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Office of Postsecondary Education (OPE)

Negotiated Rulemaking for Higher Education 2013

U.S. DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
PUBLIC HEARING

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The Public Hearing was held in the Eighth Floor Conference Room at the U.S. Department of Education, 1990 K Street, N.W., Washington, D.C., with Under Secretary Martha Kanter presiding.

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

(9:00 a.m.)

DR. KANTER: Good morning, everyone. I am Martha Kanter. I am the Under Secretary of the U.S. Department of Education and I would like to welcome you to the first of four public hearings that we will be holding.

In today's global economy, a college education is no longer just a privilege for some but rather a prerequisite for all. In the last year, 60 percent of jobs went to those with at least a baccalaureate degree and 90 percent to those with at least some college. Over the next decade, as many as two-thirds of all new jobs will require education beyond high school. And this is why the President's plan for a strong middle class and a strong America calls for expanding the availability of postsecondary education for every American who wants the opportunity.

Providing every American with a quality education isn't just a moral imperative but an economic necessity. And we want to make

1 sure that all students, regardless of income,
2 race, or background, have the opportunity to
3 cross the finish line. And we know that
4 crossing the finish line is just one step along
5 a trajectory of a lifetime.

6 So today marks the beginning of our
7 public hearings. This gives us an opportunity
8 to begin conversations about higher education
9 with the higher education community, those who
10 have a stake in postsecondary education on the
11 rules that will ensure that colleges and
12 universities are giving students a high quality
13 education that prepares them for the workforce
14 and lifelong success.

15 These hearings are meant to be
16 comprehensive and will include a discussion of
17 topics like state authorization for online
18 programs, issues surrounding institutions'
19 management of Federal Student Aid Funds and how
20 to define gainful employment. This process
21 builds upon previous steps to develop
22 regulations to protect taxpayer funds and
23 ensure that all students are able to access and

1 afford a quality higher education.

2 We know college is one of the best
3 investments anyone could make but we want to
4 ensure that students and taxpayers both are
5 investing in programs that prepare graduates
6 with the skills and knowledge they need to
7 compete for high paying jobs and to be active
8 and engaged citizens.

9 The work of the people in this room,
10 the contributions and feedback that we have
11 received over the past four years has raised our
12 awareness about a number of issues. And we are
13 interested in learning more through these
14 conversations with all of you.

15 Last year, the Department held
16 discussions about rules that would be designed
17 to prevent fraud and abuse of Title IV, Federal
18 Student Aid Funds, especially within the
19 context of current technologies.

20 In particular, the Department
21 announced its intent to propose regulations to
22 address the use of debit cards for disbursing
23 federal student aid, as well as to improve and

1 streamline the campus-based federal student
2 aid programs.

3 As our interest in fraud concerns
4 and the use of debit cards continues, we are now
5 considering adding several other very
6 important topics to the regulatory agenda.

7 These include:

8 Cash management. The Department is
9 interested in looking at the regulations
10 governing when and how institutions disburse
11 federal student aid, how institutions invest
12 and manage those funds, and other issues on this
13 topic.

14 State authorization for distance
15 education programs. The Department had
16 previously regulated on this issue but a court
17 vacated the rule on procedural grounds in 2011.
18 With that regulation no longer in place, the
19 Department is interested in ideas for how to
20 address the requirement that States authorize
21 the institutions that provide distance
22 education to its residence when an institution
23 is not physically located in the State.

1 State authorization for foreign
2 locations of domestic institutions, that is
3 another. Similarly, the Department is
4 interested in ideas for how foreign locations
5 of domestic institutions should be treated
6 under the state authorization regulations,
7 since the current rules don't specifically
8 address foreign locations.

9 Clock to credit hour conversion.
10 Given concerns raised by institutions of higher
11 education, the Department is interested in
12 whether regulations governing the conversion
13 of clock hours in a program to credit hours
14 should be reviewed.

15 Gainful employment. Last June, a
16 U.S. District Court vacated regulations
17 defining what it meant for a program to provide
18 gainful employment in a recognized occupation,
19 but it affirmed the Department's authority to
20 regulate in this area. The Department is now
21 interested in public input on other potential
22 approaches to distinguish between successful
23 and unsuccessful programs that seek to prepare

1 students for gainful employment, on what the
2 best measure or thresholds should be and how to
3 best construct an accountability system.

4 Campus safety and security
5 reporting. The reauthorization of the
6 Violence against Women Act made some changes
7 relating to the information institutions are
8 required to collect and disclose as part of the
9 Clery Act. The Department is proposing to
10 develop regulations to implement these new
11 requirements.

12 Definition of adverse credit for
13 the Direct PLUS Loan Program. The PLUS Loan
14 Program requires that applicants not have an
15 adverse credit history to receive a loan. What
16 constitutes adverse credit was defined in
17 regulations published in 1994, when credit
18 conditions and consumer markets were different
19 and loans were made through two different
20 programs. Since these conditions have
21 changed, the Department is interested in
22 comments on whether it would be appropriate to
23 modify the definition of adverse credit and if

1 so, what changes should be made.

2 Additional hearings on these
3 subjects will be held during the next few weeks
4 in San Francisco, Atlanta, and Minneapolis.
5 Based on the comments gathered at all of these
6 hearings, the Department will draft a list of
7 topics to be considered by rulemaking
8 committees. It is likely that negotiations
9 will begin this fall and, prior to that, we will
10 issue a *Federal Register* notice seeking
11 nominations for negotiators.

12 I thank you all for dedicating your
13 time and expertise to this very important
14 process. And I look forward to a fruitful
15 discourse and appreciate all of your
16 contributions.

17 And with that, I am going to turn
18 this over to Lynne Mahaffie, of the Department
19 of Education. Thank you, Lynn.

20 MS. MAHAFFIE: Thank you, Martha.

21 Hi, I am Lynne Mahaffie. I am
22 Senior Director for Policy Coordination,
23 Development and Accreditation Service here in

1 the Office of Postsecondary Education. And I
2 am here with my colleagues Dr. Kanter, and also
3 Julie Miceli, who is our Deputy General
4 Counsel. We are really pleased to see so many
5 people here and such a great interest here.

6 We are eager to get started but I
7 just wanted to tell you a couple of things. We
8 have a very full agenda today. There are a
9 handful of spots left. If there is anybody who
10 wants to testify who is not registered, please
11 speak with the women at the table outside the
12 door and they will try and find a spot for you.

13 Also, we ask that anybody who is
14 testifying limit their testimony to five
15 minutes. This will enable everybody who is
16 registered to have an opportunity to testify
17 and I will keep an eye on the clock and remind
18 you if you are getting close to your time.

19 And with that, we will start. Is
20 Angelia Millender here?

21 MS. MILLENDER: I am.

22 MS. MAHAFFIE: Thank you. You can
23 come up.



1 MS. MILLENDER: Good morning. My
2 name is Angelia Millender and I am the Vice
3 President for Student Affairs at Broward
4 College. Broward College serves 67,000
5 students annually and is the third largest
6 community college in the Florida College
7 System. Over 75 percent of our degree-seeking
8 students receive some type of financial aid
9 assistance. As such, several of the proposed
10 regulatory changes will impact our
11 institution.

12 Numerous institutions, including
13 Broward College, make student-centric
14 decisions in determining which third-party
15 provider it chose to manage the funds that are
16 disbursed to students. Electronic options
17 have taken financial aid money management into
18 the 21st Century and further regulations should
19 not burden these processes or threaten the
20 continuation of them.

21 Many students appreciate that they
22 have an option to choose their methods of
23 payments, whether ACH, check, or debit card,

1 and that they get funds sooner using these
2 methods over the traditional check method.
3 The regulations already provide options for
4 students and institutions to manage financial
5 aid funds. Large institutions cannot handle
6 the volume or the cost internally without the
7 option to outsource. Just because voices who
8 speak loudly and often through various
9 stakeholders does not mean there is a global
10 systemic problem that requires regulatory
11 change.

12 There is another part of this
13 conversation not always mentioned. Not only
14 how the students get their funds using most of
15 these systems, but how they can read to use the
16 debit card correctly and can choose whether or
17 not they incur fees related to POS transaction.
18 Or students can elect to open bank accounts and
19 we certainly want to encourage them to do that,
20 to learn responsible management of their funds.
21 They can manage their own funds through an ACH
22 transfer directly to their bank account or they
23 can make no choice and a check is the default.

1 How many more options should be provided?

2 The Department should recognize
3 that institutions bear much of the cost of this
4 set up and do not pass that cost onto students.

5 Competition through third-party
6 vendors will likely introduce new innovation
7 and improvement for these services to students,
8 whereas regulations may likely restrict
9 creativity and innovation. No doubt, there
10 are those entities who have abuse their
11 responsibilities but, in general, more
12 institutions are handling this correctly and we
13 have enough burdensome regulations. If the
14 Department chooses to modify the regulations,
15 simply add language to sanction those who are
16 bad players and who do not take their
17 responsibilities seriously when leading and
18 making decisions on behalf of our students.

19 The clock to credit hour conversion
20 impacts Broward College staff who work on
21 behalf of students and is one of the most
22 burdensome, labor-intensive processes and
23 regulations outside of R2T4. The staff left

1 the workshop provided by the Department in need
2 of heavy sedation in order to return to their
3 job title that required them to manage this area
4 of financial aid processing. Managing
5 clock-hour programs were much more manageable
6 when a simple conversion of clock hours to
7 credit hours was computed. The required
8 formula is complicated and burdensome,
9 especially if the school's financial aid
10 management system cannot perform the
11 calculation, we are doing this manually. If
12 the Department does not seek to simplify
13 clock-hour conversion as part of the negotiated
14 rulemaking process, then don't discuss it at
15 all.

16 Relative to gainful employment
17 programs, these should be defined as those
18 students who enter with the intent to become
19 gainfully employed upon completion of their
20 training. These are programs that are
21 typically short-term certificate or diploma
22 programs that do not normally lead to a degree
23 at some institution offering that same program.

1 Community colleges, however, often ladder
2 these certificates to lead to degrees.

3 Because this structure allows
4 students to continue their education and
5 enhance their career-ready skill set, these
6 ladder programs should not be defined as
7 gainful employment programs. Any tighter
8 definitions may jeopardize institutions'
9 ability or motivation to create or maintain
10 these short-term programs at this time, when
11 many states are encouraging these offerings
12 tied to performance-based funding. Florida is
13 one of them.

14 Finally, I would like for the
15 Department to consider redefining adverse
16 credit as it relates to PLUS Loan eligibility.
17 This current definition, as Dr. Kanter
18 indicated does not align with current economic
19 conditions, the credit history and the cash
20 management of most Americans. These
21 regulations should consider the present state
22 of affairs, current debt-to-income ratio, or
23 some measure that assesses recency, rather than

1 the past.

2 From January 2008 through February
3 2010, 8.8 million Americans lost their jobs.
4 As of November 2011, one in eleven American
5 workers were unemployed. Many life-long
6 careers were ended and the financial impact on
7 families was enormous. Economic conditions in
8 these past five years inclusive in this window
9 deem one in five Americans ineligible to
10 receive a parent loan for their children,
11 which, in turn, can make financing a college
12 education impossible for some.

13 Incremental disbursement for loans
14 to ensure that the loans are being used for the
15 appropriate educational use could be an option
16 worth consideration. The current definition
17 assumes that one person is involved, instead of
18 a system that contributed to this crisis. The
19 credit report does not show everything about a
20 person and does not tell the full story of a
21 person's current willingness and ability to
22 repay a loan.

23 Thank you for considering my

1 comments.

2 MS. MAHAFFIE: Abigail Boyer.

3 MS. BOYER: Good morning. My name
4 is Abigail Boyer and I am the Director of
5 Communications and Outreach for the Clery
6 Center for Security on Campus. The Clery
7 Center was co-founded by Howard and Connie
8 Clery following the brutal rape and murder of
9 their daughter, Jeanne, at her institution by
10 another student whom she did not know.

11 The Center is the first national
12 non-profit organization dedicated to the
13 prevention of violence, substance abuse and
14 other crimes at colleges and universities.
15 Today, the Center is the non-profit leader in
16 Clery Act compliance and best practices
17 education and is proud to partner with
18 individuals and institutions across a broad
19 swath of industries and geographies to promote
20 safer campus communities. Our organization
21 fosters relationships among campus law
22 enforcement, administrators, students, and
23 families to promote effective partnerships for

1 campus safety.

2 We also offer education and support
3 for students, families, and higher education
4 professionals, provide advocacy and referral
5 services to victims of crime and support policy
6 initiatives, aligned with our core goal of
7 building safer campus communities nationwide.

8 Our unique position in relationship
9 with multiple constituencies in higher
10 education offers both anecdotal and
11 evidence-based information on challenges and
12 success in Clery Act compliance.

13 As you know, the Campus Sexual
14 Violence Elimination Act was born out of
15 collaboration between advocacy groups in
16 victim services and higher education. And it
17 is our hope that collaboration will continue
18 through the rulemaking process.

19 The passage of this law reflects the
20 devastating impact of sexual assault, domestic
21 violence, dating violence, and stalking within
22 our nation's campus communities.

23 What we have learned through

1 conversations with students, parents, and
2 survivors of campus crime, as well as with
3 colleges and universities to whom we provide
4 training and technical assistance, is that the
5 effective prevention of and response to these
6 crimes requires campus policies and practices
7 that are thoughtful, consistent, and
8 comprehensive, created by institutions who lay
9 a groundwork of accountability and are
10 dedicated to protecting students and
11 supporting victims.

12 Other training, we need individuals
13 working in campus safety and security, student
14 affairs, and in other departments on campus who
15 are truly committed to student safety and are
16 looking for information resources and
17 direction while dealing with challenges such as
18 limited budgets or staff.

19 Since the goal of Campus SaVE is to
20 help a victim of campus sexual assault,
21 domestic violence, dating violence or
22 stalking, receive the critical support he or
23 she deserves, regardless of what institution he

1 or she attends, we find it necessary to keep
2 these challenges in mind.

3 A crucial piece of the legislation
4 is education for students, faculty and staff
5 about the dynamics of these crimes and the
6 impact on the campus community. Bystander
7 intervention continues to prove to be an
8 evidence-based practice to educate students to
9 help their peers.

10 On our campuses, safety should be
11 considered a community effort as students play
12 a vital role in both the prevention of and
13 response to victimization. In fact, they are
14 often the first responders.

15 Institutions should proactively
16 invest in and have a strategic plan for
17 prevention. However, those with fewer
18 resources need information on how they can
19 incorporate meaningful bystander intervention
20 programming on a limited budget.

21 Institutions have also shared with
22 us that they are looking for guidance,
23 particularly in how to define and classify

1 domestic violence, dating violence, and
2 stalking, and how to make information most
3 available to students and campus crime victims.

4 Providing written information is
5 extremely valuable to survivors, as they have
6 many options available to them which can be
7 overwhelming, following a victimization. In
8 addition, a survivor could choose to disclose
9 to a number of different people on campus. So
10 having information in writing helps the entire
11 campus community be better prepared and
12 connected with resources, should someone
13 disclose a victimization.

14 Colleges and universities benefit
15 from guidance as to what information is most
16 useful to students, faculty, and staff, and the
17 most effective way to share this information.
18 Furthermore, suggestions for resources on how
19 to train individuals who will be hearing cases
20 of student misconduct will aid institutions in
21 implementing a campus process that is
22 thoughtful and equitable.

23 Institutions vary in size,

1 geography, and demographics. And these unique
2 needs should be considered when determining
3 regulations and guidance. Conversations with
4 faculty, staff, and students at colleges and
5 universities, as well as with organizations
6 that advocated for Campus SaVE and regularly
7 work with victims, will help ensure the needs
8 of victims are met while proactively
9 identifying solutions to possible
10 implementation challenges at colleges and
11 universities.

12 The compilation and dissemination
13 of best practices about prevention and response
14 included within the Act will also prove to be
15 extremely valuable, as institutions examine
16 their own campus climate and practices.

17 Campus SaVE will have a tremendous
18 impact within campus communities and we thank
19 you for allowing us to be a part of this
20 dialogue.

21 MS. MAHAFFIE: Nancy Zirkin.

22 MS. ZIRKIN: And good morning,
23 everyone. I am Nancy Zirkin, Executive Vice

1 President of the Leadership Conference on Civil
2 and Human Rights, our nation's premiere civil
3 and human rights coalition with over 200 member
4 organizations. I am going to address mostly
5 the issue of gainful employment and then talk
6 very briefly about violence on college
7 campuses.

8 Thank you for the opportunity to
9 speak on why the civil and human rights
10 community strongly urges Secretary Duncan to
11 enact a strong gainful employment rule to
12 improve higher education and career
13 opportunities for all Americans.

14 The Leadership Conference believes
15 that all students enrolled in postsecondary
16 education programs, whether public, non-profit
17 or for-profit, deserve high quality,
18 affordable education.

19 In the career and job training
20 sector, this means effectively preparing
21 students for careers that pay competitive wages
22 and enable them to pay off their student loans.

23 Despite the ever increasing

1 importance of higher education, college has
2 become prohibitively costly. Today, student
3 loan debt totals over one trillion dollars
4 nationally. Currently, two-thirds of
5 students who graduate with a four-year degree
6 have more than \$25,000 in loan debt. College
7 affordability is particularly important to the
8 communities that the leadership conference
9 represents. The burden of the increasing cost
10 of college is keenly felt by communities of
11 color. In the 2007-8 school year, 81 percent
12 of African-American students and 67 percent of
13 Latino students who earn bachelor degrees
14 graduated with debt, compared to 64 percent of
15 white students. And for women, attending
16 college is increasingly difficult since the
17 student loan burden significantly impacts
18 their finances due to the issue of unequal pay.

19 The need for strengthening the
20 Gainful Employment Rule is particularly urgent
21 for students enrolled in for-profit colleges.
22 Students enrolled in these institutions make up
23 only 13 percent of all postsecondary students

1 in the United States but they account for 47
2 percent of all student loan defaults.

3 Furthermore, students who earn
4 bachelor's degrees at for-profit colleges have
5 far more debt on average, \$31,000 than do
6 students who graduate from public institutions
7 with an average debt of \$8,000 or from
8 non-profit with an average debt of \$17,000.
9 The failure of for-profit colleges has been
10 even worse for students of color, low-income
11 students, women and armed services members and
12 veterans. African-Americans and Hispanic
13 students are disproportionately represented at
14 for-profit college. They make up 28 percent of
15 all undergraduates but they represent nearly
16 half, 46 percent of undergraduates, at
17 for-profit college.

18 And according to the Senate Health,
19 Education, Labor and Pensions Committee, 20
20 for-profit colleges pulled in \$520 million in
21 taxpayer-funded, military and veterans'
22 tuition assistance in 2010. That is nearly
23 eight times more than in 2006.

1 The high concentration of students
2 of color, low-income students, women,
3 nontraditional students and veterans at
4 for-profit colleges is not an accident.
5 Rather, it is a product of pernicious
6 recruitment practices that actually target
7 vulnerable populations to capture taxpayer
8 financed federal tuition aid. We recognize
9 that our country's future depends to a large
10 degree on how well we educate the next
11 generation. However, permitting for-profit
12 institutions to charge exorbitant tuitions and
13 collect a disproportionately high volume of
14 federal dollars with little return on our
15 collective investment is a travesty and a
16 recipe for disaster.

17 For these reasons, we urge the
18 Secretary to strengthen the gainful employment
19 rule and to take all other necessary steps to
20 enforce current laws and to improve higher
21 education and career opportunities for all
22 Americans.

23 Let me just say a couple words about

1 the Violence Against Women Act, which was
2 passed by Congress, as all of you know, signed
3 into law by the President earlier this year.
4 But we are concerned, given the recent reports
5 of the failure of colleges and universities to
6 actually take strong action in a variety of
7 cases of sexual assault and other types of
8 violence against women. It is critical that
9 the Department of Education issue strong
10 guidance to implement the new requirements in
11 VAWA, with specific attention to traditionally
12 under-served communities such as students of
13 color, and LGBT students. We also urge the
14 Department of Civil Rights and the Office for
15 Civil Rights to strongly enforce these
16 provisions and ensure accurate collection of
17 the data and audit the reporting requirements.
18 These actions --

19 MS. MAHAFFIE: Could you wrap up
20 your comments, please?

21 MS. ZIRKIN: Yes. These actions
22 will assist colleges and universities to fully
23 implement the legislation.

1 Thank you.

2 MS. MAHAFFIE: Thank you.

3 Tom Snyder.

4 MR. SNYDER: Good morning, my name
5 is Tom Snyder. I am president of Ivy Tech
6 Community College of Indiana. Indiana has a
7 statewide community college system, singly
8 accredited. We have 200,000 students, 175,000
9 for-credit and 25,000 non-credit.

10 I am also here speaking on behalf of
11 RAMC, Rebuilding America's Middle Class. It
12 is a coalition of ten states and individual
13 community colleges from across the country.
14 We represent over 120 colleges and 1.5 million
15 students in support of the activity with RAMC.

16 We share a common belief that
17 community colleges are one of America's primary
18 solutions for building a strong more
19 competitive workforce and, therefore, a strong
20 middle class. The Department has proposed a
21 number of issues for negotiated rulemaking that
22 will impact community colleges. As the
23 Department embarks upon this new round, it is

1 important to keep in mind that these demands may
2 place burdens on colleges from a compliance and
3 paperwork perspective. And on behalf of the
4 member colleges, we urge the Department to keep
5 this in mind as we move forward.

6 I am going to comment on three
7 areas: distance education and the state
8 authorization; gainful employment; and Title
9 IV studies over the coming years.

10 With regard to state authorization
11 for distance education, the Department's
12 original regulations in this area vacated by
13 the court placed large burdens on institutions
14 seeking to serve students in multiple states.
15 Our review of these regulations raise questions
16 on the value of the additional burden that it
17 would have placed upon these institutions. It
18 seems overly complex that the institutions
19 would have to seek authorization to operate in
20 each state for which their students are
21 studying and placing a lot of burden on the
22 institutions.

23 At Ivy Tech, we offer over 350

1 online courses, 12 online programs, serving
2 over 40,000 students this semester. Many of
3 the students come from the home state of
4 Indiana. But of course, they are increasingly
5 mobile so they may start in Indiana but they may
6 move to other states. And then we think, as the
7 prior speaker just addressed, that the cost of
8 college would actually make it much more useful
9 if students from all states could take online
10 from community colleges from across the
11 country, fitting their own schedule and fitting
12 credits that need to be.

13 So as the Department proposes
14 additional regulation, we would hope that the
15 Department would not require institutions to
16 seek authorizations through multiple states
17 for online programs.

18 Gainful employment. RAMC members
19 certainly appreciate the goal of the Department
20 in promulgating its regulations on gainful
21 employment and making sure that graduates do
22 have a meaningful career once they have
23 graduated. Our goal at Ivy Tech is students

1 find employment and will be able to afford their
2 student loan payments.

3 Programs at community colleges did
4 not drive the need for gainful employment
5 regulations but would be significantly
6 impacted had not the courts intervened.
7 Particularly, the focus was on short-term
8 certificates (one year) and, of course, that is
9 being increasingly important as we strive to
10 achieve the Lumina goal of competitive college
11 attainment by 2025.

12 So, as the Department of Education
13 goes forward on the new set of gainful
14 employment regulations, community colleges
15 wish not to be treated in exactly the same
16 fashion, given that their role in workforce
17 development is so critical.

