U.S. DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

PUBLIC REGIONAL HEARING ON
NEGOTIATED RULEMAKING

Friday, November 2, 2007
11:00 A.M. - 3:00 P.M.

Bayside Room
Sheraton Hotel
500 Canal Street
New Orleans, Louisiana
MR. BERGERON: Good morning.

I am David Bergeron. This is in preparation for our conducting negotiated rulemaking under the Higher Education Act of 1965.

I am David Bergeron, Director of Policy and Budget Development in the Office of Post-Secondary Education at the Department of Education. And I am going to let my colleagues introduce themselves, and then I will say some more things about--that are preliminary, and I know that Diane will want to add some welcoming remarks.

So, with that, I will give this to Diane.

MS. JONES: Hi, everyone. I’m Diane Jones. I am the Assistant Secretary for Post-Secondary Education.

Thanks for being here for the hearing. It is a beautiful day outside, and I’m sure there are a million other things you could think about doing, but we really value the input that we get at these hearings and through the negotiating sessions.

You know, we are proud that we delivered three packages last week, and we think that the process--the process works. It works well. The
comments that we get from you during regional
hearings during negotiation, and certainly in
response to the published proposed rules and
regulations, it is really helpful to us to make
sure that the final package that we put out there
is right and serves the purpose and, of course,
continues to meet our statutory requirements.

So, thanks for being here. We look
forward to hearing your comments, and we’ll go
ahead and, I guess, get started.

MR. JENKINS: Good morning, everyone. I
am Harold Jenkins with the Office of General
Counsel, Department of Education.

MR. BERGERON: You know, I just want to
thank you all.

As Diane said, it is a great day outside.
I know that many of you have been here all week for
the Federal Student Aid Conference. I know others
have flown in this morning, and we appreciate
everyone who is here.

As Diane said, this is a really important
part of our process as we begin to think about
regulating under the College Cost Reduction Access
Act, and, you know, we’ve just gone through a very
extensive process coming out of the Higher Education Reconciliation Act.

So, we’re actually--have gotten some practice at this. We probably will find this to be an easier year, but we know that it is important that we start the process with all of you and getting your advice and counsel about the things that we should be included in to be considered on the negotiating agenda.

We will have another hearing in Washington on the 16th of November, and then we will have a concluding hearing in San Diego on the 29th. That hearing, again, will be in conjunction with the Federal Student Aid Conference so that it is easily accessible to people who are in the financial aid community, and allows us to be there and other things in the conference. So, it has worked out well, what we did last year, and I hope it will this year.

You know, we will be closing nominations for people to be serving on the negotiating committee on November 29th. We welcome public comment on the things we should be negotiating until that date as well, and the details of that
are available in the Federal Register’s notices and on the Department’s website.

Diane is wanting me to mention the data is wrong on the website. It says the nominations close on November 9th. We just left off a 2. And the sad part of that is that it was wrong in one place, and then we just copied that to someplace else. So, it is wrong twice on our website. But I think it is probably fixed by now. I know the staff back in Washington has been working on that over the past couple of days, and so I hope it is right by now. With that, I would like to invite the first commenter forward.

But as they come forward, it is Greg Guzman. As they do that, you will see us wander in and out from time to time. There will always be at least one person sitting at this table; I promise you that. But throughout the day, there will be different faces, different people sitting in these chairs, and just recognize that all of the proceedings are being recorded.

We will have that--make that available on our website as soon as we can after our hearings. And so--and I know that Diane, who just sat down
for a minute, and I, as well as all of our staff, go through these transcripts very carefully to make sure that we hear from you as we develop the agenda and proceed.

You can either use the microphone right there or the one at the podium, depending on whether or not you need to set paper down. So, with that, I will turn it over to Greg.

Thank you, Greg.

MR. GUZMAN: Thank you. Only because I am sick I am going to come up here. You guys can use the clean, healthy one back there.

During the past three days, we have heard Secretary Tucker and Secretary Jones both talk to us about how concerned they are about students and parents, and the entire direction of higher education. They have pledged mechanisms of transparency and accountability to students and the taxpayers, yet they seem to have left out one very important constituency as I see it, and that would be the aid administrator.

For over 40 organized years, aid administrators have been helping American families achieve the dream. You heard Secretary Tucker say
in her listening session how important a role the aid administrator plays in the success of students. We have been doing this without regulation, without oversight, and without recognition, because we passionately care about what we do.

However, over the past two years, our profession has been made out by the media and politicians to be the bad guy. It wasn’t already bad enough that financial aid offices are considered the most dangerous office to work on the college campus, or that research shows that financial aid is the most stressful occupation on a college campus.

No. Now, we are asked by families if we are on the take. We became used to the verbal and physical threats for administering federal regulations that we did not create.

Therefore, I now ask you to consider doing something for all of us who sit on the front lines of attacks for regulations that we did not create. During this process, I ask you to consider including in the loan forgiveness portion of the CCRAA—to include financial aid administrators as public service jobs.
Thank you.

MR. BERGERON: Thank you.

Eric Melis, would you come ahead and join us at the microphone.

MR. MELIS: Thank you.

I am Eric Melis, Associate Director for Financial Aid at George Mason University in Fairfax, Virginia.

I have some real concerns with regard to the redefinitions, or the additions to the definitions of “independent student” in the CCRAA. In particular, ward of the court. Number one, it is very difficult to figure out what “ward of the court” is. It always has been--because, in speaking with one of my constituents, there are a number of jurisdictions where the legal system doesn’t even recognize ward of the court as a current status, as a recognized status.

I have some real concerns about the definition of “ward of the court” at any time since the age of 13. During the course of reviewing dependency appeals that we see on a regular basis, we have encountered a number of situations where--there was a situation that lasted a very short
period of time in which the student was made “a ward of the court,” and then, the family situation resolved itself. There was reconciliation and everything went back to normal. And under these guidances, it appear that student would now be independent even though the family is fully capable and willing to be the primary support for the funding for the post-secondary education.

So, I would ask that we look very carefully at how we use the term “ward of the court,” and how that is defined, both in information provided to the aid administrators, but also in information provided upfront to the parents and students who are completing the application to make sure we are capturing what is truly meant by that status.

The same thing with regards to legal guardianship. We have run into a number of situations where a family has voluntarily, through the courts, assigned legal guardianship to an aunt or uncle or grandparent, not because there is some issue with the family or the parent’s unwillingness to support, but because the family wants the student to live either in the state in which the
school is located in hopes that they might secure
instate domicile, or just for the mere convenience
of geographic location and proximity to the
institution. And again, a situation like that, I
don’t think, at least based on intent, that the
student really is an independent student, when it
is a matter of voluntary convenience.

I have some real concerns about the
emancipated minor issue, because, number one, the
requirements to get yourself, or get the student
declared emancipated as a minor, varies so greatly
from locality to locality. Even in my geographic
location, it is very easy for the family to have
the student, once they turn 18, be declared
emancipated. And though there is a declaration on
the part of both the parents and students during
that process, that the student has the resources to
be self-supporting as part of that process, there
is no follow-up validation of that.

And so, I know already during our
dependency appeals processes and in conversations
with students—we quite often have thrown to us
from the students, “I’ll go get myself declared
emancipated. Will that make a difference?” So, we
already see the potential that this will be twisted
and used as a backdoor avenue to independent
student status.

So, I’d like to make sure that we look
very carefully during the process of negotiated
rulemaking in how we define those items.

Also, if we identify documentation
requirements, if there may be some. As a quality
assurance institution, I can pretty well assure
that during at least the first round of these new
statuses, that we would be verifying students who
were eligible under those categories to make sure
that we’re capturing the right people. We would do
that as part of our institutional verification
process.

