

Capital Reporting Company
Public Meeting on Gainful Employment 11-04-2010

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U.S. DEPARTMENT OF EDUCATION
PUBLIC MEETING ON GAINFUL EMPLOYMENT
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Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

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1 P R O C E E D I N G S

2 MR. KVAAL: ... these public hearings on
3 gainful employment. As I think you know, we're working
4 very hard on these rules and trying to strike the right
5 balance that takes advantage of the strengths of the
6 for-profit sector while avoiding some of the pitfalls
7 that we've seen.

8 The Department is working very hard to get
9 public input on these proposals. They began with
10 public hearings we had over a year ago. We had three
11 public hearings, a series of public negotiated
12 rulemaking sessions. We received over 90,000 comments
13 on our Notice of Proposed Rulemaking. So these
14 hearings are just the latest step in our process to try
15 and get as much feedback as we can and subject these
16 proposals to as much scrutiny from the public as we
17 can, because we think in the end all of this feedback
18 will help us improve the final product. So we really
19 appreciate the time of those who came today and will be
20 sharing their thoughts with us. We want you to know
21 we'll be considering those thoughts very carefully.

22 Over the course of the next two days we

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1 expect to hear about 80 presentations. I'm pleased to
2 say that we were able to include every organization
3 that requested time, so everyone will have an
4 opportunity to speak. Each presenter will be given
5 about -- will be given five minutes -- precisely five
6 minutes, not about five minutes. There is a timer on
7 the podium. I think you'll see it when you are up
8 there. The light will turn yellow when you have two
9 minutes left, and it will turn red when you are out of
10 time. I'd appreciate it if people would do their best
11 to observe that. We have a lot of speakers. We
12 haven't built in a lot of extra time. So if people
13 could try and keep their comments to those five minutes
14 strictly, we'd appreciate that. There may be occasions
15 on which we ask clarifying questions, so just be
16 prepared for that, as well.

17 And I just sort of want to let you know that
18 we're also transcribing this event. So there will be a
19 written transcript, and we hope to make that publicly
20 available in the coming weeks.

21 To introduce those of us from the Department
22 who will be listening, I'm James Kvall, Deputy

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1 Undersecretary. To my right is David Bergeron, who is
2 Acting Deputy Assistant Secretary in the Office of
3 Postsecondary Education, and Georgia Yuan, who is
4 Deputy General Counsel. Some of the Department
5 officials may rotate over the course of the two days.
6 In general, at all times we're going to have a career
7 policy person from the Office of Postsecondary
8 Education, a lawyer, and a political policy official up
9 here listening at all times.

10 So that's the ground rules. Thank you again
11 for your engagement, and we look forward to hearing the
12 comments. So would the first speaker like to come up
13 to the podium? And if you could please introduce
14 yourself and the organization you're representing.

15 MR. ROGERS: Certainly.

16 Good morning, ladies and gentlemen. I'm
17 Scott Rogers, and I'm the President of Ohio Valley
18 College of Technology in East Liverpool, Ohio. I'm
19 probably the guinea pig for my colleagues this morning
20 by going first.

21 I'd like to first thank the Department for
22 this opportunity in these meetings and thank Secretary

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1 Duncan for recent comments when he indicated that the
2 Department will take all necessary measures to ensure
3 that a new rule does not have significant negative
4 unintended consequences. And I'd like to talk about
5 one of those consequences today.

6 As required by today's ground rules, I will
7 limit my remarks to a single issue from page 3, item 10
8 of my submitted comments. In order to fully appreciate
9 the specific consequences of this proposed rule, it's
10 important that I first introduce our school. OVCT is a
11 traditional, small business, community school founded
12 in 1886, long before financial aid even existed. We
13 serve 200 to 300 local students annual and are a
14 respected benchmark and a tradition in our hometown.
15 Our program offerings are limited by the size of our
16 local community and its employer base. Like most small
17 traditional schools, we have just six programs.

18 We agree with testimony given in Senator
19 Harkins' recent hearings that a key component of
20 student success is personal support services. In fact,
21 this is one of our fundamental principles. We reported
22 retention and placement rates both greater than 70

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1 percent for our most recent academic year.

2 But while I have described our college, this
3 description would apply to several hundred small
4 community-based schools across this country. These
5 schools are typically family-owned with long histories
6 of training students right in their home towns. Small
7 schools such as ours comprise about 50 percent of the
8 private for-profit college system. The other half is
9 comprised of large publicly-traded chain schools, the
10 ten largest of which recently boasted of a combined
11 enrollment of 1.2 million students. While most of
12 these chains are relatively new, they have significant
13 financial resources and operate nationally with a
14 multitude of traditional as well as cutting-edge
15 programs, both residential and online. One well-known
16 chain regularly promotes the fact that it offers 125
17 different programs and degrees. These are the two
18 distinct sectors of for-profit education providers in
19 the United States.

20 Ladies and gentlemen, if this rule is adopted
21 as proposed, many, if not most of the small community-
22 based schools will be wiped out, and local residential

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1 training opportunities for those students in those
2 small towns will also be eliminated. Certainly this
3 must represent a significant negative unintended
4 consequence. Because small schools have a limited
5 number of programs tailored to their local community,
6 each program individually contributes a significant
7 portion of the tuition and revenue to that school. The
8 loss of one or two programs, or a third of that
9 school's total revenue, would likely result in that
10 school's closure.

11 Now, I must clarify that it's not my intent
12 to infer any qualitative judgment regarding large
13 versus small schools. It's simply a function of basic
14 mathematics. In today's economy it would be very easy
15 for a single program or two to miss the cut, especially
16 in an area with 11.2 percent unemployment. Therefore,
17 the rule as applied to small community schools is not a
18 program elimination rule, but rather will constitute a
19 school elimination rule.

20 Contrast this with a national chain offering
21 a hundred or more programs. The loss of five, ten,
22 even

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1 15 programs has a relatively modest effect.
2 That effect is simply program elimination and a reset
3 of corporation operations. We propose a simple fix: a
4 small school exemption. For example, an exemption for
5 schools with less than 500 students or ten or less
6 programs is imperative if these small schools are to
7 survive. Without this exemption, the ultimate outcome
8 of this rule will be a for-profit postsecondary
9 education delivery system comprised almost exclusively
10 of large, publicly-traded national chains operating in
11 medium to large-sized cities, and not in small town
12 America. Residential training with a high degree of
13 personal student support will simply cease to exist in
14 small communities.

15 I pose a simple question. Is this the
16 outcome that was intended and the outcome that is best
17 for the educational system as a whole? I am certain
18 that this clearly represents what Secretary Duncan
19 referred to as a significant negative unintended
20 consequence. For the sake of all students,
21 particularly those who are disadvantaged, I ask that
22 the Department withdraw this rule. However, as an

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1 alternative, I ask for an exemption for schools with
2 less than 500 students or ten or less programs.

3 My written comments today are available for
4 the record. I'd like to thank the Department for their
5 time and this opportunity.

6 MR. FRANK: Good morning. Thanks very much
7 for allowing me to speak today. My name is Lincoln
8 Frank. I'm the founder with Governor Tom Kean of Quad
9 Partners, which is a private investment firm in New
10 York focused on innovative K through 12 businesses and
11 building great postsecondary companies. In that
12 capacity, I serve on the board of directors of career
13 college organizations that are educating over 14,000
14 students in 80 campuses in a broad range of programs.
15 We teach medical, legal, business, cosmetology,
16 culinary degrees. We do certificates; we do
17 associate's; we do bachelor's; we do master's; we even
18 do doctorates.

19 I also am the co-chairman of the Coalition
20 for

21 Educational Success, which is a group of
22 like-minded postsecondary school owners serving over

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1 350,000 students at 478 campuses in 41 states. In
2 building our schools, we have focused relentlessly on
3 student outcomes: graduation and placement rates.
4 You're going to hear tomorrow from Patricia Fisher, who
5 is the CEO of our schools in Detroit, the Dorsey
6 Schools. Pat is do an amazing job in that very
7 difficult employment market educating and placing
8 students in the careers for which they are trained at
9 her schools.

10 Reggie Moore, who runs our Blue Cliff schools
11 in the South, will also be in the audience tomorrow.
12 Reggie is doing a tremendous job with students in that
13 territory that come from mostly minority background and
14 low income backgrounds. In what we do not only are we
15 focused on student outcomes, but we are highly focused
16 on what we have called value proposition, which is I
17 think what you guys have called gainful employment, in
18 that what we do is we really try to make sure that the
19 amount of tuition that we charge for our programs bears
20 a fair relationship to the jobs that we place them into
21 and the incomes that those students will command.

22 So when we got gainful employment, we ran the

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1 numbers. We ran the numbers for all of our 80
2 campuses. And I must tell you, I was surprised,
3 because I know we run good schools; I know we have
4 great student outcome. And a lot of our programs
5 didn't pass. And I said, why? How can these programs
6 not pass? How can these students be displaced? How
7 can these teachers be displaced? How can the employers
8 that we serve not have students to hire from our
9 schools? And the reason is, with all due respect -- I
10 know you've all put a lot of work in this -- there are
11 some key faulty components of Gainful Employment which,
12 when taken together, create massive unintended
13 consequences. And with that will be a very significant
14 displacement of students, of jobs, of staff, and really
15 of employers' opportunities to fill key jobs. So let
16 me go through what I think are the faulty provisions,
17 if I can.

18 The first is the repayment rate. The
19 definition counts as non-payers students who are
20 complying with the terms of their loans, so students
21 who have opted for an income-based or an interest-only
22 loan or who properly qualify for deferments or

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1 forbearances. If they are not to be counted in the
2 repayment rates, they should not be offered those as
3 repayment plans. The Department's own data shows that
4 the definition would catch the majority of nonprofit
5 institutions serving minority students, were it applied
6 across the board. If it's a bad regulation for one
7 group of institutions with a certain tax status, it's a
8 bad regulation for all. I think to take any different
9 approach to this is simply a discriminatory, anti-
10 business focus.

11 Second, income. Under the debt-to-income
12 test, income is proposed to be the actual income
13 reported to the IRS, Social Security Administration, or
14 similar data set. Does -- I certainly don't, I don't
15 think I'm allowed to find out, but does anybody in the
16 room know what a graduate of a college makes, what they
17 report to the IRS? It's not there. What about the
18 female graduate who gets through a program, who gets a
19 great job, and decides to work part-time to raise a
20 family? We graduate a very high percentage of women.
21 If they all graduate with the right skill sets and get
22 placed in a great job but then go part-time or

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1 temporarily withdraw from the work force, the program
2 will fail the test. Pat Fisher is really hot on this.
3 She's going to talk to you tomorrow about it.

4 Three: debt amortization. In the test, the
5 debt burden assumes a ten-year amortization schedule.
6 It's just not reality. You know, the research shows
7 that the average debt maturity, debt amortization that
8 people pay is 19 years. Let's use that.

9 Total student debt: This includes debt that
10 schools are not able to control.

11 MR. BERGERON: Your time has expired.

12 MR. FRANK: Can I take another ten minutes --
13 ten seconds here?

14 MR. BERGERON: Ten seconds.

15 (Laughter)

16 MR. FRANK: Thank you. That was negotiation.
17 Under the regulations, our students can draw cost of
18 living funds. We're not in control of that. That's
19 extra debt; we can't tell them not to. Please don't
20 regulate what you can't control.

21 And finally, graduate students. If there
22 ever were a case of a sophisticated student making a

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1 long- term investment decision, it's the graduate
2 student.

3 Okay. Thank you very much.

4 MS. BROFF: Good morning. I'm Nancy Broff
5 with the law firm Dickstein Shapiro. I'm here today
6 representing ITT Educational Services, Inc., and we
7 appreciate the opportunity to make a brief public
8 presentation today based on our comment on the Notice
9 of Proposed Rulemaking.

10 I planned on starting off with a joke, but
11 then I realized there's no joke in our comment, so
12 we'll just have to skip that part. And it was a good
13 joke.

14 Unfortunately, we believe the proposed
15 Gainful Employment rule suffers from serious flaws that
16 will adversely affect students, potential students, and
17 the regulated community if adopted in a final rule.
18 The proposed regulatory approach of defining gainful
19 employment in relation to complex formulas measuring
20 loan repayment and debt to income ratios is flawed as a
21 matter of law and as a matter of public policy. It
22 would harm the very students it purports to protect and

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1 increase the cost of postsecondary education to
2 American taxpayers.

3 The first issue I'd like to talk about is the
4 retroactive nature of the proposal. The retroactive
5 nature of the proposal is a problem in terms of both
6 legal authority and in the fact that it doesn't give
7 schools an opportunity to modify their operations to
8 come into compliance with the new regulation. If
9 adopted in its current form, the regulation would apply
10 to Title IV award year beginning July 1, 2012, and
11 could have negative impact on schools, including the
12 loss of Title IV eligibility for certain programs,
13 based on data that is already locked in. Even if
14 schools have some power to affect the performance on
15 the proposal's metrics in a going-forward basis,
16 schools cannot in reality alter repayment rates from
17 the three most recently completed award years prior to
18 the earnings year or for the four most recently
19 completed federal fiscal years.

20 As a result, the Department proposes to
21 subject schools to severe penalties and negative
22 consequences based on events that took place before the

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1 rule was published or is scheduled to go into effect.
2 Promulgating a rule with retroactive effect is
3 illogical, unfair, and beyond the Agency's authority.

4 I won't bore you with the legal citations,
5 but there is clear legal precedent noting a presumption
6 against retroactive rulemaking authority and supporting
7 the presumption that a new regulation has an
8 impermissible retroactive effect where its application
9 would increase a party's liability for past conduct or
10 impose new duties with respect to transactions already
11 completed.

12 The second issue I'd like to talk about is
13 the lack of access to necessary data. This lack of
14 access to data is a problem in two aspects. One is
15 that there has not been sufficient ability to do data
16 analysis in order to comment on this proposed rule.
17 And second, there will be an ongoing lack of ability to
18 bring yourself into compliance and stay in compliance,
19 because on an ongoing basis, schools will not have
20 access to the data that lets them determine whether
21 they are maintaining compliance on an ongoing basis.

22 With respect to the data that was used in

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1 developing the rule, schools were not given access to
2 this complete data and still don't have access to the
3 data, for instance in determining what the repayment
4 rate of their different programs would be.

5 With respect to the going forward issue,
6 because schools will never have access to the income
7 data the Department will use to make eligibility
8 determinations, the proposal does not give schools a
9 meaningful ability to challenge the accuracy or
10 completeness of the Department's eligibility
11 determination prior to having sanctions imposed.

12 The final issue that I would like to talk
13 about is an issue relating to the new program approval
14 process. The new program approval process was
15 published in partial form in the Gainful Employment
16 Rule on October 29. But the Department made clear that
17 it is going to issue additional regulations on this
18 area in the final reg on the larger Gainful Employment
19 package.

20 We believe that the requirement of
21 documentation from unaffiliated employers stating that
22 the program's curriculum aligns with occupations and

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1 the number of projected job vacancies could be
2 administratively burdensome, is beyond the reasonable
3 exercise of the Department's statutory authority, and
4 is bad public policy. It's not the purview of the
5 Department to regulate the labor supply of persons, nor
6 is it really within realistic ability of institutions
7 or employers to predict labor markets several years in
8 advance. This would be a very imperfect science.

9 In conclusion, we believe that the current
10 approach is so flawed that the best approach would be
11 for the Department to craft a new proposed regulation
12 that adheres to the statutory framework, is based only
13 on data that is fully available to schools, and will
14 better serve students and the schools of their choice.

15 MR. PROTO: Good morning. Thank you for the
16 opportunity to speak. I'm Randy Proto, CEO of American
17 Institute. I've been involved in for-profit education
18 for 32 years. I began as a student, then a teacher,
19 then virtually every other position in the school.

20 I've worked with many types of students at
21 many types of colleges: regionally accredited,
22 nationally accredited, publicly traded, and privately

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1 held. I know our students, and I know our schools.

2 I absolutely support outcomes and other
3 disclosures that help students make sound choices. I
4 also support establishing metrics to assess every
5 program's success or failure. Create a level playing
6 field where all students get the same information and
7 all institutions meet the same outcome standards, and
8 students, taxpayers, and quality will win. As crafted,
9 Gainful Employment doesn't adequately promote this.
10 Today I'll focus on a few concerns for my comments.

11 First, it will have larger detrimental
12 effects than the Department estimates. It must be
13 changed to minimize this. Second, it shouldn't be
14 selectively applied, because it deals with issues of
15 universal concern to all students in career-oriented
16 majors. Third, if it's implemented, structural changes
17 are needed to make it more effective, safe, and fair.