18 And the final thing I would like to
19 comment on is Title IV and the studies in the
20 upcoming years.

21 First, we want to add our support
22 that the Department of Education does need to
23 propose regulations through negotiated

1 rulemaking process to address the fraud that
2 was uncovered by the Inspector General. Not
3 addressing Pell Grant fraud will make it harder
4 for Congress to fund the program and address the
5 financial needs of the students, especially
6 those attending community colleges.

7 Next, we want to make sure that we
8 study the maximum Pell and the tradeoffs that
9 may be necessary not this year, not next year,
10 but perhaps in coming years. We believe that
11 max Pell is not critical to the community
12 college or its students. Indiana is typical in
13 the data. Half of our students, 49 percent
14 receive Pell but only 16 percent of those or
15 less than 10 percent of the entire student body
16 receive max Pell.

17 When we look at our four year
18 schools, they range from 20 percent Pell
19 recipients at IU Bloomington to 35 percent into
20 more open access schools. But only one-third
21 of those, that's less than ten percent of the
22 student body, receive maximum Pell.

23 In the past, there have been

1 tradeoffs that have impacted the most needy
2 students, typically those going to community
3 colleges. That would be those graduating from
4 high school, free and reduced lunch,
5 low-income, and those low-income adults
6 seeking to build a second career at a community
7 college.

8 So we respectfully submit these
9 three items for your consideration. Thank
10 you, very much.

11 MS. MAHAFFIE: Rory O'Sullivan.

12 MR. O'SULLIVAN: Good morning. My
13 name is Rory O'Sullivan. I am the Policy
14 Director at Young Invincibles. And we are a
15 young organization whose mission it is to
16 expand opportunity for 18- to 34-year-olds
17 across the country.

18 I wanted to start with a story this
19 morning. Someone who wrote in in response to
20 a recent survey of ours at Young Invincibles,
21 and she is talking about going to a for-profit
22 college. She said, "I accumulated over
23 \$150,000 in debt. The school I went to

1 defrauded students in Denver, Colorado and did
2 not have the practicum and internships in place
3 that it had marketed and promised. So, I had
4 to switch to another university.

5 I am very concerned about my
6 financial future and the potential financial
7 devastation now due to the actions of the
8 for-profit university. My payment, and I am
9 assuming she is talking here about her student
10 debt payment, will be estimated to be more than
11 my mortgage and my earning potential will
12 likely not be enough to handle both payments.”
13 So stories like this continue to come in to us
14 every day. And you could understand why. Our
15 generation knows that getting a college degree
16 is more important than it has ever been. Eight
17 out of ten young people across the country will
18 tell you that they need education and training
19 nowadays to succeed in the 21st century
20 economy.

21 When someone holds out a key to the
22 door of higher education and sells you a key to
23 the door of higher education, that road to

1 opportunity, and it doesn't work, people are
2 angry and frustrated. The career college
3 ought to prepare you for a career, not mire you
4 in debt that you can't repay. And so it is
5 under this idea of basic fairness that compels
6 us to ask the Department to force a strong
7 gainful employment rule, provide some
8 protection to students like these, like the one
9 I just mentioned.

10 We need basic standards to ensure
11 that students are able to repay their loans and
12 that their incomes they receive after
13 graduation are high enough to finance the debt
14 that they frequently incur. Otherwise, we are
15 going to continue to go on like we are. So
16 for-profits right now, even though they just
17 have ten percent of students in all of higher
18 education take in over a quarter of Pell Grant
19 and Stafford Loan dollars. They also take 38
20 percent of GI Bill dollars, costing taxpayers
21 twice as much to educate each veteran as public
22 universities and community colleges.

23 Now, despite this enormous and

1 disproportionate level of investment, more
2 than half of the students who enrolled in these
3 colleges in 2008 and 2009 left without a degree
4 or diploma within a median of four months.

5 For-profits are expensive. They
6 cost six to eight times more than the high
7 quality of public universities and community
8 colleges up the road. Because of the cost,
9 students lucky enough to earn bachelor degrees
10 from a for-profit leave with almost four times
11 the debt of students at public universities and
12 almost double the debt of non-profit private
13 colleges. And that is the ones that are lucky
14 enough. Remember, most of the people don't
15 graduate.

16 More than one in five students who
17 attend a for-profit default on their loans
18 within just three years of entering repayment.
19 And that is compared to just ten percent at a
20 public college and 7.5 percent at a non-profit,
21 private colleges.

22 So the status quo just isn't good
23 enough right now. The incentive is to enroll

1 students and take Title IV dollars, but there
2 is no incentive in the system to ensure student
3 success. And so, again, we urge the Department
4 to include strong new gainful employment
5 standards, as part of the upcoming negotiated
6 rulemaking.

7 The other one thing I wanted to
8 mention is that we are also pleased to see the
9 parent PLUS Loans on the agenda. As you know,
10 hundreds of students are dropping out of HBCUs
11 after a Department switch in underwriting and
12 we appreciate the opportunity to negotiate
13 publicly on these standards. Including the
14 student and consumer perspective is going to be
15 key in these negotiations. And, as all of us
16 know, representatives from different types of
17 schools and often different offices within
18 schools are included in negotiations. And so
19 we think it is fair that the student population,
20 which is similarly diverse, that we would also
21 have adequate slots for negotiators
22 representing students from all different types
23 of backgrounds.

1 As I said, our generation is very
2 aware that the road to economic opportunity
3 runs through the halls of higher education. So
4 it is essential that we have fair rules of the
5 road and keep it open and safe for everyone.

6 Thank you again for the opportunity
7 to speak today.

8 MS. MAHAFFIE: Carrie Wofford.

9 MS. WOFFORD: Hi, I'm Carrie
10 Wofford with Veterans Education Success, a new
11 non-profit founded by the major veterans groups
12 in town to focus exclusively on the promise of
13 the GI Bill.

14 We are here to urge you in the
15 strongest terms to institute a strong,
16 meaningful gainful employment rule and to stop
17 the manipulation of the cohort default rate and
18 the 90/10 rule.

19 I want to remind you that as the New
20 York Times reported, there was, the lobbyists
21 for the for-profit spent 12 million dollars
22 lobbying you only on this gainful employment
23 rule. That wasn't to mention the lobbying they

1 did to Congress on other issues. You are going
2 to be under a lot of pressure but I think you
3 have to keep in mind the taxpayer interest and
4 the veteran's interest.

5 For the past two years, veteran
6 advocates and Senate staff have met multiple
7 times with the Departments of VA and DoD. And
8 guess what VA and DoD have told us for two years
9 running? That they are not the ones to make
10 judgment calls about educational quality.
11 That only you, the Education Department, know
12 where to draw the line. So we need you to draw
13 that line.

14 Take a look at this from the point
15 of view of a vet. He has just come back from
16 Afghanistan. Maybe he lost his leg. He can't
17 go back to his job on a construction site. He
18 needs a new career. Good news! We have the GI
19 Bill. It is the ticket to the American dream.
20 It is the promise of a high quality education.
21 Maybe he can become a businessman, a lawyer.
22 But here is the kicker. Our loyal vets trust
23 the government to protect them from being

1 scammed. They assume that you would not let
2 them go to a school where graduates can't get
3 jobs.

4 Now look at this from the point of
5 view of a taxpayer. Taxpayers assume that you
6 are not going to waste their hard-earned
7 dollars on schools whose graduates can't find
8 a job. They expect a little old fashioned
9 return on investment. In the GI Bill, it costs
10 taxpayers twice as much to send a vet to a
11 for-profit college as it does to send a vet to
12 a public university or community college. And
13 I am going to submit to you the Senate data and
14 all the studies that have been out there.

15 And where does that money go? On
16 average, 20 percent gets set aside for Wall
17 Street profit. That doesn't happen,
18 obviously, at community colleges and public
19 universities. A quarter gets set aside for
20 marketing and advertisements, which is really
21 these high-pressured call centers where they
22 train recruiters to engage in emotional
23 manipulations and pain points. And I am going

1 to show you the pain funnel and pain puzzle,
2 four different of the big for-profits use these
3 things. They use fear and pain to create
4 urgency. It is ugly stuff. Ugly, ugly, ugly.
5 And then what else do they do with their money?
6 They give their CEO's an average of eight to
7 nine million dollars a year. That is the
8 average. Non-profit college presidents, on
9 average, is under \$400,000. And the
10 education? They spend less than one-fifth of
11 what they get from the federal spigot, a tiny
12 fraction of what community colleges and public
13 universities spend. When Bridgepoint bought
14 St. Mary's, which was a legitimate school, they
15 slashed spending on education from \$5,000 per
16 year per student to \$700. Seven hundred.
17 What kind of an education is that? That same
18 year they paid their CEO \$20 million, almost 20
19 times the amount that the President of Harvard
20 gets. Now, was the educational college as good
21 as Harvard? Not so much.

22 They take 38 percent of GI Bills but
23 educate a much lower percentage of GI Bill

1 students. Eight of the ten schools raking in
2 the most GI Bill dollars are for-profits. Only
3 two public universities even make that list,
4 the University of Maryland and UT, Texas. The
5 entire U-Cal system and Cal State don't even
6 make the list.

7 They also take half of all DoD
8 tuition assistance and 60 percent of the MyCAA
9 funds for service member spouses. And what do
10 we get? Dropout rates of 50 to 60 percent of
11 those for-profits in that top ten, compared to
12 only 13 percent at Maryland and 26 percent at
13 Texas.

14 The fifth largest recipient of DoD
15 MyCAA funds is an online animal behavior
16 college. An online animal behavior college.
17 And do you know why for-profits are targeting
18 GI Bills and DoD? Because of the 90/10
19 loophole. You are familiar with that. As
20 Holly Petraeus says, vets and military are
21 nothing more than dollar signs in uniform.

22 Why are vets signing up? These
23 massive call centers. Vets receive literally

1 hundreds of phone calls and emails by the
2 recruiters. One of our colleagues at the VFW
3 decided to test the system. So he put his name
4 in to see what would happen. He got 350 emails
5 and phone calls in a week, harassing him. And
6 he still gets them. He got one during a meeting
7 with for-profits and showed them.

8 Now I am going to surprise you.
9 Some students who actually graduate from these
10 for-profits then find out that they are not even
11 eligible to sit for the licensing exam for the
12 jobs that are part of licenses. You think of
13 lawyers, electricians, plumbers, most of the
14 medical field. Kaplan was just nailed just
15 last year by an NBC affiliate in Charlotte,
16 North Carolina for convincing students to
17 attend a dental assistance program. And they
18 knew that the graduates would never, ever be
19 able to get a license as a dental assistance.
20 You have got to weed these programs out. You
21 have got to create a stronger rule this time.
22 You know more now. You have got the Senate
23 investigation, DOJ filing lawsuits, you have

1 got CFPB complaints, and you have 32 states
2 Attorney Generals investigations. And you
3 have got data from the first round. You see
4 schools failing miserably on two out of your
5 three tests and yet they continue on. You have
6 to do better than nine strikes and you are out.
7 Taxpayers would be outraged if they had any idea
8 that GI Bill dollars are being spent on
9 millionaire salaries, fancy TV ads, and
10 predatory call centers. The vets groups who
11 have learned it are beyond outraged. VA and
12 DoD have said you are the only ones equipped to
13 know where to draw the line to weed out sub-par
14 career colleges. Please draw that line. Vets
15 should not be coming home and getting scammed.

16 Thank you. Should I submit, all
17 the papers, later?

18 MS. MAHAFFIE: If you could give
19 them to the women at the table.

20 Dr. Lomax.

21 DR. LOMAX: Good morning. I am Dr.
22 Michael Lomax, President and CEO of the United
23 Negro College Fund, which represents 38 private

1 Historically Black Colleges and Universities
2 and 55,000 students who are disproportionately
3 low-income and the first to represent their
4 families in college.

5 We have helped more than 400,000
6 students earn a college degree, moving them
7 from poverty and underemployment to the active
8 workforce and the middle class. I am here to
9 talk about a barrier now being placed in the way
10 of many of those same families, namely the
11 Department's unfortunate decision to change
12 the rules for the parent PLUS Loan Program.

13 As the UNCF institutions prepare
14 for the 2013/2014 academic year, we fear that
15 thousands of additional low-income and
16 minority students will be harmed this fall.
17 These students rely disproportionately on
18 federal grants and loans to pay tuition and
19 their direct educational expenses, in order to
20 earn a college degree that in today's economy
21 is an essential ladder out of unemployment and
22 poverty and into the 21st Century workforce.

23 On behalf of these students and

1 their parents, we urge that: 1) the Department
2 review all parent PLUS Loan applications for
3 the current and upcoming academic year under
4 the credit standards that existed prior to
5 October 2011, while appropriate eligibility
6 criteria are considered and studied under the
7 2013 negotiated rulemaking process; 2) the
8 Department consider fair, flexible, and
9 reasonable credit criteria for parent PLUS
10 Loans under the 2013 negotiated rulemaking.
11 These criteria should not, disproportionately
12 penalize families who have been impacted by the
13 great recession and the housing crisis. They
14 are hardworking Americans whose credit history
15 may have been disproportionately impacted by
16 devastating job losses that were felt most in
17 low-income and minority communities.

18 In addition, the Department should
19 consider regulations that do not rely solely on
20 backward-looking past credit history to
21 determine loan eligibility, but reflect a
22 forward-looking balanced approach, one that
23 takes into consideration other factors, such as

1 current credit status and employment; and 3)
2 should the Department proceed with negotiated
3 rulemaking on this topic, UNCF requests a seat
4 at the table, considering that educational
5 access for students at UNCF institutions,
6 Historically Black Colleges and Universities
7 and minority-serving institutions has been
8 undermined by the Parent PLUS Loan standards.

9 The actions UNCF recommends are
10 essential and fair. We were stunned that the
11 Department implemented a significant change in
12 Parent PLUS Loan eligibility with no advance
13 notice, no open communication, and no real
14 understanding of the devastating impact of this
15 policy shift. The end result of this terrible
16 policy shift has been the following: More than
17 28,000 Historically Black College and
18 University students and their families denied
19 access to the parent PLUS Loans; a dramatic
20 one-year drop, over 50 percent, in approved
21 Parent PLUS Loan applications; more than \$50
22 million in revenue losses, which resulted in
23 forced cuts in institutional budgets and

1 layoffs because of lost enrollment and good
2 faith efforts to assist new and returning
3 students who could not now pay tuition.

4 We appreciate that the Secretary
5 agreed to reconsider the 400,000 applications
6 in total that were denied Parent PLUS Loans,
7 including the 28,000 denials at Historically
8 Black Colleges and Universities; however, this
9 process still has not produced significant
10 results. As of February 2013, fewer than ten
11 percent of the denied HBCU applications have
12 been approved.

13 While UNCF shares the Department's
14 concern about not burdening families with
15 excessive debt, we do not believe the answer is
16 to restrict access to college for poor families
17 who have been hit hardest by the challenging
18 economy. These families now face a Catch-22
19 situation. Their credit history may have been
20 impaired due to the country's massive job
21 losses over the past five years. But now the
22 government says they must have an unblemished
23 credit history in order to obtain a federal loan

1 to pay for the education that is necessary to
2 obtain a good job in the economy.

3 Introducing harsh credit history
4 standards is a perverse solution when other
5 more thoughtful actions can be taken through
6 this rulemaking process to ensure appropriate
7 levels of borrowing and loan repayment.

8 UNCF and the larger HBCU community
9 are ready and willing to participate in the
10 upcoming rulemaking process. However,
11 rulemaking takes time. Our students and
12 families are in crisis now. Students have been
13 sent home and have insufficient resources to
14 re-enroll. They need relief from the
15 Department's ill-considered credit standards
16 and they need it now. Education is their one
17 sure way out of poverty and into the workforce.
18 That doorway is being slammed in their faces.

19 Thank you for your consideration of
20 these recommendations and facts. Thank you.

21 MS. MAHAFFIE: Anne Hedgepeth.

22 MS. HEDGEPEETH: Hi, I'm Anne

23 Hedgepeth. I am the government relations

1 manager at the American Association of
2 University Women. On behalf of the more than
3 165,000 bipartisan members and supporters, a
4 thousand branches nationwide, and over 800
5 college and university partners at AAUW, I
6 would like to thank you for holding this hearing
7 about the upcoming regulatory issues the
8 Department of Education is considering.

9 We will be submitting detailed
10 written comments as well, but I appreciate the
11 opportunity to speak to you today.

12 Specifically, AAUW urges the
13 Department to again undertake the issuance of
14 strong gainful employment regulations to
15 protect students and taxpayers. In addition,
16 we urge the Department to quickly negotiate and
17 issue strong regulations regarding the changes
18 to campus safety and security reporting that
19 were included in the Violence Against Women
20 Act.

21 AAUW has weighed in time and time
22 again about the importance of strong rules to
23 ensure that career education programs that

1 receive federal funds do not take advantage of
2 students and taxpayers. AAUW supports this
3 work in particular because we know that women
4 struggle with student debt more than men. Loan
5 repayment is an even more significant burden
6 for women, who earn less on average over the
7 course of their lives than their male
8 counterparts. AAUW's new research,
9 Graduating to a Pay Gap, found that the median
10 student loan debt burden was slightly higher in
11 2009 for women than for men. In addition,
12 among full-time workers who are repaying their
13 loans in 2009, nearly half of women one year out
14 of college were paying more than eight percent
15 of their earnings towards their student loan
16 debt. Only 39 percent of men were in the same
17 position.

18 Furthermore, just over half of
19 women were paying a greater percentage of their
20 income toward student loan debt than we
21 estimated a typical woman could afford.

22 The original gainful employment
23 rule uses sound framework to support the goal

1 of ensuring that schools offering federal
2 student aid did not saddle their students with
3 unmanageable debt.

4 AAUW supported the combination of
5 measuring debt-to-income ratios for payment
6 rates, default rates, to understand which
7 schools were failing their students and should
8 be ended, which needed improvement and which
9 are serving students well. The data collected
10 in the initial year of the rule found that 65
11 percent of the programs failed at least one of
12 the tests and five percent failed all three; 193
13 programs at 93 different schools.

14 While the rule was struck down by
15 the court, the decision made clear that the
16 Department can issue these regulations.
17 Indeed, the two concerns that were raised can
18 be easily addressed and we urge the Department
19 to move through the process quickly to remedy
20 the concerns and reinstate the rule.

21 In the rule, repayment rate of 35
22 percent is required for a program to pass. And
23 AAUW stands by the need for such a threshold

1 and, with support, an even stronger one. The
2 idea that it is acceptable to continue a program
3 where 65 percent of former students cannot pay
4 down their loans year after year is frustrating
5 to those of us who work with or hear from
6 students daily.

7 In addition, concerns that data
8 collection may be a problem can be resolved by
9 focusing on programs with specifics
10 characteristics. There is a way forward to
11 reinstate these rules.

12 Overall, there is no reason to
13 weaken the gainful employment rule. With 193
14 programs where students have borrowed at high
15 amounts relative to their income, are having
16 trouble repaying and are very likely to be in
17 default, we must do something to ensure that
18 federal taxpayer dollars do not continue to
19 flow to these programs.

20 To respond to another issue that is
21 scheduled to be addressed in the upcoming
22 rulemaking, AAUW urges the Department to
23 quickly move through issuing rules around the

1 new campus safety provisions, which amend the
2 Clery Act and the Higher Education Act and were
3 passed as a part of the Violence Against Women
4 Act. When campus environments are hostile
5 because of sexual harassment, assault or
6 violence, students cannot learn and miss out on
7 true educational opportunities. AAUW's own
8 research revealed that two-thirds of college
9 students experience sexual harassment. In
10 addition, the Department of Justice found that
11 around 28 percent of women are targets of
12 attempted or completed sexual assault while
13 they are college students.

14 AAUW supports the changes to the
15 Campus Safety Law. A rulemaking will need to
16 address things like new definitions, which are
17 included in the statute, including use of
18 definitions from the Violence Against Women
19 Act, make clearer to schools how often certain
20 ongoing activities must take place and who is
21 covered. The existing Clery Act framework
22 regarding reporting of crime data is strong in
23 this case. Ensuring the students are covered,

1 informed, and that schools are already familiar
2 with reporting this type of information.

3 In addition to reporting, schools
4 will also be making public policies and
5 procedures regarding instances of sexual
6 assault, dating violence, domestic violence
7 and stalking. Key to these rules is the fact
8 that every school may need to institute
9 policies and procedures that are unique to
10 their communities but that must, at the same
11 time, ensure that students are safe and that
12 they are in compliance with the law -- that the
13 school is in compliance with the law. There
14 are many schools that are already doing so.

15 In addition, there are good
16 examples of existing policies, procedures, and
17 trainings out there. AAUW has developed a
18 program in a box for campus advocacy around this
19 issue. Students Active for Ending Rape works
20 with students in schools to improve campus
21 sexual assault policies. And the Department's
22 own work around Title IX and the resolution
23 agreements that stand as best practices for

1 schools in dealing with sexual harassment and
2 sexual assault are all places to look.

3 Additionally, it is important that
4 organizations that represent students and
5 victims, as well as advocates and experts on
6 sexual assault, domestic violence, dating
7 violence, stalking, bystander intervention and
8 Title IX, for example, be included in the
9 negotiated process. These groups may not
10 traditionally be a part of rulemaking on, say,
11 financial aid or other things being discussed
12 today but are an invaluable part of the
13 conversation around the campus safety rules.

14 Thank you again for the opportunity
15 to speak.

16 MS. MAHAFFIE: John Ebersole.

17 MR. EBERSOLE: Good morning. I'm
18 John Ebersole. I am President of Excelsior
19 College in Albany, New York. Excelsior is a
20 comprehensive not-for-profit college serving
21 37,000 students at a distance. Of these,
22 nearly 40 percent come from under-served
23 populations. I would like to thank the

1 Department for your time this morning and for
2 the opportunity to come and speak before you.

3 Of the regulatory issues that are to
4 be considered in the rulemaking process, I
5 would like to speak very briefly to four of
6 these: state authorization, clock to credit
7 hour conversion, gainful employment, and
8 campus safety. In each case, I have offered
9 written testimony which expands upon these
10 particular comments.

11 Under state authorization, the
12 effort to obtain state authorization in 54
13 separate jurisdictions, as has been required
14 under the previously issued program integrity
15 rules, has been burdensome and expensive. The
16 result has been both a reduction in access and
17 a source of pressure through increased tuition,
18 without added value for students or
19 institutions.

20 The President's Forum of Excelsior
21 College, the Council of State Governments, the
22 Commission on Regulation of Postsecondary
23 Distance Education, and the four regional

1 higher education compacts have, over the past
2 six years, developed an effective framework to
3 simplify and streamline the process for
4 authorizing online degree programs that
5 operate across state lines. The resulting
6 State Authorization Reciprocity Agreement,
7 SARA, as it is now being referred to, is a
8 voluntary approach for both states and
9 institutions. It was jointly drafted by these
10 organizations with funding from the Lumina
11 Foundation. This agreement allows states and
12 institutions to work together to address an
13 existing patchwork of regulations, while
14 strengthening the state's role in protecting
15 students from unfair or illegal practices. It
16 is intended to streamline the regulatory
17 process and to increase access to higher
18 education, while protecting consumers and
19 reducing the compliance costs.

20 Representatives of the Department
21 have indicated a willingness to encourage and
22 recognize interstate reciprocity agreements
23 for purposes of verifying compliance with state

1 law and participation in Title IV programs. I
2 ask the Department to encourage and recognize
3 such reciprocity agreements as a means to
4 satisfy the requirements for institutional
5 participation in Title IV financial aid
6 programs. Further, I ask the principles
7 embodied in this SARA approach be considered as
8 the foundation for any other regulatory
9 initiatives in this particular arena.