Do I still have any time?

I will just throw one other thing out
there, unrelated to the independent student status,
and that is—my concerns—and I know that these
have been echoed throughout the conference every
time this has come up about the TEACH Grant.

At George Mason, our teacher programs,
with the exception of Phys. Ed., are all graduate
programs. But, since part of the student
eligibility definition to be eligible for the TEACH Grant is the plan to complete. I would assume that undergraduates who plan to then pursue the graduate teaching certificate or graduate teaching degree would be eligible for consideration, given any other eligibility criteria for the TEACH Grant.

So, potentially, we have the four years of undergraduate study, although they would hit their aggregate at $16,000, we have the two years of graduate study, and then, we have a period of time beyond that which they can actually commence the service component, because this is then treated as an unsubsidized loan at the point of non-completion of that service component. We have the potential there for some pretty serious accrued interest issues.

And I would just like to look very hard at what we do or what we are required to do to counsel these students who might be eligible for these upfront about the potential financial ramifications of taking these programs, because I’d hate to see that sort of debt burden dumped on these students so far down the road that they haven’t anticipated and aren’t prepared to deal with.
Thank you.

MS. BERGERON: Thank you, Eric.

Yes, absolutely.

MR. JENKINS: I would just like to make one comment on the first couple of suggestions.

As we go through negotiated rulemaking, we in the Department, and also the negotiators from the community, need to keep in mind that for this particular exercise, we are restricted by the leeway that the Congress has given us in the legislation.

For example, some of the definitions, such as those that were mentioned here, “legal guardian,” “ward of the court,” these are in a section of the law that, for whatever reason, we are not allowed to regulate on.

Similarly, actually, the previous suggestion that financial aid administrators be considered to be providing public service for purposes of loan forgiveness, that is something that could only be considered if it turned out that they fit within one of the statutory categories that are already there for loan forgiveness.

So, although we are eager to hear
suggestions, and certainly we want to hear about concerns, these are sort of the ground rules that we all have to work on in the negotiated rulemaking process.

MR. BERGERON: Very good point, Harold.

The one thing that would be helpful is issues around documentation standard—what those—those kind of things that we can address that aren’t specific to regulating the subject matter of mean analysis might be helpful as, either now, as we go through the public comment period—because I think there, and when we think about TEACH Grants, it is particularly critical that we do exactly what you have indicated, which is either by regulation or by just our consumer information that the Department makes available, make clear the potential implications of the TEACH Grants.

So, sometimes, what we’ll do is get out of this is things that we can do, and should be doing, administratively and not regulatorily, and we will take that back and address that through our process. And there are some times where there are statutory issues that constrain us, and we may need to be thoughtful about how we address them without
negating the statutory intent.

So, with that, Georgia Whidden, from Tulane, right here in town.

Thank you, Georgia.

MS. WHIDDEN: I had no idea I was going to speak. So I just scribbled down some notes. I had no idea.

I do want, first off, to say something. You just mentioned that this hearing is for a specific reason, and we should all be aware that our comments may or may not result in anything, but it actually brings to mind the fact that a lot of us here have something to say, and sometimes we feel if we just voice it, someone will hear it, and something will come out of it. Whether or not it is for this particular reason, I just want to kind of put that out there.

MR. BERGERON: Well, let me just respond to that. What we did from the public comments last time—we sorted things out and said, “Well, this isn’t really regulatory. These are administrative things that we could take back and we can work on.” Some of them have been implemented and some of them haven’t yet because they take a longer time.
Other things are statutory. Well, we can’t change the law through this process. However, we may have another way that we can affect that. So, I encourage people to express what their concerns are, and we’ll do the sorting out as to how we resolve those particular issues through this process, or some other process.

So, you know—and I’m thrilled that you came even though you weren’t really thinking you’d say anything.

MS. WHIDDON: I wanted to express a couple of concerns, and I’m a little scattered, but I will start with the CCRAA’s loan forgiveness program for public service, which is a godsend for students I know and love, which are, in particular, law students who have chosen to go into public services: public defenders or legal aid—legal services.

This is a wonderful that has happened for them and will help elevate opportunities in that sector, and we will see some real value out of this, and we are thrilled about it.

There is still one sort of perverted twist that has been recognized, and I just want to—
that you may necessarily be able to do anything about it regulatorily, but it has to do with whether or not you’re married.

We did a presentation on this the other day, and I asked the students the value of their love, because if they really loved the person that their--their girlfriend, or boyfriend, their fiancé, they have to consider, in some cases, whether or not they were worth $100,000 over ten years.

They might want to put it off, have a long engagement--they might have a few children. That’s perfectly fine, but as far as the marriage part, they may consider living in sin for a little while.

I think maybe, if there is anything that can be done about this, perhaps it should be looked at. I personally have tried to think of a way that you could allow someone to actually legally be married and get the same level of benefits. I haven’t been--I’m not that smart. But I do want to point that out and put it on the record that it is kind of a perversion that if you are someone who is passionate about going into public service, and you do have a high level of debt, that there is real
monetary incentive not to get married.

    I just want to put that out there, at
least to someone who also is employed. So, that is
a little bit perverted.

The other thing I wanted to comment on
is--the TEACH Grant, even though we don’t have a
teaching program at my school, I did want to kind
of put something out there. I hadn’t heard it
talked about, but the TEACH Grant actually could be
looked at as a way to increase your Stafford Loan
limits.

    You know, a 6.8 percent interest rate, for
some students, whether or not it is a grant or an
unsubsidized Stafford actually might not be such a
bad thing. So, you know, we’re all bemoaning the
fact that this can turn into a loan, but actually
it is a loan at 6.8 that a student might not
otherwise be able to get. I just wanted to put
that out there.

Another thing that I wanted to also--this
is kind of unrelated. You did say that this was to
make comments for other areas that you might think
help financial aid.

    We are all concerned about private
educational loans. We are trying to wash our hands of being involved with these private lenders. You know, that is not our concern, but it is absolutely our concern.

And I think it would be remiss not to point out that private educational loans directly affect all of our students and families.

I have children. I get these mailings all the time, and we can’t look away. I do know the Department is working with other agencies to look at this. Please, please look at it very carefully.

Please put up some market barriers where you can. The fly-by-night, small--you know, selling products on QVC yesterday are now in-- student-lending guys are loving it. They are sending stuff out to all the kids, and our hands are almost tied in this.

Why is there a growth in private loans, and why will there be an explosive growth in private loans? We know it is because of the profit incentive of the lenders. They are going to be going after the private loans more and more because it is less profitable to go to federal loans. That is one thing.
The other thing is that parents don’t want to go through the trouble of filling out the FAFSA in some cases. Some middle-income parents don’t want to go through the hassle of filling out the FAFSA.

You’ve just made it a little bit more difficult for everybody. The other day, I saw that we are required at financial aid offices to perform, by hand, matches that are right now available through the federal databases.

I suggest that there is created a FAFSA Lite, some sort of mechanism where a family can say, “I want to be able to borrow for my child. I want to be a responsible parent. I want to go through the federal loan program, but I don’t want my children to see my financial information. I don’t want to provide the financial information, but I would like to please be able to borrow this in a quick, easy manner.” That’s the marketing on all these private lenders: quick, easy, instant.

Why, with all these database matches in place, can’t there be a mechanism where a family can go in and choose, “I just want to go through the matches. I would like to borrow Parent Plus or
I would like my child to be able to borrow the unsub without going through all that financial rigmarole," because I think that is a real barrier. And if we could hold that up and we could say, "This is fast. This is easy. This is just as fast and easy as that marketing piece you got in the mail the other day." That’s just a suggestion.