18 The effect of its debt warning is one of many
19 examples of my first point. About two and a half
20 million for-profit students will be confronted only
21 with a debt warning upon implementation. This warning
22 alone will certainly deter our students. Yet the

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1 Department estimates that no students will give up on
2 college or shift to public colleges solely as a result
3 of it. That's unrealistic. I estimate that several
4 hundred thousand will be dissuaded from attending
5 college, and more will attempt to shift to public
6 colleges at higher taxpayer cost. Someone's wrong. I
7 truly hope it's me.

8 Regarding my second point, universal
9 application would make this a better rule, in part
10 because many nonprofit and public programs fail the
11 currently proposed test. So universal application
12 would force broader and more balanced community input
13 and more effective provisions. Further, more than 12
14 million students enrolled in career and technical
15 education majors at all types of colleges all expect to
16 achieve a positive return on investment from their
17 education. Taxpayers who support them expect similar
18 results. But the rule applies only to a fraction of
19 these students. They all have the right to equal
20 protection and comparable information. To meet its
21 promise, the rule should help students considering
22 schools like mine decide if incurring \$13,000 of debt

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1 for a degree program with a given graduation rate and
2 given employment rate is better or worse than incurring
3 \$5,000 of debt for a community college degree program
4 with a different graduation rate and a different
5 employment rate. But it won't, because it doesn't
6 apply to the community college's degree program. It
7 should.

8 Regarding my third point, structural issues,
9 first, the repayment rate counts negatively to students
10 opting for repayment plans the Department promotes,
11 like interest-only RBR. Instead, they should be
12 counted positively. Second, the debt test uses
13 individual wage data schools can't access. Schools
14 can't predictably hit an invisible target, and this
15 data allows negative and differential impacts based on
16 factors unrelated to program quality. One example:

17 women earn 20 percent less than comparably
18 employed men according to the GAO. So all else being
19 equal, programs serving higher percentages of women
20 will correspondingly be more prone to sanctions. The
21 Department should use BLS wage data for this test.

22 Also, the debt test's ten-year repayment term

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1 doesn't represent the actual repayment term students
2 choose. Instead, the test should average the actual
3 terms of students' loans to reflect graduates' true
4 debt payment burden.

5 Finally, for-profit colleges fuel the work
6 force, providing 23 percent of career and technical
7 program graduates. As crafted, Gainful Employment's
8 metrics are retroactive, threatening programs which, if
9 given the next two years, could adjust to comply. To
10 maintain needed capacity instead of wastefully
11 abandoning it, Gainful Employment's program termination
12 provisions should become effective later than its other
13 provisions, in 2014.

14 I hope my verbal and broader written comments
15 have been constructive. Thank you.

16 MS. MOODY: Good morning. I'm Sheryl Moody
17 from Anthem Education Group. I would like to thank you
18 for the opportunity to speak to you regarding comments
19 submitted by our Chairman of the Board, our Chief
20 Executive Officer, and our Chief Financial Officer.

21 My first observation is that this proposal
22 was presented as one to address student loan defaults,

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1 but then it is not based on existing data about student
2 loan defaults. If you wanted to measure student loan
3 defaults, you would use the cohort default rate.
4 Instead you have proposed new metrics. One of the new
5 metrics is the repayment calculation. As my colleague
6 has suggested, the repayment measurement counts
7 students as non-payers when they are complying with all
8 of their student loan obligations. They may be in
9 forbearance or have a deferment. They could have opted
10 for income-based repayment, or they could have
11 consolidated loans, which don't count as paid until the
12 last loan consolidated has been paid. They may be
13 paying principal first, which the law requires them to
14 do, but they would be counted as non-payers.

15 You have also proposed a measure of gainful
16 employment that is based on salaries. The problem with
17 that is that salaries reported on W-2s may not
18 accurately reflect starting salaries. If a graduate
19 lands a first job that pays \$60,000 a year and begins
20 working on December 1st, that graduate reports income
21 of \$5,000 for that year.

22 You also have not made clear that you will be

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1 able to measure self-employment income. More than 50
2 percent of our graduates in massage therapy are self-
3 employed, and they make a very good income. It's a
4 popular program. A majority of our computer networking
5 graduates are independent contractors. How will we be
6 able to provide data about that, or where will you get
7 it?

8 I'm also concerned that you have
9 misunderstood the effect of restricted programs. Mr.
10 Bergeron commented during the conference call that you
11 expected we would improve programs that fell into the
12 restricted category. With respect to Mr. Bergeron, you
13 have not presented evidence that our programs lack
14 quality. We're continually working on improving the
15 quality of our programs, but we believe they are good.
16 There is no evidence that they're not.

17 Students default for many reasons. The most
18 common predictor of defaults is that the students are
19 Pell-eligible. That means students who do not have
20 financial resources to carry them through major life
21 events that may derail their plans after they complete
22 a program. It is likely that restricted programs will

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1 not continue to be operated, but will be discontinued.
2 This will wipe out an entire option for programs such
3 as computer networking and massage therapy if the
4 repayment metrics are not accurate.

5 Restricting programs and having them
6 discontinued will result in the closure of schools.
7 Anthem Education Group operates 23 schools in 15
8 states. We have run the numbers. The fact of the
9 matter is that the schools most likely to close are
10 those serving the most economically disadvantaged
11 students. If we had to close a program at one of those
12 schools, we might very well close a school. If we
13 cannot be successful in the markets serving the most
14 disadvantaged students, neither can our competitors.
15 There will be no one to offer programs to students in
16 those demographic areas.

17 I predict that this will happen because I saw
18 the same thing happen after the enactment of the 1992
19 Higher Education Act amendments. Those amendments made
20 it difficult for schools to serve students in
21 economically disadvantaged areas, and the schools fled
22 inner cities and rural areas where they could not

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1 continue to serve students.

2 I urge you to go back and refigure this
3 approach to Title IV regulation, because the most
4 disadvantaged students are the ones who are most likely
5 not to be served. You have already heard my colleagues
6 talk about discontinuing their service to students who
7 have graduated -- who come to us with no high school
8 diploma. If these students are not served, given the
9 deplorable high school graduation rates in this
10 country, then I question whether or not this is what
11 you intended.

12 Thank you for your time.

13 MR. SWARTZWELDER: Good morning. My name is
14 Roger Swartzwelder. I'm the general counsel and Chief
15 Compliance Officer with Education Corporation of
16 America, based in Birmingham, Alabama. Thank you for
17 the opportunity to appear.

18 Let me just touch on a couple of the points
19 that I've made in my written comments, and begin my
20 respectfully asking the sort of overarching question,
21 which is whether the Department in fact does have the
22 authority to propose these Gainful Employment

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1 regulations as they've been promulgated. The
2 authorizing statute, the Higher Education Act, provides
3 that programs of study at for-profit colleges must
4 prepare students for gainful employment in a recognized
5 occupation in order to be eligible for the Title IV
6 program. These proposed regulations, which address
7 student debt loads and loan repayment rates, are not
8 reasonably founded on that statutory language.

9 Moving on to some of the specific elements in
10 the proposal, talking first about loan repayment rates,
11 as some of the other speakers have noted, the Congress
12 and the Department have created and emphasized
13 alternative loan repayment options that are designed to
14 help struggling student loan holders manage their debt
15 repayment obligations. With so many Americans
16 unemployed or underemployed, in fear of losing their
17 jobs, under water on mortgages and otherwise facing
18 economic challenges, many loan holders have taken
19 advantage of these alternative repayment options. The
20 Gainful Employment regulations unfairly count these
21 loans against the college in the loan repayment
22 calculation. I suggest that the only fair way of

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1 looking at this would be to count any loan that is in
2 good standing under the terms of the loan and the
3 requirements of the lender as a loan in repayment.

4 Moving to the question of student debt
5 levels, any assessment of the level of student debt for
6 which a college is accountable should include only the
7 debt, I suggest, that is necessary to pay the expenses
8 directly attributable to the college. Current
9 regulations allow student to borrow more, sometimes
10 considerably more, than is necessary to pay direct
11 educational costs, and colleges are explicitly
12 prohibited from limiting a student's borrowing. If
13 colleges can't control the amount of money that
14 students borrow, then I suggest they should not be
15 punished if in fact students choose to over-borrow.

16 Regarding income data, if we're going to have
17 a debt-to-income measurement, as other speakers have
18 suggested, it would seem only fair that the Department
19 use BLS or other objective aggregated data that are
20 publicly available for review. To use Social Security
21 Administration or IRS data that are not available to
22 colleges would not allow colleges to set their policies

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1 in order to comply with the regulations, because they
2 won't know the underlying data on which the application
3 of the regs would be calculated. This would not -- the
4 Social Security Administration and IRS data would not
5 necessarily capture all the income that is not
6 reported, for whatever reason, and it would not account
7 for inconsistent income when graduates enter and leave
8 the employment market for reasons that are not
9 attributable to the quality of the education they
10 received.

11 Another element that doesn't get, I think, as
12 much attention as it should is the contradictory nature
13 or the counter-purpose between the Gainful Employment
14 proposal and the 9010 regulations. We find that many
15 for-profit schools, particularly those serving low
16 income students or in areas of the country where there
17 are not state-supported financial aid programs, for
18 many of those schools adjusting tuition to account for
19 changes in Pell eligibility and loan limits is the only
20 way to remain in compliance with the 9010 regulations.
21 But the Gainful Employment regulations, in fact, would
22 work at cross-purposes to the only way of managing the

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1 9010. I would respectfully suggest that figuring out a
2 way of writing regulations so that you don't have two
3 regulations that are contradictory to one another would
4 be a very useful exercise.

5 And then finally, as other speakers have
6 noted, there is a certain element of unfairness in the
7 retroactivity that's proposed in the way the rule is
8 written. And I suggest that any rule that's based on
9 three years of data should only be made effective three
10 years after the final rule is adopted, thereby giving
11 colleges the opportunity to understand the regulations
12 and the data and to make the appropriate adjustments.

13 Thank you very much.

14 MR. NORTON: Good morning, everyone. Thank
15 you for the opportunity to speak this morning. My name
16 is Bill Norton, and I've been involved with the
17 administration of student financial aid for nearly ten
18 years. I represent a small or proprietary school that
19 is locally owned in the state of Utah, (inaudible)
20 College and Provo College.

21 Thank you for engaging in meaningful dialogue
22 with the higher education community. While the intent

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1 of the proposed rule is to protect taxpayers and
2 students, we feel the public policy does not
3 sufficiently extend its reach or penetrate the full
4 sector of higher education. By targeting all degrees
5 of proprietary schools and only certificate programs at
6 institutions of higher education, the proposed rule is
7 perceived as discriminatory.

8 Students who choose a private institution are
9 merely electing to utilize their portable federal
10 student aid entitlement at the institution of their
11 choice. By selecting a proprietary institution, many
12 are essentially paying their own way for their
13 education without overly burdening the states,
14 taxpayers, other education sectors. So while the
15 proposed rule suggests that loan defaults may be higher
16 at a proprietary institution, any associated taxpayer
17 costs after collection and recovery efforts should be
18 directly compared with the sum costs society pays in
19 the form of subsidies to public and private nonprofit
20 institutions, plus their relative portion of FSA
21 defaults.

22 Please follow the intent of Congress. Await

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1 ongoing investigations, Senate hearings, potential new
2 legislation. The definition of gainful employment
3 should be argued by Congress and included in statutory
4 law. The proposed rules are deemed to be economically
5 significant and come at an extremely inconvenient time
6 for the economy of our nation.

7 The Department has suggested that all a
8 school needs to do to comply with the debt to income
9 ratio is to reduce tuition or place graduates in jobs
10 with higher-paying salaries. In recent years, schools
11 have been unable to reduce tuition due to the 9010
12 rule. Significant increases in the Pell grant limits
13 and loan limits continue to drive up 9010 rates. So
14 Congress must consider repealing this rule to allow
15 institutions to lower tuition.

16 With the reauthorization of the Higher
17 Education Act, please remember that many proprietary
18 schools were already offering accelerated year-round
19 education. Therefore, it's unfair to criticize them of
20 consuming increased portions of year-round Pell and
21 student loan funds made available to students. During
22 the recession, the Department encouraged state

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1 workforce agencies to refer the unemployed to college
2 and also encouraged financial aid administrators to
3 exercise professional judgment when evaluating their
4 incomes.

5 Please consider that according to sub-
6 regulatory guidance, all institutions of higher
7 education are precluded from engaging in a practice of
8 limiting borrowing or certifying loans only needed to
9 cover direct institutional costs. Therefore, the
10 Congress and Department have taken the position that
11 students are entitled to loan proceeds pursuant to
12 statute. As such, we feel this responsibility for
13 student borrowing must be shared by the student, the
14 school, the Department, and the Congress.

15 Please allow me to cite a few remaining
16 comments.

17 Number one, the proposed phase-in timeline is
18 inappropriate, since most of the time has already
19 elapsed. The rule is retroactive and punitive. Schools
20 will be prohibited from making any necessary
21 adjustments in time.

22 Number two, since the analysis for the NPRM

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1 was conducted at the institutional level in the
2 Missouri data set, small schools may have much more
3 difficulty meeting the proposed metrics, like ours. The
4 true impact may be significantly higher than originally
5 anticipated when analyzing each school on a per-program
6 basis, with smaller number of graduates per program.

7 Three, all sectors of higher education should
8 be required to disclose graduation rates, loan
9 repayment rates, debt to income ratios. Rather than a
10 sanction for poor performers, students should be
11 presented with consumer information and be entitled to
12 make their own decisions, informed decisions, when
13 choosing any college or any university.

14 Number four, the NPRM does not adequately
15 address situations where students continue their
16 studies at higher levels of education. So if the
17 cumulative debt must be considered, a school may soon
18 have an incentive to teach only certificates and
19 diplomas, and avoid master's or bachelor's programs. So
20 we suggest, please allow schools to isolate debt at
21 each level of education where the regulations will have
22 significant unintended consequences.

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1 Five, the proposed regulations are most
2 likely going to affect a disproportionate share of Pell
3 grant recipients, low income students, minorities,
4 first time college attendees, and single parents.
5 These students are more likely to attend a proprietary
6 institution for the smaller class sizes, for job-
7 specific training, personal support, and a caring
8 environment.

9 Lastly, an entire school should not be placed
10 upon provisional certification due to the failure of a
11 single program's compliance with the gainful employment
12 calculation as proposed. Institutions must be afforded
13 the opportunity to remedy the situation without facing
14 extreme sanctions such as limiting the organization's
15 ability to achieve recertification, add new programs,
16 or increase enrollments.

17 In conclusion, please remember that
18 proprietary institutions have a vested interest in the
19 long-term success of their graduates. It would be very
20 difficult to enroll future students if the college had
21 a reputation for poor performance or poor measurable
22 outcomes. To assume that for-profit institutions do

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1 not bear any of the future financial risk is a
2 misstatement of private enterprise. Schools provide
3 entrance loan counseling, default management, and
4 personal finance at their own expense.

5 Together we can provide additional
6 disclosures to students, meaningful measurements of
7 outcomes, and the quality of education students
8 deserve.

9 Thank you again for your time.

10 MR. DRAGER: Good morning, and thank you for
11 the opportunity to speak today. I appreciate the
12 Department's willingness to take the necessary time to
13 fully examine these regulations.

14 My name is Justin Drager. I'm from the
15 National Association of Student Financial Aid
16 Administrators. We represent more than 18,000 aid
17 administrators at some 2,800 colleges and universities
18 around the country. And my members live in the realm
19 of regulatory implementation, and that's where I'd like
20 to focus my remarks today.

21 We don't challenge the concepts behind what's
22 being proposed by the Department. We believe that we

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1 should be measuring to ensure that programs lead to
2 gainful employment. But I think we want to move
3 forward with an eye towards careful implementation that
4 avoids any unintended consequences. And specifically,
5 we're looking at using -- asking the Department to use
6 existing measures of workforce placement, student loan
7 indebtedness, and successful loan repayment before
8 implementing new, untested measures. In our comments
9 dated September 9th, we suggested a hierarchal approach
10 to this using existing criteria that would act as
11 filters.

12 So first: Apply exemptions for programs with
13 few borrowers and low average indebtedness. So if a
14 program has few borrowers, and a low percentage of
15 those borrowers have low average indebtedness, in our
16 minds no further action would be required. As
17 currently proposed, the rules would treat low-cost
18 programs with few borrowers the same as higher-costing
19 programs with many borrowers that are likely borrowing
20 much more on average. And without making this
21 important distinction up front, students attending very
22 dissimilarly priced programs would end up receiving the

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1 exact same warnings. And I don't think that's the
2 intent.