10 In regard to the state
11 authorization for foreign locations of
12 institutions located in the state, I believe
13 that there is a need for greater clarity is what
14 this refers to and it is unclear from the
15 *Federal Register* description as to the type of
16 locations involved and to the regulations
17 envisioned.

18 Now speaking to the credit hour, it
19 is recommended the Department consider
20 alternative procedures for measuring student
21 entitlement under Title IV where seat time is
22 not appropriate. The current focus on clock
23 hours, while customary and convenient, is not

1 thought an appropriate approach to measuring
2 learning, whether online or as an element of a
3 competency-based program. An alternative
4 would be to request a certification of
5 substantial equivalency, whereby an
6 institution offering new forms of instruction
7 delivery -- and those might include accelerated
8 learning, adaptive learning programs, new
9 forms such as competency assessment and MOOCs
10 -- these would be certified to the Department
11 that the learning outcomes produced equal or
12 exceeding expectations from a traditional
13 approach, based upon some form of valid
14 assessment. Such a certification could be
15 made at either the course or program level by
16 an institution's chief academic officer.

17 An additional or alternative
18 approach would be for the Department to sponsor
19 demonstration projects that include a variety
20 of post-traditional approaches. Such
21 projects would determine appropriate measures
22 for learning instead of credit or clock hours.
23 Such projects could also measure outcomes as

1 evidenced by demonstrations of specific
2 competencies or other appropriate forms of
3 measurement.

4 Relative to gainful employment,
5 while the desire for information related to
6 program costs and return on investment is
7 understood, the ability of institutions to
8 obtain such information as salary data, one of
9 the metrics often mentioned, is by no means
10 assured. The intended use of such data to
11 distinguish between successful and
12 unsuccessful programs needs to be considered
13 against multiple variables to be truly accurate
14 or useful.

15 The Department is urged to consider
16 the following in arriving at its regulations in
17 this arena. What is the minimum amount of
18 information needed to appropriately ensure
19 that aid is flowing to programs that result in
20 success in hiring? What sources exist for this
21 information beyond the academic institution?
22 And why is it assumed that a college or
23 university actually has this information?

1 Finally, and perhaps most
2 importantly, fully consider the cost of
3 obtaining the desired information and its
4 impact on tuition.

5 I will give an example here. Last
6 year, my institution spent over \$300,000 to
7 comply with state authorization requirements
8 as they now exist. In the process of
9 evaluating past gainful employment proposals,
10 we estimate that the cost for my institution
11 would be roughly \$200,000 to collect, monitor,
12 and report all of the data required by the
13 proposals that have been submitted but not yet
14 put into effect. If these two costs, state
15 authorization plus gainful employment, are
16 applied to all recently accredited
17 institutions, of which there are approximately
18 5,000, the total cost of higher education
19 increases by some two and a half billion
20 dollars. Most institutions have nowhere to go
21 to recover such costs, except to the student in
22 the form of increased tuition and fees.

23 MS. MAHAFFIE: Please wrap up your

1 comments.

2 MR. EBERSOLE: Okay, thank you.
3 Finally, in regard to campus security, the
4 intent of this requirement is understood for
5 the traditional brick and mortar campus,
6 however, there needs to be criteria for an
7 exemption. Excelsior and many other
8 post-traditional institutions have no campus
9 and no on-site students. To require the same
10 policies and reporting as for a traditional
11 campus with physically present students serves
12 no purpose and is a waste of our time and
13 resource. Thank you.

14 MS. MAHAFFIE: Rick Weidman. Is
15 Rick Weidman here?

16 (No audible response.)

17 MS. MAHAFFIE: Suzanne Ross.

18 MS. ROSS: Good morning, everyone.
19 I am Suzanne Ross and I am the new Chief
20 Compliance Officer at Higher One and we welcome
21 the opportunity to submit our comments today.

22 Since 2000, Higher One has provided
23 enhanced services to students to help college

1 and university business offices manage their
2 operations. We developed the first widely
3 adopted refund disbursement solution designed
4 exclusively for higher education to ensure that
5 students receive financial aid refunds and
6 credit balances securely and quickly.
7 Students are never charged fees to receive
8 their refunds and may have their refunds
9 distributed to a bank account of their
10 choosing. More recently, Higher One added the
11 Campus Labs suites and we provide data
12 analytics to our universities as part of our
13 product offering, and we include tools to help
14 institutions of higher education leverage data
15 to identify at-risk students early in the
16 process and hopefully improve the graduation
17 completion rates. Approximately 13 million
18 students at more than 1,600 campuses nationwide
19 use one or more of our services.

20 Historically, the disbursement of
21 federal student aid refunds has been
22 paper-based, which is a costly and inefficient
23 way for higher education institutions to

1 deliver those refunds. The Department of
2 Education has worked to modernize refund
3 disbursements through the use of electronic
4 funds transfers to improve efficiency,
5 mitigate fraud, reduce expense and improve
6 service to the students.

7 In 2008, negotiated rulemaking of
8 FSA programs, the Department acknowledged the
9 emergence of EFTs in the disbursement of Title
10 IV funds and facilitated their use through
11 regulations. Since that time, the use of EFTs
12 has continued to expand as more and more
13 institutions have come to realize the benefits
14 of these services. We believe that this trend
15 is essential to reinforce a more
16 cost-effective, sustainable and secure
17 environment. Higher One would encourage the
18 Department to ensure that students continue to
19 have these choices for their preferred method
20 of refund delivery. Now that we have entered
21 the 21st century, we encourage the use of
22 electronic distribution of refunds, in line
23 with practices adopted by other federal

1 agencies. This approach removes the
2 additional cost of potential check cashing fees
3 for those students who do not have a traditional
4 banking relationship. It also provides a more
5 secure platform to reduce the risk of financial
6 aid fraud.

7 Higher One agrees with the
8 Department's decision to explore the ways in
9 which EFTs can be used to streamline operations
10 and mitigate fraud risks. Fraud impacts
11 federal and state governments and higher
12 education institutions, as well as students and
13 their families, with taxpayers assuming the
14 ultimate final burden. We cannot afford or
15 tolerate the abuse of programs vital to our
16 national interest, especially at a time when
17 families around the country are struggling
18 through economic hardships and institutions
19 are facing budget cuts.

20 For many students and families, the
21 lack of eligibility and accessibility of
22 banking services represents a significant
23 barrier to establishing a financial anchor.

1 It is important that all students have access
2 to financial services that support them. An
3 electronic refund disbursement service is
4 incomplete if students who are unable to
5 qualify for traditional banking services are
6 denied the means to receive their electronic
7 refunds, essentially shutting them out of the
8 mainstream banking system and depriving them of
9 FDIC insurance and fraud protections. The
10 fees and risks associated with disbursement
11 alternatives, such as check cashers, are not in
12 the best interest of students. The Department
13 should examine how the un-banked and
14 under-banked student population can manage
15 their financial help, which includes financial
16 aid refunds and day to day financial
17 obligations. This approach establishes the
18 foundation for a viable fiscal future and
19 promotes financial literacy.

20 We agree with the Department's
21 recommendation that the fees, terms, and
22 conditions of a third-party servicer's account
23 should be transparent and clearly communicated

1 to students in a way they understand. All
2 financial service providers charge for the
3 services they offer. However, not all banks or
4 financial institutions charge the same for
5 those services. Each affords students a
6 choice of various products that may fit their
7 particular need. Every student must be
8 presented with options that afford them the
9 opportunity to select a product or service that
10 best meets financial needs and budget
11 constraints of those students.

12 We support the recommendation to
13 recognize the importance of EFTs in the
14 delivery of refunds and the value of accessible
15 student oriented checking accounts. Any new
16 rules should be carefully enacted to prevent
17 unnecessary barriers to the use of EFTs and
18 post-disbursement money management options in
19 such processes. At the same time, we agree
20 that the negotiating committee should explore
21 whether enhanced disclosure of checking
22 account fees to students is appropriate.

23 We also recommend that the current

1 time frames in which an institution must be
2 disbursing funds should be shortened, in order
3 to avail students of their funds in a more
4 timely fashion. Higher One has always made the
5 student focus a priority and the issuance of
6 paper checks has, by its very nature, delayed
7 the availability of ready access to funds for
8 all of our students. We call for a change in
9 the regulation.

10 Ultimately, third-party servicers
11 provide EFT disbursements and we play an
12 important role in helping students avoid more
13 costly and risk-laden alternatives to access
14 refunds and manage their daily finances.
15 These providers also help assist the Department
16 and institutions in the detection and
17 prevention of fraud and reduce overall
18 administrative costs in higher education.

19 Thank you for your time and
20 attention to this most important matter.

21 MS. MAHAFFIE: Marvin Silver.

22 MR. SILVER: Good morning. My
23 name is Marvin Silver. I serve as the Outreach

1 Director with Americans for Financial Reform,
2 which is a public interest coalition of 250
3 organizations made up of state, national and
4 local groups, consumer organizations, labor,
5 economic and policy research groups.

6 We come this morning to express our
7 strong support for an effective gainful
8 employment rule. We recently joined 50
9 organizations in signing a letter on this
10 particular issue. Since the final gainful
11 employment regulations were issued in June
12 2011, new information about for-profit
13 colleges' fraudulent conduct have been made
14 clear, as clear as the sky. High tuitions and
15 bad student outcomes have reinforced the urgent
16 need for a strong gainful employment rule.
17 While there are some responsible companies
18 providing quality programs, we believe the
19 latest facts, including the comprehensive
20 report from the Senate Health, Education, Labor
21 and Pension Committee's two year investigation
22 of a for-profit college industry issued last
23 year show that the problems are egregious and

1 widespread and certainly not limited to a
2 handful of bad actors.

3 The effects on students are clear.
4 More than half of students who enroll in
5 for-profit colleges in the recent year dropped
6 out within about four months without a degree
7 or certificate. For-profit colleges have 13
8 percent of the students but 47 percent of
9 student loan defaults and 23 percent of their
10 borrowers default on their loans within three
11 years of graduating or dropping out.

12 Abuses by for-profit colleges
13 imperil efforts to help Americans to
14 successfully train for careers at prices they
15 can afford. These schools have consumed as
16 much as \$32 billion in federal financial aid in
17 a single year, about 25 percent of all such aid.
18 Fifteen big publicly traded companies in this
19 sector receive about 86 percent of their
20 revenue from taxpayers. And at this time of
21 fiscal challenge, we cannot afford to divert so
22 many education dollars to programs that are
23 wasteful and, indeed, harmful to our students.

1 Many of the organizations in our
2 coalition are concerned about students in
3 career education programs being left with debts
4 that they cannot repay.

5 Today, I ask that this letter that
6 we signed with other organizations be submitted
7 for the record, as well as a list of news
8 articles and editorials that ran since the
9 gainful employment regulations issued in June
10 2011 on the need for greater oversight and
11 regulation of career education programs be
12 added to the record.

13 Also, finally I would say that we
14 ask that you would amend any regulations to
15 prevent schools from evading other current laws
16 designed to protect students and taxpayers,
17 such as laws limiting cohort default rates and
18 the share of revenue that can come from federal
19 student aid.

20 Thank you for the opportunity to
21 share today.

22 MS. MAHAFFIE: Aristeia Williams.
23 Aristeia Williams?

1 (No audible response.)

2 MS. MAHAFFIE: Anne Johnson.

3 MS. JOHNSON: Good morning. My
4 name is Anne Johnson. I am the Director of
5 Campus Progress at the Center for American
6 Progress. Campus Progress strives to voice
7 the concern of students and other young people
8 nationwide and to fight for their interests,
9 both here in Washington and in their local
10 communities. We are pleased to see that the
11 Administration remains focused on program
12 integrity in the federal student aid programs.
13 However, we need to make sure that reforms that
14 were pursued in the first term aren't weakened
15 in the second term.

16 The strength of our economy depends
17 on the quality of our workforce. Therefore, it
18 is vital that we protect the interests of
19 students by ensuring that higher education is
20 both affordable and of high quality. In order
21 to preserve quality within the framework of
22 gainful employment, we believe that this issue
23 must be pursued carefully, using the best

1 available data.

2 Metrics and thresholds should not
3 be set based on what is politically palatable.
4 For example, oftentimes job placement data from
5 certain institutions has depended on loose
6 metrics that skew data inappropriately. This
7 is because of a lack of a clear and standard
8 definition of gainful employment. By focusing
9 policy on clearly defined data matrix, we can
10 effectively change this and ensure that the
11 students that we work with have access to the
12 information that they need to be able to make
13 important decisions about where to pursue an
14 education.

15 These students need protections
16 beyond what currently exist and gainful
17 employment regulations are a strong step in
18 that direction.

19 Existing regulations should be
20 reviewed and improved. For example, the 90/10
21 rule has resulted in too many heartbreaking
22 stories of veterans who have been exploited as
23 a method for schools to avoid hitting the 90

1 percent cap. We have brought these stories to
2 D.C. many times and further action is needed to
3 be taken.

4 In terms of ensuring affordable
5 quality higher education, we believe that part
6 of the answer lies in refinancing and lowering
7 student interest rates. On July 1st, the
8 interest rates on subsidized Stafford loans are
9 scheduled to double from 3.4 to 6.8 percent.
10 As a result of this impending deadline, there
11 have been several bills introduced in the House
12 and Senate to address both short-term and
13 long-term fixes that will protect students from
14 incurring thousands upon thousands of
15 additional debt. This topic is especially
16 relevant for students who attend for-profit
17 colleges, since the data clearly indicates that
18 those students have almost double the amount of
19 debt when compared to students who attend
20 non-profit institutions. That is a comparison
21 of \$31,000 of debt versus \$17,000 of debt.
22 This debt can have a ripple effect on the
23 economy. And we hear frequently from

1 borrowers that this impact is having -- the debt
2 is having an impact on their daily lives.

3 Creating sustainable systems for
4 student debt is multifold and must include
5 provisions regarding interest rates,
6 strengthening rather than eliminating the
7 federal grant programs, and ensuring that there
8 are more protections for parents and students
9 who are having difficulty with their debt.

10 Campus Progress stands ready to
11 continue to help raise the voice of students on
12 these issues. Thank you for your time.

13 MS. MAHAFFIE: Todd Leatherman.

14 MR. LEATHERMAN: Good morning. My
15 name is Todd Leatherman and I am the Executive
16 Director of the Office of Consumer Protection
17 for the Kentucky Office of the Attorney
18 General. Thank you for the opportunity to
19 comment on the Department's upcoming
20 negotiated rulemaking, which focuses largely
21 on issues related to postsecondary for-profit
22 institutions.

23 In addition to these oral comments,

1 we will be submitting additional written
2 comments prior to the conclusion of the final
3 public hearing on June the 4th.

4 Since 2009, our office has been
5 investigating and pursuing violations of
6 Kentucky's Consumer Protection Act by certain
7 for-profit colleges. We are currently in
8 litigation against three for-profit colleges
9 with several other investigations pending.

10 In addition, Kentucky Attorney
11 General Jack Conway leads a 32 state working
12 group of attorneys general who are
13 investigating issues involving for-profit
14 schools. We have now heard from hundreds of
15 dissatisfied students of for-profit colleges
16 and our experience investigating and
17 litigating consumer protection cases has
18 provided our office and other attorneys general
19 with first-hand knowledge of several abuses of
20 our laws, as well as federal regulations, by
21 for-profit colleges and the consumer harm
22 resulting therefrom. We appreciate this
23 opportunity to share some of what we have

1 learned, in hopes that it further informs the
2 Department in this rulemaking process.

3 Based on our experience, we have
4 several recommendations. First, reduce the
5 time by which an institution must deliver a
6 student's federal student aid credit balance to
7 the student to ensure students are able to
8 access Title IV aid when it is needed, and not
9 allow schools to delay release of those funds
10 merely to serve the purposes of the
11 institution.

12 Second, require institutions to
13 make specific written disclosures to students
14 which clearly explain the students'
15 entitlement to receive the financial aid
16 exceeding tuition and fees and the students'
17 rights concerning use of those funds.

18 Third, prevent institutions and
19 their agents from manipulating information
20 provided to students and data to evade the
21 consequences under other Department
22 regulations, such as the 90/10 rule and
23 calculation of the cohort default rate.

1 Four, adopt strengthened gainful
2 employment regulations.

3 Five, require institutions and
4 accreditors to better substantiate with
5 independent data and research the extent of the
6 need for postsecondary education for the
7 "recognized occupation" as a part of obtaining
8 approval for a program.

9 Six, develop a standardized
10 methodology for calculating job placement
11 rates or, at a minimum, define certain factors
12 that must be included or that shall not be
13 permitted to be included in the calculation of
14 job placement rates.

15 Time restrictions on oral comments
16 prevent me from giving in-depth explanation for
17 all these recommendations. However, I would
18 like to explain the reason for a couple of them.

19 Our office strongly favors reducing
20 the time it takes an institution to deliver
21 credit balances to students so that students
22 may obtain their books and educational supplies
23 in a timely manner at competitive prices.

1 Current regulations provide schools an
2 opportunity to delay delivering credit
3 balances, even to returning students, for more
4 than 14 days after the first day of classes.
5 Schools holding onto the students' credit
6 balances until after the term commences are in
7 a position to coerce students into buying their
8 books and supplies from the school at
9 exorbitant prices. While it is a service to
10 students to allow them to obtain their books at
11 the school bookstore by charging books to their
12 accounts, a school delaying the release of a
13 credit balance is free to charge much higher
14 prices than competitors because the student
15 does not have the aid available to purchase
16 books from another vendor.

17 This very practice led us to sue a
18 company operating schools in four states,
19 including Kentucky. It is clear from our
20 dealings with the school that it purposefully
21 misread the Department's regulations in order
22 to ensure that students had no alternative but
23 to spend their financial aid at the school's own

1 bookstore for books and supplies that were
2 priced well above prices readily available from
3 other vendors.

4 The same school also adopted a
5 hyper-technical and manipulative definition of
6 credit balance to unfairly delay delivery of
7 the student's financial aid. The school would
8 draw down the federal student aid and deposit
9 it into the student's school accounts.

10 However, to avoid creating a credit balance
11 prior to the term commencing, the school
12 purposefully did not post its tuition charges
13 to the students' accounts until sometime after
14 the term had commenced. According to the
15 school, a credit balance owing to the student
16 was not created prior to the term commencing
17 because it had not yet paid itself tuition, so
18 there were no federal student aid dollars to
19 deliver to this student. Consequently,
20 students who needed their financial aid to
21 purchase books were forced to buy their books
22 at exorbitant prices from the school's
23 bookstore. This, obviously, is harmful to

1 consumers because they are incurring more debt
2 than they need but it is also a fiscal issues
3 for taxpayers and the Department because the
4 school obtained more federal student aid
5 dollars than if the students had funds
6 available to purchase items from lower cost
7 vendors.

8 Finally, in our experience, a major
9 contributor to student complaints, withdrawal
10 rates, and default rates is that students are
11 enrolled in programs for jobs that do not
12 require much, if any, postsecondary education.
13 Thus, students complained the education was
14 useless and a waste of time. Students withdraw
15 because they realize the classes are not
16 substantive and students default because the
17 cost of the education for the career far exceeds
18 the amount of money they can earn because the
19 jobs do not really require postsecondary
20 education. High school graduates without any
21 postsecondary education are hired for the same
22 jobs, yet these programs are accredited and
23 substantial amounts of federal student aid are

1 available to the schools for providing these
2 expensive and unnecessary career programs.

3 For example, one large healthcare
4 employer in our state explained that it hires
5 persons with only a high school diploma to train
6 them for a "billing and coding" position and
7 that there is no expectation of any additional
8 certification. This is essentially an entry
9 level data entry position, yet a billing and
10 coding diploma from an accredited Title
11 IV-approved for-profit college in our state
12 cost \$27,000 and an associate of applied
13 science degree in billing and coding costs
14 \$36,000. ONET describes billing and coding
15 jobs as only requiring a high school diploma.

16 Obviously, one must question
17 whether such programs truly prepare students
18 for gainful employment in a recognized
19 occupation within the meaning of the statute.
20 To the extent it is able, the Department should
21 consider placing a greater burden on
22 institutions and accreditors to justify and
23 substantiate with independent data and

1 research the need for postsecondary education
2 to prepare students for an identified,
3 recognized occupation as a part of obtaining
4 approval for the program.

5 Further, the Department should
6 adopt regulations requiring that the cost of
7 the program correlate in a reasonable fashion
8 to the rate of pay expected from the employment,
9 including the rate of pay needed for repayment
10 of loans in a timely manner.

11 Policy makers and taxpayers are
12 rightfully concerned about the skyrocketing
13 amount of student loan debt. Putting an end to
14 predatory programs that charge students
15 exorbitant tuition for meaningless,
16 unnecessary degrees should be a high priority
17 for the Department.

18 We hope these comments are useful to
19 the Department and help guide it through the
20 negotiated rulemaking process. Thank you.

21 MS. MAHAFFIE: We will now take a
22 break until 10:40.

23 (Whereupon, the above-entitled

1 matter went off the record at 10:24 a.m. and
2 resumed at 10:40 a.m.)

3 MS. MAHAFFIE: Meg Benke.

4 MS. BENKE: I am Meg Benke,
5 President of Empire State College, which is
6 part of the State University of New York.
7 Empire State College was founded in 1971 by
8 educational visionary Ernest Boyer, then the
9 Chancellor of the State University of New York,
10 who went on to become U.S. Commissioner of
11 Education.

12 Dubbed "The College without walls
13 of New York," we continue now, more than 40
14 years later, to provide flexible, high quality
15 public education at a low cost for 20,000
16 students. It is within this context I offer my
17 thoughts today about the non-traditional
18 student, state authorization, and cash
19 management.

20 As you know, there has been growth
21 in the students over 25. The percentage of
22 increase in the number of younger students in
23 this pattern is expected to continue. For

1 example, between 2000 and 2010, the percentage
2 of students in college age 25 or older increased
3 by 42 percent. Adult students now make up a
4 large portion of students enrolled in higher
5 education.

6 However, when state and federal
7 regulations are created, it is rarely with the
8 student population in mind; rather, the focus,
9 legislators and regulators continue to treat
10 them as the exception. The regulations
11 authored and approved thus far seem to be based
12 on the idea that most students are full-time,
13 18 years old, and going on campus. And the
14 statistics that we need to report on these
15 students do not account for part-time students'
16 rate.

17 While there are many younger
18 students who can stop out and go to school
19 full-time, we need to find ways to continue to
20 help students to go to school while working
21 full-time, tending to family, and meeting civic
22 obligations.

23 We are seeing a greater number of

1 students in their twenties working and going to
2 school part-time. Aiding adults to return and
3 finish school is a missed opportunity,
4 particularly those in their twenties who are
5 pursuing this path.

6 And this is repeated at the state
7 and federal level by an educational bureaucracy
8 that puts a premium on the 18 to 22-year-old
9 student and focuses much of its attention on the
10 needs of that group when crafting legislation.

11 State authorization for distance
12 learning is an example of how the Education
13 Department hadn't thought through what
14 students are being served by flexible,
15 high-quality, public distance education
16 institutions.

17 Generally, for working adults with
18 few other options for study, our programs
19 provide an accredited alternative. Through
20 these regulations, many good public
21 institutions of higher education are burdened
22 with the costly and, in some cases,
23 insurmountable endeavor of registering.

1 If consulted, institutions like
2 ours could have provided more guidance to help
3 solve the problems these regulations sought to
4 improve and, in fact, we have. This past year
5 I served on the SHEEO Commission for Regulation
6 of Postsecondary Distance Education, which was
7 chaired by former U.S. Secretary of Education
8 Richard Riley on distance education and state
9 authorization.

