the federal law.

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

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

Currently, several states either have passed or are contemplating laws which regulate the conduct of Title IV institutions acting within the state, or in an interstate commerce, with state residents, under the theory that unless explicitly preempted, state laws, which are more restrictive
than the federal laws, are permissible.

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

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

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

We would like for the Department to clarify in regulations whether the two winning
bidders per state get to choose the guarantor from which they will obtain their loan guarantees on the PLUS loans. Or, since it is on a state-by-state basis, the state designated guarantor will be the automatic guarantor for all parent PLUS loans made in that state.

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

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

The application of the established debt burden test could prove beneficial to a borrower who has exhausted all his economic hardship deferment eligibility but is still needing to
postpone and obtain a forbearance.

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

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

Thank you.

MR. BERGERON: Thank you.

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

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

MS. SAUNDERS: If you’re going to look at
it more holistically, then that makes sense, but if
the gap is going to stay out there, then...

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

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

    MS. SAUNDERS: Yes.

    MR. BERGERON: Anything else?

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

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

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

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

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

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

MS. SAUNDERS: I understand.

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

MS. SAUNDERS: Okay.

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

MS. SAUNDERS: Understood.

Thank you.

MR. BERGERON: Thank you.

Andrew Friedson.

Is Andrew in the room?

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

MR. BERGERON: Yes. We apologize for
confusion about location and difficulty finding us.

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

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

Thank you.

[Recess.]

MR. BERGERON: We’re going to reconvene.
Andrew Friedson is joining us.
Andrew.

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

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

MR. FRIEDSON: I’ll use it anyway.
Good morning. My name is Andrew Friedson.
I currently serve as the Student Body President at
the University of Maryland. I stand before you
this morning to represent the 25,000 undergraduates
at College Park, and also to advocate for millions
of college students across the Nation. Thank you
for allowing me the opportunity to testify.
Last November, I testified during the negotiated rulemaking process. Although we weren’t able to use that process to make significant changes, it was an important starting-off point to passing some of the most significant federal legislation for students in a half-century.

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

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

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

Students face serious hardship in terms of the cost of college and the burden of debt, and
this legislation makes crucial strides to improve both. It is absolutely critical that this negotiated rulemaking process ensures that the legislation does what was originally intended: to help students better afford college both during their time as a student and once they graduate.

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

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

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

Additionally, the maximum repayment for income-based repayment and income-contingent repayment should be capped at 20 years. The
Secretary of Education has discretionary power to limit repayment from the current 25-year statutory limit. It is important to note that the vast majority of borrowers who will have paid their loan before 20 years; however, this will alleviate the small number of students who have struggled with their repayment from the burden of debt and will allow them to be productive society members for their future years.

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

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

Inevitably, other issues will arise throughout this process. It is my sincere hope that the Department of Education will act in the best interest of students in each decision it makes.
when implementing these changes to student borrowing programs.

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

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

MR. BERGERON: Thank you, Andrew.

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

If you are interested in testifying and didn’t sign up as you came in, I would encourage you to go and see my colleagues outside the door
and get on the list of people to testify.

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

Thanks.

[Recess.]

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

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

Could you come forward, Phil.

MR. SCHRAG: Thank you. I’m Philip, with one “l,” Schrag, S-C-H-R-A-G.

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

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

I agree with the observation of Senator
Edward Kennedy that this law is the most important boost to the financing of higher education since the GI Bill, from the point of view of graduate and professional students, especially those who will incur high educational debt in relationship to their expected incomes.

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

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

The main reasons why students do not voluntarily elect ICR is the long 25-year period
before any forgiveness can occur. The IBR plan in Section 2.03 lowers monthly repayments compared
with ICR or any other repayment plan for those with high debt-to-income ratios.

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

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

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

First, what types of work qualify as public service jobs? Some of the qualifying occupations are clear from the statute, including those in government and those in an employment by
non-profit organizations that are described in Section 501C3 of the federal income tax law.

But Section 4.01 appears to encompass employment in other jobs, well. For example, Section 4.01 appears to cover, “public service for individuals with disabilities, and jobs in ‘emergency management,’ even if those employees are not working for the government or for 501C3.”

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

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

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

Third, if a borrower who wants to use the
public service forgiveness program consolidates an FFEL loan before beginning repayment into a federal direct consolidation loan, will the regulations characterize the federal direct consolidation loan as one that is made by the United States to assist the individual in attending an educational organization?

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

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

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

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

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

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

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

Thank you.

MR. BERGERON: Thank you. I don’t think we have questions.

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

[Recess.]

MR. BERGERON: Good afternoon.

We’re going to reconvene the public hearing on negotiated rulemaking.

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

Otherwise, we will just recess for a little while.
[Recess.]

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

Thank you.

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