3 Second: Use existing regulatory requirements
4 for completion and placement rates. Currently, short
5 loan-only training programs, programs that are well
6 under a full academic year in length, are already
7 subject to minimal completion and placement rates.
8 These are defined in federal regulations. And under
9 those regulations, those short certificate programs
10 have to have completion and placement rates of over --
11 of at least 70 percent.

12 Third: Look at using cohort default rate
13 measures, but applied to programs. Cohort default
14 rates already apply to institutions, not individual
15 programs. But in the upcoming years, the cohort
16 default rate will apply -- will capture three years
17 worth of data, not two, which will give us, I think, a
18 more accurate depiction of how well students are
19 managing their student loan debt. The benefits of
20 using the cohort default rate is that first, it already
21 takes into account low borrower participation. There
22 are exemptions already in cohort default rates for

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1 that. And second, it allows schools to verify and
2 challenge data provided by the Department, something
3 that's not awarded -- afforded to schools under the
4 proposed rule.

5 The other part of the proposed rule that's
6 taken into account with cohort default rates is under
7 the proposed rule, only a reduction in principal is
8 used as the primary measure of successful student loan
9 repayment. I think we -- our belief is, is that all
10 loans in deferment or in a valid, statutorily
11 recognized repayment plan, even if principal is not
12 being reduced, should be included in successful student
13 loan repayment. In fact, I think we have to be careful
14 that we don't introduce a perverse incentive where
15 schools would be counseling students away from the very
16 programs that we partnered with the Administration on
17 implementing, like income-based repayment.

18 I think it's also inequitable and
19 inconsistent to hold these safeguards out as viable
20 loan management tools for students who become sick,
21 disabled, decide to serve in the Peace Corps or other
22 volunteer opportunities, or simply choose not to work

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1 because of family obligations, but then another set of
2 regulations that hold them out as unviable options.

3 So in short, it's using existing completion,
4 placement, and cohort default, perhaps with different
5 thresholds, on a program-by-program basis as starting
6 points so we can ensure that students are being treated
7 fairly. And if a program doesn't meet any of those
8 existing data requirements, then it may be appropriate
9 to look at using debt-to-income and repayment
10 calculations. And I would refer you to our September
11 9th comment, where we raise several implementation
12 questions that we think have to be clarified in order
13 for proper implementation.

14 Thank you for the opportunity to speak today.
15 The only other part that I would focus on from our
16 comment is a suggestion that the Department look at
17 implementing an interim final rule that would implement
18 the regulations, but allow for additional comments, so
19 we can ensure that it goes forward correctly.

20 Thank you.

21 MS. PEOPLES: Good morning, everyone. My
22 name is Angela Peoples. I am the Policy and Advocacy

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1 Manager at Campus Progress, and I thank you all for
2 this opportunity to be here.

3 Campus Progress is the youth division of the
4 Center for American Progress, a non-partisan, nonprofit
5 progressive organization. Campus Progress advocates
6 with and for young people on a wide range of issues,
7 including immigration reform, climate change, LTBTQ
8 equality, and of course college affordability.

9 I appreciate the opportunity to address you
10 all today on the equal employment regulations. It is
11 our belief that an effective rule in this area is
12 critical to ensure that students have a chance to
13 receive a quality education at a reasonable cost; have
14 the opportunity to advance in their careers and be
15 successful if they so choose; and then also that they
16 are not overwhelmed with the certainty of unpayable
17 debt.

18 I served as an alternate negotiator in this
19 round of negotiated rulemaking on the issues of program
20 integrity. As a very passionate student advocate, I
21 was very pleased to see the efforts of the Department
22 of Education and my fellow negotiators to find

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1 solutions on a number of troubling issues plaguing
2 students at many institutions of higher education.

3 While I believe, and still do, that
4 educational institutions, all institutions, must act
5 with integrity and in the best interests of students, I
6 could not avoid the conclusion that the egregious
7 examples of misconduct took place at for-profit
8 institutions. After the negotiations ended, Campus
9 Progress became part of a broad coalition urging the
10 Department to continue the work of the negotiators and
11 propose a strong and effective regulatory definition of
12 gainful employment. As a member of the coalition,
13 Campus Progress submitted comments in response to the
14 Department's proposed definition.

15 Our comments overall express an appreciation
16 of the Department's proposed regulations. However,
17 there are a few areas where we believe the Department
18 can improve. And I will speak to a few of those today.

19 One: In terms of repayment standards, we
20 believe that the rate needs to be higher. Right now,
21 the current regulation sends a wrong message that the
22 highest bar set by the Department of Education would

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1 allow that more than half of students coming out of a
2 program would not be paying down their loans. And we
3 recommend that the repayment threshold be increased by
4 ten percent.

5 Another area is in the treatment of
6 delinquent borrowers and in the repayment calculation.
7 Borrowers who are in default and forbearance or
8 economic deferment are not the only ones that are
9 struggling, and we believe that delinquent borrowers
10 should also be excluded from the repayment rate.
11 Keeping them in the repayment numerator will give
12 institutions no reason to support them to move out of
13 that delinquent status.

14 Finally, in the discretionary income metrics,
15 we believe that there are a number of ways to improve
16 them, number one, using a single 20 percent debt to
17 discretionary income threshold to more accurately
18 reflect the real debt burden of families.

19 And then finally, we believe that it is
20 inappropriate to assume the discretionary income of a
21 single person when the reality is that most students at
22 for-profit institutions have one or more dependents. We

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1 believe that there are a number of ways, which are
2 specified in our comments, to clarify the definition of
3 discretionary debt to discretionary income.

4 In conclusion, I'd just like to speak very
5 broadly to a couple of the themes within our comments.
6 Number one, we believe that this definition is designed
7 to improve college access and will do that. Right now,
8 the definition will allow for higher education
9 institutions to be protected -- to protect vulnerable
10 students and taxpayers. We think that this will allow
11 good programs to make the adjustment and to rise and to
12 expand, and then poor performing programs will be
13 encouraged to make adjustments that are necessary and
14 better serve those students.

15 The second is that we are not concerned that
16 this will decrease access, because this will only,
17 again, apply to programs not threatening to the closing
18 of schools, and again, having a strong definition will
19 give programs guidance on ways to make adjustments.

20 And then finally, we just want to reiterate
21 that we recognize that this reg applies to all schools,
22 not just for-profit schools. And in fact, it will

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1 apply to more public schools, which we think is
2 consistent with the statute and very appropriate.

3 Campus Progress strongly urges the Department
4 to move ahead with the Gainful Employment regulation
5 without delay before more Americans are signed up for
6 educational programs that sound great when they're
7 pitched to them by recruiters, and then they end up
8 with low educational value and low career value or
9 prospect of paying back their loans. We believe that
10 there are thousands of solid programs where students
11 can obtain knowledge and develop the skills that they
12 need to have promising careers, and our scarce federal
13 resources must go to supporting those programs, whether
14 they are at nonprofit or for-profit institutions.

15 Thank you very much for this opportunity.

16 MR. KASSA: Good morning. My name is
17 Getachew Kassa. I'm with the United States Student
18 Association. We are the country's oldest and largest
19 student-led, student-run national organization
20 advocating for access and affordability in
21 postsecondary education. We are part of a broad
22 coalition of advocates for students, consumers, higher

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1 education, civil rights, and college access that
2 support a strong definition for gainful employment.
3 The proposed rules will help protect students and
4 taxpayers from programs that routinely saddle students
5 with debts they can't repay and degrees they can't use.

6 USSA, along with our coalition partners,
7 submitted joint comments. Today I will limit my
8 comments to ineligible programs. Under the proposed
9 rules -- under the proposed regulations, specifically
10 ineligible programs, programs unable to meet basic
11 repayment rate thresholds and neither debt to income
12 measures will be found ineligible by the Department.
13 However, under the proposed programs, regulations will
14 be permitted to continue -- programs will be permitted
15 to continue to enroll students for up to two additional
16 years. We understand this additional time is balance
17 the mistreatment of students with students having the
18 opportunity to finish their programs. However, it is
19 our position that the regulations need to be
20 strengthened to adequately support students.

21 As we worked through the commenting process,
22 questions arose about how or when enrolled students in

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1 ineligible programs will be notified that the program
2 is ineligible and its consequences. It is critically
3 important that students who are enrolled in ineligible
4 programs be notified and understand the Department's
5 findings. We propose that enrolled students should be
6 provided such information within 30 days of the
7 Department's notification of the institution. We
8 strongly recommend that the Department notify students
9 directly so that the information provided to students
10 is standardized and not altered, softened, or qualified
11 by the institution losing the ineligible program or its
12 ineligibility.

13 Additionally, enrolled students who are
14 unable to choose not to complete their program for the
15 remaining period the period is eligible or those who
16 are unable to choose not to transfer to an alternative
17 program within the same institution should not be
18 accountable for their federal student loans incurred in
19 attending that program. Furthermore, the federal
20 student loan debts incurred to attend that program
21 subsequently deemed ineligible under this regulation
22 should be discharged. This is an important

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1 counterbalance to the additional years of Title IV
2 eligibility after the program is deemed ineligible.
3 Under the proposal, students have a choice to continue
4 with an ineligible program, or on the other hand,
5 students who question the value of attending the
6 program have the ability to remove themselves from the
7 program. They should do this without penalty or debts
8 that were incurred in that program.

9 Students enrolled in an ineligible program
10 will be saddled with debt, at a higher risk for
11 default, and as a consequence, these same students will
12 be at a higher risk to lose eligibility for future
13 loans, depriving them of the education they seek.

14 Lastly, the Department has the authority to
15 compromise loans, and we further urge the Department to
16 seek reimbursement from institutions for discharge
17 grants to borrowers for federal programs and any other
18 loans that were given to the students.

19 So basically, to summarize all this, if I am
20 a student and I am in a program that's found
21 ineligible, I want my Department of Education to notify
22 me and let me know that the program is ineligible and

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1 the consequences and the options that I as a student
2 have. At the same time, if I take out student loans or
3 other federal aid loans, I would hope that the
4 Department of Ed would discharge those loans and
5 forgive me for those loans because the program was
6 found ineligible.

7 Thank you for this opportunity.

8 MR. BERGERON: We're going to take a five-
9 minute break, I guess. Thank you.

10 MR. OCHOA: Okay. Good morning, everybody.
11 We're having a slight change of the guard here. I'm
12 Eduardo Ochoa. I'm with the Office of Postsecondary
13 Education. And this is Jennifer Woodward with the
14 Office of General Counsel. And continuing is David
15 Bergeron, also from the Office of Postsecondary
16 Education.

17 MR. WILLIAMS: Good morning. My name's Rich
18 Williams, higher education advocate at U.S. PIRG, the
19 United States Public Interest Research Group. We're a
20 network of state public interest advocacy
21 organizations, including the Higher Education Project,
22 which represents hundreds of thousands of students on

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1 hundreds of college campuses across the country,
2 primarily working to decrease the amount of student
3 loan debt students are leaving college with.

4 I want to thank the Department of Education
5 for the opportunity to speak today, but also for the
6 opportunity to serve as a negotiator in crafting
7 program integrity rules, not only for gainful
8 employment, but many other issues, as well.

9 As part of a negotiator within the
10 negotiations, both myself and Angela Peoples ask
11 Secretary Duncan and the Department of Education,
12 particularly with Gainful Employment, to craft a rule
13 that specifically takes in account the level of student
14 debt that graduates incur when leaving their programs.
15 We have seen tremendous increases in student debt
16 levels across the country, and it has profound impacts
17 on graduates' lives. We are seeing now across the
18 board students graduating with %24,000 worth of debt,
19 and that number is even higher when you look at for-
20 profit colleges, which are now higher than \$33,000.
21 Specifically, there are several programs
22 across this country which have been under-serving

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1 students, and we would like to work with the Department
2 and try to -- to try to narrow those down. We'd like
3 to thank the Department for including in their
4 framework specific areas such as including debt from
5 all affiliated schools within the metrics; including
6 private student loans; avoiding loopholes for colleges
7 with higher borrowing but poorer outcomes, such as
8 looking at completers only; and using independently
9 verified data. We thank you for addressing our
10 concerns within the framework that's put forward.

11 Within my comments, I want to look at two
12 specific areas, and that's looking at why it's so
13 critical that MORE(ph) goes into effect before Gainful
14 Employment is implemented to protect students and
15 taxpayers, and why it's so critical that restricted
16 programs are forced to improve rather than stay
17 restricted forever.

18 So disclosures and placement for completion
19 rates are not enough. There's been recent stories by a
20 Texas news station which is looking at an institution
21 within their state which was falsifying graduation rate
22 -- placement rates, where the school was quoted as

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1 saying a 70 percent placement rate, rather than its
2 actual 40 percent placement rate. It also has a 17
3 percent repayment rate; a two-year cohort default rate
4 of 26 percent; and a three-year cohort default rate of
5 37 percent. In a new set of stories just in the past
6 few days, they documented cases of schools recruiting
7 felons to train in their programs for programs that
8 they'd never be able to use because of their felon
9 status, and also giving bonuses to recruiters to make
10 students break down and cry.

11 For schools like these, it's simply not
12 enough to report unreliable placement and graduation
13 rates until Gainful Employment metrics go in effect in
14 2012. The Department of Education should take whatever
15 administrative enforcement measures it can immediately,
16 rather than waiting for the Gainful Employment metrics
17 to go in effect in 2012.

18 Also, it's important to make sure that
19 restricted programs improve, rather than stay in
20 restricted forever. We think that it is a right thing
21 to include debt disclosures and warnings and also limit
22 enrollment for programs based on the previous three

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1 years of enrollment. But that, as well, does not go
2 far enough. We are giving a lifetime pass to many of
3 these programs. There's an old saying that C's get
4 degrees for students. But many programs now have basic
5 requirements for students to graduate, like getting a B
6 or better. Within the proposed rules, we are allowing
7 programs which could be qualified as a D to continue
8 giving degrees.

9 We have two concerns: large programs which
10 enroll thousands of students, even though they'll have
11 an enrollment cap, will still be able to enroll
12 thousands of newly Title IV-eligible students each and
13 every year. We also think that programs that rely on
14 G.I. benefits -- eight of the ten top G.I. benefiting
15 schools are for-profit schools. Just because you can
16 change your enrollment strategies doesn't mean that you
17 should avoid regulation. I would think these should be
18 improved.

19 Thank you for the opportunity to speak, and
20 thank you for moving forward with this rule on gainful
21 employment rules.

22 MR. OCHOA: Next speaker, please.

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1 MR. SPONSELLER: My name's Tom Sponseller.
2 I'm President and CEO of the South Carolina Hospitality
3 Association, speaking on behalf of employers, and the
4 first to do so this morning.

5 Giving you a little background, the South
6 Carolina Hospitality Association is the leading
7 business trade association for the restaurant, food
8 service, and lodging industry in our state. Our
9 mission is to help our members in the industry
10 establish customer loyalty, build rewarding careers,
11 achieve financial success. In our state, small as it
12 is, we have over 8,000 restaurant and food service
13 outlets, employing over 200,000 people. Despite being
14 an industry of predominantly small businesses, the
15 restaurant industry is the nation's second-largest
16 private sector employer.

17 The restaurant and food service industry are
18 unique, for several reasons. First and foremost, small
19 businesses dominate the industry, with more than seven
20 out of ten eating and drinking establishments being
21 single unit operators. Our work force is typically
22 young, with nearly half under the age of 25. In

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1 addition, the industry operates under relatively low
2 profit margins of four to six percent before taxes,
3 with labor costs being one of the most significant line
4 items for the restaurant. Just in our state, we're a
5 \$6 billion industry.

6 We appreciate the opportunity to be here
7 today in opposition to the Gainful Employment proposed
8 rule to amend the student assistance general provisions
9 by setting new debt to income standards that would
10 determine whether students in certain postsecondary
11 educational programs remain eligible to obtain student
12 financial assistance under Title IV of the Higher
13 Education Act of 1965. We agree with the suggestion
14 that if students were able to complete their education
15 with no student loan debt, more of their subsequent
16 income could be devoted to home purchases, retirement
17 savings, or serving the community. However, the
18 availability of federal student not only increases the
19 likelihood of a student that will enroll in an
20 institution of higher education, but may also be the
21 only way the student will be able to afford higher
22 education that could lead to his dream career. As a

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1 parent of three students that are still paying back
2 federal loans to public institutions, I can attest to
3 the fact that a lot of kids could not go to school
4 without federal student loans.