Another place where resources might be able to be used from the Department rather than through schools is actually through the lender list. Certainly, lenders are vetted. Please tell me they are vetted somewhere.

MR. BERGERON: I guarantee.

Just so you know, the primary agreement that lenders have to participate in the FFELP Program is through the guarantee agencies, and the guarantee agencies are the ones that do the vetting of lenders to determine their eligibility to participate in the FFELP Program. So, that’s where that responsibility lies.

MS. WHIDDEN: Got it.

So, the guarantee agencies are vetting, and there is a database of lenders.

Is there a database of these borrower
benefits that lenders may offer today and bring away tomorrow?

MR. BERGERON: No.

MS. WHIDDEN: But we are, at the financial aid offices, required to put those out there and to determine once a year whether or not they are still valid. Can’t the guarantee agencies do that?

MR. BERGERON: Well, then you get in the circumstances where the guarantee agencies are the ones who are basically developing the preferred lender list, and the prohibition of the restriction is, “You can’t prohibit a borrower’s choice and lend—or a guarantee agency.” So, it gets very circular.

We hear you. We absolutely hear you. And we’ve been struggling with this, and we’ll take this back and do some more work around this issue. Because yes, we hear you.

MS. WHIDDEN: All right. I think that is all my ramblings.

Thank you.

MR. BERGERON: Thank you.

Melanie Amrhein.

MS. AMRHEIRN: And I do represent a
guarantee agency. I’m with the Louisiana Office of Student Financial Assistance.

And Georgia, I think that’s a great idea. I think the guarantee agencies could help fill that role with our agreements to the lenders if the Department would sanction it, and I think we could do so in a very honest and forthright way that would not show any favoritism, but just lay out the facts, is what I would recommend.

But my question actually is from the state scholarship and grant area. On the College Access Challenge Grants, and I did not see those mentioned in the negotiated rulemaking, and I didn’t know if that was intentional, and does that mean that the Department will totally regulate that program?

MR. BERGERON: College--the Access--

MS. AMRHEIN: The Challenge Grants.

MR. BERGERON: The Challenge Grants are not in Title IV of the Higher Education Act. They are not subject to negotiated rulemaking.

Likely, we will not regulate the program. We will do a grant solicitation to get information from the states about their desire to participate in the program and get application from them, and
that the program will basically operate under the Department’s general administrative regulations statute, and the application that the agency or organization representing the state or the philanthropic submits.

So, it is not something where we intend to regulate or would regulate. Particularly, that is only a two-year program.

With that, I am going to turn it over to Diane.

MS. JONES: That being said, I have another group of staff people back at the office actually working right now to develop a solicitation for that program. So, if you have some ideas and suggestions, I’d love to hear them, even though we are not going to go through a rulemaking. We are in the process of developing a solicitation. So, please let us know your thoughts.

MS. AMRHEIRN: Great. Thank you.

MR. BERGERON: That is everyone who has signed up to this point to testify.

So, if anyone else wants to testify, I would ask that you go and see my friend Nikki, who
is standing by the door, and sign up.

The reason I suggest that rather than just going to the microphone is our court reporter will need that information in order to have a record, a full record, of the hearing. So, if people want to sign up, go and see Nikki, and we’ll add you to the list—or maybe we have one more.

MR. BERGERON: Jeremy Wichert.

MR: WICHERT: Jerome Wichert

MR. BERGERON: Jerome Wichert. Okay.

I have been telling my wife for the last couple of days—like, the last month-and-a-half that I have to go and get my glasses changed, because I cannot read anything.

MR. WICHERT: Most of it is me. It is my penmanship.

I guess the thing I wanted to just mention is I am thinking about the lender lists, and in one of the sessions the other day we talked about the fact that you could possibly operate without a lender list.

The issue that we really get into is making this easy for students, and we use ELM as a disbursement agent, and we still would like to be
able to use ELM. I’m okay with actually getting rid of a lender list, but we still need to be able to operate efficiently. And part of that is for the school’s purposes, and part of it is for the student’s purposes.

And without the ability to at least direct in some manner—I don’t think we could operate efficiently for students with large volumes.

So, I just wanted to mention that.

MR. BERGERON: Thank you.

As I said, if others want to testify, go and see Nikki and she’ll sign up. Otherwise, we’ll just stay here for a little bit—well, somebody will be here throughout the day taking testimony from anybody who wants to come and testify, but we’ll let the transcriber take a little rest until someone is ready.

MR. BERGERON: We have another person signed up.

Jim Reed, from West Texas A&M.

Thank you, Jim.

MR. REED: Thank you, David.

I’d like to continue part of the conversation that was started with Jeff in the
earlier session concerning the determination concerning dislocated workers and other persons in that venue.

A very great concern that we have at the institutions, as I voiced there, is that we will find ourselves with people submitting themselves as dislocated halfway through the year, three-fourths of the way through the year, and asking us to do dependency overrides for their children at that point in time.

The other thing that concerns me about the independency thing is the portion concerning--how to best put this--the homeless student, and I think the Department is going to really need to help us as far as giving us some very clear not only guidance, but perhaps some documentation that we can ask for to ascertain as to whether a student falls into this point.

I think the gentleman made a valid point earlier that this is something we all struggle with, along with the emancipated minor. It is a point that we cannot seem to communicate in anything that we share with parents and students.

Part of it, of course, is tied to the age-
old conflict of the regulations saying that a
student is not independent until they attain the
age of 24, where we live in a society where the--
quote often, families determine that, when a
student completes his or her high school education,
that they have then become an adult, and separate
themselves.

And we find ourselves discussing with
students ad infinitum, ad nauseum about, “Well, my
parents don’t provide any support to me.”

“Well, do you have contact with your
parents?”

“Well, I only see them twice a year,” or
“I know where they live,” and yet we find ourselves
having to enforce the rule that says, “If there is
no instance of abuse or some other mitigating
circumstances, that you’re still a dependent
student.”

And I’m really concerned that the points
concerning emancipation and homelessness are going
to fall into this same category, and we’re going to
have an immense amount--a drastic influx of people
rushing to get these things acquired when they
determine that their son or daughter, by doing one
of these things, can then evade having to include
their tax information. And I just wanted to voice
that very strong concern.

    Thank you.

MR. BERGERON: Thank you.

And with that, we will wait until we have
another person sign up.

MR. BERGERON: It is about noon, and so
we’re going to go ahead and adjourn until 1:00,
since there is no one signed up to speak, but we’ll
reconvene at 1:00.

    Thanks, everybody.

[Whereupon, at 12:00 p.m., the hearing was
recessed until 1:18 p.m.)
AFTERNOON SESSION

MR. BERGERON: Good afternoon. We are going to go ahead and reconvene.

We have another person signed up to testify, and that is Ray Testa.

Ray, go ahead and tell us what you’d like to say.

MR. TESTA: Well, as I said outside, this was one of those things where I called home to some of my constituents and said, “There are really not a lot of people talking.” And they said, “Well, aren’t you going to talk?”

“Well, I was prepared to just be in the audience.” And they said, “Come on. It is an open microphone. You’ve got to take advantage of it.”

I would just like to make a couple of general remarks.

First of all, I’ve been involved in the negotiated rulemaking process in one way, shape, or form since 1992. So, I pre-date a lot of folks in this. And so I would just like to commend the Department, especially as a result of the last round in terms of the way the process has evolved.