10 We have produced what I think is a
11 solid recommendation for a way to meet the needs
12 of states without unduly burdening accredited
13 colleges. I believe this report provides an
14 appropriate roadmap forward.

15 We were also heartened to read the
16 letter sent to the Department by certain
17 members of the Committee on Education and the
18 Workforce asking the Department to curtail
19 enforcement of certain regulations and defer to
20 the upcoming reauthorization process for the
21 Higher Education Act. We agree with this and
22 thank those Members for sending this letter.
23 We also humbly ask the Department to defer from

1 any further action until the reauthorization
2 process is fully underway.

3 I want to take a moment to make a
4 special note of the consideration being given
5 to including competency-based programs for
6 financial aid. We believe that this form of
7 education is valid and necessary to meet the
8 goals of the Obama Administration to increase
9 completion rates and decrease time to
10 completion. We have engaged in this type of
11 education for more than 40 years and can provide
12 evidence of its effectiveness. We thank the
13 Department for its forward thinking on this
14 important issue.

15 With regard to cash management, one
16 of the topics today is the current
17 regulation of 14 days to assignment of the
18 financial aid resources. We actually think
19 that this is a fair way to approach giving aid
20 to the appropriate students, to giving
21 institutions the time to disburse the aid.

22 There are ways to deal with the
23 issues related to students buying books.

1 Colleges like ours provide foundation grants,
2 so that students can purchase their books from
3 any source, our institution where we provide
4 books or others through many grants that are
5 no-interest grants.

6 So, there are some anomalies that we
7 need to do to give accurate financial aid, and
8 we think there should be a retaining of the 14
9 days.

10 In closing, I want to thank you for
11 your time. Institutions like ours, Thomas
12 Edison College, Charter Oak, University of
13 Maryland, and Western Governors have begun
14 working together on issues related to adult
15 learners and public higher education.

16 We look forward to giving feedback
17 on these proposals as you move forward from
18 Empire State College or from this consortium of
19 institutions.

20 Thank you.

21 MS. MAHAFFIE: Thank you.

22 Rick Weidman.

23 MR. WEIDMAN: First of all, I thank

1 the panel for the opportunity to speak here
2 today and will not dwell as much as others might
3 have on prescriptive remedies, but rather talk
4 about why Vietnam Veterans of America was
5 founded.

6 We were founded because, make no
7 mistake about it, our fathers' generation
8 threw us away and people didn't care, by and
9 large. It was only a fluke that we had the Cold
10 War GI bill which started out at 60 bucks a pop
11 per semester for everything -- or per month for
12 everything, including tuition, books, fees.

13 We have, since our founding in 1978,
14 pushed hard for a GI bill for those who would
15 come after us like that which my father had
16 coming from a very poor background where he
17 joined the military at 16 just to get enough to
18 eat. And that was not atypical. But he was
19 able to go to a college, in fact, to a very
20 prestigious private college, as a result of
21 that GI bill.

22 But that was not handed down to my
23 generation and we were adamant that we hand it

1 down to this generation, only to see the
2 guarantees that should be of keeping the
3 rascals out, those guarantees turn to smoke.

4 In the seventies, the same problem
5 that exists now with unscrupulous individuals,
6 both in the public sector and in the private
7 sector taking off veterans existed. And yet,
8 that is why at that time in the early seventies
9 enough pressure was applied from both students
10 and from others to ensure that information was
11 gathered about graduation rates, about course
12 completion rates -- and that is perhaps the most
13 important -- as well as progress toward a degree
14 or certificate.

15 The course completion rate is
16 really the one that you need to zero-in on
17 because people drop out when there is nothing
18 of value. Essentially, they vote with their
19 feet, and that doesn't matter whether they are
20 a veteran or not, although I will tell you that
21 we are most concerned about the young men and
22 women who have fought in the two wars our nation
23 has been waging for the last decade.

1 They are coming back after having
2 been exposed to much more combat than any of the
3 wars of the 20th century. The average exposure
4 to combat of a combat MOS in World War II was
5 less than 30 days. In Vietnam, it was 271 days.

6 We have young people that I have met
7 in the Wounded Warrior units at Fort Belvoir and
8 at Walter Reed who have been back on the fifth
9 involuntary tour. And they cannot continue to
10 be soldiers or service persons from this point
11 on because we are drawing down the forces and
12 because in many cases they have been impaired
13 and lessened by virtue of their military
14 service in the name of us all.

15 So, they have to retrain for what
16 they are going to do with their lives. In many
17 cases, their life changed in an instant
18 literally. They were fine, young athletes one
19 moment, and the next moment, all of a sudden,
20 they will never walk again under their own
21 power.

22 They need the GI bill. They need
23 this training to be of worth in order to move

1 forward into new professions. Because, quite
2 bluntly, our society needs them, and it is not
3 just something nice we do for them.

4 Our organization was founded on
5 this principle that we keep coming back to:
6 never again shall one generation of American
7 veterans abandon another generation. I want
8 to say that one again, because for everybody in
9 this room over the age of 40 -- and there are
10 a few of us -- never again shall one generation
11 of American veterans abandon another, and it
12 should be true of Americans.

13 And frankly, we don't care whether
14 it is a for-profit or not-for-profit. If there
15 is not value in a particular course of study
16 that an individual has intrinsically acquired
17 from that study, to take from them is to steal
18 their future. It is bad enough to do that to
19 any American, but to do that to the young men
20 and women who have put their life on the line
21 literally in defense of the Constitution of the
22 United States -- and I want to stress, when you
23 join the military, that step forward is

1 pledging life and limb in defense of the
2 Constitution of the United States, not a
3 particular war, not a particular policy, not a
4 particular government, but of the Constitution
5 which begins with "We, the people...."

6 And therefore, everyone in this
7 room has a covenant with those young men and
8 women who have placed themselves in harm's way,
9 whereby they have been lessened
10 physiologically, neuropsychiatrically,
11 emotionally, spiritually, or economically, to
12 help make them as whole again as humanly
13 possible. And part of that is to go ahead and
14 do what has already been affirmed in the courts,
15 not to wait for the Reauthorization Act, but to
16 go ahead and promulgate a rule on gainful
17 employment that is needed.

18 Because VA has walked away from
19 their responsibility. DoD has walked away
20 from their responsibility. And I beseech all
21 of you at the Education Department to not join
22 them in abandoning this generation; and,
23 rather, to stand with them and help safeguard

1 that education which they have paid for so
2 dearly in terms of spending their life and in
3 many cases their blood.

4 I thank you for the opportunity, and
5 I would appreciate the opportunity to follow
6 with a written statement.

7 MS. MAHAFFIE: Thank you.

8 MR. WEIDMAN: Thank you.

9 MS. MAHAFFIE: Kim Gandy.

10 MS. GANDY: Thank you for this
11 opportunity to provide testimony on the
12 implementation of the Violence Against Women
13 Act reauthorization provisions regarding
14 college campuses.

15 The National Network to End
16 Domestic Violence is a membership and advocacy
17 organization representing the 56 state and
18 territorial coalitions against domestic
19 violence.

20 NNEDV is the national voice of these
21 coalitions. There are more than 2,000 local
22 domestic violence programs and millions of
23 domestic violence survivors who turn to them

1 for services.

2 As the Department of Education
3 issues regulations under the campus provisions
4 of VAWA, we recommend that colleges and
5 universities be encouraged to work in
6 partnership with experienced state domestic
7 violence and sexual assault coalitions and
8 their local programs in the community.

9 VAWA 2013 requires all campus
10 grantees to create a coordinated community
11 response that includes both the relevant
12 divisions of the Institute -- it is still not
13 working.

14 PARTICIPANT: We can hear it.

15 MS. GANDY: You can hear it? I
16 will just talk loudly.

17 The relevant divisions of the
18 institution and organizations external to the
19 institution, the State Domestic Violence and
20 Sexual Assault Coalitions and their local
21 programs are precisely the external
22 organizations that institutions should
23 collaborate with in developing campus-based

1 responses.

2 As colleges and universities work
3 to shape their policies and protocols, they
4 should draw on the substantial expertise of
5 State Domestic Violence and Sexual Assault
6 Coalitions not only in victim advocacy, but
7 also in working with law enforcement,
8 healthcare providers, and others.

9 Coalitions have long experience in
10 working with all of the relevant community
11 stakeholders to shape responses and policies
12 that are victim-centered, evidence-based, and
13 guided by applicable legal standards.

14 Campuses, in many ways a microcosm
15 of the surrounding community and with many of
16 the same stakeholders, would benefit from the
17 assistance of state coalitions as they bring
18 stakeholders to the table to create and
19 implement internal policies and protocols.

20 Furthermore, coalitions are
21 ideally situated to be part of these efforts,
22 as they have extensive experience with the
23 Coordinated Community Response Model through

1 the Violence Against Women Act's STOP program
2 and, thus, are uniquely able to assist campuses
3 as they develop their own coordinated community
4 response.

5 Additionally, it is vitally
6 important for there to be a strong and
7 collaborative relationship between
8 institutions and programs in the surrounding
9 community of the campus, so that each is aware
10 of the services and resources offered by the
11 other in order to best position both to make
12 needed referrals.

13 While a student who is a victim of
14 dating violence or sexual assault may choose to
15 access campus-based resources first, it is also
16 possible that a community-based service
17 provider could be a student's first point of
18 contact. In either case, the program that the
19 student initially reaches out to first may not
20 be able to provide all of the needed services.
21 For this reason, institutions should work with
22 state coalitions and local programs for
23 domestic violence and sexual assault to

1 understand how campuses and students might be
2 able to take advantage of those existing
3 resources.

4 It is, likewise, important for
5 state coalitions and service providers to be
6 engaged in the campuses' processes as they
7 develop new policies and responses, so that
8 these external organizations can stay
9 up-to-date and informed on the campus resources
10 available for survivors. This kind of ongoing
11 partnership will allow for effective and
12 streamlined referral mechanisms as well as
13 strengthen the ability of both to provide
14 services for students.

15 As campuses work to respond to the
16 new requirements of the Violence Against Women
17 Act reauthorization, they will benefit from
18 collaborating with, and drawing on the
19 expertise of, state coalitions and local
20 service providers, especially in developing
21 policies and procedures that are coordinated
22 across the campus as well as the surrounding
23 community.

1 Therefore, we urge regulations
2 issued by the Department to reflect the
3 importance of these partnerships.

4 And thank you again for the
5 opportunity to testify.

6 MS. MAHAFFIE: Christine
7 Lindstrom.

8 MS. LINDSTROM: The trick
9 microphone keeps the witnesses on our toes.

10 Thank you in advance for
11 consideration of my remarks. I am Christine
12 Lindstrom. I am the Higher Education Program
13 Director for the U.S. Public Interest Research
14 Group. We are a federation of state-based
15 consumer organizations with 75 college campus
16 chapters across the country.

17 Students are now graduating with an
18 average of \$27,000 in loan debt. The country
19 carries \$1 trillion in student loan debt, and
20 that has consequences for the individual
21 borrowers as well as for the social and economic
22 health of our country.

23 Therefore, I ask that during this

1 round of rulemaking the Department of Education
2 act boldly on several important items that are
3 necessary to drive down costs for our student
4 members and to protect them as consumers.

5 The first is campus debit cards.
6 The USPIRG Education Fund released a report
7 last May, "The Campus Debit Card Trap," which
8 detailed the extent to which students are using
9 debit cards of many kinds on campus with very
10 little consumer protection.

11 We estimate that 9 million students
12 now have campus debit cards. Most receive
13 their financial aid refunds on these cards,
14 which hits students with high fees that can be
15 hard for them to avoid and deduct those fees
16 from their student aid.

17 For these students, access to their
18 federal financial aid is now controlled by a
19 private financial institution which uses
20 monetary controls and imposes other limits on
21 those students to generate their profits.
22 That is their business model.

23 In the report, we raised a number of

1 problems that can be solved with stronger rules
2 from the Department of Education, and we look
3 forward to engaging on those concerns, as the
4 Department has already agreed to raise these
5 issues in the upcoming negotiation.

6 However, students are being
7 overcharged right now to access their aid and
8 simply cannot wait until July 2015 for the final
9 rules to actually be implemented. So,
10 therefore, we ask that the Department act
11 swiftly to further guide rules around debit
12 cards that already are in existence.

13 Specifically, the rule surrounding
14 the placement of ATM machines on campus states
15 that access should be fee-free and that
16 students should have convenient access.
17 Because these criteria are not defined,
18 financial institutions are able to comply with
19 the letter of the rule; yet, violate the spirit
20 of it.

21 In one example, a financial
22 institution simply located one ATM machine on
23 one campus, despite the fact that the college

1 actually has nine campus locations in total.
2 Thus, the campus generates a windfall in profit
3 from foreign ATM surcharges that students,
4 again, are paying with their financial aid
5 dollars. So, by issuing further guidance now,
6 the Department of Education can remedy this
7 problem as soon as this fall for the incoming
8 class.

9 If the ATM issue can be expedited,
10 then we can spend valuable time in negotiation
11 dealing with new dynamics in the marketplace
12 that aren't touched upon in statute. For
13 instance, companies are engaging in aggressive
14 marketing tactics such as sending debit cards
15 to all students in the mail before they have
16 even made a choice to have one, essentially
17 making the decision for them.

18 Second, I would like to add USPIRG
19 to the numerous voices you are hearing today
20 praising the Department of Education for its
21 ongoing efforts to rein in student abuse at
22 for-profit colleges by defining the gainful
23 employment criteria through which colleges can

1 access financial aid dollars.

2 For-profit colleges leave students
3 with too much debt. Nearly one in five
4 students from a for-profit college default on
5 their loans. So, a strong rule helps to curb
6 the abuse.

7 USPIRG found the initial gainful
8 employment rule to be weaker than it could have
9 been initially, but we agreed with the overall
10 framework, including the debt-to-income
11 metrics. So, we urge you to stand by that
12 framework, to tweak it slightly to satisfy the
13 courts, and to further strengthen the rule on
14 behalf of student loan borrowers. Another
15 part of the solution is to buttress borrowers
16 from 90-10 rule manipulation by for-profit
17 colleges.

18 Private loans have become more
19 important over the past decade to finance
20 higher education in conjunction with the rise
21 in for-profit colleges. By law, for-profit
22 colleges can earn up to 90 percent of their
23 revenue from government aid, and the other 10

1 percent has to come from other sources. So,
2 for-profit colleges are targeting students
3 with little savings or accumulated wealth.
4 And so, "other sources" means private student
5 loans.

6 For-profit colleges are pushing
7 students into these loan products without
8 taking into account their need or their ability
9 to repay. According to the Project on Student
10 Debt, more than half of private loan borrowers
11 are eligible for more federal loan aid. But
12 these schools needed the 10 percent in private
13 revenue on their books, so that motivates them
14 to push the expensive and risky products onto
15 students.

16 Given that these loans have very
17 little consumer protections for students, they
18 are more likely to create financial stress for
19 borrowers. In essence, we think this rule
20 needs to be strengthened.

21 So, in short, the Department of
22 Education has a fundamental role to play in
23 reining in abusive practices that have

1 contributed to the students' current student
2 debt crisis -- or the country's current student
3 debt crisis. So, please make this upcoming
4 round of rulemaking a defining one in terms of
5 taking bold and necessary action to alleviate
6 that debt.

7 Thank you.

8 MS. MAHAFFIE: Daniel Toughey.

9 MR. TOUGHEY: Good morning.

10 I am Dan Toughey. I am President of
11 TouchNet Information Systems. We specialize
12 in providing software and software solutions
13 for college and universities to automate
14 business processes, including the financial
15 aid excess credit balance distribution process
16 as well.

17 One of our products is called
18 eRefunds. Basically, it uses the ACH direct
19 deposit system, much like your paychecks are
20 deposited every day. It is very successful for
21 hundreds of our colleges around the country.

22 How to do this is very simple. It
23 is easy. It is cost effective for students,

1 and it is cost effective for schools as well.

2 But there is kind of a disturbing
3 trend in the market, and that is moving more
4 towards third-party service providers that are
5 banks or financial institutions that are
6 partnered with banks in issuing debit cards for
7 the purpose of distributing these financial aid
8 credit balances.

9 This process is being sold to
10 schools as the answer to going electronic and
11 eliminating the paper checks, but more often
12 than not, it is creating more problems for both
13 the students and the higher education community
14 in general. This is impacting millions of
15 students around the country right now.

16 And I testified last year about this
17 time, when this subject was also brought up. I
18 would like to report that things have gotten
19 better, but, in fact, they really haven't.
20 With the recent acquisition by Higher One, the
21 leader in the market in this
22 third-party-service-provider-to-debit-card
23 process, with their recent acquisition of

1 Sallie Mae Campus Solutions, they now are
2 joining forces. And so, once again, the
3 hearings are very timely.

4 There are basically four problems
5 with the whole financial-aid-to-debit-card
6 process that we see in the market today. The
7 first one is overly aggressive marketing. At
8 these campuses, many of these campuses I should
9 say, students, new students coming in,
10 everybody is receiving in the mail a debit card
11 with the school logo on it, and it looks like
12 a product that has been endorsed by the school.
13 Of course, it is encouraging the students to
14 immediately go sign up for their new debit card
15 or their bank account that goes with that debit
16 card. Again, it looks like it is endorsed by
17 the schools themselves.

18 This is kind of an end-around, if
19 you will, from the Credit Card Act of 2010 that
20 the Congress passed that eliminated the
21 marketing of credit card products on campuses
22 like this. But, of course, this is a debit card
23 and, again, it is kind of a loophole in the

1 process. Unfortunately, the Congress missed
2 the Credit Card Act by one word in not adding
3 "debit".

4 Once a student goes off to these
5 service providers' websites to select their
6 options or to sign up for the program, what they
7 are finding is they are being heavily steered
8 to the bank product. In one particular case,
9 the leading provider, about 50 percent of the
10 students on their campus sign up for a brand-new
11 bank account to get one of these debit cards.

12 Now there are plenty of studies out
13 there in the market that show -- in fact, even
14 one that they funded themselves called "Money
15 Matters on Campus" -- that 86 percent of
16 freshmen students come to campus with a bank
17 account. So, there is really no good free
18 market explanation why 50 percent of those
19 students would be signing up for a brand-new
20 bank account just to get their financial aid
21 disbursements.

22 The fact of the matter is direct
23 deposit that you and I get our paychecks through

1 is being difficult to choose for students.
2 They have to print a form and either mail it or
3 fax it back to that service provider. Of
4 course, students don't probably know fax
5 machines today and, of course, carrying stamps
6 is not very easy, either. So, there is a
7 steering process that is taking place once they
8 get to the website.

9 Then, once a student has the card,
10 which 50 percent of these students have this
11 card in this particular case, once they have it,
12 they begin to understand what capitalism is all
13 about because the fee schedules are extremely
14 complex and confusing. I would just highlight
15 three different fees very quickly here.

16 One is what I call a pay-to-pay fee
17 where a student is charged 50 cents per
18 transaction if they enter a pin number at the
19 point-of-sale. This is kind of a historic thing
20 in the debit card market. It is very unusual,
21 but it is still in effect there.

22 ATM machines, the same thing
23 happens there. If they have to go to

1 out-of-network ATM machines, they are charged
2 \$2.50 to check their balance, \$2.50 to withdraw
3 money, or \$2.50 if they are declined on a
4 transaction, that together with the cost that
5 the ATM owner charges them as well.

6 And then, the third area is
7 inactivity fees or monthly account service fees
8 that also begin to add up.

9 So, we have aggressive marketing,
10 we have steering to bank products, and we have
11 high fee schedules that our students are faced
12 with.

13 And then, the fourth item is
14 exclusive contracts with schools. The schools
15 can't get out of these contracts and they are
16 stuck with them, typically, for five years.
17 And five years in the banking and financial
18 service industry is a very long time to be stuck
19 with a particular product.

20 So, the result out there is students
21 are protesting. They are pushing back on many
22 campuses. You can check the blogs. You can go
23 out there and do the research. Just hit Google

1 and hit this topic and you will see what is going
2 on in the marketplace.

3 And just in the last year, there
4 were six class action lawsuits filed by
5 students against one of the providers. So, it
6 is really time for federal action. I mean the
7 market forces are not going to take care of
8 this, especially with the recent acquisition of
9 Sallie Mae Campus Solutions by Higher One, now
10 making them by far the largest provider in this
11 space.

12 And the result of this is taxpayer
13 money is being harvested and students are being
14 coerced into bank accounts and debit cards that
15 they don't want and they don't need.

16 And so, we respectfully ask --

17 MS. MAHAFFIE: Your time is running
18 out.

19 MR. TOUGHEY: Okay. Thank you.

20 We respectfully ask the Department
21 to proceed with a negotiated rule committee on
22 this and to bring the rules forward faster than
23 two years, which is a long time in this market.

1 Thank you very much.

2 MS. MAHAFFIE: Thank you.

3 Jeff Keith.

4 MR. KEITH: I appreciate the
5 opportunity to speak today.

6 Good morning.

7 My name is Jeffrey Keith. Before I
8 begin my brief remarks, let me first describe
9 my background a bit.

10 I have had the unique opportunity to
11 understand higher education through a variety
12 of lenses: as a peer evaluator,
13 administrator, student, investor, and trustee.
14 I have worked in both non-profit institutions,
15 where I was the chief architect of an innovative
16 system with independent non-profit colleges
17 known as the TCS Education System, and
18 proprietary institutions.

19 I am currently the Chairman of the
20 Board of two institutions, Spartan College of
21 Aeronautics and Technology in Tulsa, Oklahoma,
22 and Tribeca Flashpoint Media Arts Academy,
23 located in Chicago, both of which are

1 proprietary institutions.

2 I am also a member of the Board of
3 two non-profit institutions, the University of
4 Dubuque in Iowa and Calumet College of St.
5 Joseph in Indiana, which is a Catholic
6 institution.

7 In addition, I am a member of the
8 Board of Educate Online, a private company that
9 provides students with personalized online
10 instruction, both at the K-12 and higher
11 education level, and is really concentrated on
12 preparing students for college.

13 I also work for Sterling Capital
14 Partners, an investor group with an established
15 history of owning and operating institutions,
16 including Spartan and Tribeca, Florida Coastal
17 College of Law, Phoenix International School of
18 Law, and the Charlotte School of Law.

19 I believe that my experiences
20 working with these various educational
21 institutions, both non-profit and proprietary,
22 provide me with a comprehensive understanding
23 of some of the issues that will be discussed

1 during this negotiated rulemaking. Briefly, I
2 will address the following topics: regulation
3 of clock-and-credit hour programs, state
4 authorization issues for distance education,
5 and restrictions on the use of certain bundled
6 services resulting from the interpretation of
7 the incentive compensation rule.

8 With respect to any new regulation
9 regarding clock-to-credit-hour conversion or
10 clock-hour requirements, I am firmly behind
11 Secretary Duncan's push to expand
12 competency-based learning opportunities to
13 more students. The Secretary said, and I
14 quote, "The century-old practice of awarding
15 degrees based on seat time in the classroom
16 rather than on demonstrated competence is now
17 at odds with the world in which the internet
18 offers perpetual opportunities for learning
19 and gaining skills at your own pace."

20 I couldn't agree more. Programs
21 that allow students to progress at their own
22 pace after they have demonstrated mastery of
23 the required subject matter, rather than by

1 their age or amount of time in class or seat
2 time, are an important element of higher
3 education going forward.