5 The restaurant and food service industry
6 needs culinary arts programs at proprietary
7 institutions to help provide postsecondary training for
8 our workforce. In South Carolina, our association has
9 an educational foundation we'd established ten years
10 ago. We did it to address workforce development issues
11 and to encourage high school students to consider the
12 hospitality industry as a career choice. In that short
13 period of time, we brought the National Restaurant
14 Association's Pro-Start Culinary Arts Restaurant
15 Management Program to our state and are now serving
16 over 70 public high schools and over 3,000 high school
17 juniors and seniors who want to make the restaurant
18 industry a career. We also as an association provide
19 thousands of dollars of scholarships as students from
20 these programs are going on to postsecondary for their
21 degrees in either culinary arts or
22 hotel/restaurant/tourism management. A large

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1 percentage of those students are looking to attend
2 culinary schools to fine-tune their knowledge and
3 education in hopes of becoming a chef, a restaurant
4 owner, or even maybe becoming the next Food Network
5 star.

6 In our state, there are only four
7 postsecondary culinary arts degree programs, three of
8 which are at state-supported two-year technical
9 colleges and one at the Art Institute of Charleston.
10 Only the international culinary school at the Art
11 Institute of Charleston offers a bachelor of science, a
12 four-year degree, in culinary arts.

13 Over the next seven years, we anticipate over
14 46,000 new jobs will be created in South Carolina's
15 restaurant industry, and across all job categories.
16 Restaurant and food service workers who obtain
17 postsecondary culinary training can earn a lot more
18 than those without the formal training in their
19 occupation. The proposed rule ignores real-life
20 successes. Graduates of the international culinary
21 schools at the Art Institute, with more than 12,000
22 students currently enrolled, will earn significantly

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1 above the Bureau of Labor Statistics salary projections
2 in culinary arts. For example, the average starting
3 salary for individuals graduating from the Art
4 Institute in culinary is \$28,000, while the salary
5 projection for the 25th percentile by the Bureau of
6 Labor Statistics used by the proposed rules for its
7 determination is just \$19,319.

8 The Art Institute in Charleston was created -
9 - was recruited by the City of Charleston, its mayor,
10 and the business community to fill a void when another
11 nonprofit four-year culinary institution announced in
12 2002 that they were leaving our state to go to North
13 Carolina. They opened in April 2007, just three and a
14 half years ago, and they've got over 800 students
15 already. Obviously, the proposed rule could create a
16 void where that college might have to consolidate, and
17 our state would have no four-year postsecondary.

18 Thanks very much for your time.

19 MR. OCHOA: Thank you. Next speaker?

20 MR. HINCHLIFFE: Thank you. My name is John
21 Hinchliffe. I represent the Nevada Restaurant
22 Association. I am the immediate Past President. I

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1 have 25 years in the restaurant industry.

2 The Nevada Restaurant Association provides a
3 number of services, mostly importantly the Nevada Pro-
4 Start, which helps education in partnership with high
5 schools to educate younger people and draw them into
6 our industry, as well as ServSafe certification, which
7 is a certification provided -- recognized by most of
8 the country and most municipalities to protect the food
9 product, to ensure that nobody's getting sick from food
10 borne illnesses.

11 When I was 17 I got my first restaurant job,
12 and it was as a dishwasher. The most complicated piece
13 of machinery in the restaurant was the dishwasher. Five
14 years later when I graduated from college, I worked in
15 a restaurant that wanted to make sure that I told
16 everybody, "We don't have any microwaves." Technology
17 in that five years had changed dramatically. It has
18 changed dramatically since then to now. Las

19 Vegas is the culinary capital of the world.
20 We serve hundreds of thousands of meals every day:
21 breakfast, lunch, dinner, late dinner. We serve
22 gourmet meals for four; we serve banquets for 2,000

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1 where everything goes down at the same time. We can't
2 afford to have anyone dying because of a food borne
3 illness. And we get our food from around the world.
4 The food industry has become very, very complicated,
5 and it requires education.

6 Unfortunately, in Nevada, our higher
7 educational system cannot meet this demand. We have
8 excellent schools. We have UNLV; we have the Community
9 College of Southern Nevada; we have the University of
10 Nevada at Henderson. But they cannot meet the demand
11 our industry has. Arts Institute has stepped in. It
12 graduates hundreds of students every year. They do it
13 very well, and they work in our industry.

14 Unfortunately, they don't always make, in a highly
15 competitive industry, what one would expect from a
16 four-year institution. It's highly competitive. On
17 the other hand, over the years they do reach that
18 goal.

19 We oppose the Gainful Employment issues, but
20 if we're going to use them, the rules should use the
21 higher Bureau of Labor statistics or of actual earnings
22 in debt to income tests. The rule should use a 15-year

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1 repayment schedule. It more accurately reflects the
2 realities of what happens. The rule should be phased
3 in to commence no sooner than 20154. We have hundreds
4 of students currently enrolled in culinary programs
5 across the state. They shouldn't be punished because
6 we decided to change the rules right now. And the rule
7 should excuse graduate programs. I understand the
8 Department of Education is protecting students. We all
9 want to protect our students. But the fact is, is that
10 these rules could impose a great burden, not only on
11 the city of Las Vegas, but on the state of Nevada, on
12 an entire industry that we quite frankly can't afford
13 today. We need those students.

14 Thank you for your time.

15 MR. OCHOA: Next speaker, please.

16 MS. POLLASTRINI: Good morning. My name is
17 Laura Pollastrini. I'm the Government and Public
18 Relations Manager at Northwestern College, which is a
19 family-owned and operated for-profit institution of
20 higher education that serves approximately 2,100
21 students on three campuses in the Chicago-land area in
22 Illinois.

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1 These proposed rules, we believe, will
2 unjustly disenfranchise the non-traditional students,
3 such as the older students who tend to balance jobs and
4 families, many a single parent household, and a greater
5 number of minority students. The Department has seen a
6 problem here and is unfairly throwing all the schools
7 into just one big pot. I'm urging the Department to
8 withdraw its rules and instead specifically address the
9 problems that it sees and where it seems them, instead
10 of victimizing all students in one big pot.

11 Now, the Department has painted all for-
12 profits with a single brush, which is discriminatory at
13 best, and at worst, it's detrimental to the very
14 students that the Higher Educational Act was intended
15 to benefit the most, which was low income and minority
16 students. So this rule will take away a student's
17 freedom of choice. In essence, the Department will now
18 be dictating to low income and minority students where
19 they can go, what careers they can pursue, or whether
20 to pursue a career college at all.

21 Now, President Obama's goal is to return the
22 United States to the highest proportion of college

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1 grads internationally by 2020. And I believe that
2 rather than helping to meet this goal, the Department
3 is putting up this colossal roadblock to it. If for-
4 profits are closed or programs are slashed, students
5 such as Northwestern College students have nowhere else
6 to go. Public and community college budgets have been
7 slashed repeatedly over the last few years. Class
8 sizes are growing, and the programs are being
9 eliminated. So fewer and fewer students are being
10 welcomed into these programs, and those that are are
11 being put on waitlists, not only for their classes, but
12 for the programs that they're interested in.

13 Now, some say that those students can just go
14 across the street if a program is closed or a college
15 is closed. But that's not the case, because for-profit
16 schools tend to be neighborhood schools. They're easy
17 to get to for classes, and if a school is closed or a
18 program eliminated, that student might have to take a
19 subway and two buses to find a similar program to give
20 them what they need. But that five-minute original
21 commute now becomes 45 minutes to an hour. It's harder
22 to coordinate their schedules around their children's

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1 schedules, and it's hard to make class on time after a
2 shift at work in the neighborhood. So in essence it's
3 taking away college from those low income and minority
4 populations, because they just won't go.

5 Now, with respect to the proposed rules, I
6 believe the Department has exceeded its statutory
7 authority, because in essence it's attempting to create
8 eligibility rules. However, only the U.S. Congress can
9 do that.

10 Also, the Department has exceeded its
11 statutory authority by proposing to redefine gainful
12 employment, which the Congress on multiple occasions
13 has chosen not to do.

14 Now, the new metric that you are proposing
15 has some flaws in it. And for an example, it is based
16 on factors not under the control of for-profits. Loan
17 repayment information and income data uses Social
18 Security reported earnings to calculate this metric,
19 and that's -- educational institutions are not privy to
20 that data. So without that data, there's no way to
21 determine the need to reassess a program or to seek
22 alterations in order to better comply with it. So

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1 consequently, institutions will only learn that a
2 program has failed the Department's test after it has
3 failed the complicated metrics.

4 Additionally, to remain in compliance,
5 schools and their programs will be judged on graduates'
6 salaries earned the first two years of employment. But
7 a college degree is for a lifetime of earnings, and no
8 one enters into that world making their highest
9 salaries those first few years. Thus, this incomplete
10 and skewed salary data can lead the Department to
11 deeming an institution non-compliant, for per the
12 proposed rules if a single program is out of compliance
13 with the complicated metric, that entire institution
14 can be placed on provisional certification. And that
15 limits the institution's ability to add new or
16 replacement programs and to increase enrollments.

17 Student debt, I agree, it's out of control.
18 But the college students are adults, and they take on
19 debt by choice, as well all do. They can vote; they
20 can go to war; they can sign leases for apartments;
21 they can buy cars. That many choose to take on more
22 than tuition costs and use those funds for

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1 transportation and other living expenses, the amount of
2 debt is their choice. Educational institutions have no
3 control over the amount of the loans taken. We can
4 counsel them, but the ultimate choice as to whether to
5 borrow and at what amount is the student's.

6 So based on all this, I respectfully request
7 the Department to withdraw its Gainful Employment
8 proposed rule until it has reexamined its potential
9 negative ramifications and unintended consequences. The
10 harm that will result if this proposed rule goes into
11 effect will touch the lives of hundreds of thousands of
12 students, graduates, employees, and employers at a time
13 in our history when it will be extremely detrimental.

14 Thank you for your consideration.

15 MR. OCHOA: Next speaker, please.

16 MR. MAZZA: Good morning. My name is Paul
17 Mazza. With me is my wife, Marilyn, a mother of six,
18 grandmother of 15. We live and work in State College,
19 Pennsylvania. We are the founders of South Hill School
20 of Business and Technology. I graduated from the
21 University of Notre Dame in 1952 with a degree in
22 accounting when they knew how to play football. I

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1 graduated from the Harvard Law School in 1955; Mrs.
2 Mazza graduated from Bates College in Maine in 1949,
3 and I've practiced law in State College since 1956.

4 In 1970, we were asked to start a job
5 training school, because young women in the State
6 College area had no alternatives except either to go to
7 Penn State or to become waitresses or retail
8 salesclerks. That did not seem good enough to us.

9 We presented our first classes in January of
10 1971. We decided to make it so tough that those who
11 survived it would be walking advertisements for this
12 little school. Eleven started; seven survived. They
13 did just what we had hoped. We now offer 16 different
14 programs in four different little towns for two-year
15 degree studies. Since 1971, we have graduated 6,200
16 students. The Pennsylvania State University employs 30
17 percent of our graduates historically over the past 40
18 years. Mrs. Mazza was the director of the school for
19 35 years. She ran it as a mother would run a family.
20 She treated every student as if that student were one
21 of her children. She introduced a culture that we
22 don't think we'll ever change.

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1 Secretary Duncan was quoted as saying, These
2 new rules will help ensure that students are getting
3 from schools what they pay for: solid preparation for
4 a good-paying job. Some bad actors are saddling
5 students with debt they cannot afford in exchange for
6 degrees and certificates they cannot use. These
7 schools and their investors benefit from billions of
8 dollars in taxpayer subsidies, and in return, taxpayers
9 have a right to know that they are serving students
10 well.

11 On this coming Saturday I will be 80 years
12 old. And I'm not making small talk when I say, I do
13 not have time to beat around the bush. We have yet to
14 receive our first dollar from any public entity of any
15 kind in any place -- not federal, not state, and not
16 local. We are not the people he's talking about
17 Furthermore, if these regulations work, let's see how
18 they work on two real people. Assume a young man in
19 State College who doesn't want to go to college. He
20 comes to our school. He gets a two-year degree. He is
21 hired by Penn State because he knows how to work. If he
22 borrows a lot of money -- we have a tuition of \$13,000

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1 a year -- we have 25 hours a week in the classroom.

2 We're expected to produce 5,800 hours of classroom

3 hours. We produce 1,900. He knows how to work.

4 His good friend next door wants to go to

5 college. He picks Go To College University. He pays

6 \$30,000 a year in tuition. He graduates. He is hired

7 by the same Penn State department, as he can't find a

8 job anywhere else, and he doesn't know how to work. He

9 has now four years of \$30,000 a year, \$120,000 of debt.

10 He has no job except the one he just got. He gets

11 fired from the job because he doesn't know how to do

12 it.

13 And now, Mr. Duncan, I'm saying, How does

14 this gainful employment system work? Who is it for?

15 I'm finished. The red light says I'm

16 finished. I have a lifetime more to say. Thank you.

17 MR. OCHOA: Thank you very much.

18 Next speaker, please.

19 MS. JONES: Good morning. My name is

20 Kimberly Jones, and I am the Associate Vice President

21 for Public Policy at the Council for Opportunity in

22 Education. And I wish to share the comments submitted

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1 by our president, Dr. Arnold Mitchum.

2 On behalf of the board of directors of the
3 Council for Opportunity in Education, I write in
4 response to respect to the recent safeguards issued by
5 the Department of Education on the for-profit sector to
6 protect low income and first generation students and
7 learners with disabilities. As the only higher
8 education organization with a mission to advance and
9 defend the ideal of equal opportunity in postsecondary
10 education, COE commends Secretary Duncan and the U.S.
11 Department of Education for proposing necessary steps
12 to ensure that disadvantaged students are protected
13 from accruing unmanageable debt and a dearth of
14 employment opportunities upon receipt of their
15 certificates or degrees.

16 Career colleges in the for-profit education
17 sector target low income and first generation students
18 to attend their schools, promising flexible hours and a
19 job-friendly curriculum. However, as we have seen time
20 and time again, many students enter these institutions
21 without guidance on financial aid and are subject to
22 the unsavory and unfair recruiting tactics of these

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1 institutions. These students start their higher
2 education dreams with high aspirations, but under false
3 pretenses. Unfortunately, many of them are left with
4 no viable career options and mountains of debt.

5 The data on for-profit institutions and the
6 cost of tuition and default rates is extremely alarming
7 as it relates to low income students. According to a
8 recent study by the College Board, in 2009-2010, the
9 average for-profit institution charged \$14,174 in
10 tuition and fees, while the average community college
11 charged only \$2,544. In addition, recent data provided
12 by the Department of Education show that 93 of the 100
13 postsecondary institutions with a default rate of 30
14 percent or more in 2006 and 2007 were for-profit
15 institutions, the same institutions targeting
16 disadvantaged students without the knowledge and
17 support systems to make sound decisions.

18 While setting necessary and important
19 safeguards for career colleges in the for-profit sector
20 through measures like Gainful Employment is
21 commendable, that alone cannot solve the problem.
22 Programs like TRIO's Town Search and Education

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1 Opportunity Centers are necessary to ensure that
2 students are making sound decisions regarding higher
3 education. These programs provide financial aid
4 counseling where participants receive information about
5 admissions requirements, scholarships, facts of
6 completion, and various student financial aid programs.

7 On behalf of all low income students and
8 families, COE thanks the Department of Education for
9 taking the necessary steps to prevent fraud and abuse
10 in the for-profit higher education sector and
11 protecting students as they enter in and complete their
12 postsecondary education.

13 We look forward to working with this
14 Administration on means to further promote educational
15 access and achievement for low income and first
16 generation students in TRIO and beyond.

17 With the balance of my time, I just wish to
18 respond to some of the concerns about many of the
19 institutions here in their discussions of low income
20 students and students of color. The Council really
21 encourages the Department to think about low income
22 students and first generation students and students of

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1 color and where they end up and why, and what happens
2 to them once they're there. What we do know is that
3 about 50 percent of students enrolled at for-profits
4 are Pell grant recipients, more than any other type of
5 institution. We know that for-profits serve only six
6 percent of all undergraduates, yet 20 percent of all
7 those receiving Pell grants. And we know that of the
8 top 20 institutions receiving Pell grant funding, 80
9 percent of them are for-profit institutions. So given
10 their low enrollment rate of all undergraduates, it's
11 very alarming that they in fact account for 25 percent
12 for all student financial aid and 44 percent of all
13 federal student loan defaults.

14 We thank you for this opportunity and look
15 forward to working with you.

16 MR. OCHOA: Thank you.

17 MS. HERRON: Thank you for permitting me to
18 share my opposition to the Gainful Employment metric
19 today. My name is Elizabeth Keifer Herron. I'm the
20 Executive Vice President and Compliance Officer for the
21 Postsecondary Education Assistance Corporation. Our
22 company has been serving students and postsecondary

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1 institutions in the areas of admissions, retention,
2 student loan repayment, and indebtedness counseling and
3 following up on loan repayment rights and default
4 prevention initiatives for more than 20 years. We
5 serve hundreds of thousands of students each year and
6 provide services to hundreds of proprietary
7 institutions each year.