By the way, if you recall, I was on the
team that did reach consensus. But I also thought it was very significant that the Department made every effort to incorporate those areas where consensus was reached, even on portions of the other teams, in order to come up with a fair product, and I think they should be commended on that, and we are pleased with the packages pretty much as they came out.

I would like to address, in reaction to—or in regards to the College Cost Reduction and Access Act, one of the things that we are very concerned with is, as we expand Title IV programs—and, of course, on behalf of our students, we greatly support that effort, and we look at some of the things that can trickle down as a result of that.

We are very concerned that institutions may face increased problems with the 90/10 provisions. We are looking at an arena where a school that might be close—and by the way, most of my institutions are not affected by this because of the way we are structured, but generally, proprietary institutions deal with this and, in many cases, they are very close.
And when you look at the increase in loan limits, pending increase in Pell limits, schools that were at 88/12 or at 85/15 might all of a sudden find themselves at 91/9.

We are hopeful that, in the process of reauthorization, 90/10 may go away, or it may get moved from one section to another. Sanctions may not be as draconian where they would hit in one year. They may apply to all institutions, which we support, by the way, but those are things that might happen. You know, we’ve been looking for reauthorization to occur for the last couple of years.

Since you are going to engage in another round of negotiated rulemaking, you have the ability, as was done in the last round, to add items to the agenda. And in view of the increasing limits on loans, the increasing Pell Grants available to students, we think it would be prudent for the Department to take another look at 90/10, in the definition of what revenues count where. These items were brought up before, and they weren’t deemed necessary to be changed, but we believe it might be worth taking another look at
that now.

We are also very concerned that, as a result of the CCRAA, that we may be heading toward an area of lender access problems, especially for smaller institutions, and for institutions that offer programs of one academic year, two academic years. As we shrink the margins for lenders and certainly there are reasons to do that—we do run the risk that lenders will begin to be very selective as to who they want to lend to. And lenders can say, “We are not going to lend to two-year or one-year programs, because the cost of servicing a $3,000 loan is the same as cost of servicing a $30,000 loan.”

And any of us who were around in the past when we hit lender access problems, lenders said, “Well, we’re not going to service—we’re not going to make loans to students at schools that had over a 7 percent default or over a 10 percent default rate, whatever.”

And those institutions found themselves in the lender-of-last-resort world. I would be, perhaps, bold enough to say that lender-of-last-resort programs are out there theoretically.
Whether they have any money left or the states have siphoned it off and moved it around and done whatever--if this happens suddenly, we could find serious problems in students being able to get access to FELP Loans.

Of course, the schools could migrate to the direct loan program, and some people think that would be a good idea, but in principle, we believe that the dual programs have served, perhaps, the best of all worlds in making competition and making lenders more sensitive to students and their needs.

So, again, I think--we would ask that the Department be mindful in crafting regulations that we take the restrictions that have been placed by statute, and we don’t so overimpose them as to drive lenders from the field.

You know, if you are in a small town--those schools in small towns may have trouble finding three lenders that are unaffiliated to put on a preferred lender list, and if two of the lenders decide to leave the program or not to offer loans to that school, or students in that school, we could have problems with that lender access issue.
And I think that is about it. I don’t know how specific—I can’t make specific recommendations, other than, if you are going to have a round of Neg Reg, you have the--while the book is open, you can pinpoint areas that are significant, and I think that those do represent potential problems for the education community going forward.

Thank you.

MR. BERGERON: Thank you, Ray.

Anyone else who wants to speak, go and visit with Nikki and give her your information, and until then, we will just hang out for a few minutes.

No, Danny, you can’t.

MR. MORAN: We are going to reconvene the hearing.

As we do that, I am going to introduce myself. My name is Bob Moran, and I am a senior advisor in the Undersecretary’s Office at the Department.

And our next witness is Jennifer McNeel from Tulane.

MS. McNEEL: I had a question regarding
the TEACH Grant and how it—when it gets converted
to an unsubsidized Stafford Loan if they don’t
participate in a—you know, they decide that they
don’t want to teach.

My question is, “How will that be
reflected on NSLDS?” And he indicated that it
wasn’t going to go towards aggregate limits. So,
I’m just curious how that is going to be reported
on NSLDS.

And then my second question is, “Once that
becomes a direct student loan, if a prior borrower
has a consolidated loan in FELP through a FELP
lender, can they then consolidate that direct
unsubsidized loan into their FELP consolidation
loan if they choose to do so?”

MR. MADZELAN: Hi, I am Dan Madzelan with
the Office of Postsecondary Education.

Not to be fresh, but your first question,
“What do you suggest?”

And I say that because, I mean, we’re in
the session here to try and get some ideas from you
folks about how we should be addressing some of the
issues that have been raised—programmatic issues
that have been raised by the Reconciliation Act.
We have, you know, at least 1,000 approaching a million questions about the TEACH Grant program and how we implement that.

And, you know, it is safe to say right now, “We just haven’t made any decisions.” This is a program that comes online next July 1st. We are planning for a relatively aggressive rulemaking process this winter and spring, so that we have final rules in place at about the time the program comes online. So, you know, there’s just a lot of questions, both policy and operational.

Now, in terms of NSLDS reporting, that will most likely follow along after we make certain policy decisions about when--these are clearly grants at the start, and they may be, clearly, loans at the end. So, between those two points, if there is a change from grant to loan, when does that occur, and what is the programmatic response? What is the apparatus that has to kick in at that point so that we are now treating this benefit that we provided as a grant now as a loan?

Now, you know, this statute gives us some guidance about, you know, accrued interest and that kind of stuff, because it acts as an unsubsidized
loan--unsubsidized direct Stafford Loan, but again, the operational issues, we have to make the policy and programmatic decisions first.

MS. MCNEEL: Okay. So, my question was--I mean, we’re a school that does not offer a teaching program, so we may have a lot of students coming in at the graduate level that took out this grant and then decided that is not what they want to do. They want to pursue something else.

And so, I would encourage that it still remain as a line item on NSLDS, that we can view that, so that they know that they have a loan out there, but I would strongly suggest that it doesn’t reflect anywhere in the aggregate totals up at the top, because right now, we already have an issue with loans as being flagged as over aggregate even if they are not.

And then, the second part of my question regarding if they have--they take out--let’s say it becomes an unsubsidized direct loan, and then they’ve no borrowed a FELP loan after it has already become the direct unsub loan. Can they then consolidate that loan back into the FELP Program?
MR. MADZELAN: Again, I think that is a decision we will have to make.

Under current law, when you look at what are the loans that are eligible for consolidation, and you take the position that this TEACH Grant is now an unsubsidized direct Stafford Loan, well, that is a loan that is eligible for consolidation.

So, if you just sort of take the world as it is today, I think the answer to your question is yes. But again, because we have to make some decisions and some calls around, “When does this thing that begins life as a grant that may in fact turn into loan--when, in fact, does that occur?”

And you know, these are questions for us around returns to Title IV.

MS. McNEEL: Well, that was going to be my next question, was, “How is that going to play in RTT IV?”

MR. MADZELAN: Exactly. And then how do these play into institution’s cohort default rates.

It is just many, many questions for us.

MS. McNEEL: Okay. Well, then that was my comment more than a question.

Thank you.
MR. MADZELAN: Thank you very much.

MR. MORAN: Is there anybody else at this point?

Well, we’ll go on short recess again.

Again, if anyone would like to testify, please leave your name in the back, and that way we can get it on the record.

And we’ll take a short recess until we get another name. Thank you.

[Brief recess.]

MR. MORAN: we have another person who would like to come to the microphone, and her name is Adrianne Mendes of St. Joseph’s School of Nursing.