4 A competency-based system puts
5 students at the center, replacing rigid
6 time-based structures with flexible learning
7 environments that ensure students receive the
8 support and time that they need to successfully
9 master content standards. This highly
10 personalized approach provides clear
11 individualized pathways to student proficiency
12 with the ultimate goal of graduating highly
13 skilled, career ready students.

14 One of the most significant
15 barriers to more fully developing a
16 competency-based learning system is the
17 Federal Student Aid Program's reliance on
18 time-based accountability and assessment
19 systems that conflict with the core elements of
20 competency education.

21 The most recent changes to clock and
22 credit-hour regulations have required more
23 programs than in the past to be measured for

1 federal student aid purposes solely based on
2 seat time, even while Secretary Duncan has
3 advocated for the expansion of
4 competency-based learning. These recent
5 regulatory changes have created conditions
6 where the Department has substituted its own
7 interpretation of state agencies and
8 educational program approval and licensing
9 requirements for that of the state, resulting
10 in the imposition of clock-hour assessment
11 methods for federal student aid purposes, even
12 where a state considers a program to be a
13 credit-hour program.

14 The Department should, instead,
15 show proper deference to state education
16 agencies' interpretation of their own laws and
17 regulations, particularly where doing so is
18 consistent with the Secretary's push to
19 implement more competency-based learning into
20 existing curriculum.

21 With respect to state authorization
22 for distance education programs, to the extent
23 that the Department decides it remains

1 necessary to implement such requirements, any
2 new regulations must provide states with the
3 flexibility to enter into reciprocity
4 agreements on both a regional and national
5 level, and must also provide incentives for
6 states to do so.

7 I understand the Department's
8 reliance upon the regulatory triad includes a
9 robust oversight system that is administered by
10 state education agencies. However, any
11 implementation of state authorization
12 regulations must balance effective state
13 oversight with recognizing that certain state
14 regulations of schools with a very light
15 footprint in state due to distant education
16 activities could be ineffective and
17 duplicative.

18 In my experience working with a
19 variety of schools, and the aftermath of the
20 final program integrity rules that were
21 published in October 2011, there was a great
22 deal of confusion among schools and state
23 education agencies with regard to what state

1 authorization regulations required. This
2 affected not only distance education
3 providers, but also schools that offer course
4 and programs with clinical placements,
5 externships, student teaching, faculty
6 mentoring of students, and other outside
7 classroom activities that occur outside of the
8 school's home state.

9 The communication that we have with
10 the state agency staff confirmed that they were
11 confused by what was expected of them, very much
12 overwhelmed by the large number of inquiries
13 that it received from schools regarding state
14 authorization regulations.

15 Further, due to understaffing at
16 some state education agencies as a result of
17 state fiscal crises, some schools waited for up
18 to two years to receive responses with regard
19 to what states require from out-of-state
20 schools.

21 There are currently some state
22 education agencies that are still trying to
23 address and clarify the requirements for

1 schools with some sort of limited physical
2 presence in their states, including those that
3 offer distance education. Therefore, based on
4 my past experience, I recommend that any state
5 authorization rulemaking more fully involve
6 state agency education policymakers, as the
7 ability to successfully implement a state
8 authorization regulation in this area is
9 dependent upon the ability of states to
10 administer such a process.

11 I would also like --

12 MS. MAHAFFIE: Wrap up your
13 remarks, please.

14 MR. KEITH: Oh, I have to wrap it
15 up?

16 (Laughter.)

17 Sorry.

18 So, in regard to one other thing,
19 which is the bundled services on the program
20 integrity rules, I just want to say that the way
21 that they are structured now is actually
22 inhibiting the ability of non-profits to work
23 with a variety of institutions. And I believe

1 that the intent of the rule is not being
2 fulfilled by the way it is being structured
3 right now. So, I would encourage a review of
4 that as far as allowing non-profit institutions
5 to work more closely with a larger variety of
6 organizations out there to launch and enhance
7 online programs.

8 But, again, thank you for the
9 ability to speak today. Thank you.

10 MS. MAHAFFIE: Thank you.

11 Vickie Schray.

12 MS. SCHRAY: Good morning.

13 Can you hear me back there? Okay.

14 My name is Vickie Schray, Senior
15 Vice President for Regulatory Affairs and
16 Public Policy for Bridgepoint Education.
17 Bridgepoint Education is a higher education
18 company which has re-engineered the modern
19 student experience with innovative solutions
20 that advance learning. Its academic
21 institutions, Ashford University and the
22 University of the Rockies, provide progressive
23 online platforms and have traditional

1 campuses.

2 The majority of our distance
3 education students are independent, working
4 adults that represent the non-traditional
5 students and those that historically have been
6 underrepresented in higher education.

7 Thank you for the opportunity to
8 offer recommendations on the proposal to hold
9 negotiated rulemaking. When the Department
10 originally announced its intent to launch
11 rulemaking last year, I offered testimony and
12 commended the Department for their approach in
13 responding to the Inspector General's
14 Investigative Program Advisory Report
15 regarding student identity theft and fraud.

16 Rather than immediately launching
17 into rulemaking, the Department sought to
18 better understand the issue by meeting with
19 institutions and creating an internal task
20 force to explore the issue.

21 I encourage the Department to
22 continue this collaborative approach to
23 addressing important issues that affect

1 taxpayer investment in higher education and our
2 nation's students, and ask that you postpone
3 the negotiated rulemaking session until after
4 Congress reauthorizes the Higher Education
5 Act.

6 Rather than initiating negotiated
7 rulemaking at this time, the Department could
8 use this opportunity to engage the broader
9 higher education community and key
10 stakeholders in a national, not federal, dialog
11 regarding regulatory challenges and seek to
12 identify areas for improvement to help improve
13 both policies and practices aimed at improving
14 student access and success.

15 The announcement proposing another
16 round of rulemaking comes at a time when
17 government regulation of colleges and
18 universities has grown exponentially. Since
19 the last reauthorization of the Higher
20 Education Opportunity Act in 2008, the
21 Department has published 19 final or interim
22 regulations, totaling 779 pages in the Federal
23 Register, and has distributed a plethora of

1 sub-regulatory guidance that continues to be
2 issued as recently as this week.

3 In the April 16, 2013 Federal
4 Register, the Department announced that their
5 intent to hold negotiated rulemaking over the
6 next several years will be to address more
7 directly access to and the affordability of
8 higher education and possible steps to improve
9 the quality of higher education in the United
10 States and to better encourage students to
11 complete their education.

12 We support the need to address these
13 important issues, as there is a growing demand
14 for higher education, especially from
15 non-traditional students who want even greater
16 options in the delivery of high quality
17 education.

18 The need to increase access and
19 affordability and find more cost-effective
20 solutions in every aspect of higher education
21 is critical at the institutional, state, and
22 federal level. There is a continued call for
23 increased accountability for all institutions,

1 and we are witnessing a major shift in policy
2 from access to success with an emphasis on
3 education and employment outcomes.

4 Finally, there is the changing
5 structure and delivery of higher education,
6 including new types of educational
7 institutions and the increasing use of distance
8 learning that allows institutions to operate
9 not only on a national, but a global scale.

10 Again, I recommend that the federal
11 government use this time and the bully pulpit
12 to convene, collaborate, and to help
13 rationalize the work underway by institutions,
14 states, and accreditors as a means to identify
15 promising practices that can inform the
16 reauthorization discussions to the benefit of
17 our nation's students and families.

18 Development of burdensome
19 regulations that lack best practices would be
20 detrimental to the promise of innovation and
21 access to our nation's students, especially
22 those that have been underserved by
23 traditional institutions.

1 If the Department decides to move
2 forward with negotiated rulemaking, I have
3 included a number of specific recommendations
4 that I will submit as part of my written
5 testimony for your consideration.

6 Again, thank you for the
7 opportunity to share my comments today.

8 MS. MAHAFFIE: Megan McClean.

9 MS. McCLEAN: Good morning.

10 Thank you for this opportunity to
11 comment on the need for negotiated rulemaking
12 on areas of concern. On behalf of our nearly
13 3,000 member postsecondary educational
14 institutions, the National Association of
15 Student Financial Aid Administrators, NASFAA,
16 extends strong support for the negotiated
17 rulemaking process.

18 We have always found that
19 negotiators, including those represented by
20 the Department of Education, are strongly
21 motivated to achieve consensus and that this
22 process results in far better proposed rules.

23 In terms of specific topics, we

1 believe Return of Title IV Funds when a student
2 withdraws is a complex set of issues that needs
3 its own negotiating team devoted to all aspects
4 of that topic, with a mandate to simplify it and
5 think in larger terms about how we can decrease
6 burden for schools rather than simply chasing
7 down pennies.

8 For example, institutions must make
9 post-withdrawal disbursements even to a
10 student who lived at home and only attended for
11 one day. For a student who received more funds
12 than he or she earned based on time in school,
13 the current order of return is not always the
14 most beneficial to the student.

15 The last time that the Return of
16 Funds topics were slated for revision, the
17 negotiating team had so little time to discuss
18 the issues that the resultant rules were not
19 truly negotiated. There is still a great deal
20 of confusion on the treatment of modules, as a
21 result.

22 The relationship between course
23 load reduction and subsequent withdrawal needs

1 to be examined, and the issue of liability for
2 funds paid based on registration data, when the
3 student fails to begin attendance in all of
4 those classes, is a related issue with broader
5 implication.

6 We still hear from our members about
7 the classification of on-campus daycare
8 centers for students and faculties as
9 non-community service. We would like to see a
10 conversation about changing that
11 interpretation related to the community
12 service requirement of Federal Work Study.

13 We agree with the Department's
14 suggestion to tune up the cash management
15 rules, so long as they remain flexible enough
16 to balance institutional and student needs in
17 our technological world.

18 We believe that one of the issues
19 under student notifications that should be
20 revisited is a payment of prior year charges.
21 Schools should be permitted to provide notice
22 of the school's policies regarding use of a
23 limited amount of current year aid to pay prior

1 year charges with an opt-out option available
2 to students.

3 The current adverse credit
4 definition for borrowers is a topic of concern
5 to our members. We agree that a review and
6 possible updating is timely. For example,
7 negotiators might consider some form of
8 debt-to-income ratio assessment for parents
9 and more emphasis on the practicability to
10 repay the loan.

11 It is important to keep in mind,
12 however, that what is appropriate for a parent
13 borrower might be different from what is an
14 appropriate measure for a graduate student
15 borrower. Any changes to PLUS Loan
16 underwriting standards must be implemented in
17 a way that does not disrupt current student
18 enrollment.

19 We also agree that the rules
20 governing clock-hour measurements and
21 clock-credit-hour conversions have been
22 confusing to schools and could benefit from
23 review in the negotiated rulemaking setting.

1 State authorization is a tricky
2 subject. We believe a key factor in successful
3 resolution in this area is knowledgeable
4 advisors and suitable representation from
5 states, especially in the area of foreign
6 locations and crediting agencies.

7 We urge the Department to tread
8 lightly in matters that are related to state
9 purview and to find reasonable alternatives
10 that do not price a program out of existence or
11 add such administrative burden as to compound,
12 rather than resolve, any true problem that may
13 exist.

14 We live in an era where electronic
15 and technological communication has become the
16 norm and changes rapidly and sometimes
17 profoundly to alter the educational landscape.

18 Our members continue to be
19 concerned about the Department's intent to
20 define gainful employment without clearer
21 direction from Congress or giving schools the
22 ability to limit borrowing or require
23 additional counseling.

1 We would also like to offer a broad
2 comment. The number and complexity of the
3 topics that a single team has been expected to
4 negotiate in recent years has become
5 increasingly unrealistic. Besides time
6 management issues, concentrating widely
7 diverse issues into one negotiating team
8 committee renders the consensus approach
9 difficult. We, therefore, strongly urge the
10 Department to establish multiple negotiating
11 committees, so that each team may, to the extent
12 possible, focus on related issues in-depth.

13 Finally, in conducting the upcoming
14 negotiations, we urge the Department to
15 regulate only where necessary and only to the
16 extent required to achieve agreed upon goals.

17 Thank you for your time.

18 MS. MAHAFFIE: Brad Card.

19 MR. CARD: Good morning.

20 My name is Brad Card, and I am a
21 managing partner at Dutko Grayling. I am here
22 on behalf of the Association of Proprietary
23 Colleges in New York.

1 APC includes 27 accredited,
2 degree-granting colleges and operates on 41
3 campuses throughout the State of New York. Our
4 institutions enroll over 60,000 students in a
5 diverse range of academic programs and employ
6 more than 6,300 people. APC membership
7 includes small and mid-sized institutions
8 located in urban and rural areas. Uniquely,
9 the majority of APC colleges are still family
10 owned, with several institutions being third-
11 and fourth-generation family members.

12 Additionally, based on the degree
13 programs, our institutions are approved under
14 a stringent standard of the New York State Board
15 of Regents. Many of our colleges hold regional
16 accreditation from the Middle States
17 Commission on Higher Education.

18 We appreciate this opportunity to
19 present today.

20 APC looks forward to being an active
21 participant in the negotiated rulemaking
22 process and delving into the technical issues
23 involving cash management, debit cards, and

1 other subjects on the agenda. APC was an
2 active member in the 2009 program integrity
3 rulemaking process, submitting comments,
4 hosting campus visits, meeting with Department
5 representatives, and having an Association
6 member serve as an alternate negotiator.

7 At this stage, however, when the
8 Department is preparing to launch a multi-year
9 series of rulemakings prior to pending
10 reauthorization of the Higher Education Act,
11 APC believes it is useful to take a step back
12 from the details and take a more holistic view
13 of higher education and the federal student aid
14 process.

15 We appreciate your consideration of
16 these suggestions and we believe that the
17 guidelines and the negotiating process should
18 be viewed as a whole. Regulation of higher
19 education should apply to all sectors. Our
20 higher education system is stronger based on
21 diversity in multiple sectors, including the
22 proprietary sector.

23 APC, for instance, our proprietary

1 colleges have developed robust student
2 services, cutting edge programs, and flexible
3 schedules. Our student outcomes compare
4 favorably with our peers in the public and
5 non-traditional, non-profit sectors.

6 We agree all institutions,
7 including proprietary colleges, should be held
8 fully accountable for the use of federal funds.
9 However, too much of the public recent debate
10 seems to be aimed at tarnishing the proprietary
11 sector. Good rulemaking should start by
12 recognizing that proprietary colleges have
13 brought value and bettered the lives of
14 millions of students.

15 Consistent with this view, the
16 Department should be encouraging responsible
17 growth in all sectors. We could have a lively
18 debate on the meaning of responsible growth,
19 but, at a minimum, we urge the Department to
20 steer clear of regulations that are targeted at
21 any particular sector. If the Department
22 believes that certain types of institutions
23 should be held to a certain rate of growth or

1 subject to additional scrutiny, if they need a
2 certain rate of growth, then it should make a
3 proposal, and we can discuss that subject in a
4 straightforward manner. Consumer information
5 should be transparent and uniform across all
6 sectors.

7 We should recognize that students
8 are the ultimate customers for all of us, the
9 colleges and the Department. All students
10 begin as applicants who are choosing whether to
11 pursue their education and where to enroll. It
12 is critical to provide these applicants with
13 clear, simple information about their
14 enrollment opportunities, including cost of
15 their program, whether they choose public or
16 non-profit or proprietary institutions. In
17 other words, we believe the Department can do
18 more to encourage and require clear, upfront
19 disclosures to bring transparency to the cost
20 of the programs across all sectors as well as
21 the expected outcomes of those programs.

22 Simplifying Title IV regulatory
23 scheme, as I am sure you know, a printout of the

1 Title IV regulations now produces a
2 3-to-4-inch-thick stack of paper. A printout
3 of the Department's Federal Student Aid
4 Handbook runs 10 to 12 inches. These
5 regulations and related guidance are
6 incredibly intricate and full of traps for the
7 unwary that can lead to inadvertent violations.
8 I would suggest that we all need to aim for
9 quality with regulations that are simpler and
10 cleaner rather than more voluminous.

11 Go slow with the rulemaking
12 process. We all went through an extensive
13 rulemaking process three to four years ago, and
14 we are living with a series of new regulations
15 that went into effect in 2011. In many cases
16 the Department has not yet issued promised
17 guidance to clarify important issues under some
18 of those rules, such as questions about state
19 authorization and credit regulations that are
20 vague and troublesome for many institutions.

21 With all of these unsettled issues
22 from previous rulemaking, and with so little
23 experience with the Department's ability to

1 enforce those recently-issued rules, we again
2 strongly suggest going slowly. It is always
3 worth asking if the Department can achieve its
4 public policy goals by enforcing the existing
5 regulations rather than creating new ones.
6 Limit Title IV funding to truly educational
7 related expenses.

8 In launching a new rulemaking, we
9 also have to recognize the limits of federal
10 funding available to student aid. It is more
11 important to ensure that federal student aid
12 funds are used to pay the core cost of higher
13 education, tuition, and fees, and legitimate
14 living expenses. We believe the Department
15 needs to pay more attention to the fact that the
16 vast amounts of student aid are more available
17 for students to spend for other purposes.

18 At the same time that the headlines
19 indicate a growing concern over student
20 debt, Title IV regulations force -- yes,
21 force -- colleges to award federal grant and
22 loan funds even when colleges have real concern
23 that those funds are not necessary to support

1 legitimate living expenses.

2 APC colleges would gladly join the
3 Department in developing responsible ways for
4 colleges to help their students avoid over
5 borrowing and avoid trapping into federal funds
6 for extraneous spending that is not necessary
7 to support the student's core educational
8 expenses.

9 Do not --

10 MS. MAHAFFIE: If you could wrap up
11 your comments, please?

12 MR. CARD: Sure.

13 Do not relive the gainful
14 employment regulation. We have entered into a
15 series of reruns, it seems. The gainful
16 employment regulation is complex and
17 redundant, extends the federal government's
18 reach into higher education, and looks like a
19 backdoor to restrict the proprietary sector
20 based on metrics that do not work.

21 We all have a history in gainful
22 employment rulemaking. We dedicated enormous
23 time and resources into the rulemaking. We

1 have participated in the process. We have
2 acted as a negotiator often in the negotiated
3 rulemaking process. And this gainful
4 employment regulation simply does not work.
5 Let's let the Congress act in the new
6 reauthorization of the Higher Education Act,
7 and we stand ready to help you.

8 Thank you.

9 MS. MAHAFFIE: Thank you.

10 Jennifer Blum.

11 MS. BLUM: Good morning.

12 I am Jennifer Blum, Senior Vice
13 President of Government Relations and Public
14 Policy at Laureate Education. On behalf of
15 Laureate and our network, Laureate
16 International Universities, I want to thank you
17 for the opportunity to speak.

18 Laureate is a unique global network
19 of 70 institutions in 29 countries. Together,
20 these institutions share a global commitment to
21 access and quality for students in each of their
22 own countries and localities. We have five
23 distinct institutions in the United States:

1 Walden University, which is entirely online;
2 Kendall College in Chicago; Santa Fe University
3 of Art and Design, one of the oldest
4 institutions in New Mexico; New School of
5 Architecture and Design in San Diego, with 600
6 students, and the National Hispanic University
7 in San Jose, California, with 800 students.

8 With access and institutional
9 accountability as our primary goals here and
10 abroad, we appreciate each opportunity for
11 dialog with policymakers on these issues. In
12 fact, today Laureate and one of its
13 institutions in Spain, is hosting a European
14 Economic Summit on Youth and Jobs with the
15 Clinton Global Initiative, government
16 officials, and employers in that region.

17 In the U.S., Laureate continues to
18 believe any accountability effort should be
19 applied to all institutions. Recent shifts in
20 higher education and innovation are seismic.
21 These initiatives are largely positive
22 developments for students. However, they
23 underscore the need for ensuring that our laws

1 and regulations are equitable and consistent.

2 Before commenting on a number of
3 agenda items, I would first like to mention a
4 couple of concerns regarding the Department's
5 initiative. First, implementation of any new
6 regulations promulgated coincide with HEA
7 reauthorization. We strongly urge the
8 Department to coordinate regarding which
9 issues should be addressed through the
10 regulatory process and which Congress should
11 address.

12 Second, the range of issues
13 presented by the Department is broad in nature,
14 requiring different types of expertise.
15 Laureate suggests appointing two negotiating
16 committees, one that is focused on the
17 technical changes to Title IV and another to
18 address specific policy issues. This will
19 allow the Department to appoint members with
20 definitive expertise and interest.

21 I will now comment on specific
22 topics presented.

23 During the 2010 regulatory process

1 on state authorization, Walden raised concerns
2 regarding the enforceability of these rules.
3 While we appreciate the Department's most
4 recent time extension, Laureate and Walden
5 expect that HEA reauthorization will provide a
6 better opportunity to provide clarity around
7 the roles of the current statutory triad.
8 Laureate, however, is uniquely positioned to
9 provide insight on distance education and on
10 foreign locations.

11 On distance education, Laureate and
12 Walden continue to support the concept of
13 reciprocity between states, and the recent work
14 by the Riley Commission should provide helpful
15 input. As an international community of
16 universities, Laureate noted with interest the
17 Department's proposal to examine whether state
18 authorization is necessary for, quote,
19 "Foreign locations of institutions located in
20 a state". Many of our U.S. students,
21 particularly at Kendall, Santa Fe, and New
22 School, benefit from exchange opportunities
23 with our very separate foreign institutions.

1 It is essential that all
2 institutions continue to provide students with
3 a rich and global education. Laureate is
4 interested in learning more about the
5 Department's scope and intent in this area, and
6 we look forward to providing our insight and
7 expertise.

8 With our focus on default rates and
9 outcomes, our institutions share the
10 Department's interest in an accountability
11 system that improves the ability of students to
12 distinguish between the quality of
13 institutions and programs. However, we firmly
14 believe that the Department remains too
15 narrowly focused on accomplishing the
16 significant policy goals through the lens of
17 gainful employment provisions which are
18 applicable only to a limited subset of
19 institutions and programs.

20 It is also important to recognize
21 the tremendous steps being taken toward
22 understanding and analyzing how best to use
23 data. This week the House is likely to

1 consider legislation that would require the
2 Department to study this area.

3 In response to the Department's
4 request for input, however, Laureate does offer
5 two suggestions regarding existing regulatory
6 tools the Department might better utilize.

7 First, the Department and the
8 Administration have created several disclosure
9 requirements recently which supplement already
10 existing disclosure requirements under HEA.

11 While Laureate strongly supports the
12 Department's goal of disclosure and
13 transparency, we are concerned that these
14 multiple efforts actually increase student and
15 consumer confusion. Streamlining disclosure
16 requirements should be a critical component of
17 the Department's accountability goals.

18 Second, Laureate encourages the
19 Department to examine its current new program
20 approval processes and, also, its
21 certification requirements in the context of
22 its existing accountability measures. The
23 Department's guidance in this area has shifted

1 back and forth, and some processes seem
2 inconsistent with the goal of establishing
3 distinctions in the quality of institutions.

4 Finally, we are also interested in
5 the Department's discussion of Title IV
6 management. Regarding the issue of fraud, we
7 believe the current regulations on
8 verification and unusual enrollment history
9 have significantly helped institutions monitor
10 and combat this problem when suspected.

11 Laureate is very interested in discussing
12 current practices and learning more about any
13 additional measures available to combat this
14 serious problem.

15 Laureate's institutions also agree
16 with the need for clarity regarding the
17 definition of adverse credit. Guidance has
18 created confusion and burdens for
19 institutions, students, and parents.