8 The Department of Ed has cited abuse in the
9 private school sector has the rationale for publishing
10 this regulation. But the broad-brush approach proposed
11 in the July NPRM will impact hundreds of institutions
12 and thousands of students where absolutely no abuse has
13 been identified. While I appreciate that the
14 Department of Ed is responding to abuses identified in
15 a small number of institutions, this proposed
16 regulation has gone too far. It has gone beyond
17 statutory authority.

18 A better approach may be to enforce existing
19 regulations that the Department of Education already
20 has regarding admissions, information dissemination,
21 disclosure, rather than creating a burdensome and
22 costly regulatory framework.

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1 The metrics proposed are retroactive in
2 nature, taking a snapshot for the repayment and the
3 debt to income ratios, even if we delay the effective
4 date, that are still many years beyond what anyone
5 could have an impact on. The first cohorts of students
6 who will be measured by these regulations were
7 recruited, admitted, trained, certified for student
8 loans, graduated and helped to find jobs before this
9 regulation will even be in effect. The NPRM exceeds
10 statutory authority to define institutions providing
11 gainful employment in a recognized occupation and
12 establishes a complex regulatory framework that will be
13 difficult to establish, maintain, and enforce. The
14 same regulatory framework will cost institutions and
15 taxpayers, via the new tracking and reporting, untold
16 quantities of scarce resources at a time when we should
17 be investing in the nation's educational requirements,
18 rather than combating them.

19 In addition, the regulation seeks to
20 incorporate the Department of Education into the
21 authorization and review process for programs by in
22 essence creating programmatic eligibility, which is

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1 also beyond statutory authority. By creating
2 restrictions and sanctions by program, the Department
3 of Ed is proposing to use the metric to evaluate
4 quality, which it is in no position to do. What this
5 proposed metric will do is evaluate the socioeconomic
6 conditions in particular communities and job markets
7 and unfairly punish those of lower socioeconomic
8 backgrounds and the institutions that serve them at a
9 time when they need our support the most.

10 The student loan programs were conceived and
11 developed to help people pursue their educational
12 objectives, and they come with special repayment rights
13 and responsibilities, deferment and forbearance
14 options, alternate repayment plans. These plans make
15 borrowing more palatable and enable people to pursue
16 their dreams, also making repayment easier. Students
17 are entitled, assuming they meet certain eligibility
18 criteria, to utilize different repayment plans, like
19 income-based repayment, or to avail themselves of
20 deferments or forbearances or consolidations to get
21 them through difficult economic times.

22 The repayment portion of the NPRM punishes

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1 institutions for serving people who exercise their
2 rights. Many students attend our client schools, they
3 have prior debt. They've lost their job and are
4 seeking additional training. They might have a spouse
5 that's lost their job. Even though they may be working
6 and making a reasonable income, family circumstances
7 may necessitate the use of deferments or forbearances
8 or a payment plan that does not chew down principal.
9 Would it be fair to counsel these students against
10 utilizing deferments and forbearances so they default
11 in some other aspect of their life instead of their
12 student loan debt? I think not.

13 It seems that this regulation suggests that
14 institutions must be held accountable for serving any
15 student who is at risk. Institutions are not permitted
16 to alter their admissions practices to refuse entry to
17 individuals based on their socioeconomic status or
18 prior indebtedness, which we know has an impact on
19 their ability to repay and their debt to income ratio.
20 We're not permitted to alter financial planning
21 criteria to refuse to certify student loans if a
22 student is eligible, even if the institution believes

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1 that the student will be incurring too much debt or has
2 prior debt that will make repayment or their debt to
3 income ratio unpalatable.

4 Data: Finally, if this regulation were to go
5 into effect, implementing the repayment rate formula
6 and the debt to income ratio formula will hold
7 institutions accountable for a data set they have no
8 access to; no ability to track, monitor, or review for
9 their progress. It fails to recognize that student aid
10 is portable. Students choose to attend the school or
11 program that best meets their needs. It violates the
12 master calendar, denies process, and exceeds statutory
13 authority.

14 Most importantly, to move forward with this
15 regulation will demonstrate a blatant disregard for the
16 rights of lower income Americans. Who will serve these
17 displaced Americans?

18 Thank you for your time.

19 MR. OCHOA: Please, sir.

20 MR. HARTLE: Good morning. My name is Terry
21 Hartle. I'm Senior Vice President of the American
22 Council on Education. I'm speaking this morning on

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1 behalf of the ACE and the 58 other associations and
2 organizations that signed onto the letter that we
3 submitted in response to these regulations.

4 I'd like to begin by thanking the Department
5 of Education for the exceptional and extraordinary
6 efforts to solicit public comments on the proposed
7 regulations. You are taking a lot of steps that are
8 not required by the Administrative Procedures Act, and
9 I commend you for doing that. I've never seen another
10 agency do anything quite like this, so thank you for
11 that.

12 The second point I would make is that we
13 strongly support efforts to protect students from
14 excessive debt that they cannot pay back. I believe
15 that the repayment rate is a reasonable indicator that
16 we shouldn't be afraid to look at.

17 The third point I would make is that
18 according to IPEDS, there are 53,000 programs that are
19 gainful employment programs that will be covered under
20 the proposed regulation. Forty thousand of these
21 programs -- that's 80 percent -- are at traditional
22 colleges and universities. So traditional colleges and

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1 universities have quite a stake in the proposed
2 regulations.

3 Two substantive points I'd like to make.
4 First is a point that's been discussed before. That's
5 retroactivity. Schools will find out that they have a
6 problem only after it's too late for them to do very
7 much about it because of the implementation schedule
8 you are proposing. Lawyers have a name for a law that
9 retroactively changes the legal consequences taken
10 before its passage. It's called an ex post facto law,
11 and usually it's unconstitutional. Even if not
12 unconstitutional, I think it raises fundamental
13 fairness questions that I would ask the Department of
14 Education to consider. The obvious solution here is to
15 make the test prospective; base it on data going
16 forward as opposed to using retroactive data.

17 Second observation is the very large number
18 of programs that will be covered by this regulation.
19 As I mentioned earlier, according to IPEDS, the
20 regulation will affect roughly 53,000 programs, and
21 it's extremely complex and will require a great deal of
22 data collection by institutions. And it will put a

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1 substantial workload burden on the Department of
2 Education, which will stretch the Department's
3 abilities in several ways unless it gets considerably
4 more staff to take this on.

5 I think there are several ways that the
6 Department could address the broad reach of the
7 regulation that I'd encourage them to consider. First,
8 I think the Department should exempt from gainful
9 employment regulations any program where a degree, a
10 bachelor's or associate's degree, is a prerequisite for
11 participation. Of the 53,000 certificate programs,
12 about 6,000 are post-baccalaureate certificate
13 programs. Post-baccalaureate certificate programs
14 don't rely very heavily on Title IV aid, and most post-
15 baccalaureate certificate recipients are seeking
16 additional education to expand their education for an
17 occupation they already have.

18 Second observation, or second way to
19 streamline the reach of this would be to impose a five
20 percent test. I think the Department should exempt
21 from the Gainful Employment regulations any institution
22 where less than five percent of the total credentials

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1 awarded come from gainful employment programs. In many
2 schools, if they have that few certificate programs,
3 there's no profit motive that might motivate the
4 expansion of low-cost, high-profit programs without
5 adequate resources.

6 Finally, I would suggest that the Department
7 consider exempting from the Gainful Employment
8 regulation any program where a modest number of
9 students take out federal loans. There are a fair
10 number of certificate programs that do not have a
11 significant amount of borrowing, particularly at
12 community colleges. Community colleges have about 40
13 percent of all total student enrollment in American
14 higher education, but they account for about ten
15 percent of all federal student loans. Indeed, the most
16 recent Department of Education data make clear that
17 only five percent of community college students in
18 certificate programs take out federal loans.

19 I think by targeting the regulation a little
20 bit more specifically, the Department will ease its
21 workload burden and minimize the negative impact on
22 institutions and programs that are not a serious

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1 problem.

2 Again, I thank the Department for the time
3 that they've made available for all of us to express
4 our concerns and suggestions for these regulations.

5 Thank you.

6 MR. OCHOA: Next speaker, please.

7 MS. OLDHAM: Good morning. My name is Cheryl
8 Oldham with the United States Chamber of Commerce, and
9 I want to thank the Department for the opportunity to
10 be here to reiterate the Chamber's opposition to the
11 proposed Gainful Employment regulation.

12 The Chamber is the world's largest business
13 federation, representing the interests of more than
14 three million businesses of all sizes, sectors, and
15 regions, as well as state and local chambers and
16 industry associations. It's overarching mission is to
17 strengthen the competitiveness of the U.S. economy to
18 increase opportunity and prosperity for all Americans.

19 The Chamber recognizes the importance of
20 education, particularly postsecondary education, to
21 that mission. That's why we are opposing the proposed
22 Gainful Employment regulation and submitted our

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1 comments to the Department outlining that position.

2 The Chamber's concerns can be summarized in
3 four areas. The proposal will negatively impact job
4 creation; runs counter to a necessary focus on degree
5 completion; adversely affects minority and low income
6 students; and punishes the innovation in higher
7 education.

8 With regard to job creation, it is our deeply
9 held belief that America's number one priority now
10 ought to be creating the more than 20 million jobs
11 needed over the next ten years to reemploy the
12 unemployed and keep pace with the growing population.
13 Yet this regulation would result in jobs lost and fewer
14 Americans getting the postsecondary education and
15 training they need to secure a job in today's economy.
16 Fostering an environment that promotes job creation
17 should be Job Number One for the federal government,
18 and nothing should be done by any federal agency that
19 could do harm to an already fragile economic situation.

20 Private sector higher education schools are
21 working to help reduce the approximately ten percent
22 unemployment rate Americans have endured for more than

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1 two years. These institutions offer hands-on training
2 and real world experience. For the sector as a whole
3 during 2008, more than 370,000 graduates were placed
4 into jobs needed to drive the economy forward.

5 We applaud the Administration's emphasis on
6 degree completion and positioning America once again as
7 a global leader in postsecondary attainment. The goal
8 of five million more graduates by 2020 is both
9 aggressive and commendable. However, in order to
10 achieve this goal, even Secretary Duncan has
11 acknowledged the key role the for-profit sector must
12 play. Yet simultaneously, the Department is issuing a
13 rule that runs counter to this goal by targeting the
14 very sector it needs to play a role. By jeopardizing
15 programs and institutions, fewer students, particularly
16 low income and minority students, will have access to
17 postsecondary education.

18 The Administration's completion goal will not
19 be met if these very students are not a part of the
20 equation. These are the students that are most often
21 left behind by some in traditional higher education,
22 but are being served in large numbers by the for-profit

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1 sector, which is providing them an alternative to
2 traditional higher ed when they may otherwise not have
3 access.

4 In direct contrast to the attainment goal,
5 this measure by its nature would disproportionately
6 affect degree programs that take longer to complete.
7 Virtually no colleges, for-profit or nonprofit, can
8 meet the eight percent threshold for bachelor's degree
9 programs included in the rulemaking.

10 The for-profit sector will not and should not
11 replace traditional higher education. However, public
12 and private institutions can provide only a limited
13 number of opportunities. Capacity at public and
14 nonprofit institutions is limited, particularly so in
15 tough economic times, when state and local budgets are
16 tight. And in a global knowledge economy, we as a
17 nation must support those who are providing educational
18 opportunities to those who might otherwise be excluded.

19 We are concerned the Department lacks the
20 data required to sufficiently understand the true
21 impact of this far-reaching regulation, particularly on
22 the minority community. This rule is lethal to

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1 programs that enroll significant numbers of low income
2 students. Low income students, regardless of the type
3 of institution they attend, tend to borrow more money
4 than their more affluent peers. The Chamber is
5 concerned that the institutions may be forced to reject
6 low income students in order to ensure compliance with
7 the proposed rule.

8 Private sector investment in innovation in
9 higher ed is critical to serving more students and
10 tackling the high cost of higher education. For-profit
11 colleges and universities are a proven leader in
12 delivery of instruction and program development that
13 meets the needs of the employer community and students
14 across the country. These institutions serve non-
15 traditional students with highly convenient delivery
16 that addresses the needs of working students, parents,
17 and first generation college-goers. However, this rule
18 would have a chilling effect on private sector
19 innovation and would result in reduced access and
20 opportunity, fewer choices, and less convenience for
21 students.

22 Finally, while the Chamber will leave the

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1 detailed arguments regarding the approach of this
2 regulation to others, we believe there are very real
3 and significant questions that have been raised about
4 whether there has been an informed and adequate
5 assessment of the overall impact. Getting the bad guys
6 in the sector is certainly a goal that's hard to argue
7 against. However, enough legitimate questions have
8 been raised about the data and analysis that we don't
9 believe the Department can say with certainty that the
10 good guys will not be punished and students, especially
11 those least well served by traditional higher ed, will
12 not be harmed in the process. That is why the U.S.
13 Chamber of Commerce urges the Department to withdraw
14 the proposed regulation at this time.

15 I appreciate your time.

16 MR. OCHOA: Next speaker, please.

17 No more speakers?

18 We will end our session, then, and resume
19 (off mike).

20 MALE: Okay. Thank you, ladies and
21 gentlemen. That concludes this morning's session. We
22 would ask that you come back if you have a black badge,

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1 and if your name is written in black, you can come back
2 at 12:30 and we'll start allowing you back in the room.
3 The next session will start at 1:00. If you have a red
4 badge, that means you're only confirmed for this
5 morning's session, so we ask that you exit the building
6 that way. And we'll see you back here at 1:00 o'clock.

7 Thank you.

8 (First session ends)

9 (Afternoon session begins)

10 MR. OCHOA: Good afternoon. I'm Eduardo
11 Ochoa, Assistant Secretary for Postsecondary Education.
12 And here we have with me also Dan Madzellan from Office
13 of Postsecondary Education and Steve Finley from the
14 Office of General Counsel.

15 The Department has received an unprecedented
16 number of comments on the proposed rule for Gainful
17 Employment, approximately 90,000, from a wide variety
18 of stakeholders. And those stakeholders submitting
19 comments include representatives from for-profit
20 universities and colleges, community colleges,
21 students, higher education associations, members of
22 Congress, financial analysts, economists, and college

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1 and university faculty. As a result, the Department is
2 taking this additional time to consider the comments it
3 received and is hosting today's public hearings to
4 ensure a thoughtful process as we work to finalize the
5 proposed rule.

6 Now, just briefly some ground rules for
7 today. Over the course of two days we expect to hear
8 close to 80 presentations or updated presentations
9 covering a range of interests and ideas. In selecting
10 presenters, the Department worked to ensure that every
11 organization that requested to speak was afforded the
12 opportunity. Each presenter will be afforded five
13 minutes to deliver remarks. We would ask that
14 presenters state their name and their organization at
15 the beginning of their remarks. During this time the
16 Department listening panel reserves the right to ask
17 clarifying questions of a presenter.

18 There will be a timer keeping us on track.
19 When it turns yellow, each presenter will have two
20 minutes remaining. When it turns red, we request that
21 you stop speaking and return to your seat.

22 For those of you who hope to have a record of

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1 this, a full transcription will be posted to the
2 Department's website in the coming weeks.

3 Okay. So we're ready to begin. I think that
4 speakers have been issued numbers. So we will start
5 with our first speaker now.

6 MS. MOREE: Good afternoon. I'm Maggie
7 Moree. I am the Director of Federal Affairs for the
8 Business Council of New York State. We are a business
9 trade organization located in Albany, New York,
10 representing over 3,000 businesses of all sectors and
11 all sizes across the state. Our members include
12 institutions of higher education, public, private, and
13 proprietary; two-year, four-year, and research
14 institutions. And I appreciate the opportunity to
15 present today before you and provide additional
16 perspective on the formal comments that we submitted to
17 the Department.

18 In short, a well-prepared work force gives
19 New Yorkers the opportunity to compete in a global
20 economy. The business of higher education is tied to
21 our state's economic development success. The ability
22 to provide businesses with a skilled work force

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1 enhances the opportunity for business expansion and
2 retention. This is not new, nor is it news to anyone
3 here. It's a maxim our members own, with no
4 distinction between public, private, and proprietary
5 schools.

6 The business of higher education cannot shy
7 away from accountability if it is to be relevant to its
8 students and relevant to the business sectors where its
9 students will apply the skills and knowledge gained.
10 Ramon Vaquez(ph), a 2004 graduate of the Art Institute
11 of New York City, is but one example of putting a face
12 on what this means in New York State. The education
13 and skills he received at the Art Institute put him on
14 a path to gainful employment. That is, he owns his own
15 production company; he provides director and production
16 services to independent films, commercials, music, and
17 corporate videos.