MS. MENDES: Hi. Thank you.

This will have more of a comment and I guess a question and concern.

I heard through all the conference this week about—especially under Secretary Tucker. She talked about simplicity—simplifying the process, accessibility.

And I am quite—going home a little bit discouraged with that, because, under the new regulations for lender choice, I don’t know how
this is going to make the process any simpler for our students.

I represent a very small institution, and I see pretty much my students on a one-by-one basis, and I can understand the process of confusion. I see the faces of confusion. For them, it is very difficult.

So, I am really concerned about this lender choice, because, frankly, to be honest with you, in my 14 years of financial aid, counseling students and parents, I can tell you firsthand that when something goes wrong with the lender, it comes back to us, the financial aid office, and that’s what really concerns me.

One of the reasons we do what we do is because we know what we are doing. And I feel that in some way, the Department—yes, the Department—needs to make lenders a little bit more accountable as to, you know, the information they are providing to students, the information that they are putting out there, but at the same time, I don’t know how this is going to simplify the process for students.

And it is not going to be just the FAFSA. I can picture this, in my institution, how this is
going to play out: the confusion of filling out the FAFSA, and now, more information to them to go and disseminate, go figure out what lender you want to use.

That’s one area that I’m concerned and really, really wish--you know, I know you are in the process right now where the rules are made, but I just wanted you to keep that in mind, because I not only do that, but I do speak in a lot of financial aid nights at the high school level, so that is a concern.

My next concern has to do with the parent in college, and I know that, right now, under the current formula, the student cannot count the parent. And if--I want to know if there is the possibility of putting that back into the--since we are talking about the middle class America here being the most affected--I, personally, would be affected by that, because my daughter is going to go to school next year, and we are in the middle class, and I don’t see how that can help me, even being a financial aid administrator. I would like to see something like that proposed again where the parent can--we’re not in a position where we can
possibly support right now support tuition and fees for my husband and my daughter as well. So, I would like to see that reopened again and probably discuss that again--the possibility of counting the parent.

MR. MORAN: Well, real quick, on your first comments about simplicity and the Under Secretary’s comments earlier this week.

You know, that was mainly the FAFSA, and when you take a look at the rules that have come out, we have tried to take a very consumer-friendly approach, tried to get as much information out for the consumer, and the consumer-oriented--and that being the student that we are all here to serve.

And so, when you look at the Undersecretary’s comments about simplification, making that process less onerous, so that--where they are not thwarted away and, you know, other marketing provisions become more interesting than going after federal aid, federal grant aid, federal programs, and then, state aid and institutional aid, that would result from completing the FAFSA.

And then, obviously, you mentioned the lender regs, that--again, that is from a consumer-
friendly standpoint of trying to get information out.

And as I think you heard in our session earlier, we are going to develop and assist in what we feel is the right information that should be provided, and we think that we can work with you as we move forward in making that a less onerous process.

We understand that--well, we’ve heard the comments and understand, you know, the concerns there.

On your second point, I’m going to let you...

MR. MADZELAN: Well, with respect to parents in college and the need analysis formula, recall that the federal formula is specified in statute.

I mean, the Congress basically wrote the formula for us. I am of an age when the Education Department had regulatory authority to essentially write these formulas for the Pell Grant and other programs, but again, this is a statutory provision.

There are some reasons why the Congress chose to do this. I think it was back in 1982 when
they decided to make the change, but, you know,
where--at the Education Department, at any rate, in
terms of this provision--I mean, we are bound by
the statute here. So, there is really nothing
through the regulatory process that we could do.

MS. MENDES: Okay. Thank you.

MR. MORAN: The next person we’d like to
call to the microphone is Rosy Toney, from
Southwestern Louisiana University.

MS. TONEY: Good afternoon.
I have a couple of questions, and I am
kind of asking for clarification, too.

One would be the emancipated student. For
students, my understanding is, for ’08–’09
students, emancipated students can now be declared
independent. My question is, “Are there going to
be any guidance on a timeline?”

I do know that emancipated students that
have to have some sort of support and there’s some
other things that’s ordered through the court. So,
are emancipated students--I’m making an assumption
here, so please correct me if I’m wrong--would have
to be court-ordered emancipated? If not, that
would certainly be a suggestion.
The other thing is, at one point can a student become emancipated before they begin college? For instance, I can allow my son to graduate in May and then emancipate him in June.

So, in my opinion, I could see some abuse of that. So, will there be some type of timeline as to--maybe a student would have to be emancipated so many months or a year before they are--before they actually attend college, or will it be that at any time--whatever time they are emancipated, they automatically become eligible?

MR. MADZELAN: Well, this is a tricky area for the same reason when I responded to our previous speaker.

This provision that Congress expanded to essentially expand the definition of “independent students” is basically what it is doing, is within that portion of the law in Title IV of the Education Act, Part F, the Need Analysis, that the Congress specifically forbids the Department from regulating.

So, we cannot go through a regular rulemaking process. However, we can offer guidance based on what we see in the legislation, if there
is legislative history. You know, Congress supports those kinds of things. We get other floor debate speeches by representatives and Senators. We find that in the Congressional Record, but any kind of information that we can find that would illustrate for us what the members of Congress were thinking when this provision was being proposed.

We will certainly be providing some guidance, likely through “Dear Colleague” letters, but again, it will be in a fashion that we think best interprets the plain language of the statute. And again, I am being a little cautious here, because, again, this is an area we are specifically forbidden from regulating on.

I think the statute does speak to emancipated youth, homeless youth, individuals in circumstances of that kind of nature. And it also makes references to other federal legislation. So, we think, without having the benefit of our attorneys check this out closely for us yet, of course, this will happen over the next several weeks, that the other federal legislation that is referenced in our legislation will, we think, probably give us some benchmarks that then we can
use and then share with you.

I think--is this a provision that is effective ’09-’10. Anybody recall offhand? I know you mentioned ’08-’09, but my general recollection is--and I no longer rely on memory. I have gotten to that stage in my life, that I think the need analysis provisions are effective for ’09-’10. I could be wrong on that. But either way, you know, we will have some guidance and information out for you, again, in a timely fashion.

MS. TONEY: Okay. Even though--I know that it is not something that can be regulated, but could it be suggested that there be a timeline as opposed to--because, I mean, we can see the fraud and abuse in that easily--that a student completes high school with their parents, and then they are immediately emancipated to get the benefit of becoming an independent student with virtually no income.

The other thing pretty much follows the same line, is the legal guardianships. Could we make suggestions that there be a timeline placed on the legal guardianship, also? And it follows that same point. Students could easily finish high
school with the parent’s information, and then parents can then release—give guardianship to another relative whose income is not as high and making them automatically become eligible as an independent student for more funds.

MR. MADZELAN: Yes, we certainly share your concerns for potential fraud and abuse.

Again, this whole notion of the emancipated youth, homeless youth, guardianship—you know, these are issues that, in our Title IV programs, really haven’t been required, at least in terms of the eligibility part of it—haven’t been required to address up until this point in time. So again, this is something we will be studying carefully.

MS. TONEY: And in both of them, especially with the legal guardianships, I think it is—the guardianship regulations are from state to state, but I believe, in Louisiana, legal guardianship is recognized through an attorney. Some are only recognized through the courts.

So, could we also get some guidance—I mean is it—if an attorney just gives the guardianship or do a guardianship, is that
acceptable, or will it have to go through the courts. We just kind of need some guidance on that, also.

MR. MADZELAN: Yes. We will certainly try to provide our guidance that is sensitive to the laws and customs in the various states.