20 Laureate appreciates the Department's
21 inclusion of this issue and is hopeful there
22 will be more flexibility in its appeals process
23 and more consistency and clarity for all

1 interested parties.

2 In conclusion, we hope the
3 Department will consider these suggestions,
4 and we look forward to participating in any such
5 process. Thank you again for this
6 opportunity.

7 MS. MAHAFFIE: David Baime.

8 MR. BAIME: Good morning and thanks
9 for having me.

10 I am David Baime, Senior Vice
11 President for Government Relations and Policy
12 Analysis, American Association of Community
13 Colleges.

14 We have a little bit under 1100
15 members. So, unlike Jennifer, I am not going
16 to mention all of them this morning.

17 I want to talk primarily about the
18 gainful employment issue, but I did want to
19 touch upon a couple of other topics that were
20 mentioned in the notice about this session.

21 First of all concerns fraud.
22 Community colleges feel that we are, in fact,
23 particularly vulnerable to so called Pell

1 runners and fraud rings. And as a result of
2 that, we feel a great need to be involved in any
3 process the Department undertakes to try to
4 address this issue.

5 We would note that the instances of
6 fraud are still quite limited and are a very
7 small fraction of the overall student
8 population. We would not want to see policy
9 being changed too dramatically to address this
10 particular issue. I would say that our
11 institutions are already doing many things
12 themselves for their own reasons to make sure
13 that this does not occur.

14 The second thing I wanted to talk
15 about is the state authorization issue. It has
16 been mentioned a number of times already here.
17 For our institutions, the Department's new
18 interpretation and proposed enforcement of the
19 regulation -- related institutions that offer
20 distance education programs outside of the
21 state in which they are physically located --
22 has been extremely problematic for our
23 institutions, precisely because they have so

1 few resources and in many cases have one or two
2 or literally just a handful of students
3 enrolled in a given state.

4 And what we have found as an
5 unfortunate outcome of the regulations that
6 have been currently held in abeyance is that,
7 in a number of states, institutions have simply
8 chosen not to offer programs. So, rather than
9 resulting in enhanced or improved access for
10 students, what we have seen is actually a
11 diminishment of access for students.

12 We are encouraged by the efforts
13 that have been undertaken to develop
14 regional/state compacts or arrangements for a
15 series of institutions, and we think that that
16 is a process the Department should continue to
17 develop rather than issuing new regulations on
18 distance education.

19 The last thing I wanted to talk
20 about in a little bit more detail is the gainful
21 employment regulations. You have heard people
22 this morning talking about the impact of
23 gainful employment regulations on the

1 for-profit sector. And, of course, the
2 for-profit sector received the bulk of the
3 attention as the gainful employment
4 regulations were promulgated and, then,
5 debated in different ways in Congress.

6 But I would like to remind the
7 Department that community colleges, in fact,
8 have far more programs that qualify under the
9 gainful employment definition than the
10 for-profit sector does, about 30,000, to the
11 best of our count, community colleges compared
12 to 13,000 at for-profit institutions.

13 And the number of certificate
14 programs that community colleges are offering
15 is growing very rapidly. It is part of the
16 completion agenda and encouraging students to
17 get onto career ladders and career pathways,
18 giving them some tangible sign of academic
19 accomplishment that keeps them enrolled.

20 We do have high numbers of students
21 who don't complete their programs, and offering
22 more certificates is one of the ways to address
23 that. So, consequently, if the gainful

1 employment regulations were reinstated in some
2 way, we would probably see even more programs
3 falling under its purview.

4 I don't want to spend too much time
5 revisiting the past, but we do think it is
6 important to outline my membership's
7 extraordinary frustration over the gainful
8 employment regulations as they were enacted and
9 disclosure regulations that still remain
10 formally in place.

11 This process has been a debacle for
12 community colleges. The Department, we feel,
13 has acted insensitively, and we don't think it
14 is an exaggeration to say irresponsibly, in the
15 series of issue updates and increased numbers
16 of communications to institutions who have been
17 trying to implement these rules.

18 If you go on the IFAP website, you
19 now see 44 "Dear Colleague" letters and
20 electronic communications on gainful
21 employment. And again, we think that it is
22 simply irresponsible for a federal agency to
23 expect that institutions of higher education,

1 certainly not institutions such as community
2 colleges which don't have heavy administrative
3 resources at their disposal, to manage that
4 continual change in implementation procedures.
5 So, we hope the Department learns from this and
6 whatever it does in the future is much more
7 focused in the direction that it gives
8 institutions.

9 Did I lose this altogether?

10 Thanks. I guess it is working a bit.

11 Another unfortunate outcome in
12 gainful employment that we do encourage the
13 Department to look at is to consider the fact
14 that for community colleges only less than a
15 quarter of all the programs for which data were
16 provided ultimately had income earnings
17 generated for them. So, less than about 23
18 percent of all the programs that institutions
19 dutifully provided data to the Department
20 ultimately received the earnings information
21 that would have been useful to not just the
22 consumers, but to institutions themselves in
23 evaluating program effectiveness.

1 So, as the Department looks at
2 taking another pass at this, we think that some
3 methods need to be devised, perhaps
4 consolidating some of the programs so that
5 there is greater data reported out on
6 particular groups of programs, and perhaps
7 career cluster areas.

8 We also, picking up what a number of
9 other commenters have said this morning, it
10 would be foolish for the Department to ignore
11 the broader environment of the Higher Education
12 Act reauthorization that is currently getting
13 underway. We know that Congress will be
14 looking at outcomes across all institutions of
15 higher education for all types of programs. It
16 is very likely that Congress will be looking at
17 ensuring that institutions and the public get
18 better data about the earnings and workforce
19 side of higher education, which is something
20 that my Association supports.

21 Therefore, the Department should
22 examine very carefully the direction that
23 Congress is going in, as it looks or at least

1 considers putting forward regulations again on
2 gainful employment. And this is irrespective
3 of whether or not the definition itself for
4 statutory treatment of gainful employment
5 programs is altered at all, and just this
6 broader issue of providing greater information
7 is addressed.

8 In terms of some of the things that
9 were done in the last regulation, we said it
10 before -- I will say it again -- an on-time
11 graduation rate of 100 percent for community
12 college students, many of whom, about 60
13 percent on average enroll part-time, says very
14 little about the nature of the program and the
15 quality of the program. We would urge you to
16 use another approach if you go forward in this
17 general area.

18 There are currently three
19 graduation rates for institutions, as you know,
20 under IPEDS. So, we question whether this is
21 necessary.

22 We also -- and this relates to the
23 issue I just mentioned about the paucity of data

1 on earnings -- for more than 75 percent of our
2 programs, we had many of our programs, no data
3 was provided because we either had too few
4 borrowers or too few students in those
5 programs. So, you need to devise a framework
6 in which institutions aren't responsible for
7 providing data for the Department that is never
8 going to be revealed to the public or otherwise
9 used in a way that provides some benefit on the
10 back-end.

11 In terms of the actual loan metrics
12 that were used for gainful employment -- we,
13 community colleges, thought that they were
14 reasonable ways of looking at public policy.
15 We continue to emphasize the great importance
16 of limiting student debt. We have heard a
17 tremendous amount about this issue. We see
18 defaults arising under a more accurate
19 three-year rate at an alarming amount. And we
20 think that institutions should be given
21 encouragement for ensuring that students limit
22 their borrowing. And we do support giving
23 institutions the ability to limit borrowing,

1 but also giving them incentives to keep their
2 tuitions low. And therefore, the policy
3 should reflect and approve of institutions that
4 are able to keep student borrowing minimized.

5 Thank you for your time. We look
6 forward to being active participants in that
7 process.

8 MS. MAHAFFIE: Thank you.

9 Wagatwe Wanjuki.

10 (No response.)

11 Lezli Baskerville.

12 MS. BASKERVILLE: Good morning,
13 Department executives and colleagues.

14 I am Lezli Baskerville, President
15 and CEO of the National Association for Equal
16 Opportunity in Higher Education, NAFEO, which
17 is the nation's only membership association of
18 all of the 105 Historically-Black Colleges and
19 Universities and 50 Predominantly Black
20 Institutions.

21 Our institutions are richly
22 diverse. They are two- and four-year
23 institutions, public and private institutions.

1 They are Land Grant institutions, sectarian and
2 nonsectarian institutions; undergraduate,
3 graduate, and professional schools.

4 Our institutions represent just
5 three percent of the nation's colleges and
6 universities, but they are graduating about 15
7 percent of African Americans graduating from
8 college today.

9 In growth and high needs areas, our
10 institutions are doing much better in the areas
11 of STEM. Historically Black Colleges and
12 Universities are graduating 40 percent of
13 African Americans who are graduating with a
14 four-year degree in STEM.

15 With regard to teacher education,
16 our institutions are graduating 50 percent of
17 African Americans coming out in teacher
18 education today and 60 percent of African
19 American health professionals.

20 I cite these data at the outset
21 because at the time when the nation is
22 concerned, and we have all been concerned,
23 about cost-effectiveness, cost of college and

1 effectiveness of college, the College Board's
2 reports indicate that the cost of college at an
3 HBCU, for private institutions is on average 10
4 percent less than their historically white
5 counterparts. For public institutions,
6 public HBCUs are about \$2500 less than their
7 historically white counterparts.

8 And let me just say, also, that our
9 institutions are economic engines of their
10 communities, \$13 billion short-term
11 enterprises.

12 So, with this significant chunk of
13 America's colleges and universities, without
14 which this nation cannot realize its goal of
15 having Americans with two- or four-year
16 degrees, 60 percent of Americans attaining a
17 two- or four-year degree, our institutions, the
18 fiber, the infrastructure of our institutions
19 was shaken when the Department, without
20 notification, shifted its interpretation of
21 the parent PLUS regulations.

22 As a result, you heard from my
23 colleague this morning, Michael Lomax, who is

1 President and CEO of a subset of our 39 private
2 institutions that as a result, tens of
3 thousands of our students were not allowed to
4 return to college, and we lost tens of millions
5 of dollars.

6 I incorporate by reference the
7 comments with regard to Dr. Lomax this morning,
8 and I would like to add just a few supporting
9 observations.

10 What occurred was that the
11 Department made adjustments in its
12 interpretation of adverse credit. And again,
13 it did so without notification, without an
14 opportunity for public engagement. It made
15 this adjustment to the adverse credit
16 interpretation at a time when our institutions
17 were already reeling from about four major
18 factors.

19 The shift in interpretation was
20 unanticipated. Our institutions have
21 disproportionate percentages of low-income and
22 first-generation students. Disproportionate
23 percentages of HBCU have small endowments that

1 prevented many of our institutions from
2 standing in the gap and offering funding to
3 those students who lost their parent PLUS Loan
4 due to the shift in the regulatory
5 interpretation. And the loss of the parent
6 loan funding came as disproportionate numbers
7 of HBCUs were reeling from the loss of Title III
8 and SAFRA funds, the loss of summer Pell and
9 other Pell funds, the loss of additional funds
10 due to sequestration, drastic cuts in state
11 funding.

12 And for most HBCUs, they have a
13 majority African American student population,
14 and the financial foundations of the families
15 in our institutions was shaken severely as the
16 result of the great recession. For example,
17 according to the Pew Foundation, the families
18 at HBCUs, primarily African Americans, lost 53
19 percent of their wealth, as compared with 13
20 percent of the wealth for white Americans. A
21 combined \$200 billion wealth loss for African
22 Americans and Latinos, with a typical African
23 American household with just \$5700 in wealth;

1 Latinos, \$6300 in wealth, and white Americans
2 with \$113,000 in wealth. This is important
3 because, as you know, wealth is what most of our
4 families draw on to pay for college in times
5 when such things as the loss of a parent PLUS
6 Loan takes place.

7 The shift of the regulatory
8 interpretation also happened at a time when the
9 net worth, the wealth gap between
10 African-Americans and white Americans
11 increased from \$20,000 to \$90,000, according to
12 the Bureau of Labor Statistics.

13 So, with these things going on, the
14 shift had a destabilizing impact. We worked
15 with the Department of Ed from August through
16 October to try to come up with a plan that would
17 return the nearly 20,000 students in good
18 standing that were forced to leave our
19 institutions, but, unfortunately, we have not
20 been able to get most of the students back.

21 At this point, as we are approaching
22 the next year, we are hoping that the Department
23 will revert back to the pre-October 11th

1 interpretation. From our perspective and our
2 discussions with the Department, we found that
3 the program was not broken. If the program was
4 not broken, we respectfully request that the
5 program not be fixed.

6 The parent PLUS pipeline, prior to
7 the shift in regulatory interpretations, had
8 loans evaluated under criteria that were
9 working effectively for most students at the
10 time. If the Department decides to do
11 something, it should clearly define
12 extenuating circumstances to account for major
13 and sustained economic recessions that cause
14 persons who otherwise have good credit
15 histories to experience an anomaly and fall
16 behind as a direct result of such things as
17 recessions. They should take into
18 consideration financial resilience, parents
19 who perhaps lost a house in the great recession,
20 people who lose houses and other things due to
21 natural and manmade disasters, but they are
22 able to rebound. The criteria should be more
23 liberal and allow for considerations of those

1 things.

2 Again, I embrace by reference the
3 recommendations of Dr. Lomax, but I want to add
4 one thing, that when the parent PLUS debacle,
5 for lack of a better word, hit the HBCU
6 community, in addition to showing the need for
7 return to the pre-October 11th regulatory
8 interpretation, it pointed out that which NAFEO
9 and the HBCU community has been saying for
10 years; namely, that America needs to invest
11 more of its sparse dollars in those
12 institutions that are graduating
13 disproportionate percentages of low-income,
14 first-generation, traditionally underserved
15 students, the growth populations of today.

16 Our institutions were able to
17 absorb the students because their endowments
18 are low and their infrastructures, their
19 dollars are few. If we invest of our dollars
20 in those institutions that are doing the lion's
21 share of educating growth and high needs
22 students, we could have a buffer against such
23 huge drops of students who are doing what they

1 are supposed to do and matriculating on time.

2 There is a need for the federal
3 government, states, and the private sector to
4 provide greater incentives for other
5 institutions to enroll and graduate large
6 numbers of high needs students as well.

7 Although the details are still scant, it
8 appears as though the Administration's
9 proposal to, quote, "Keep tuition from
10 spiraling too high and drive greater value and
11 to shift aid away from colleges that fail to
12 keep net tuition down and toward those colleges
13 and universities that do their fair share to
14 keep tuition affordable, provide good value,
15 and serve needy students," this appears to be
16 aligned with NAFEO's sense that we must invest
17 more of our dollars in those institutions that
18 are serving the needy, that are underfunded,
19 and that are growing, educating the lion's
20 share of today's and tomorrow's students.

21 NAFEO looks forward to working with
22 the Department as we continue to think through
23 and come up with a reasonable solution, but the

1 immediate solution is, and we urge and request,
2 that for the fall semester you respectfully
3 revert back to the pre-October 11
4 interpretation and afford us an opportunity to
5 be at the table with the negotiators, so that
6 we can have a voice on behalf of all of America's
7 Historically Black Colleges and Predominantly
8 Black Colleges to make sure that our students
9 are doing right, doing what we expect them to
10 do, are matriculating and in good standing; do
11 not have to drop out because of unnoted shifts
12 in policies.

13 Thank you so very much for affording
14 me the opportunity.

15 MS. MAHAFFIE: Thank you.

16 Congresswoman Brown.

17 (No response.)

18 We have one more person to speak
19 before lunch. So, we are going to wait a couple
20 of minutes. She is on her way.

21 If there is anybody scheduled for
22 the afternoon session who would like to speak
23 now, you are welcome to. We have a few minutes

1 before our next speaker.

2 MS. HATTAN: I am Susan Hattan. I
3 am here testifying on behalf of the National
4 Association of Independent Colleges and
5 Universities, or NAICU.

6 NAICU serves as the national voice
7 of independent higher education. With more
8 than a thousand members nationwide, NAICU
9 reflects the diversity of private, non-profit
10 education in the United States.

11 My comments today address the two
12 topics related to state authorization and the
13 gainful employment issue. In response to a
14 court decision issued last year, the Department
15 is considering developing new regulations
16 relating to state authorization for programs
17 offered through distance education or
18 correspondence education. Given the
19 substantial work being done across the country
20 in this area, NAICU believes it would be
21 premature to develop federal regulations in
22 this area.

23 Although the prior distance

1 education regulation was struck down in court,
2 its issuance has had a marked effect in
3 increasing awareness of the breadth and variety
4 of state requirements affecting distance
5 education providers. It has also underscored
6 the complexity of addressing regulatory issues
7 in a manner that is understandable to, and
8 affordable for, institutions seeking to comply
9 with state requirements.

10 The difficulties in navigating
11 these various requirements have spurred
12 conversation regarding ways in which
13 compliance could be simplified. As we have
14 heard earlier today, the most significant of
15 these efforts is the work being done on the
16 State Authorization Reciprocity Agreement, or
17 SARA. Certainly, the President's Forum, the
18 Council of State Governments, regional
19 education boards, APLU and SHEEO, among others,
20 have been engaged in this effort for some time
21 now.

22 A SARA framework has been developed
23 and work is beginning to flesh out on how such

1 an agreement might be implemented. There is
2 still a long road ahead. While being generally
3 supportive of this effort, NAICU is concerned
4 about some of the specific features and will
5 continue to work on behalf of appropriate
6 investment as that process continues.

7 So, in brief, there is a lot of work
8 going on now by a variety of individuals with
9 deep knowledge of state laws and practices.
10 Given this high level of involvement, it
11 doesn't seem to be an appropriate time to
12 introduce new federal requirements into the
13 mix.

14 We suggest that the Department
15 defer regulatory action in this area in order
16 to allow the current work to proceed in a manner
17 that will maintain the ability to make
18 adjustments. At this point, it may simply not
19 be possible to develop uniform federal
20 requirements to capture all the moving parts
21 that will be required to establish a better
22 means to regulate distance education
23 providers.

1 The second state authorization
2 issue raised in the April 16th notice relates
3 to authorization for foreign locations of
4 institutions located in a state. Given the
5 confusion that has been created by the general
6 regulations related to state authorization, we
7 urge that the Department not compound that
8 confusion by trying to regulate foreign
9 locations of U.S. institutions via the states.

10 Experience with the existing state
11 authorization regulations have shown that
12 states have chosen a variety of ways in which
13 to recognize and regulate the institutions
14 within their borders. Superimposing a vague
15 set of federal requirements over the state
16 activity has led to massive confusion with no
17 discernible impact on improving program
18 performance or integrity.

19 Equally troubling are the shifting
20 and inconsistent interpretations of what the
21 regulation requires. It is for this reason
22 that NAICU has advocated for the repeal of the
23 existing state authorization regulation. By

1 the same token, we believe attempts to expand
2 this regulation to incorporate rules related to
3 state regulation of foreign locations would
4 only compound the substantial problems and
5 confusion that we are seeing today.

6 And finally, with respect to
7 gainful employment, the gainful employment
8 regulations are exceedingly complex and
9 include significant reporting and disclosure
10 requirements relating to the employment and
11 economic success of gainful employment program
12 students.

13 The Department's original intent
14 was to publish regulations aimed at eliminating
15 fraud and other deleterious practices of these
16 programs. However, while sanctions under the
17 final regulations were delayed and weakened,
18 the substantial reporting and disclosure
19 requirements require that all gainful
20 employment programs remain in place. These
21 requirements have been made more complicated by
22 recent court decisions.

23 We urge the Department to take a

1 comprehensive look at the gainful employment
2 regulations and target them more appropriately
3 on areas of high risk. Specifically, we
4 recommend that certificate programs which meet
5 some sort of a first-test standard that does not
6 require additional reporting by institutions,
7 such as the newly formulated repayment
8 standard, be exempted from the burdensome
9 collecting, reporting, and disclosure
10 requirements.

11 Under this framework, only schools
12 that fail this first test would be required to
13 gather additional information or meet
14 additional standards, such as the minimum
15 debt-to-earning level, in order to avoid
16 negative action. This would be a simple way to
17 deregulate satisfactorily performing
18 institutions while also targeting enforcement
19 actions at programs that are performing under
20 par.

21 We appreciate having this
22 opportunity to present our views.

23 MS. MAHAFFIE: Thank you.

1 Congresswoman Brown.

2 REP. BROWN: Good morning.

3 I am Congresswoman Corrine Brown.

4 I represent Florida's 5th Congressional
5 District, but, basically, I feel like I
6 represent all of Florida.

7 I am here concerning the PLUS Loan
8 Program, but let me just give you a little of
9 my background. I have been elected to
10 Congress, the United States Congress, for 20
11 years. I was the first African American
12 elected from Florida in 129 years, but I have
13 been an elected official for 30 years.

14 I am very concerned about the PLUS
15 Loan Program. Let me just tell you I represent
16 Jacksonville, Orlando, Gainesville. And so, I
17 am speaking, first of all, about the 400,000
18 students that are being kicked out of school
19 because of the PLUS Loan Program and, in
20 particular, the 28,000 from Historically Black
21 Colleges.

22 I don't understand why it is that
23 the Department of Education came up with this

1 additional or new policy, first of all, without
2 talking to the stakeholders. And I am very
3 pleased that you are having this hearing today,
4 and I want my entire statement committed to the
5 record.

6 And in the statement, one of the
7 statements pertains to the article that came
8 out in the paper on Friday pertaining to the
9 fact that this PLUS, the educational loan
10 program, has made over \$53 billion, wherein the
11 student interest rate from the Department of
12 Education is worse than it was under the banks.
13 I never thought I would be sitting here talking
14 about the Department of Education that has a
15 policy that is worse than the loan sharkers.
16 And I know that the President could not know
17 about this.

18 When I was first elected in 1992, Ed
19 Waters College had a problem, and President
20 Clinton was the President. And it was one that
21 we was able to sit down and work it out.

22 Then, when President Bush was the
23 President, Historically Black Colleges had

1 problems. We was able to sit down and work it
2 out.

3 And now, I don't understand what is
4 the problem that for six months the Black
5 Colleges, the Presidents, and the
6 Congressional Black Caucus have not been able
7 to work out this problem. We have had numerous
8 meetings with the Secretary, and evidently, the
9 internists are telling them one thing, but my
10 position as far as the internists are
11 concerned, since I educated one, they tell you
12 what you want to hear. And if they are not
13 telling you what needs to be told, then you need
14 to get you a new set. And I told the Secretary
15 that.

16 We need to work this out. It is
17 unacceptable that 28,000 black students,
18 African Americans, have been kicked out of
19 college, and they were kicked out -- school
20 started in August -- and they were kicked out
21 in September.

22 Now there is supposed to be a policy
23 that the Secretary of Education can forgive

1 these students or work it out, but that hasn't
2 been worked out. And so, I am suggesting that
3 the Department of Education, it is just totally
4 unacceptable to continue in this pathway.

5 Maybe some of that \$51 billion or
6 \$53 billion needs to go into Pell grants. I
7 like grants. I like grants programs. So,
8 students and families don't have to worry about
9 paying it back.

10 But one thing I want to say is that
11 failure is not an option. Now I hope that you
12 can work it out with the stakeholders or else
13 I can promise you that I will be joining the
14 majority party in Congress to work it out.
15 Failure is not an option for our children.

16 Education is the key. This is the
17 worst economic times in the history. And to
18 say that your standard is worse than the banks
19 is unacceptable.

20 I want to thank you for giving me the
21 opportunity to just say a few words. But all
22 of my statement, I want it put in the record,
23 including the report that indicates how much

1 money that the Department of Education has made
2 on the interest of the student loans and how
3 many students have been disenfranchised
4 because of this new policy.