18 The Business Council was disappointed at the
19 rulemaking promulgated by the Department on July 26th,
20 particularly as it defined and proposed to measure
21 gainful employment. As a business trade organization,
22 we value and encourage the use of data to inform public

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1 policy, to assist decision making by consumers, and to
2 measure the effectiveness of the investment of public
3 dollars. While the rulemaking indicates that, quote,
4 "the concept of training leading to gainful employment
5 was intended to ensure that this connection between
6 debt and earnings would not be lost," close quote, the
7 proposed metric does not actually measure gainful
8 employment, but uses debt repayment ability as a proxy
9 for gainful employment.

10 The concept of training leading to gainful
11 employment is not new to much of the work force
12 development system, or perhaps as you know it, the
13 education and training system. Welfare reform in the
14 '90s compelled education and training providers using
15 TANF money to demonstrate that a job at the end of the
16 course of study was there. The Workforce Investment
17 Act compels the training using WIA dollars be directed
18 only to those skills for which jobs are in demand.

19 Both of these federally funded programs
20 measure employment outcomes. They both measure wage
21 gains. And at its most basic level, the public
22 businesses and policy makers understand gainful

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1 employment. I daresay Ramon Vaquez understands it, as
2 well, with the skills that he acquired at the Art
3 Institute.

4 At the heart of our comments, the Business
5 Council would encourage the Department to align its
6 measures with the remainder of the workforce system,
7 rather than creating parallel measures which impose
8 more barriers to the education component of the system
9 and prevent it from fully integrating with the rest of
10 the workforce development system. Public policy and
11 public investments will be much better served by the
12 ability to have a common set of metrics across the
13 education and training portfolio.

14 The Business Council supports accountability.
15 We support transparency. Gainful employment should, in
16 fact, measure employment and not mislead the public by
17 using metrics which are related to debt. And as a
18 broader part of the workforce development system, we
19 would strongly urge you to become a part of, and not
20 stand separate from the rest of that system, and adopt
21 measures which allow all of us to see the results
22 across the publicly funded workforce system.

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1 I would be remiss if I didn't urge the
2 Department to consider what their primary objective is
3 in promulgating these rules. If the goal is to curb
4 fraudulent and marketing practices, then develop the
5 solution to fit the problem. New York State's Board of
6 Regents is the only state board of education in the
7 country having authority over all educational activity
8 at all levels, including private, public, nonprofit,
9 and for-profit institutions. Our system may not be
10 perfect, but it has provided ample oversight and
11 guidance and does not resist in exercising its
12 authority when needed and as appropriate. It has
13 closed proprietary schools; it exercises vigilance on
14 the marketing of programs and services. It is within
15 this well established, highly regulated operational
16 framework that New York's system of education and
17 training thrives. That's the foundation for our
18 opposition to these rules and regulations on gainful
19 employment, and we would ask that you would visit what
20 your primary objective is and target the solution and
21 the metric to that problem.

22 Thank you very much.

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1 MR. WYNNE: Good afternoon. My name is David
2 Wynne, and I'm the Vice President of Stenograph in
3 Elmhurst, Illinois. We're the worldwide leader in the
4 development, manufacture, and distribution of
5 technology solutions for court reporters and closed
6 captioners. We also own two court reporting schools,
7 one in Montgomery, Alabama, and Denver Academy of Court
8 Reporting.

9 In 1995 there were almost 400 schools
10 teaching court reporting. Today there are less than
11 100. Why? The cost to operate an increasingly
12 technology-driven program and extensive -- some might
13 say intrusive -- regulation and compliance issues
14 overwhelmed the majority mom and pop schools run by
15 dedicated educators, but without much business acumen
16 or capital.

17 As a result, there is a national shortage of
18 individuals trained to perform the functions of court
19 reporting critical to the functioning of our American
20 judicial system and CART closed captioning, providing
21 access for the deaf and hard of hearing that is
22 mandated by the Americans with Disabilities Act. We

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1 know. We service these customers every day at
2 Stenograph.

3 Court reporting is a very difficult course of
4 studies, generally leading to an associate degree. It
5 requires a unique combination of English language
6 skills, broad general knowledge, and extensive
7 vocabulary and the ability to master the psychomotor
8 skills necessary to write at 225 words a minute with
9 95-plus percent accuracy, verbatim. Clearly, not
10 everyone can do it. The rewards can be significant
11 when they do. According to the National Court
12 Reporters Association, the national average income of a
13 full-time court reporter is \$62,000. Candidly, the
14 public sector has been unwilling or unable to fund the
15 programs necessary to provide this training. It is
16 expensive to offer, and the density of students in any
17 given community is generally not adequate to support a
18 public program. Only about 30 of the 75 accredited
19 programs within NCRA are public, and approximately 80
20 percent of all students going into court reporting
21 programs today are in private, for-profit schools.

22 The demographic of our students is non-

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1 traditional. Many are retraining after layoffs. Our
2 population is 92 percent female; 18 percent minority;
3 72 percent are attending school with children, nearly
4 half of them as single parents; and 83 percent have a
5 current annual income of less than \$25,000.

6 With the new rule as proposed, you'll be
7 taking away the dream of a better life and future from
8 our students and thousands of others by denying them
9 access to financial aid which they deserve and need. We
10 ask that you not approve the gainful employment rule as
11 proposed. Instead, enforce the existing rules on
12 default rates mandated by our accrediting bodies -- in
13 our case, ACICS. Why create another unwieldy set of
14 rules and increased bureaucracy?

15 And second, reduce the amount of money that a
16 student can borrow. We spend a lot of time trying to
17 convince students that it is not in their best interest
18 to borrow the maximum provided from their FAFSA
19 calculations.

20 We hear repeatedly that this country needs a
21 more skilled and educated workforce to compete in the
22 world economy. Not all students are traditional and

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1 fit in a traditional four-year institution. Career
2 colleges prepare students, many of whom have not had
3 previous educational success and have other baggage
4 that you and I cannot even imagine.

5 In closing, I would like to share two success
6 stories. Tasha returned to school as a married
7 African-American parent. She loved her program, and in
8 her internship, provided CART and captioning services
9 to students at the University of Alabama, Birmingham,
10 and Troy State College. She liked it so much that over
11 the last six years, she has developed a business and
12 has contracts with virtually every public institution
13 of higher education Alabama to provide access for
14 students and faculty members who are deaf or hard of
15 hearing And she employs seven people.

16 Janie is a graduate and single parent. She
17 was encouraged by her mother to continue her education,
18 even though her family had no resources to help. She
19 did it the hard way, going to school at night. But she
20 was determined. Even an unanticipated pregnancy did
21 not stop her. She was attending class within a week of
22 the birth of her son. By the time she crossed the

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1 stage to receive her diploma, she'd already accepted a
2 position as an official court reporter in South Dakota.

3 Tasha and Janie and hundreds more like them
4 are not numbers. They are people like you and me who
5 want more for themselves and their families. Please do
6 not stifle their dreams of a better future. The rule
7 as proposed hurts more good schools and has more
8 unintended consequences than you can imagine. Please
9 don't lump all career colleges with a few bad actors.

10 Thank you.

11 MR. OCHOA: Thank you.

12 Next speaker, please.

13 MS. FLANAGAN: Good afternoon. My name is
14 Sarah Flanagan. I'm Vice President of Government
15 Relations at the National Association of Independent
16 Colleges and Universities. NAICU has more than 950
17 colleges in its membership and more than 70 additional
18 independent college associations. We represent private
19 nonprofit colleges that are either regionally or
20 nationally accredited. In total, our sector educates
21 about 20 percent of the nation's students, but awards
22 about 30 percent of all degrees.

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1 First I'd like to address a common
2 misunderstanding about these regulations. These
3 regulations impact all certificate programs at all
4 schools, regardless of whether a student attends a
5 public, nonprofit, or for-profit institution. Indeed,
6 ACE estimates that 40,000 of the 53,000 credentialed
7 programs that will be affected by these regulations are
8 in the public and nonprofit sectors.

9 At its core, NAICU understands the Department
10 of Education's efforts under the gainful employment
11 regulations are designed to address the issue of
12 negative amortization in the student loan program.
13 Currently, schools with excessive default rates are not
14 allowed to access Title IV funds. But as the federal
15 government has become more generous in extending
16 repayment terms to borrowers, they've created a large
17 group of students who are not technically in default,
18 but are unable to even make a dollar down payment on
19 their principal.

20 The proposal before us essentially tries to
21 capture these students through a second repayment
22 screen. We are deeply appreciative of the generous

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1 terms and conditions Congress and the Administration
2 have extended to student borrowers. We have a shared
3 responsibility to taxpayers and to the students we
4 serve to make sure that those benefits are not gamed.

5 However, we also recognize that complex
6 regulations not only add to the increased cost of
7 college which will be ultimately passed on to students,
8 but can also add a significant burden to the Department
9 of Education and reduce administrative effectiveness.

10 With that in mind, I'm going to suggest
11 several ways in which the Department might target the
12 regulations to make them more efficient and effective.
13 Our recommendations are based on the clear, well
14 established distinction in the Higher Education Act
15 that student aid may be used for two different
16 purposes: general education and degree programs, and
17 job training through credential programs.

18 Student loan repayment options recognize that
19 while degree attainment leads to higher earnings,
20 commonly quoted figures of over a million dollars over
21 a lifetime, it may take several years for the
22 investment in a degree program to pay off. Indeed, a

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1 recent study published in USA Today cites age 33 as the
2 average point at which the investment in traditional
3 college degree pays for itself.

4 But this same principle does not necessarily
5 apply to job training programs that are not premised on
6 degree acquisition, and so do not yield the same
7 lifetime bump in earnings. Student loan limits and
8 borrowed benefits are largely constructed around
9 traditional pathways to four-year degree. So how do we
10 deal with these credential programs?

11 We have three basic proposals to target.
12 First, remove credential programs that assume a degree
13 is a prerequisite, no matter whether that's an
14 associate's, bachelor's, master's, or doctoral. These
15 students are really degree students, and they are going
16 to have the lifetime earnings that reflect in the
17 degree programs.

18 For related reasons, exempt credential
19 programs, too, that students receive as part of a
20 degree track. Students may receive credentials often
21 automatically on the pathway to degrees, an example of
22 a stackable credential. But these students are for all

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1 intents and purposes in degree programs.

2 Our third proposal tries to address the
3 Department's concern that some students may not be able
4 to repay loans because the schools they attended did
5 not have adequate resources to prepare students for the
6 modern day workplace. We recommend that the Department
7 exempt institutions in which no more than five percent
8 of the total credentials awarded are in gainful
9 employment programs that are not tied to degrees or met
10 one of the two previously proposed tests. An analysis
11 of a sample set of about 50 of our member schools that
12 offer these type of credential programs illustrate that
13 programs at these schools are generally tied to, grew
14 out of, and benefit from the infrastructure of the
15 school's overall focus on degrees. As an illustration,
16 we looked at a well known university that awards about
17 300 certificates a year that are at least one year, but
18 not more than two years. Nearly all of these
19 credentials were for clinical medical laboratory
20 technicians. This made sense, because the institution
21 runs a well-known, household name research hospital and
22 medical school and nursing program. Such credential

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1 programs benefits hugely from these comprehensive
2 campus resources, including equipment, facilities, and
3 faculty.

4 Finally, I would like to mention that we were
5 conservative in selecting the five percent figure.
6 Since Title IV data is not available to us at the
7 programmatic level, we would highly encourage the
8 Department to look at this type of a model and see if
9 it applies at ten percent or what the right percentage
10 would be.

11 Thank you very much for allowing me to speak
12 today on behalf of our schools and students.

13 MR. OCHOA: Thank you very much.

14 Next speaker, please.

15 MR. MITCHELL: Good morning. Or good
16 afternoon, gentlemen. My name's Paul Mitchell. I'm
17 the Chief Executive Officer of Ross Education, the
18 parent company of Ross Medical Education Centers. Thank
19 you for the opportunity to speak with you today
20 regarding what is now simply known as GE.

21 My entire 30-plus-year career has been
22 devoted to postsecondary education, both in the public

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1 and the private sector. By way of background, Ross
2 provides allied health training in 19 campuses,
3 generally in smaller communities -- communities like
4 Flint, Saginaw, Muskegon, Michigan, Niles, and Toledo,
5 Ohio. Contrary to the image of our sector that many
6 hold, we operate small campuses, with the largest
7 having enrollment of about 210 students. Unemployment
8 rates in most of our communities hover in the teens.
9 Allied health careers are among only a handful of
10 growth occupations in Michigan, Ohio, and Indiana.

11 In many of our communities, Ross is the only
12 or primary training provider in these expanding allied
13 health fields. Michigan, where 14 of our campuses are
14 located, has experienced a 21.3 percent drop in median
15 household income since 2000, compared to a 6.6 percent
16 drop nationwide. In just one year, 2008-2009, Michigan
17 experienced a 6.5 percent drop in median household
18 income, essentially the national average over the
19 previous ten years.

20 Our enrollment is about 96 percent female.
21 Interestingly, the average age is 26 years old -- not
22 the young, naive, relatively recent high school grad,

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1 again, depicted by many.

2 Minority students comprise 34 percent of
3 enrollment at our Roosevelt Park campus, for example,
4 and not surprisingly, given our economy, 63 percent of
5 our students were full Pell eligible -- the most
6 disadvantaged in our population.

7 It is against this backdrop of economic
8 dislocation and financial challenges that the GE
9 regulations need to be considered. They can't be
10 considered in a vacuum. I strongly believe the
11 regulations as proposed -- not surprisingly to you, I
12 don't think -- are counterproductive, but have
13 significant consequences for our communities and
14 segments of the public that the regulation seeks to
15 protect.

16 The repayment rate standard and calculation
17 methodology certainly does not provide consumers
18 accurate and complete information to assess educational
19 opportunities. How can a repayment rate of 35 percent
20 be an appropriate minimum for private for-profit
21 institutions when many community colleges in the same
22 communities we work have repayment rates below 30

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1 percent, and some are below 20 percent?

2 Studies conducted by respected analysts have
3 revealed that the repayment rate is more closely tied
4 to the socioeconomic status of the borrower than any
5 other single factor. Simply put, enrolling a higher
6 percentage of economically disadvantaged students means
7 a lower repayment rate.

8 Further, we contend the more economically
9 depressed the community, the more the repayment rate
10 will be adversely impacted. The proposed debt to
11 income ratio standard disproportionately impacts
12 programs with a heavily female enrollment. GAO data
13 shows females are more likely to leave the workforce;
14 work part-time; and leave for family needs. Further,
15 due to the economic situation in Michigan and Ohio, our
16 campuses would be disproportionately impacted under
17 those proposed rules.

18 Further, Ross cannot require that every
19 graduate seeks or accepts employment, work full time,
20 or remain in the labor force. The debt to income
21 standard penalizes institutions for every student that
22 fails to seek employment or likes to work part-time or

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1 leaves the labor force as a result of family needs,
2 childbirth, or various other things that come up in
3 families.

4 The question then is, put very clearly:
5 Should Ross close its campuses in many of our
6 communities, who will fill the educational void for
7 these still-growing allied health careers? How will
8 employers' needs for training personnel be met? How
9 will our students be served? As I said earlier, we are
10 in many communities the only provider, and the other
11 provider may well be another proprietary institution.
12 Our local community colleges now provide most of the
13 programs we run.

14 Critical changes to GE need to be adopted to
15 avoid extensive economic damage and dislocation.

16 First, utilizing 40 percent of the BLS wage
17 for an occupation as the appropriate standard for debt
18 to income to level the playing field for programs
19 heavily serving females and to adjust for factors
20 beyond institutional control.

21 A three-year phase-in period to avoid the
22 retroactivity which I'm sure many people have spoken

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1 about and will.

2 Eliminating either graduates receiving Pell
3 grants in the repayment rate calculation or modifying
4 the definitions to exclude students exercising their
5 borrower's rights to deference or forbearance from the
6 calculation entirely.

7 Modifying the debt to income ratio standard
8 to ten percent of 13.8 percent, which I believe Mark
9 Antowich(ph) has also recommended, and inclusion of an
10 adjustment in the repayment rate and debt to income
11 standard that recognizes the unique challenges our
12 community is facing in protracted economic --
13 unemployment challenges and economic dislocations. In
14 fact, a number of federal regulations do that now,
15 where there are adjustments to various standards
16 because of economic issues.

17 Lastly, modifications of this nature I
18 believe are significant without.... Lacking -- I'm
19 sorry -- modifications of this nature, I believe
20 significant adverse incomes and unforeseen economic
21 dislocations will occur in our communities. Frankly,
22 things we cannot afford.