MS. TONEY: Okay. Thank you.

Oh. One correction: It is Southeastern Louisiana University.

MR. MORAN: Thank you.

Next person we would like to call is Tom McDermott, from Johns Hopkins University.

MR. McDERMOTT: Good afternoon.

My question has to do about--with the new TEACH Grant Program, and I’ll be the first to admit I have not yet read the final rules that were released on November 1st. So, I am basing this question on information that I have learned throughout the conference this week.

My first question is, Do students— or will students need to demonstrate a financial need in order to qualify for the TEACH Grant, because I didn’t see that as a bullet point requirement in any of the slides?
MR. MORAN: Legislatively, at this time, there was no need in there at all.

MR. McDERMOTT: Okay.

My second question is, Since the Grant could conceivably turn into a loan for some students, can schools treat it as an unsubsidized loan? And what I mean by that is, use it to replace EFC as opposed to reduce need when they apply for financial aid.

MR. MORAN: The—that’s just going to be something that we are going to work out through negotiated rulemaking. I think that there’s a lot of questions around the TEACH Grant on how it gets applied.

I—you know, and legislatively, it is silent on that. So, that is going to be something that we are going to work through as we go through this.

MR. McDERMOTT: And then, the third question is, Will the Department publish annual statistics regarding how many of the TEACH Grants actually convert to unsubsidized loans?

MR. MADZELAN: I think that—you know, obviously I can’t give, obviously, a definite
answer. I mean it is a good idea.

I mean, we, obviously—we will know that information internally, just like we know, you know, information on the number of Pell recipients, right on down the line.

We routinely make a lot of programmatic data available—you know, Pell Grant, end-of-year report, student loan stuff. The—I mean it is a good issue—a good question. And you know, we used to be able to kind of say, “Well, you know, if we have the resources, we’ll do it.” But now, since we basically publish everything electronically, you know, we have to come up with a different excuse to not do something.

But I think that, by and large, this will be information that obviously will be of interest to policymakers, both here in the Department and then on the Hill, as well. So, it is probably something that—I don’t think that would be something that we would hide.

And in the terms of annual reporting, well, you know, I don’t know exactly how we’d do that. But again, in the context of making a lot of programmatic—program-specific information
available, the answer is probably yes.

MR. McDERMOTT: And then the fourth and final question regarding TEACH Grants.

If there is no needs tests required for a student, will the student have to submit the FAFSA to apply for the TEACH Grant?

MR. MORAN: Well, I mean, right now we are working on developing a question for the FAFSA.

I don’t know that we’ve talked about the corollary where if you don’t complete the FAFSA, would you still be eligible, and I would think that would be something that could be worked out.

MR. MADZELAN: Well, we would hope that individuals would complete the FAFSA, because it is the gateway to other forms of aid.

We understand that there are those who, you know, are--maybe feel some of the questions are a bit intrusive or whatever. But also, a TEACH Grant awardee, a grantee, a student still has to demonstrate otherwise eligible--which, you know--appropriate citizenship, and males are registered with Selective Service if they are supposed to be, and you know, we have the drug question and citizenship, and so there are a lot of these
eligibility questions that we handle, you know, sort of in a very transparent fashion via the FAFSA and the central processing system, and the matching arrangements we have with other agencies.

So, I think, as sort of as a policy matter, we want as many people to fill out a FAFSA as we can. And again, as a practical matter, we haven’t made a decision yet, but having a potential—or teacher candidate as the statute refers to these individuals, go through the FAFSA process wouldn’t be a bad idea just to get the other eligibility checking taken care of.

MR. McDERMOTT: Thank you.

MR. MORAN: Before you go, can I--this is a hearing really designed to get your thoughts on some of these questions that you’ve just raised.

And so, can I ask you if you have some thoughts on that to share some of them?

MR. McDERMOTT: Well, at Hopkins, we struggle with—we try to encourage parents to fill out the FAFSA when they are interested in a Plus Loan, for all of the reasons that you just described, are useful and would be helpful for the TEACH Grant program. But we still have a
significant number of families every year who just
do not want to file the FAFSA. So, we collect
signed statements regarded citizenship, and
certifications regarding Selective Service.

And I could foresee the same issue
occurring with students who perhaps were never
receiving any type of assistance before who are
interested in the TEACH Grant, and may say, “Well,
why do I have to follow the FAFSA?”

So, the FAFSA in its current state, you
know, with all the questions— it is hard to argue
with a student or with a family that, you know—
“Why do I have to divulge all this information if
this is the only thing I’m getting and it is not
really based on need?”

The issue about the possibility about the
award turning into unsub is a concern for us, just
in terms of, you know, trying to control student
debt and make sure that students don’t end up
graduating with significant debt load.

So, if there is, you know, statistics at
some point that show that there is a large number
of students who actually end up turning their grant
into a loan, we would want to be able to let
students know about that upfront, as they consider taking that grant. And hopefully, it wouldn’t turn into a loan, but we would want to advise them about that.

Thanks.

MR. MORAN: Thank you.

The next person we would like to call is Jennifer McNeel from Tulane again.

MS. McNEEL: I’m back.

I have some follow-up concerns regarding the TEACH.

One concern I had was abuse and fraud. In the cases where you have students coming in that may not necessarily want to teach, but you are at a school that offers teaching and they see this as a way of obtaining additional loans, with no intent to teach.

So, there was mention that there was a signed letter of an intent to teach. Could you inform me of that? Is there going to be a letter that they have to sign indicating that they have an intent to teach in order to get the grant, or is this self-identified?

I’m sorry, I didn’t read the whole rule on
it, but I am trying to find out, “How do they
identify themselves as a student that wants to
teach?”

MR. MORAN: Those eligibility requirements
and those other factors that Dan was talking about
earlier, we haven’t developed how those mechanisms
will work yet.

That will come out as we move forward
here. I will say that we do share the same type of
concerns, and as we move forward, we will be,
hopefully, moving forward making sure that these
are directed to those folks that...

MS. McNEEL: And I am just concerned about
how you are going to monitor intent for someone
that leaves your school five years later.

MR. MADZELAN: Well, we think at the front
end—again, we said the front end is a grant unless
it becomes not. And we believe that there is
something that we need to get on the front end so
that the student understands that it is a grant
now, but may not always be a grant.

And you know, not to say that it is going
to be a promissory note, but again, it has to be
some firm indication that the student knows that
this is a grant that may not stay a grant forever. So, again, on the upfront side—you know, it is not going to be like a Pell Grant—“Well, here’s your money and see you next semester,” but rather some additional communication, some additional counseling, some additional work with the individual student, so, they, you know, understand as best they can, as an 18-year-old incoming freshman, that maybe 8, 10, 12 years from now, it could become a loan.

MS. McNEEL: Okay. And in that aspect, if it does become the unsubsidized Stafford Loan, since a requirement of that is the Free Application for Federal Student Aid, I would recommend that become a requirement of the program.

The second thing is, if the TEACH Grant will affect the school’s cohort default rate, and I would recommend no on that.

The next thing I wanted to refer back to was lender lists and providing some guidance regarding some sort of chart.

I am assuming that when we develop a streamlined lender list, we usually provide a link to those lenders that we use on our website that
details the borrower’s benefits in that program. And we used to do a chart, and we removed the chart because of the fact that the moment you published the chart, it was no longer valid and those benefits have changed. And so, I would encourage some guidance on exactly what type of chart or exactly what sort of documentation on our websites we should be providing.