5 Thank you very much.

6 MS. MAHAFFIE: Thank you.

7 We are going to take a break now
8 until one o'clock. Thank you.

9 (Whereupon, the above-entitled
10 matter went off the record at 12:16 p.m. and
11 resumed at 1:04 p.m.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

(1:04 p.m.)

MS. MAHAFFIE: James Bologna.

MR. BOLOGA: Do I need to keep a timer on me or --

MS. MAHAFFIE: I will let you know if you go over your time.

MR. BOLOGA: You will? All right.

Let's see, can you guys hear me in the back? You can. Great. Fantastic.

All right. Good afternoon.

Thank you for the opportunity to share my comments with all of you.

My name is Jim Bologna. I am the President and CEO of Porter and Chester Institute. We are a small postsecondary vocational training school with nine campuses, five in Connecticut, four in Massachusetts. We have been in existence since 1946. We offer 10 programs overall, one in transportation, three in skilled trades, two in technology, and four in the healthcare field. We have approximately 3,000 students enrolled in our school.

1 The main objective of my
2 recommendations is to create a level playing
3 field for all educational institutions
4 regardless of sector, public, private,
5 non-profit, for-profit, regardless of
6 degree-granting or certificate-granting.

7 I will begin with my remarks around
8 the parent PLUS Loan Program. My objective in
9 addressing the parent PLUS Loan is to promote
10 borrowing caps for parents and to recommend that
11 we offer them the same repayment options that are
12 available to student borrowers. Currently,
13 parents don't qualify for income-based
14 repayment plans, and this has created a
15 financial hardship for many parents.
16 Consequently, we are seeing an increase in
17 defaults because parents are borrowing more than
18 they can afford to pay.

19 We have an opportunity to
20 significantly reduce defaults if we can offer
21 parents the same repayment options that we offer
22 the students. A student's future shouldn't be
23 limited by the financial resources of his or her

1 parents, nor should a household budget be
2 jeopardized by loan payments that are out of
3 reach.

4 I would like to now move on to the
5 clock-to-credit-hour conversion. At the heart
6 of the clock-to-credit-hour conversion is the
7 need for consistency. This is corroborated by
8 three scenarios.

9 First, if it is mandated that a
10 program be measured in clock hours because of
11 state licensure wording, then it should apply to
12 all programs, whether they are certificate or
13 degree programs.

14 Second, the fact that a state refers
15 to clock hours in the regulations does not
16 automatically make all the programs in that
17 state clock hour programs.

18 And lastly, if the state allows a
19 school to measure in credit hours, the federal
20 government should not have the ability to
21 disagree and impose a clock hour limitation. As
22 we all know, Title IV aid is based on the correct
23 enrollment status. An inconsistency in how we

1 measure programs could have a negative impact on
2 financial aid and on access to education for many
3 students. When discussing the credit hour
4 regulations, the Department of Ed regularly
5 insists that it is not all about seat time, but
6 that credit hour regulations are not meant to
7 place limits on schools, but clock hours are all
8 about seat time. None of the homework or other
9 outside study or preparation required of
10 students in certain programs counts if those
11 programs must be measured in clock hours.

12 The Department's continuing effort
13 to transform more and more programs into
14 clock-hour programs is, indeed, an effort to
15 place limits on schools and students. For
16 academically-challenged certificate
17 programs -- we have one, for example, practical
18 nursing -- it is unfair to artificially force
19 these programs to a clock-hour model where the
20 students' extensive outside study, up to four to
21 six hours of homework a night, are not accounted
22 for in the calculation of the financial aid
23 eligibility.

1 I would now like to move on and have
2 a few brief comments about state authorization
3 for distance education. There are two key
4 issues that need to be addressed in connection
5 with the regulatory changes regarding state
6 authorization for distance ed.

7 The first issue has to do with
8 licensing and fees associated with the number of
9 students enrolled in distance ed programs. The
10 value of distance ed is that it allows a greater
11 number of students to have access to education,
12 students who may not be able to pursue an
13 education via the traditional method of
14 traveling to a school.

15 To ensure that we can offer distance
16 ed to as many students as possible, we recommend
17 a cap on the number of licensing fees that an
18 institution would have to incur. Without a cap,
19 many institutions would have to limit the number
20 of students in order to meet their budget
21 constraints.

22 The second issue has to do with state
23 requirements. Distance ed allows schools to

1 provide education to students who may reside in
2 states in which the school doesn't have a
3 physical presence. In these cases, the school
4 would have to meet the educational requirements
5 of the state in which the student resides. We
6 agree with this regulation, but recommend that
7 it be modified to allow the school to meet the
8 educational requirements of the state in which
9 the student resides at the time of enrollment.

10 Without this time of an enrollment
11 modification, there is the potential for
12 negative ramifications for a student who moves
13 to another state before completing his or her
14 education. Differences in educational
15 requirements from state to state may result in
16 students not being able to meet the licensing
17 standards for which his or her curriculum had
18 originally been planned. This will pose a
19 hardship to many students, and for some it may
20 prove to be a deterrent to pursuing their
21 education.

22 I will briefly comment with regard
23 to cash management disbursement of Title IV

1 funds. We believe that disbursement of Title IV
2 funds by a debit card should be an option
3 available to schools.

4 I would also like to move on and talk
5 a little bit about gainful employment. We do
6 not feel the Department should be readdressing
7 gainful employment through negotiated
8 rulemaking. Let this subject be addressed
9 through reauthorization if Congress feels it
10 needs to be incorporated into law.

11 Here, too, we feel that a focus on
12 a level playing field is necessary. If
13 debt-to-earnings ratios or repayment rates or
14 other measures are needed to define successful
15 programs, then they should be used to define all
16 programs at all schools, degree or non-degree,
17 regardless of whatever we call the excess left
18 over after delivering our education, net income
19 for-profits or surplus for not-for-profits,
20 since we all have to generate revenue in excess
21 of our expenses to remain viable and responsible
22 institutions.

23 In fact, we already have a level

1 playing field metric. The cohort default rate
2 is that measure. In loan repayments, loan
3 repayment rates are at heart simply the inverse
4 of default rates. If additional oversight is
5 needed, why not strengthen and expand the cohort
6 default rate calculations to look at the life of
7 loan performance, rehabilitated loans, or loans
8 paid in full after default, and the dollar
9 amounts of defaults per school, instead of
10 simply the number of defaulters?

11 We believe that the cohort default
12 rate is one of the most misunderstood education
13 metrics out there read about by the media and
14 others due to measuring a very, very short period
15 of time versus looking at the actual loan
16 performance.

17 And as we have seen recently, the
18 Department of Ed has actually just generated \$51
19 billion of profit. We could call it surplus if
20 you are not-for-profit or profit if you are
21 for-profit.

22 In closing, I would like to conclude
23 my remarks with one final thought about refining

1 and enforcing the regulations we currently have.
2 I suggest that we can help schools remain in
3 compliance and do the right things for their
4 students by implementing periodic reviews,
5 perhaps making them part of the annual audit
6 process.

7 I believe that the last time that
8 there was some talk and revisions was about 13
9 years ago. Rather than add more regulations,
10 just let's reinforce the ones that are on the
11 books.

12 Thank you and I am available for any
13 questions.

14 Hopefully, I did it in five minutes.

15 MS. MAHAFFIE: You did great.
16 Thank you.

17 Christopher Barto.

18 MR. BARTO: Thank you, and good
19 afternoon.

20 My name is Christopher Barto. I am
21 the Assistant Vice President for Student Finance
22 and Chief Compliance Officer at LIM College in
23 Manhattan.

1 I bring to the discussion 23 years
2 of administrative experience overseeing student
3 financial aid programs at prestigious
4 non-profit institutions prior to joining my
5 current proprietary institution, which is a
6 third-generation, family-owned college that is
7 specializing in the business of fashion,
8 bachelor's programs, master's programs. The
9 institution was founded in 1939, and we
10 currently enroll about 1500 students.

11 The college provides a well-rounded
12 education through a combination of high-quality
13 instruction in the traditional classroom
14 setting along with hands-on experience in the
15 business of fashion via required internships, a
16 model that many public and non-profit
17 institutions are increasingly pursuing in the
18 form of co-op and other experiential education
19 programs, a model that we have long employed to
20 the success of our graduates.

21 In addition to the longstanding
22 accreditation by Middle States, the strength of
23 the college's curriculum and academic programs

1 were further affirmed in 2012 via accreditation
2 of our undergraduate and graduate programs by
3 the Accreditation Council for Business Schools
4 and Programs, ACBSP. We are also a member
5 institution of the New York Association of
6 Proprietary Colleges.

7 In spite of difficult economic
8 conditions that we are all familiar with the last
9 several years, the employment rate of LIM
10 College graduates has remained consistently
11 high. For the class of 2011, 95 percent of
12 graduates seeking employment were gainfully
13 employed within 12 months, and over 90 percent
14 were seeking employment within their fields and
15 found, as I said, 95 percent found employment in
16 their related fields within 12 months.

17 LIM College's most recent cohort
18 default rate, for two-year, the cohort, the
19 default rate was 5.2 percent; our 2009
20 three-year rate is 7.7 percent, both well below
21 the national averages and significantly below
22 the averages for proprietary institutions. Our
23 graduation rate for freshmen is 54 percent and

1 for transfer students is 72 percent.

2 It is against this background and
3 with a 74 year history of successfully educating
4 students and preparing them to become gainfully
5 employed in the retail fashion and related
6 industries that we respectfully share our
7 ongoing concerns regarding gainful employment
8 provisions that the Department is continuing to
9 propose further regulation for.

10 Let me first say we agree with the
11 sentiments expressed by Representatives Kline,
12 Foxx, Andrews, and others in their letter of
13 April 18th to Secretary Duncan urging him to
14 abandon what has amounted to costly failed
15 regulatory efforts in both gainful employment
16 and state authorization.

17 At LIM College, we have
18 conservatively determined that we have spent at
19 least 1500 man hours over the last three years
20 working to understand and comply with the
21 gainful employment rules. Yet, in spite of the
22 tremendous added burden placed on affected
23 institutions, an outpouring of public comments

1 addressing the flawed nature of these
2 regulations, significant congressional
3 opposition, and court rulings that have severely
4 limited the ability of the Department to move
5 forward on these already promulgated
6 regulations, the Department proposes to
7 essentially go back to the drawing table.

8 Given the rapidly changing
9 environment of higher education in the U.S. and
10 many other pressing national education policy
11 concerns, many of which that have been discussed
12 today, it appears quite stubborn, and perhaps
13 foolhardy, of the Department to continue to
14 devote public dollars in pursuing this agenda.

15 Perhaps a well-developed,
16 thoughtful placement template for employment
17 data that all colleges could adhere to might be
18 better spent time. As I know, that is an agenda
19 that has continued to be delayed by the
20 Department.

21 Given your persistence in doing so,
22 and thus, this hearing, we feel compelled to
23 continue to comment as part of the public record

1 on this matter of gainful employment.

2 HEA language originally focused in
3 a limited way on the programs and schools that
4 were identified as those that needed to result
5 in gainful employment in a recognized
6 occupation, primarily in the vocational and
7 certificate programs, technical education, and
8 other short-term non-degree programs.

9 HEA further changed the language to
10 separate the definition, as many of us know, the
11 designation of schools, into vocational and
12 institutions of higher ed. Congress in 1992
13 amended the HEA to replace that vocational
14 school categorization with two designations,
15 proprietary institutions of higher ed, defined
16 as for-profit, and postsecondary vocational
17 institutions as those that the GE rule applied
18 to.

19 Yet, in the application of the GE
20 rules, the Department seems to ignore this
21 definition change and continues to describes all
22 degree programs of proprietary institutions as
23 somehow vocational in nature, as evidenced by

1 the revised version of the PPA which required
2 schools, proprietary institutions,
3 recertifying or making any other updates, to
4 register all existing degree programs and any
5 new degree programs under the designation
6 "vocational".

7 The Department seems to be ignoring
8 the recognition by Congress that proprietary
9 institutions offer instruction and programs of
10 study that span all academic areas and degree
11 levels, and that there is nothing inherent in
12 their for-profit status that makes these
13 programs vocationally-oriented.

14 The Department's 2010 NPRM refers to
15 the GAO findings that, quote,
16 "Occupation-specific training programs that
17 lacked a general education component made
18 graduates of for-profit proprietary
19 institutions less versatile and limited their
20 opportunities for employment outside their
21 field." I believe the GAO was focusing their
22 attention on vocational and technical
23 certificate programs and other non-degree

1 programs.

2 Unfortunately, the Department
3 appears to be assuming this assertion applies to
4 all degree programs at proprietary institutions
5 and ignores the fact, again, that a large number
6 of colleges and universities in this sectors
7 primarily offer degrees, or exclusively offer
8 degrees, at associate, baccalaureate, and
9 master's or professional degree levels, and
10 have --

11 MS. MAHAFFIE: Could you wrap up
12 your comments, please?

13 MR. BARTO: Okay. And have
14 comprehensive liberal art core curriculum
15 requirements.

16 I will just briefly also comment
17 with regard to Judge Contreras' ruling in
18 relation to the disclosure of gainful employment
19 information. He stated that the government may
20 require the commercial disclosure of purely
21 factual and uncontroversial information as long
22 as there is a rational justification for the
23 means of disclosure and is intended to prevent

1 consumer confusion.

2 We would posit that, in order to
3 ensure equal levels of transparency and avoid
4 further consumer confusion, the application of
5 GE disclosures and any renewed GE metrics must
6 be uniform across all degree programs/areas of
7 studies regardless of institution type.
8 Otherwise, they could violate this principle.

9 We would also, lastly, posit that,
10 if the Department continues to move forward in
11 promulgating regulations in this area, that it
12 be limited to the narrow scope that was intended
13 with the original regulation, and that was a
14 focus on certificate and vocational or technical
15 programs.

16 Thank you very much.

17 MS. MAHAFFIE: George Pruitt.

18 DR. PRUITT: Good afternoon.

19 I am George Pruitt, President of
20 Thomas Edison State College of New Jersey.

21 Are you the guys, the Department
22 representatives or your colleagues? You are
23 it? You drew the short straws?

1 MS. MAHAFFIE: There are some other
2 Department people in the audience.

3 DR. PRUITT: Can you raise your
4 hands if you are here from the Department? I
5 just want to see who you are.

6 (Show of hands.)

7 Okay. Good. So, you guys drew the
8 short straw. Okay.

9 (Laughter.)

10 All right. I just wanted to know
11 who I am talking with.

12 I am going to be brief. My
13 intention is to speak to four points in five
14 minutes and give you some of the time back.

15 I want to say that I know that the
16 people, the staff of this Department, I know them
17 to be honorable, good people, decent people of
18 goodwill, professional educators that work very
19 hard at serving the public interest. And I want
20 to say that upfront.

21 I also want to say that you got it
22 wrong this time, guys, on the institutional
23 integrity rules, and we need to find a way to fix

1 them.

2 I want to speak specifically to two
3 of the regulations and, then, two contextual
4 comments. The first is on the credit-hour rule.
5 Credit hour, since Bologna, has been a measure
6 of academic substance and has never been a
7 measure of seat time or clock hours or input. It
8 is a fairly disruptive and un-useful distortion
9 of that concept to link it to seat time and credit
10 hour.

11 I believe that this is a matter that
12 is appropriately left to the faculty and
13 institutions at the campuses. There should not
14 be a federal intrusion in everything in the
15 academy, and I know that is a complaint that you
16 guys hear all the time, that nothing should be
17 a federal purpose. Well, there are things where
18 there is a federal purpose, but credit hours
19 should not be one of them. And I urge you to
20 repeal that regulation in its entirety.

21 As to the state authorization, I
22 have served in advisory capacities to four
23 Secretaries of Education under three Presidents

1 of both parties, and I have never seen a more
2 destructive regulation promulgated than the
3 state authorization rule. I know that was not
4 the intent. I understand the purpose of it.
5 But the impact of it has serious consequences for
6 our country, and we need to revisit it.

7 I have heard other speakers refer to
8 the work of the State Reciprocity Agreement, or
9 SARA. I encourage you to read it and pay
10 attention both to its spirit, but also its
11 language. I think the quickest way to fix this
12 thing is to adopt the definition of physical
13 presence contained in the SARA report. If you
14 were to do that, 98 percent of the controversy
15 would go away.

16 The question in your notice is, how
17 does a state regulate distance education from
18 colleges and universities that have no physical
19 presence in the state? The answer is you don't.
20 You have to rely on the goodwill and offices of
21 the state in which the institution is licensed
22 and you have to rely on the credibility of the
23 accrediting bodies that accredit it.

1 I hope you saw the story about the
2 lawsuit that Barry University has filed against
3 the State of Tennessee. This is just the
4 beginning of thousands of such disruptors. For
5 those of you that are looking puzzled, Barry
6 University is a private institution in Georgia.
7 It has no presence in the State of Tennessee, but
8 it put a billboard up in Tennessee advertising
9 its presence. The State of Tennessee said,
10 "You've got to get licensed in Tennessee."
11 Barry is suing Tennessee. I think a lot of
12 people will be willing to join that suit. But
13 we are going to have countless disruptions like
14 that which are just counterproductive and
15 disruptive if we don't fix that.

16 The two contextual things. I know
17 this Department well. The Department needs to
18 change its culture. The culture of the
19 Department is regulatory compliance, template,
20 and conformance.

21 One of the values of our system is
22 the diversity of it. There are diverse
23 institutions of high quality that deal with

1 diverse student bodies and produce wonderful
2 results. You cannot create a template and have
3 a compliance strategy without hurting the
4 diversity of those institutions. If we do that,
5 we will hurt public higher education in our
6 country.

7 So, we need to change the culture.
8 We need to have a culture in the Department that
9 enforces accountability, but also supports
10 innovation.

11 President Obama called for this
12 nation to resume its role as the No. 1, for our
13 citizens to be No. 1 in the world in the
14 percentage of our students with college
15 educations.

16 There was a Commission formed to
17 respond to the President's call. I had the
18 privilege of serving as one of the Vice Chairs
19 of that Commission. I want the President to be
20 successful. I want his call to the country to
21 be successful. I want this Department to play
22 a role in helping that happen. What I don't want
23 is to have the Department to become an impediment

1 in achieving the President's objective.

2 Finally, I didn't come here to curse
3 the darkness; I came here to light a candle.
4 There is a group of institutions that came
5 together, public institutions, Thomas Edison
6 State College, Empire State College, the
7 University of Maryland-University College,
8 Charter Oak College, Troy State College in
9 Alabama. These public institutions were
10 created to serve adult learning, were pioneers
11 in distance education, prior learning
12 assessment, military education.

13 And our record of quality and public
14 service is unimpeachable. We are exemplars and
15 field leaders in this area, and we honestly and
16 openly come to you with our hand to say, "Let us
17 help you." We want to work with you, figuring
18 out rational, reasonable, effective solutions
19 to the abuses that you are trying to respond to
20 and the problems you are trying to solve.

21 We invited two other institutions to
22 join us, Excelsior University and Western
23 Governors. They are not public institutions,

1 but they were created by the public. Excelsior
2 was created by the Regents of New York, and
3 Western Governors was organized by six governors
4 to try to do some very important things.

5 So, we want to help you. You have
6 been beat up a lot. I have been a part of beating
7 you up, not because I don't love you, but because
8 I want you to do better.

9 (Laughter.)

10 So, we stand to assist you in any way
11 we can. And I wish you well in this because the
12 consequences in states are very high.

13 Thank you.

14 MS. MAHAFFIE: Marie Cini.

15 DR. CINI: Good afternoon.

16 When you are short, you have to just
17 take things into your own hands.

18 (Laughter.)

19 Good afternoon.

20 I am Marie Cini, Provost for the
21 University of Maryland University College. I
22 want to thank you for the opportunity to address
23 you today.

1 And I intend to speak briefly about
2 the need to adjust the traditional measure of
3 academic achievement, the credit hour, which is,
4 at best, an indirect measure of academic
5 achievement that equates the number of hours a
6 student spends in a classroom with the level of
7 learning that he or she attains.

8 Since 1947, UMUC has served adult
9 students who seek to attain a college or graduate
10 degree, but who did not have the means to do so
11 or who would not finish or could not finish a
12 traditional campus-based experience. With
13 94,000 students worldwide enrolled in programs
14 of study and a median age of 31, our students are
15 adults who have amassed significant knowledge
16 and experience and who juggle family, career,
17 community, and education.

18 Time in a classroom does not
19 necessarily equate with a certain level of
20 learning achieved. And UMUC respectfully
21 requests that the Department consider a change
22 in how student learning progress is measured to
23 include direct learning assessments and that the

1 federal financial aid rules be overhauled to
2 align this new model of measuring academic
3 achievement. And there are steps already
4 moving in that direction, as we know.

5 Even for traditional age students
6 who begin college immediately following high
7 school and who are seeking and can afford a
8 traditional campus experience, the idea that all
9 college-level learning occurs in a classroom has
10 been challenged for some time now, even for
11 traditional-age students with limited life
12 experience.

13 Many students learn a tremendous
14 amount through internships, service learning,
15 work study, and extracurricular leadership
16 activities, such as writing for the school
17 newspaper, heading student political
18 organizations, or organizing a volunteer
19 activity.

20 But, for adult students, the idea
21 that all college-level learning occurs only in
22 the classroom is even more unfounded. UMUC's
23 adult students have learned on the job in a range

1 of career fields, as they raised children, as
2 they took care of their elders, and as they
3 improved their communities. This is real world
4 learning, something we hope to prepare our
5 younger undergraduates for through the
6 traditional college experience.

7 In addition, UMUC is known for our
8 service to the U.S. military in Europe, Asia, and
9 the Middle East. These men and women are
10 leading very adult lives, even if they are in the
11 18-to-22-year-old range. Their exposure to the
12 world, to new cultures, to the ethics of life and
13 death decisions, to the diversity of their
14 peers, all contributes to learning that many
15 traditional age undergraduates only learn from
16 books.

17 As you know, the credit hour was
18 established over 100 years ago by the Carnegie
19 Foundation, primarily as a measure of workload,
20 so that faculty could receive appropriate credit
21 for retirement funding. It was never intended
22 to measure student learning achievement.

23 Learning needs to be active,

1 interesting, and applicable to the individual's
2 experience. It does not matter where the
3 learning occurs as long as the conditions for
4 learning are met.

5 We all know many learned individuals
6 who have no college degree because they read
7 voraciously, they discussed current events with
8 family and friends, and they exposed themselves
9 to new knowledge in the greater world.

10 And with a tip to Dr. Pruitt, Thomas
11 Edison, one of the most innovative and
12 influential individuals in our recent history,
13 had no college degree. His learning was on the
14 job, in his laboratory, and with others who
15 shared his passions.

16 Similarly, the number of hours and
17 the methods to achieve learning are secondary to
18 its demonstration. The only measure by which we
19 should trust that a person has achieved a certain
20 level of learning is its demonstration.

21 An accounting student should be able
22 to explain a balance sheet. A cyber security
23 major should be able to prevent cyber-attacks to

1 an organization's computer network. A
2 communications major should be able to develop
3 a communication plan for a company.

4 Things are changing rapidly. The
5 Carnegie Foundation is currently reexamining
6 the Carnegie unit. The Department of Education
7 has recently allowed for a process whereby
8 federal financial aid can be granted for direct
9 assessment achievement, rather than time spent
10 in class.

11 Now is the time to take a hard look
12 at the applicable regulations to see how else we
13 can assess an individual's learning instead of
14 counting time that she spends in the classroom
15 as the only measure.