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1 Since I have one -- ten seconds, I have one
2 other observation. After 30 years in this field, I
3 found it entertaining how when dealing with
4 regulations, people can argue the regulations are good
5 for everybody else but them.

6 Thank you. Any questions?

7 Thank you, gentlemen.

8 MR. OCHOA: Thank you.

9 Next speaker, please.

10 MR. ANDERSON: Good afternoon. I'm Duncan
11 Anderson and CEO of Education Affiliates.

12 On behalf of the 22,000 students we serve, I
13 have six recommendations on how to make the gainful
14 rule -- employment rule more workable and fair for all.

15 The majority of my students are female and/or
16 minority and have family incomes of less than \$40,000.
17 Seventy-nine percent of our graduates go into the
18 healthcare field, into scarce areas such as nursing,
19 dental hygienists, medical -- you name it.

20 Point number one: To ensure transparency and
21 avoid discrimination, earnings data should be measured
22 by medium BLS statistics, not an average of actual

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1 earnings data from the Social Security Administration
2 or IRS. The flaws with this are the Department's
3 proposed using data in a manner that provides no
4 transparency for decision makers. The model has not
5 been tested and is not using live data. Institutions
6 lack the underlying data, and as a result, we'll have
7 very limited ability to plan and adjust their
8 performance appropriately in advance in order to
9 remediate their programs.

10 Institutions will have no ability to
11 challenge or appeal Department data. Actual earnings
12 data is discriminatory. Actual earnings data penalizes
13 schools whose graduates are self-employed, choose to
14 work part- time, choose to leave the workforce
15 voluntarily for pregnancy, illness, or other family
16 issues.

17 These programs which serve a higher
18 percentage of women, such as my schools, will be
19 significantly more likely to be eliminated than those
20 serving lower percentages of women when actual earnings
21 data is used. Actual earnings data will cause the
22 metrics to vary significantly from year to year in

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1 programs with a small number of students, and such
2 fluctuations have nothing to do with the quality of the
3 programs.

4 The use of a medium BLS statistic will
5 provide much-needed transparency and the ability for
6 institutions in advance to calculate their programs'
7 performance and remediate and fix them in a timely
8 manner. The medium BLS statistic is fair, agnostic,
9 and non-discriminatory. Loan repayment takes place on
10 an average of over 15 years. As economists have
11 written, the value of education lasts a lifetime, not
12 three years.

13 Number two: Any loan in compliance with
14 terms of its debt agreement, including income-based
15 repayment loans, consolidation loans, interest-only
16 loans, and extended repayment loans should be counted
17 in both the numerator and the denominator of the
18 repayment rate calculation. The Legislature has made a
19 policy decision to allow and even promote loan
20 consolidation's income-continent repayment plans.
21 These programs often result in a borrower being in good
22 standing with both the Department and its lenders while

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1 not reducing principal, and therefore penalizing the
2 institution that has no control over the issuance of
3 this.

4 The Department's repayment rate calculation
5 is inconsistent when the policy decision is made by the
6 Legislature. The proposed regulation includes only
7 borrowers making payments to reduce their principal
8 balance. As a result, the borrowers who use programs
9 enacted by the Legislature will not be included in the
10 repayment rate calculation, despite they are not in
11 default.

12 The institutions should not be penalized
13 because the Legislature has determined as a matter of
14 policy that it is appropriate to offer flexible payment
15 plans to those consumers that have taken loans and are
16 availing themselves of their legal rights. We should
17 exclude all borrowers on deferment or forbearance from
18 both the numerator and the denominator. This is not
19 something that the educational institutions have any
20 control over. Your servicers are making these
21 decisions. You need to train your servicers. Every
22 day they are putting people into forbearance right now.

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1 My students last week are calling up trying to make
2 payments. They're told, "Don't worry. We're putting
3 you in forbearance."

4 Debt should be defined to include only that
5 portion specific to tuition, which would exclude prior
6 debt and debt incurred for living expenses.
7 Institutions are required by federal regulation to
8 allow students to draw the maximum loan amount for
9 which they are eligible, irrespective of relative
10 tuition level. Institutions cannot discriminate
11 against students whom they believe might have
12 difficulty repaying that loan amount by insisting they
13 borrow a lesser amount. If the institutions are
14 required to offer the maximum loan amount to students,
15 how can they simultaneously be held accountable for
16 excessive borrowing by the students, over which they
17 have no control?

18 The loan repayment metric as a percentage of
19 actual earnings should start at ten percent. The eight
20 percent was based on a mortgage-related debt which the
21 author Sandy Baum has stated clearly does not apply.
22 President Obama's speech clearly called out for ten

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1 percent, so I think you're thinking about it.

2 Thresholds were arbitrary and were based on proxy data,
3 not actual income data.

4 I would ask that you would eliminate the
5 retroactive nature of the tests by waiting to implement
6 until July 1, 2015. Institutions need a one-year
7 period to put these policies and procedures in place,
8 hopefully with transparency to calculate where they
9 stand and remediate them, and then start the three-year
10 clock as you've suggested. Fairness dictates the data
11 should only be used after the preparation period. As
12 the Department has recognized, three years of data is
13 necessary to evaluate. We should have time to prepare
14 and not be measured retroactively.

15 I want to thank you very much for the chance
16 to comment. I ask for you to have objectivity. What's
17 at stake, again, are 22,000 students who have no other
18 alternative for education. They're trying to better
19 themselves in life. And we're measuring this and
20 enacting this rule in the worst economic period over
21 the last four years in the modern history of this
22 country.

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1 So it should not come as a surprise they're
2 having a problem in meeting some of these payment
3 results. It doesn't mean they're going to default,
4 because legally they haven't defaulted. But the way
5 you're measuring this, you're counting them as a
6 default.

7 Thank you.

8 MR. OCHOA: Thank you.

9 Next speaker, please.

10 MS. CARTY(ph): Thank you for the opportunity
11 to speak today. I'm Karen Ann Carty. I've been an
12 educator my entire professional life, first as a
13 teacher and then as a higher administrator. I've been
14 25 years in higher education, 15 of those years at a
15 small Catholic liberal arts college and ten of those
16 years at the current college I'm with, Monroe College.
17 Today I represent the Association of Proprietary
18 Colleges in New York. We are 27 accredited degree-
19 granting institutions of higher education serving over
20 50,000 students on 41 campuses throughout our state.
21 These are institutions like the School of Visual Arts,
22 Berkeley College, Plaza College, the Laboratory

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1 Institute of Merchandising, the College of Westchester,
2 and my own institution, Monroe. We offer high quality
3 programs and fine student outcomes. We have a history
4 of serving students who desire a clear path to career
5 opportunities and a track record of providing a wide
6 range of industries skilled, educated employees.

7 First, about proprietary education in New
8 York State. Like every other degree-granting college
9 and university in New York, irrespective of sector, APC
10 colleges are regulated by the New York State Board of
11 Regents, which means all of our programs undergo
12 rigorous review and must be approved prior to enrolling
13 students. Like my colleagues at other APC colleges, I
14 have always slept well at night knowing I work for an
15 institution with a worthwhile mission and an
16 extraordinary history. Each day we are challenged
17 professionally, held highly accountable, encouraged to
18 make reasoned decisions, and expected to act in the
19 best interests of the students we serve. Anyone who
20 visits an APC college or meets my colleagues invariably
21 walks away with a fresh and positive perspective on
22 proprietary education.

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1 Second, we support the broad aims intended by
2 the Department of Education. At APC we agree that we
3 should prepare students for employment, and we agree
4 that measures should be taken to eliminate unethical
5 practices; curb unruly and irresponsible growth; limit
6 excessive borrowing; and curtail anything that would
7 thwart the long-term success of our students and
8 graduates. However, the harsh economic realities of
9 the past several years have had an impact on every
10 industry and people from every walk of life. Likewise,
11 the economy has had an impact on our recent graduates.
12 They, and thousands of others across the country, have
13 entered a difficult and competitive employment
14 environment through no fault of their own or the
15 institutions where they chose to pursue their studies.

16 Next, the Gainful Employment regulation as
17 proposed will not help realize the intended outcomes.
18 As noted in our written response, the regulation
19 presents great difficulties for institutions because
20 the metrics on which we will be judged have been
21 changed mid-stream, and the penalties, which are harsh,
22 will apply retroactively. We will be judged on data

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1 that we cannot examine, verify, or remediate.

2 One noteworthy example of just how difficult
3 and unfair the regulation is, is we have identified
4 multiple instances where students' principal loan
5 balances are incorrectly recorded in NSLDS due to
6 complications related to having multiple service
7 providers. This means that a student may have an
8 outstanding balance of \$15,000 and it is recorded as
9 \$30,000. Such flawed data will have an impact on both
10 the loan repayment rate and the debt to earnings ratio.
11 The loan repayment rate formula, in particular,
12 presents its own set of problems. It judges
13 institutions on repayment of loan principal immediately
14 following graduation for cohorts of students who
15 entered the most strained employment market in memory.
16 And the formula seriously penalizes institutions whose
17 graduates had deferred their loans or entered into
18 income-contingent and interest-only repayment plans,
19 which were previously perfectly acceptable ways for
20 recent graduates to manage their debt while seeking
21 employment or getting established in the job market.
22 The debt to earnings and loan repayment rate metrics

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1 are purported to identify programs that are of little
2 or no value and where students have taken on more debt
3 than they are able to pay back. But many researchers
4 and other thoughtful commentators, including Mark
5 Antowich(ph), have provided compelling evidence that
6 the repayment rate in its current formulation punishes
7 institutions on the income level of their students and
8 not on the quality of the programs and the career
9 preparation they receive.

10 In closing, we have committed to working
11 together to realize the outcomes we all desire. If you
12 ask most middle class parents whose children graduate
13 this year if they believe their investment will pay off
14 in the first year out, they will tell you that they do
15 not expect an immediate return on their investment. In
16 fact, they will probably tell you that their graduate
17 is moving back in and looking for a job.

18 This regulation as it is proposed gives
19 neither our institutions nor our graduates the time or
20 opportunity to respond appropriately to this dramatic
21 and sudden shift in how the proprietary sector is
22 viewed by the Department of Education. All the

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1 (inaudible) students who own their degrees, do get
2 established in their careers, and pay down their loan
3 debts. This does not happen overnight, and
4 particularly for students from economically
5 disadvantaged backgrounds. We have faith that the
6 Department will craft a regulation that leads to real
7 improved outcomes and is not simply punitive. We know
8 there are ways to apply a level of accountability that
9 will encourage colleges and universities of every
10 stripe to realize their missions and serve all students
11 well, regardless of their backgrounds or their personal
12 circumstances. This version of Gainful Employment,
13 unfortunately, is not the way.

14 We look forward to working with the
15 Department to assure that our graduates find meaningful
16 employment and have debt levels that they can manage.

17 Thank you very much.

18 MR. OCHOA: Thank you.

19 Next speaker, please.

20 DR. SHANNON: Good afternoon. My name is Dr.
21 Stephen Shannon. I'm the President of the American
22 Association of Colleges of Osteopathic Medicine, which

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1 I'll refer to as AACOM. And I'm pleased to present on
2 our recently submitted comments to the Department on
3 Gainful Employment.

4 AACOM represents the administrators, faculty,
5 and students of the nation's 26 colleges of osteopathic
6 medicine and four branch campuses that offer the Doctor
7 of Osteopathic Medicine degree. Today more than 18,000
8 students are enrolled in osteopathic medical schools.
9 More than 20 percent of U.S. medical students are
10 training to be osteopathic physicians.

11 AACOM commends the Secretary for proposing
12 rules that are designed to promote the principles of
13 the Title IV student financial aid programs and for
14 understanding the importance of accountability. We
15 recognize that appropriate oversight is a fundamental
16 function of the Department to ensure that federal
17 funding is being appropriately allocated, and we thank
18 the Department for its leadership on this important
19 matter.

20 During a time when our nation faces a
21 critical and growing shortage of physicians,
22 particularly in the area of primary care, AACOM asks

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1 the Department to take into consideration the factors
2 that are unique to medical education. Medical students
3 follow a common sequence of coursework, clinical
4 training, internship, residency, and national board
5 exams regardless of whether they attend a public,
6 nonprofit, or for-profit medical school. Typically,
7 students spend their first and second year of medical
8 school in classrooms and laboratories and their third
9 and fourth years on clinical rotations. Each
10 osteopathic medical student must pass three separate
11 national exams in order to graduate. However, upon
12 graduation, medical students cannot begin practice.
13 They must undergo an additional three to seven years of
14 graduate medical education, depending on their
15 specialty, and then take additional national board and
16 certifying exams. During internship and residency,
17 students earn a stipend. However, that income is
18 generally not sufficient to provide financial resources
19 to begin significant payment of educational loans, and
20 it certainly is not indicative of the future practicing
21 physician salary.

22 We hope that the Department recognizes the

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1 special educational process that is unique to medical
2 education and gains understanding of the negative
3 impact this proposed rule could have if applied to U.S.
4 medical schools.

5 While AACOM has concerns with the potential
6 impact of the proposed regulation on all U.S. medical
7 schools, we understand that the proposed regulation
8 would affect only for-profit medical schools. One
9 AACOM member institution that would be affected is
10 Rocky Vista University College of Osteopathic Medicine,
11 which filed comments on August 26th with the
12 Department. AACOM supports those comments and would
13 like to draw your attention to them as illustrative of
14 the problems that regulation would pose for all U.S.

15 medical schools. AACOM has serious concerns
16 that if these regulations were applied to nonprofits as
17 well as for-profit U.S. medical schools, essentially
18 all schools would be deemed ineligible for Title IV
19 student financial aid programs. Therefore, as the
20 implementation process of these regulations continues,
21 AACOM asks the Department to exempt all U.S. graduate
22 terminal degree medical education programs from these

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1 regulations.

2 While AACOM agrees with the Department's
3 statement that programs offered by the for-profit
4 sector must lead to measurable outcomes, AACOM
5 maintains that the best way to measure the outcome for
6 graduate medical programs is through other means, such
7 as the graduation rates of schools matriculates, their
8 students' pass rates on national board exams, or
9 employment, income, or loan repayment metrics after the
10 completion of specialty training and entry into
11 practice. Income alone repayment after graduation --
12 during graduate medical education is not appropriate.

13 Thank you for the opportunity to offer these
14 public comments. AACOM looks forward to working
15 closely with the Department to ensure the responsible
16 and productive utilization of Title IV student
17 financial aid programs by U.S. medical schools and
18 their students.

19 Thank you.

20 MR. OCHOA: Thank you.

21 Next speaker, please.

22 MS. HAUGH: Good afternoon. I would like to

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1 thank the U.S. Department of Education for inviting me
2 here today to speak. I'm here representing Herzing
3 University as one of their students in their MBA
4 program. I'm here to tell my story.

5 My name is Tommie Jo Haugh. I'm that girl
6 that grew up in rural Wisconsin on a dairy farm with
7 only 42 in my graduating class. I'm sure several of
8 you can probably relate to that.

9 I'm the first college graduate in my family.
10 My parents have a high school education. And when I
11 graduated from high school, they couldn't guide me in
12 the direction that I needed to go for college. My
13 friends were doing it; I knew it was probably the right
14 thing to do for my future. But I had no stability at
15 home and no money to do it with.

16 I did attend college for three years after
17 high school, and in my last year of college -- I was on
18 the University of Wisconsin program -- I couldn't
19 afford to live any more and go to school. So I joined
20 the workforce and started working full time. At the
21 age of 27 my current employer now wanted me to go back
22 to school to gain an education that would benefit my

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1 future with the help -- they would help me financially,
2 and I would be silly not to take advantage of that
3 opportunity. My challenge was finding a program that
4 was conducive to my work schedule at that time. I
5 travel all over the country, and when I do travel, I
6 travel Thursday to Monday. I couldn't attend a
7 traditional campus like University of Wisconsin
8 Madison. I did look into their programs, and it's
9 Monday through Friday. It's daytime. It would have
10 interfered with my work schedule and my travel, and I
11 wouldn't have been able to work full time, afford to
12 put a roof over my head, food on the table, pay my
13 bills, plus go to school.

14 I did some research and found Herzing
15 University, that offered a class schedule that was
16 conducive with my work schedule. I could go to school
17 online if I wanted to. I could go to school at
18 nighttime. I could still work full time, and it worked
19 out perfect.

20 Here I am four years later in their MBA
21 program, getting ready to graduate on December 21st
22 with my MBA in healthcare. And I'm not counting down

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1 days or anything. But just letting you know that
2 without career education, I would not be where I am
3 today. And after I graduate, I feel like the sky is
4 the limit. I can go anywhere.