I feel that, if we are directing them to the lender’s websites, which are updated with the most accurate information—is that sufficient when the school themselves is not providing that benefit? Is the link itself okay? Or is it—if I am not putting it out in text on my website, is that sufficient? And that is my concern with that. MR. MORAN: You know, as we have highlighted, the Department is working on a mild disclosure form, and as far as the other comments about whether the website is sufficient to move forward, I think we will be issuing guidance around that area as we move forward with this issue. MS. MCNEEL: Okay. And I guess, the sooner the guidance the better.
Because, as a school that does early
decision and early action, we are already getting
our award letters out for the next year, and
providing that information on our websites to our
students.

MR. MORAN: Sure. And obviously, the
Department would love to see compliance as early as
possible.

But as you know, the regs that were
published yesterday don’t go into full effect until
July 1 of ’08. So, you know, any ED decisions that
are coming up this spring, we’d like to see them
applied, but, you know, if they’re not, then we
can’t really--there is no enforcement level on our
part.

The next person we would like to bring
back is Rosy Toney from Southeastern Louisiana
University.

MS. TONEY: Thank you.

Once again, I want to address the--as you
can see, I am on the emancipations, legal
guardianships, and this time it is the foster
child.

It is my understanding that, if a child is
in foster care from--at age 13, regardless of the situation that occurred after that, they would still be considered an independent student. Is that correct?

MR. MADZELAN: Yes. I believe that the literal reading of the statute would say yes.

MS. TONY: Okay. I would like possibly for that--and I know--I guess we can’t--I am going to say, “to be reconsidered,” because I am a counsel worker, and we work a lot with foster children.

And we see a lot of--and children are gone for a lot of reasons, but they often are not--a lot of them are not gone but a few months. And they go back to middle- to upper-class homes. They go back to parents who can afford to pay. And they are, there--if we remove them at age 13 and then from 13 to 18, from then on they will be considered independent. They will be living with their parents, and the parents are going to be able to pay for college, and I think that is an abuse for the other children who are legitimately away from home and cannot pay and don’t fall in the middle-to upper-income categories. A lot of these parents
fall into the middle- to upper-income categories.

And to just blankly say that a child who has been in foster care, for whatever reason, at age 13--and may have only been there for a couple of months--they would then be considered independent, I would think is an abuse. So, it would, you know, behoove us to maybe consider that and maybe do a timeline on that, also--that maybe if they have been in foster care or were in foster care at 16 or 17 be considered--and have not returned to their families or to their parents--be considered independent as opposed to putting them in foster care, taking them out, and they remain with the parents who can pay and then let them come out as independent students.

Okay.

MR. MORAN: We’re going to wait for the next person to arrive.

[Pause.]

MR. MORAN: We’re going to invite Patrick Gorman from LSU Health Science Center back to the microphone.

MR. GORMAN: Thank you.

This is my first trip. It's okay, though.
Thank you.

I just want to follow up on some comments on several of the issues that have already been discussed--a few suggestions regarding the TEACH Grant.

One is, in order to strike a little fear in hearts of students who might be considering using this mainly to get more loan money, you might put some sort of a statement to the effect that you’re not allowed to tell lies when you’re trying to get federal aid, even though, as been discussed, it would be very hard to prove somebody had a false intent. It wouldn’t hurt to have a statement of that to that effect on the initial agreement that the students would sign.

I’d also like to suggest that, to the extent that you may be allowed to under the law, you’d consider special circumstances in the fulfillment of the teaching commitment. If I understand correctly, they have eight years to teach for four years to meet--to fulfill that commitment.

If you’re able, you may want to consider, essentially, deferments or forbearances of that
timeframe for continuing education. I know eight
years seems like a lot to do something for four
years, a good timeframe, but you may run into
situations where it would be appropriate to extend
that timeframe. It could be issues related to
hardship and family situations, and what have you.

You might also give some consideration to
those teachers who might, through their own
excellence, be offered administrative positions in
their Title I schools. And if that occurred early
enough to prevent them from fulfilling their four
years of teaching, you may want to consider that
service as fulfilling the commitment, or do
something to give them some—to avoid them
incurring the full penalty, which I guess is a
related suggestion, “If someone is unable to
fulfill the full four years, and there is some
legitimate cause that you could develop,” I don’t
really have them in mind right now, “but if
possible, you might want to consider a partial
conversion of the funds from grant to loan, because
basically, as it stands now it is all or nothing.

So, those are my suggestions on a program
that I have no business talking about because we
don’t teach teachers at our school. I hope we’re going to teach a few teachers—a few students who will go on to teach in healthcare education, but of course that’s not—that wouldn’t be qualifying. Sorry. I knew I wanted to follow up on some of the other—

MR. MORAN: All right. As you are thinking about that, we appreciate those comments, and we’ll certainly take them all in as we move forward on the negotiated rulemaking provisions.

MR. GORMAN: Okay. All right. Thank you. I did have a suggestion, and this I know is not—well, it is not related to the new law. I guess it is related more towards our brewing controversy over the past year or so regarding lender lists, lender choice, providing lender information.

I recommend that the Department of Education go the extra mile with their template, and actually require or invite lenders to provide—to fill in that template and provide a link where schools can go out and grab those templates on given lenders and put them—or link to them.

That way, you could put the onus on the
lenders to keep their templates up to date, because as Jennifer mentioned, it is tough to keep a chart up to date. Well, it may be impossible to keep a chart up to date, because it is possible lenders will make changes without telling us in advance or even afterwards.

So, I don’t know that you have the authority to require lenders to provide that information, but you could possibly go out and get that authority, or certainly try to create an environment where it would be beneficial to lenders to provide you with that information so that you could provide populated grids or charts that schools could tap into.

All right. Thank you.

MR. MORAN: The next person that we’d like to invite to the microphone is Tom McDermott from Johns Hopkins.

MR. McDERMOTT: Hello again.

My question this time, or actually, suggestion, is regarding the loan auction process that was discussed where, in each state, there would be essentially two Plus lenders that would be designated.
And my concern is that it conflicts with the guidance to schools to have at least three lenders on a preferred lender list if a school was going to create such a thing. And so, there could be a situation where there are only two lenders that students could borrow from in a state, and a school could only put those two on a list. How would they meet the guidance or the guidelines established for the criteria for creating a preferred lender list?

MR. MORAN: Well, again, the auction is only on the Parent Plus Program.

MR. McDERMOTT: Right.

MR. MORAN: So, you know, obviously this is one of those dichotomies where the Department, when it moved forward with its regulations—and we’re trying to make sure the message of borrower choice was out there.

One, it is statutory that a borrower can go anywhere and bring in any lender that they would like. But on the borrower choice side, when we talked about there being three choices by the school, we were hoping to provide options.

This is a legislative provision. Now, let
me take a step back there, please. Those three are also in various other--referenced in other various legislative proposals that are on the Hill.

    Now, you have the Hill in a different program, in a pilot program--they consider to be a pilot program, for this auction, saying, “In the Plus, this is how you’re going to do it.”

    And so, I hear your concerns and I hear your dichotomy there, and we--it is actually--we appreciate these comments.

    MR. McDERMOTT: Thank you.

    MR. MORAN: We would like to invite Jennifer McNeel from Tulane back.

          Thank you.

    MS. McNEEL: To follow up my colleague’s question about the Parent Plus loan--is it the state that the school is in or the state of the borrower?

    MR. MORAN: The school.

    MS. McNEEL: The state of the school.

          Okay.

    So, I could potentially have a parent who sends their child down here to Tulane but also has a child back in California being required to borrow
through two different lenders?

MR. MORAN: That is the potential, yes.

MS. McNEEL: I’m concerned.