5 And I would like the U.S. Department of
6 Education to take into consideration what career
7 education can do for so many more after me. By taking
8 my funding from private sector schools and programs, we
9 eliminate others from achieving their hopes and dreams.
10 Please don't take that away from them.

11 Thank you very much.

12 MR. OCHOA: Thank you.

13 Next speaker, please.

14 MR. LARUE: Gentlemen, my name is Dave Larue.
15 I'm the campus president of the Akron Institute of
16 Herzing University.

17 My comments today deal with the Gainful
18 Employment rule currently being considered by the U.S.
19 Department of Education. Career schools are essential
20 to the educational process in the United States. Not
21 all students are suited to traditional educational
22 methods or educational offerings. Many of today's

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1 students are better suited to career-oriented programs
2 not always offered by public or private nonprofit
3 institutions.

4 I've been in private for-profit education in
5 1979 as an instructor, an education supervisor,
6 director of education, and now as campus president.
7 Through these years I've measured my success by my
8 students' success. My students have worked for major
9 manufacturers and healthcare providers. They've helped
10 in the design of items from ladders to automated
11 control systems that can monitor and control heating
12 and ventilating systems in buildings around the world.
13 They've provided billing services nationwide and work
14 in major hospitals, including the Cleveland Clinic.

15 I, too, am a product of career-focused
16 education. In 1976 I graduated from ITT Technical
17 Institute in Youngstown, Ohio, with a degree in
18 drafting. I attended there because I'd attended the
19 Ohio State University with a Navy ROTC scholarship, and
20 having graduated from a small, rural community high
21 school, I was a very small fish in a very large pond.
22 The instruction process was foreign to me. It was also

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1 at a time where the university was experimenting with
2 educational methods that had many faults.

3 Upon graduating from ITT, I received an
4 employment offer for a contractor at the Johnson Space
5 Center in Houston, Texas. My job was to coordinate the
6 construction of the simulators for the space shuttle
7 between the technicians building them, most of which
8 were DeVry Institute graduates, and the engineers that
9 were designing the process. The engineers did not
10 always have a clear comprehension of what the actual
11 simulator looked like.

12 With my educational experience at a career-
13 focused school, I was able to assist in the completion
14 of the shuttle procedure simulator ahead of schedule
15 and under budget -- terms very seldom used in
16 government work. As a result of the accomplishments on
17 the simulator projects I worked on, I was selected to
18 be the first pilot of the motion-based simulator after
19 being man-rated after it was rebuilt after the approach
20 and landing tests. The approach and landing tests were
21 where they flew the shuttle on the 747 to see if it was
22 going to fly, it would drop like a rock. The motion-

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1 based simulator was one that simulated actual movement
2 instead of just being a platform.

3 Once we had restructured it, no one could
4 ride it during the assembly. Once it was man-rated,
5 which means somebody could ride in it, I was sitting in
6 the right-hand seat. A NASA monitor was sitting in the
7 left-hand seat.

8 Career-focused education build the workers
9 who build the items that make the world what it is
10 today. With automation and integration, engineers can
11 do more with less. But there is still the need for the
12 grunt work and the nuts and bolts of today's business.
13 Career-focused education provides these people. Do not
14 hinder their ability to do their job.

15 Since I have been in the position I have been
16 in, I continued my education, and I now have a degree
17 in management. But it was the foundation that was laid
18 with the career-focused school that I have been able to
19 allow others to succeed.

20 And two last items that have developed since
21 the time that I presented my original comments. The
22 Ohio State University earlier this week released a

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1 statement that the majority of their students were now
2 completing their assigned program in six years. And
3 they think that's a great accomplishment, because it
4 used to be much longer. Well, six years is 150 percent
5 of the intended program. One of the ways they are able
6 to accomplish that is they are now restricting entry
7 into the university. They are allowing less people to
8 attend because they want a higher completion rate --
9 something that proprietary schools have been measured
10 on for a very long time, but traditionals have not been
11 measured on but are being looked more closely at.

12 So I would ask that as the Department
13 develops the final rule that will be submitted, I would
14 ask that fair and equal treatment be given to
15 proprietary schools, as well as all educational
16 programs, for the success of our students, not the
17 providers of the education.

18 Thank you very much.

19 MR. OCHOA: Thank you.

20 Next speaker, please.

21 MR. FRANKEL: Good afternoon. My name is
22 Jonathan Frankel. I'm from the law firm of Steese,

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1 Evans & Frankel, and I'm representing Alta Colleges. I
2 want to thank you for the opportunity to speak today.

3 Other speakers today have talked about the
4 policy problems with the Department's proposed rule,
5 and in particular how at the very time when more
6 working adults than ever need job skills training, the
7 rules would cripple the very schools that, as we just
8 heard two speakers ago, have proven themselves to be
9 the most flexible and the most able to meet the needs
10 and schedules of working adults.

11 Alta's comments in this proceeding focused on
12 a different issue, but it is one that the Department
13 must address. And that is that the rule that's being
14 proposed would not survive judicial review. It should
15 come as no surprise that, given the enormous impact
16 that the rule would have on the ability of proprietary
17 and vocational institutions to continue operating, that
18 those schools will feel they have no choice but to
19 challenge the rule in court. And looking at the law
20 and looking at the rule as it's proposed now, the
21 Department stands to lose that challenge.

22 The statutory foundation for the rule is weak

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1 to the point of non-existent. The Department is
2 proposing to take an innocuous two-word phrase that
3 appears in the description of the programs offered by a
4 proprietary institution, that those programs train
5 students for gainful employment, and use these two
6 words to supplant pages and pages of explicit statutory
7 mandates and detailed instructions from Congress. Where
8 Congress has wanted the Department to regulate with
9 respect to student loan burdens and loan repayment
10 rates, it has created detailed rules and spelled out
11 the Department's authority explicitly and carefully.
12 Lengthy sections of the Higher Education Act spell out
13 default standards and the consequences for schools that
14 fail to meet those standards. Congress also went into
15 great detail in the Higher Education Act creating
16 different mechanisms and payment plans for students to
17 manage their loan repayments.

18 By contrast, the Department is proposing to
19 find an even broader authority to regulate student loan
20 practices, and effectively tuition prices, and find
21 this hiding in the definition of a proprietary
22 institution in the two words, "gainful employment." On

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1 its face, though, that phrase is simply talking about
2 the purpose and content of the programs that such an
3 institution offers. It means that to count, a program
4 must directly train students for a specific occupation,
5 as opposed to being a general education program that
6 may only indirectly make a student more employable.
7 This is how the Department has read the statutory
8 language for decades, and Alta's comments lay out this
9 precedent.

10 There is nothing in this language that makes
11 any reference to tuition prices or to student loan
12 burdens. And that's why you find the same statutory
13 language, the same phrase, "gainful employment," in
14 numerous tax, labor, and other statutes that have
15 nothing to do with student loans. It makes no sense to
16 suggest that Congress would have gone through all the
17 trouble of spelling out the cohort default rules and
18 detailing multiple options for helping students manage
19 their loan repayments, only to turn around and give the
20 Department implied authority to undo those rules and
21 those mechanisms and adopt different ones simply by
22 hiding two words in a definitional provision somewhere

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1 else in the statute. I think the clearest example of
2 the conflict is something we've heard from several
3 speakers today -- the fact that the repayment rate
4 calculation actually ends up penalizing institutions
5 when students take advantage of the Congressionally
6 approved alternative payment programs. A review in
7 court looking at this would not accept this reading of
8 the Higher Education Act as reasonable.

9 I know that the Department believes that the
10 current Higher Education Act provisions do not go far
11 enough, but the solution is to go to Congress and ask
12 for the regulatory authority that the Department seeks.
13 That would be a solution that would stand up in court.
14 Instead, the Department is risking a court decision
15 that would not only strike down the Gainful Employment
16 rule, but also constrain the Department's authority to
17 interpret the Higher Education Act going forward. In
18 other words, the Department could well be left with
19 less regulatory authority than it had before.

20 I strongly urge the Department and legal
21 counsel to review the comments filed by Alta Colleges
22 in this proceeding. Everybody in the field shares the

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1 Department's interest in crafting rules that are
2 sustainable, predictable, and that have a solid legal
3 foundation. But the current proposal risks a strong
4 legal challenge and may end up harming the Department's
5 efforts in the long run.

6 Thank you very much.

7 MR. OCHOA: Thank you.

8 Next speaker, please.

9 MR. DUMARESQ: Good afternoon. My name is
10 Richard Dumaresq. I'm the Executive Director of the
11 Pennsylvania Association of Private School
12 Administrators. Our association represents 320 -- more
13 than 320 for-profit career schools, colleges, and
14 universities in the Commonwealth of Pennsylvania.

15 I want to focus my testimony and expand on
16 one aspect of my original comments on gainful
17 employment, and that is student over-borrowing. We are
18 aware that one of the major goals of the Gainful
19 Employment regulation is the reduction of student loan
20 debt. Institutions are concerned, however, that the
21 gainful employment strategy focuses primarily at the
22 back end of the equation -- after students have

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1 incurred the debt. Very little attention is given to
2 approaches to curb debt at the front end.

3 Currently, student debt counseling is the
4 only acceptable strategy. Yet what schools have found
5 is that over-borrowing is a big part of the loan debt
6 problem, especially among unsophisticated borrowers,
7 and it is increasing, despite aggressive counseling.

8 Schools constantly report stories of students
9 asking for all the financial aid they are entitled to;
10 paying their tuition, and then walking away with
11 thousands of dollars which ends up paying for a newer
12 car, Christmas presents, plastic surgery, bail money,
13 or big parties, which the school usually ends up
14 hearing about. These cash stipends can be, in one
15 case, as high as \$24,000. The student needed \$7,000
16 and ended up borrowing \$31,000.

17 Despite the best efforts of schools to curb
18 over-borrowing, the Department insists that schools
19 must disclose to students all the loan money they are
20 entitled to. Yet how can schools be responsible for
21 repayment when the Department encourages irresponsible
22 over-borrowing?

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1 Over-borrowing is defined in three ways by
2 our schools. A student transfers or moves from school
3 to school and they continue to mount debt, which goes
4 into deferment while they are attending another college
5 or school. Or number two, commuter students living at
6 home borrow available funds in excess of direct school
7 costs -- tuition, fees, and books -- without regard to
8 debt consequences. While these dollars make sense for
9 traditional college students living on campus, they are
10 not appropriate for commuter students living at home.

11 Number three: Students also over-borrow when
12 they receive an unexpected increase in grant money:
13 Pell, OVR, state grant, public assistance, or WIA
14 funding. As a result, more grant money is received
15 than students originally planned. And when the school
16 counsels and encourages them to return the excess loan
17 money, the students almost always decline the request
18 and keep the extra loan amount.

19 The following are some actual examples of
20 student over-borrowing. The first is a small
21 cosmetology school in central Pennsylvania. In 2007,
22 '08, and '09, the school had a zero percent tuition

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1 increase; .6 percent of an enrollment increase. Yet
2 over-borrowing increased from four to 41 students, a
3 925% increase. Over-borrowing loan amounts increased
4 from \$2,000 to \$68,000 by 2009.

5 Three business school campuses in
6 northwestern

7 Pennsylvania: In 2007, '08, and '09, the
8 schools averaged a 3.8 percent total tuition increase,
9 with a 43 percent enrollment increase because of a new
10 campus. But 152 percent increase in over-borrowing,
11 from \$234,000 to \$590,000 in two years.

12 Finally, one business school campus in
13 central Pennsylvania. Between 2007 and 2009, again,
14 the school averaged a 1.7 percent tuition increase each
15 year and no increase in enrollment or borrowers. Yet
16 over- borrowing increased by 104 percent, from 36 to 74
17 students; and over-borrowing dollars tripled, from
18 \$100,000 in 2007 to \$363,000 in 2009.

19 The three-year trend appears clear. While
20 there were minor tuition increases, no change in
21 student demographics, stable or moderate enrollment
22 increases due to some new campuses, only over-

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1 borrowing, as was defined earlier, increased
2 exponentially.

3 We would hope that the Department and/or
4 Congress would provide additional methods beyond
5 counseling for limiting student over-borrowing. We
6 have a number of suggestions. But I'll close by
7 saying, if the Department is going to address the back
8 end of the loan debt problem through gainful employment
9 -- and our school community has provided many reasons
10 why the Department shouldn't -- at the very least,
11 address the front end as well by curbing over-borrowing
12 and considering other front end approaches which we
13 will be glad to discuss with you.

14 Thank you very much.

15 MR. OCHOA: Thank you.

16 Next speaker, please.

17 MR. HEFFNER: These are actually computer
18 glasses -- stop the strobing.

19 Gentlemen, this is a formal statement on
20 behalf of the Gainful Employment rule. For the record,
21 my name is Van Heffner. I am President and CEO of the
22 Nevada Hotel and Lodging Association, the NH&LA.

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1 The NH&LA is a unifying voice of Nevada's
2 multibillion dollar hospitality industry, serving
3 Nevada since 1979. This trade association represents
4 more than 300 hotel casinos statewide, with
5 approximately 150,000 rooms and over 200,000 employees.

6 Nevada's hospitality industry is heavily
7 dependent on a knowledgeable and well-trained
8 workforce. Southern Nevada's tourism and hospitality
9 industry has been well served by graduates of the
10 institutions that will be harmed by these proposed
11 rules. These institutions have provided students the
12 education that has given them the essential skills and
13 talents that have supported Nevada's economy.

14 Private sector postsecondary schools like the
15 Art Institute of Las Vegas provide career training for
16 the jobs they need to succeed in today's economy. This
17 institution provides a broad range of education options
18 that provide a skilled workforce to the hospitality
19 industry in Nevada.

20 In Las Vegas, the entertainment capital of
21 the world, the Art Institute of Las Vegas and the
22 Culinary Institute of Las Vegas have graduated over

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1 1,000 students in the past eight years. Many employers
2 are eager to express the important role the Art
3 Institute plays for their business. Victoria Lee, a
4 creative manager of MGM Resorts International
5 Advertising, Inc., has said that MGM Resorts
6 International Advertising has been very pleased with
7 the caliber of talent graduating from the Art Institute
8 of Las Vegas. They have hired many Art Institute
9 graduates, because they come well prepared with
10 excellent skills and great enthusiasm to thrive in a
11 fast-paced environment. Lee believes the graduates are
12 bright, creative, and talented and that they are a
13 tremendous asset to the MGM Resorts International
14 advertising team. Nevada has the dubious distinction
15 of having the highest unemployment rate in the nation
16 of over 14 percent, to the Bureau of Labor Statistics
17 ranking. And the U.S. Department of Education's
18 proposed rule would prevent hundreds of Nevadas, as
19 well as future students, from acquiring the job skills
20 they need to work in and support our critically --
21 tourism industry to help reduce this troubling
22 statistic.

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1 The proposed rule is discriminatory. Our
2 industry is particularly concerned about the bias this
3 proposed rule holds against students who must borrow
4 money to attend college. The Gainful Employment rule
5 proposed by the Department of Education would render
6 many of these career-oriented degree programs
7 ineligible for Title IV financial aid if students fail
8 to meet a debt service to income ratio test.

9 This rule is arbitrary and unfair to those
10 who want to pursue careers with lower starting
11 salaries, in the culinary arts, for example.
12 Essentially, these students would be ineligible to
13 qualify for the same federal funding as classmates who
14 opt for careers that may initially pay better starting
15 salaries. Because this rule discriminates against
16 those who must borrow to attend college, access to
17 postsecondary education may move out of reach for many
18 low income and minority students. This is
19 unacceptable, and I believe the Department of Education
20 has overstepped its statutory authority with this
21 ruling and should rescind it. Matters of education
22 policy should be administered by Congress on the advice

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1 or counsel of the Education Department.

2 Thank you for the opportunity to address you
3 on this important issue to the industry that I
4 represent.

5 Thank you.

6 MR. OCHOA: Thank you.

7 Do we have any additional speakers?

8 Okay. Then there's no more for the rest of
9 the afternoon?

10 All right. Well, this concludes our session.

11 I thank you very much for your comments.

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1 CERTIFICATE OF NOTARY PUBLIC

2 I, JEFFREY MICKLE, the officer before whom
3 the foregoing meeting was taken, do hereby certify
4 that the testimony that appears in the foregoing pages
5 was recorded by me and thereafter reduced to
6 typewriting under my direction; that said meeting is a
7 true record of the proceedings; that I am neither
8 counsel for, related to, nor employed by and of the
9 parties to the action in which this testimony was
10 taken; and further, that I am not a relative or
11 employee of any counsel or attorney employed by the
12 parties hereto, nor financially or otherwise interested
13 in the outcome of this action.

14

15

16

JEFFREY MICKLE
Notary Public in and for the
District of Columbia

18

19 My commission expires: June 20, 2015

20

21

22

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