And my follow-up question to that was--I am concerned that you’re limiting choices. You’re having this broad umbrella under the Stafford Programs and under the Grad Plus Program, and the Grad Plus Program was designed very similarly through the Parent Plus loan route--that is how it was originally designed--and yet now we’re limiting the lenders that our parents can choose, and I’m concerned about that.

MR. MORAN: Thank you.

Would Patrick Gorman please return to the mike, from LSU Health Sciences--and this time you are returning.

MR. GORMAN: Yes, I’m back. Thank you.

A follow-up regarding the Plus Program--the Parent Plus auction. I’ve been in student financial aid for quite a while. I just got my 20-year plaque at our state conference. It is the “professional mortality plaque,” is what I would like to think of it as.

But I’ve always worked in health
professions, and I worked with the health education
assistance loan program, and I don’t know—those of
who have been around for quite a while and had any
dealings with that program may remember that there
was—the HEAL Loan Program did have a competitive
bidding for lender participation.

And two things about that I’d like to say.
One is that the basis of competition was, “Which
lender would provide the lowest rate to the
borrower?” And I would love to see that kind of
competition. Because frankly, I think this kind of
competition is not going to produce lenders that
are not going to offer anything special to the
borrower. And you know, even with the cut in
margins and all—of course we are seeing special
benefits trimmed and probably going away.

But with competition for the lender that
is willing to take the lowest special allowance, I
don’t think we are going to see lenders willing to
provide any special financial benefits to parent
borrowers, and that does concern me. I don’t know
if you could have another stage to the auction,
“What were you going to do for our borrowers?” but
that is something that I am concerned with.
Now, of course, the HEAL was not a pretty loan. It was variable rate. It was designed to be self-sustaining. It had a fairly high insurance premium. So, I’m not up here to be a cheerleader for the HEAL loan program, but I did like the concept of competition to provide the borrowers with the better rate.

I would also like to say about that, though—and this, I think, could be applicable here—it was a fairly disruptive process, because lenders had to bid every so often to become the Heal lenders. Schools were confused, borrowers, I guess, were confused at various times. There became orphan disciplines, because it was bidding by health professions’ disciplines, and some disciplines that were smaller, they didn’t have a lot of people bidding for their business. So, I think that this process is going to create some disruptions.

One other thing with that in mind is I suggest that you include in your process what you will do if one of the lenders that wins the lending rights for a state decides that they don’t want to make student loans anymore, or that they bid too
low and they really can’t afford to do this, and so, they’re not going to make loans. You know, I don’t think we want a situation where there is only going to be one Plus lender really active in a state.

Or, of course, I guess the idea of all this is, eventually, if it is really groovy--they’re going to put that in there, aren’t they?--that this would spread to Stafford, too.

Is that not the idea? I mean...

MR. MORAN: We would hate to guess at congressional intent beyond what has already been indicated.

MR. GORMAN: Okay, okay.

MR. MORAN: But--and I don’t want to go through the machinations of how we got to the auction, but what I will tell you is that, in the legislation, Congress proscriptively told the Department that we have, basically--in determining who will be eligible to make a bid, the Department has some criteria around which they can limit those bidders, mainly around the service area and how we--and set up service criteria, and what type of--basically, what will end up a minimal level of
service that we’ll be allowed to provide.

Then, once we have set that service, the bidders who come in to meet that—we are required by law to take the two lowest bidders for—on what they will take as a SAP payment.

The borrower rates are set. You know, they are already statutorily set. That is not necessarily part of the auction program.

So, the only thing we really can influence here is the service aspect of that. And on that service side, we may or may not get the best service out of the list of candidates.

MR. GORMAN: Okay. And service, of course, would be things like customer service hours and availability of human interaction—some kind of track record, possibly. It would not involve discounts or financial—potential financial benefits to the borrowers, though, I assume, right?

MR. MORAN: We need to work through those, but at this time I don’t believe there can be discounts in that fashion.

MR. GORMAN: And the second point, if a lender drops out of student lending—a winning bid lender drops out of student lending or determines
that they don’t want to make the loan at that rate, so they are not going to be providing the loans?

MR. MORAN: Right. And as the Assistant Secretary, Diane Jones, indicated earlier in her talk, that they are two-year auctions.

So, every two years, the lenders will be rebidding for each state. So, we would--I think the assumption on our part--and again, it is an assumption, so I don’t want to make it sound like it is concrete at this point, but we would be expecting anybody who bids to service and provide that service for those two years for the auction.

MR. GORMAN: Okay. Well, then, I would still stand by my suggestion that you have a fallback in cases where a lender might, for whatever reason, drop out within that two-year period.

MR. MORAN: There are provisions in the law where a lender may not necessarily bid, but ask the Secretary to be the lender of last resort for that state where no one bids, potentially.

And so, there’s some provisions of making sure that there is at least lender service out there for each state, but we appreciate the
Jennifer McNeel from Tulane.

MS. MCNEEL: My question is regarding—well, my statement regarding ranking customer service.

Electronic processing is key in making sure that they are able to transmit and receive information electronically from every single school in that state—would be key, depending on the software packages that each institution uses differ.

And then, my second response is that the Plus MPN is currently good for—it is a ten-year note on that. If there is a two-year auction, and at the end of the two years that lender is no longer still a viable lender, that parent will need to re-sign a new note with the new bank?

MR. MORAN: Those are discussions we are having now, as to working through that.

It is part of the question raised earlier today in the general discussion around, “If I’m already a Plus borrower when the auction starts, does my Mass Promissory Note continue through that or not?” And so, those are things that we are
still working through.

MS. MCNEEL: Which would lead me to my concern regarding default prevention and having several different lenders out there that you’re making payments to and having to keep track of who owns your loan, and who I should be contacting. So, that’s a reason for my concern of that.

MR. MORAN: Thank you.

Rosy Toney from Southeastern Louisiana University.

MS. TONEY: Thank you.

We are having this side bar conversation back here because we are concerned. We are concerned about the service that not only the parents and students will be receiving, but the schools.

It opens the door for the lowest door for the bidder of Plus Loan lenders and right now, we are going through this—well, you know, the issues with the lender partners has become a big thing. But we base a lot of our decisions on service. It is not always who is going to feed us the biggest meal, but who is going to provide us the better service. Who can we get in touch with during our
working hours? Who can we refer students to that we know that their questions are going to be answered?

If a student is going into default, we kind of know who we can send them to, to work with them to keep them from going into default.

We are not going to have the benefit--possibly we are not going to have the benefit this time. We don’t have a clue what we’re going to get.

And if it is not going to be service oriented, how will that benefit anybody? I guess that’s my question. How is that going to--I mean, I think it is going to be more of a fiasco than anything else.

The students can’t get in touch with them. The schools can’t get in touch with them. The parents won’t know how to get in touch with them. How is that going to benefit the whole loan program, limiting it to two possibly unknown lenders?

I mean, we’re real concerned about that.

Okay.

MR. MORAN: I appreciate your comments.
Thank you.

Jennifer McNeel from Tulane.

MS. McNEEL: You are getting the entire contingency of Louisiana over here.

To follow up on that. With just offering the two Parent Plus loans, I would be fearful, too, that if a parent sees it as, “This is the lender that the state and the DOE says is the best lender, then this might be the best lender for the Stafford loan, too.”

And so, all of our hard work going into providing them with the best Stafford loans that are out there--they are going to just streamline it right to that lender that may be unknown.

MR. MADZELAN: Well, thank everyone for coming today.

Our time is up. And again, thanks again to all of our commenters.

[Whereupon, the hearing concluded at 3:30 p.m.]