16 Thank you.

17 MS. MAHAFFIE: Thank you.

18 Russell Kitchner.

19 MR. KITCHNER: Good afternoon.

20 I am Russell Kitchner. I am the
21 Vice President for Regulatory and Government
22 Relations at American Public University System.
23 We are a for-profit university that was founded

1 in 1991 by a Marine Corps major specifically to
2 serve the military, utilizing, taking advantage
3 of the technology of the day to serve the
4 educational interests of military students
5 around the world who otherwise would be
6 restricted from educational opportunities
7 simply because of their duty stations and the
8 change in duty responsibilities.

9 We currently serve 70,000-plus
10 military students and veterans around the world,
11 plus another 40,000 or so civilians. And we
12 think that we do a very good job of it. So does
13 the Sloan Foundation. So does the Gates
14 Foundation. But not everyone is in agreement on
15 that, and that is part of the reason that we are
16 here, and that is part of the reason the
17 Department of Education determined a number of
18 years ago to establish some program integrity
19 rules. They related to how institutions of
20 higher education perform.

21 I had made a note to myself, when I
22 signed up for one of these in the future, not to
23 follow the President of Edison State. The man

1 said everything I was going to say, and said it
2 well. That said I have five minutes. So, I am
3 going to take them.

4 There are two topics that are close
5 to our heart at this point. One of them is state
6 authorization for programs offered through
7 distance education and correspondence
8 education. And the second is the matter of
9 gainful employment.

10 Regarding state authorization,
11 while the deadline for compliance recently has
12 been moved back a year, my plea is simply that,
13 whenever this provision is fully implemented,
14 that all of higher education be expected to
15 operate according to a common set of standards
16 and practices that lack any substantive
17 differentiation between sources of
18 institutional funding.

19 In this regard, to the extent that
20 the Department has the prerogative to mandate
21 that the individual states establish and
22 implement policies related to the
23 certification, authorization, and/or approval

1 of distance education institutions, I would
2 respectfully ask that the Department further
3 stipulate that those state provisions be void of
4 any regulatory distinctions based solely on
5 funding models.

6 Furthermore, such state provisions
7 should not be overly burdensome, either in terms
8 of financial investment or regulatory
9 complexity. The current regulatory landscape
10 in this regard reflects a wide range of
11 state-based initiatives, some of which,
12 frankly, suggest questionable practices or
13 ancillary objectives.

14 In particular, the practice of
15 establishing measures ostensibly designed to
16 protect the interests of residents who choose to
17 take courses online from out-of-state
18 institutions, while not invoking any such
19 consumer protection prerogatives regarding
20 residents who cross state lines to enroll in
21 brick and mortar institutions, appears to be on
22 its face a capricious exercise and somewhat
23 specious reasoning.

1 The Department is well positioned,
2 in my opinion, to provide useful guidance and
3 appropriate guidelines in this regard. And I
4 believe institutions and state agencies alike
5 would welcome its engagement in this context.

6 On the matter of gainful employment,
7 bipartisan congressional voices indicated
8 nearly a year ago that they would welcome the
9 option of working with the Secretary of
10 Education and the Department in an effort to
11 incorporate the spirit of institutional
12 accountability that is inherent to gainful
13 employment, and to do so in the context and
14 during the process of the higher education
15 reauthorization.

16 Having both the Congress and the
17 Department devoting time and resources and
18 duplicative efforts or, worse, conflicting
19 efforts does not appear to serve any public
20 interest. And moreover, that approach would
21 likely further taint the already divisive
22 political environment associated with
23 institutional accountability, this plea for the

1 Department to defer to HEA reauthorization
2 notwithstanding.

3 If it is determined to move forward
4 in an effort to plant its own flag on the matter
5 of postgraduate employment, I would
6 respectfully recommend that it do so with a
7 corresponding willingness to avoid recasting
8 higher education as the simple pursuit of a
9 paycheck.

10 Absent an institutional commitment
11 to programs that are vocation-specific, I do not
12 believe that American higher education was ever
13 intended to be an exercise in preparing for
14 gainful employment. The Department's past
15 practice of considering proprietary higher
16 education to be synonymous with career education
17 does not reflect the reality of the whole cloth
18 of the for-profit community, nor does it do
19 justice to the thousands of students whose
20 academic pursuits at for-profit institutions is
21 substantively identical to those being pursued
22 at traditional not-for-profit institutions.

23 In both contexts, the attainment of

1 an associate's or baccalaureate degree
2 represents an individual journey of
3 intellectual enlightenment and an expansion of
4 both personal and cultural knowledge. In short,
5 a personal preparation for a meaningful life
6 with employment and career considerations being
7 singular dimensions of that life, but not the sum
8 total of its value or its purpose.

9 I will close with a final comment.
10 The American Public University System has a
11 longstanding commitment to providing access to
12 high-quality higher education, and it can point
13 to a correspondingly enviable record of success
14 in that regard. Our interests are congruent
15 with those of the Department. And in making
16 that statement, I am also petitioning for
17 internal consistency in matters of departmental
18 policies and their supplement implementation.

19 Whatever policy initiatives
20 associated with the concept of gainful
21 employment, as the term has been or in the future
22 may be defined by the Department, should be
23 applied equally at all higher education

1 institutions, irrespective of the funding
2 model.

3 Policies ostensibly designed to
4 measure and ensure the quality and integrity of
5 educational options themselves lack integrity
6 if they incorporate discriminatory standards.

7 As a beneficiary of not-for-profit
8 higher education, I expect my alma mater to be
9 willing and able to demonstrate the same
10 attributes of quality and integrity for which
11 for-profit institutions are held.

12 In the context of an environment
13 dominated by the somewhat ungainly concept of
14 gainful employment, anything less than a level
15 playing field is politically disingenuous and
16 socially inequitable.

17 I thank you for the opportunity to
18 speak with you.

19 MS. MAHAFFIE: Sophia Zaman.

20 MS. ZAMAN: All right. I like what
21 the sister said before me. I am pretty short.
22 So, I have got to take the microphone off.

23 So, good afternoon.

1 First, I would like to thank the
2 Department for initiating the negotiated
3 rulemaking process and allowing our
4 organization to provide comments in today's
5 hearing.

6 My name is Sophia Zaman, and I am the
7 Vice President of the United States Student
8 Association. We are the nation's oldest and
9 largest student-run, student-led organization,
10 representing over 4 million undergraduate,
11 graduate, and professional students across the
12 country.

13 We fundamentally believe that
14 education is a right and have identified several
15 recommendations around making college more
16 affordable and accessible. Some of the areas to
17 address in a negotiated rulemaking process
18 include:

19 No. 1, financial literacy.
20 Oftentimes, we hear from students that loan
21 documents are pages and pages long with language
22 that is difficult to comprehend in its entirety.
23 Taking out a loan is one of the biggest financial

1 decisions a student will make upon entering
2 college. We believe that the Department should
3 facilitate a partnership with states and
4 institutions of higher education to provide
5 financial literacy support for students as well
6 as addressing college affordability. This is a
7 problem the federal government cannot solve
8 alone.

9 Secondly, TRIO and Pell Grant
10 programs. We have seen large reductions in the
11 federal TRIO program, and USSA believes that
12 there needs to be an increase from its current
13 funding level. TRIO programs are geared toward
14 serving students from under resourced
15 communities, oftentimes students of color,
16 providing them with a pathway to higher
17 education.

18 Additionally, recent changes in
19 eligibility for the Pell Grant program will
20 limit low-income, minority students from under
21 resourced communities from completing a higher
22 education degree. This poses a large problem
23 for many students across the country who rely on

1 the grant to afford a college education.

2 For example, a former University of
3 California student, Karina Cyprien, was
4 separated from her parents for over a decade and
5 was raised by her grandmother. Under current
6 regulations, Karina was not eligible for student
7 aid because the Free Application for Federal
8 Student Aid, or FAFSA, only considered her
9 parents' income, despite the fact that she was
10 raised by her grandmother. We need the
11 Department to expand access for the neediest
12 students and families across the country.

13 Thirdly, relief for current
14 borrowers. USSA is concerned about the growing
15 number of graduates who are unable to pay their
16 student debt. Student debt in the U.S.
17 currently stands at approximately \$1.1
18 trillion. We believe that the expansion of the
19 Income-based Repayment Program, loan
20 modification, and refinancing options can help
21 ease the burden for existing borrowers with
22 unmanageable levels of debt.

23 Fourthly, gainful employment.

1 USSA appreciates the efforts the Department has
2 taken to defend the rules in the courts. Like
3 many other groups here today, we are urging the
4 Department to provide a strong gainful
5 employment rule to ensure career education
6 programs receiving federal funding do not
7 consistently leave students with debts they
8 cannot pay.

9 And finally, unemployment for
10 recent graduates. Unemployment rates for
11 college graduates remain very high. This is an
12 issue we look forward to working on with Members
13 of Congress, and we hope that the Department can
14 play a role in urging Congress to address this
15 issue as quickly as possible. Our students are
16 very eager to contribute and participate in our
17 country's economic recovery.

18 USSA recognizes that, in addition to
19 student debt relief, there must be adequate jobs
20 available that enable students to deal with
21 their debt. For instance, under IBR, if a
22 borrower is unemployed, he or she will owe zero
23 dollars per month. That is neither beneficial

1 for the borrower nor the federal government.
2 Creating jobs for graduates is just as important
3 as providing federal relief for borrowers with
4 unmanageable student loan debt.

5 So, we understand that the
6 jurisdiction to address these issues may fall
7 largely within lawmakers on Capitol Hill.
8 However, we look forward to working with the
9 Department throughout the negotiated rulemaking
10 process to strengthen regulations and to make
11 strong recommendations to Congress.

12 Thank you for your time.

13 MS. MAHAFFIE: Paul Shiffman.

14 MR. SHIFFMAN: Good afternoon.

15 I am Paul Shiffman, Executive
16 Director of the President's Forum at Excelsior
17 College in Albany, New York, and I appreciate
18 this opportunity to speak with you today.

19 The President's Forum at Excelsior
20 College, now in its 10th year of operation, is
21 a collaboration of accredited national adult
22 serving institutions and programs which have
23 embraced the power and potential of online

1 education. The mission of the President's
2 Forum is to advance the recognition of
3 innovative practice and excellence in online
4 learning.

5 Today I would like to address an
6 issue of concern to the entire distance
7 education sector, that being state
8 authorization and the Title IV requirements for
9 institutional compliance.

10 As a result of the Department's
11 continued emphasis on state authorization,
12 institutions must address an expanding
13 patchwork of state statutes and rules regarding
14 the authorization and regulation of higher
15 education, most of which generally date to a
16 period when instruction occurred only
17 physically on a campus within state boundaries.

18 To complicate matters, no two states
19 dictate the same approach to authorizing and
20 regulating online higher education providers.
21 Today institutions require an efficient,
22 cost-effective, and expeditious way to receive
23 state approval for multiple states, and in the

1 case of my institution, from all states and
2 territories.

3 And states need an efficient process
4 to assure that institutions offering higher
5 education to their residents are providing a
6 quality program and that students are protected
7 from substandard practices.

8 With the support of the Lumina
9 Foundation for Education, the President's
10 Forum, the Council of State Governments, the
11 Commission on the Regulation of Postsecondary
12 Distance Education, and the four existent
13 Regional Higher Education Compacts -- the
14 Midwestern Higher Education Compact, the New
15 England Board of Higher Education, the Southern
16 Regional Education Board, and the Western
17 Interstate Commission for Higher
18 Education -- have developed an effective
19 framework to simplify and streamline the process
20 for authorizing online degree programs that
21 operate across state lines.

22 The State Authorization Reciprocity
23 Agreement, SARA, a voluntary approach for both

1 states and institutions, was jointly drafted by
2 these organizations. The State Authorization
3 Reciprocity Agreement, or SARA, is being
4 advanced by all of the leadership organizations
5 that represent the breadth of American higher
6 education.

7 The SARA agreement meets the
8 Department's Title IV agenda to have
9 institutions remain in full compliance with
10 state law where they serve students. It
11 encourages states and institutions to work
12 together to address the existing patchwork of
13 regulation across states while strengthening
14 the state's consumer protection role in
15 shielding students from unfair or illegal
16 practices. And it is intended to streamline the
17 regulatory process and increase access to higher
18 education while effectively protecting
19 education consumers.

20 The Department has indicated that it
21 is willing to encourage and recognize interstate
22 reciprocity for authorization agreements for
23 the purposes of verifying institutional

1 compliance with state law for participation in
2 Title IV federal student financial aid programs.

3 I strongly urge the Department to
4 encourage and to recognize state authorization
5 reciprocity agreements as a means to satisfy the
6 requirements for institutional participation in
7 Title IV student financial aid programs, and
8 that the principles and structure for
9 reciprocity embodied in the state-centered,
10 voluntary SARA approach be incorporated within
11 any forthcoming regulatory initiative for state
12 authorization.

13 I am furnishing copies of the final
14 report of the Commission on the Regulation of
15 Postsecondary Education, which is a joint effort
16 amongst the groups I have mentioned, called
17 "Advancing Access through Regulatory Reform,"
18 that details both the principles and the
19 structure for the state authorization
20 reciprocity agreement. I hope that you will see
21 fit to include this in any considerations that
22 you have in the future.

23 Thank you.

1 MS. MAHAFFIE: Thank you.

2 Aristea Williams.

3 MS. WILLIAMS: Good afternoon, and
4 thank you to the Department for allowing us to
5 speak today.

6 My name is Aristea Williams, and I
7 am here to greet you on behalf of Johns Hopkins
8 University, which sounds really great, but I am
9 here on behalf of the Johns Hopkins University
10 School of Education.

11 We are all from different
12 associations and different places, but one thing
13 that we all have in common is that we all had a
14 teacher. I am here to represent the teachers.

15 At the School of Education at Johns
16 Hopkins University, we have a lot of people who
17 are changing careers. We have a lot of people
18 who are straight from undergrad, but we have a
19 lot of people who have excelled in their industry
20 and now want to reach and teach a lot of our
21 underrepresented groups, like our Baltimore
22 programs and our D.C. programs.

23 I want to offer for consideration

1 the change in the PLUS Loan Program. A lot of
2 our students, because they did change careers or
3 maybe because of the recession, they took a hit
4 on their credit. So, we get calls all the time
5 that we are like, "Okay, you might need this, but
6 you may need to also apply for a PLUS Loan." And
7 sometimes that just stops. So, it very much
8 adversely affects the people who are trying to
9 help the people who are trying to make the future
10 better.

11 Also, it is not one of the topics
12 that is addressed, but I want to make sure that
13 through the process of negotiated rulemaking
14 that we push to keep the TEACH Grant Program how
15 it is. A lot of our students go into special
16 education programs, and it is a great
17 opportunity for us to offer aid in grants that,
18 hopefully, they will continue in special
19 education and it won't become a loan. That will
20 help them to affect our neediest students, a lot
21 of our students with special education issues.

22 Also, with state authorization,
23 Johns Hopkins School of Education is expanding

1 our programs nationwide. A lot of our students
2 who are not able to afford to come to Baltimore
3 who live in Montana or live in Alabama or other
4 places would still like to benefit from an
5 education at the Johns Hopkins School of
6 Education. We are setting everything up to make
7 that available for them, but state authorization
8 is somewhat of a barrier for us to be able to give
9 a streamlined process and to be able to give them
10 the certifications that they need for each state
11 that they plan to teach in.

12 We also offer internship
13 opportunities with our Baltimore education
14 scholars that we would like to offer to students
15 and teachers nationwide, but because of state
16 authorization, we are not necessarily able to
17 offer that program.

18 So, just those are the couple of
19 things that I have on my plate. And next time
20 you see a teacher, give them a hug because they
21 are working really, really hard.

22 (Laughter.)

23 Thank you.

1 MS. MAHAFFIE: Thank you.

2 Elaine Neely.

3 MS. NEELY: Thank you.

4 Good afternoon.

5 I am Elaine Neely, the Chief
6 Regulatory Officer for Medtech Colleges. We
7 have 11 campuses located in the Midwest, the
8 Southeast, and in the Washington, D.C. area. We
9 serve approximately 4300 students in allied
10 health and nursing programs.

11 I would like to thank the Department
12 of Education for allowing the opportunity to
13 provide my comments today concerning the
14 proposed negotiated rulemaking sessions and the
15 topics to be discussed.

16 As I have been fortunate to be a
17 negotiator on numerous negotiated rulemaking
18 panels, I understand -- and the most recent being
19 the program integrity issues -- I am very
20 familiar with the process.

21 I would like to encourage the
22 Department to postpone the proposed negotiating
23 rulemaking sessions until after Congress has had

1 the opportunity to reauthorize the Higher
2 Education Act. As you know, the Act will expire
3 at the end of 2013, and the reauthorization
4 process is expected to be addressed by Congress
5 within the next 18 months.

6 Based on the timeframe suggested by
7 the Department for negotiated rulemaking and the
8 requirements of the master calendar, rules
9 negotiated by the proposed panels could not be
10 implemented until July 1st, 2015 at the very
11 earliest. This timeframe, along with the
12 timeframe anticipated for the reauthorization
13 of the Higher Education Act, could make the
14 rulemaking process proposed useless, as
15 Congress is likely to address many of the issues
16 during reauthorization.

17 As you have heard already today,
18 many Congressman have addressed both the state
19 authorization and gainful employment
20 regulations --

21 (Siren outside is interrupting the
22 presentation.)

23 MS. MAHAFFIE: I will add a minute.

1 (Laughter.)

2 MS. NEELY: Okay. Well, I think I
3 have it under five.

4 As a former negotiator, I know
5 firsthand about the time and money and effort
6 which is involved in the negotiated rulemaking
7 process, and I appreciate all the efforts which
8 the Department has allocated to this process,
9 but I respectfully request that you delay the
10 process and allow Congress to first address
11 these issues, saving both time and money.

12 As you know, the final regulations
13 have not yet been issued for either of the most
14 recent rulemaking sessions. These sessions
15 include the changes to the student loan process
16 and to the TEACH Grant Programs.

17 I would like to suggest that, rather
18 than engage in a new round of negotiated
19 rulemaking, the Department finalize these
20 previously negotiated rules.

21 In the event that you wish to proceed
22 with negotiated rulemaking, renegotiating
23 gainful employment, state authorization, and

1 clock-credit conversion rules will have little
2 chance of success. During the program
3 integrity rulemaking process which produced
4 these rules, the negotiators were unable to
5 reach consensus, which ultimately resulted in
6 rules which are difficult to understand and
7 implement and have caused controversy with
8 institutions from all sectors of higher
9 education and, also with state authorizing
10 agencies.

11 Although repeated attempts have
12 been made for clarification of the rules, the
13 Department has not responded to these requests,
14 leaving the question surrounding these rules
15 unanswered. Also, two of the rules have
16 successfully been challenged in court and are
17 better left to Congress to address during
18 reauthorization.

19 In the event that you proceed with
20 the negotiated rulemaking, I suggest you limit
21 the negotiations to the following topics:

22 First, include negotiations for the
23 recently-authorized Violence Against Women Act,

1 as both consumers and educational institutions
2 could benefit from a streamlined process for
3 reporting and disclosures which will be required
4 by the Act, as well as the Clery Act.

5 Second, address the adverse credit
6 for PLUS borrowers, as many previously eligible
7 borrowers are being denied loans based on the
8 administrative process currently in place for
9 evaluating the credit ratings of borrowers.

10 And finally, address the issues
11 surrounding fraud and distance education, in
12 particular, a collaborative effort between the
13 Department and educational institutions to
14 easily identify suspected violators through the
15 use of technology.

16 In closing, I again want to thank you
17 for the opportunity to speak today, and I look
18 forward to working with the Department. I have
19 limited my talk to five minutes. And if you have
20 additional information you would like, I would
21 be glad to clarify.

22 Thank you.

23 MS. MAHAFFIE: Thank you.

1 Steve Gunderson.

2 MR. GUNDERSON: I am Steve
3 Gunderson, President and CEO of the Association
4 of Private Sector Colleges and Universities. I
5 am here today representing approximately 4
6 million students and the thousands of dedicated
7 educators and staff who work at our member
8 institutions. Our schools provide the full
9 range of higher education programs to students
10 looking for career-focused education.

11 Recently, we presented a
12 comprehensive proposal for HEA reauthorization.
13 Our proposal focuses on students and positive
14 student outcomes, centered on three goals:
15 simplicity, affordability, and transparency.
16 We call upon both the Department and the Congress
17 to recognize the need to move in this direction.

18 On behalf of our students and
19 institutions, we encourage the Department to
20 consider postponing new negotiated rulemaking
21 sessions, particularly on the controversial
22 topics likely to be impacted by reauthorization.
23 It is our hope that the Department and the

1 Congress will work out complementary schedules
2 for both reauthorization and the regulations to
3 implement that reauthorization.

4 As the higher education sector seeks
5 to maximize student service while holding down
6 cost and confusion, it would be important for the
7 Department and the Congress to collaborate. In
8 challenging economic times, all institutions,
9 you, the Department, and all colleges and
10 universities should focus available funds on
11 educating students and not on navigating the
12 conflicting directions from the Legislative and
13 Executive Branches.

14 Today none of us can predict what the
15 House or Senate will do, but I believe it is safe
16 to predict the focus will be on holding down
17 costs, simplifying the process for students, and
18 promoting transparency.

19 Our proposal calls for the
20 Department to use its current existing authority
21 for demonstration projects as a means for
22 innovation in higher education. We strongly
23 encourage this, recognizing no new regulations

1 are required for such initiatives.

2 If the Department chooses to
3 proceed, however, we would urge you to carefully
4 consider improvements in the rulemaking
5 process.

6 First, implement the
7 recommendations from the IG's final audit
8 report.

9 Second, participants selected as
10 negotiators must represent the viewpoints of all
11 parties involved in postsecondary education.

12 And third, create more teams to
13 address fewer issues and have the proper
14 negotiators for the topics at hand.

15 Allow me to make some specific
16 reference to some of the proposed topics that
17 were suggested.

18 The promulgation of state
19 authorization for programs offered through
20 distance education or correspondence education
21 as part of the program integrity rules is an
22 example of the Department issuing rules that the
23 negotiating committee was unable to fully

1 discuss because of time constraints and too many
2 topics before one team. It is a prime example
3 of rules the Department is issuing that the
4 Congress may not support.

5 Since the state authorization for
6 distance education provision was overturned by
7 the courts, many states and organizations have
8 taken the time to thoughtfully consider the best
9 ways to approach this topic, including the
10 Commission on the Regulation of Postsecondary
11 Distance Education. Their recommendations
12 propose a voluntary system of reciprocity with
13 the states, reflecting existing state and
14 federal structures.

15 We want to acknowledge our
16 appreciation of the Department's decision to
17 delay until 2014 the state authorization rules.
18 Unfortunately, the guidance does not yet provide
19 the information about which states are
20 considered compliant by the Department. We ask
21 the Department to take on this task and make the
22 information and departmental decisions on state
23 compliance public.

1 It has been almost two years since
2 the clock-credit hours rules have been in
3 effect, and we are still waiting for some
4 guidance on the issue. At this point, the best
5 outcome may be for the Department to leave
6 determinations related to clock and credit hours
7 to the accreditors who are also working on this
8 issue with institutions.

9 On the PLUS Loan Program, a more
10 common-sense approach during the initial review
11 and approval process could result in
12 substantially fewer denials and appeals, easing
13 the burdens on the Department and anxiety for
14 parents and students. We would encourage the
15 Department to ensure deserving PLUS Loan
16 applicants are being carefully considered and
17 assisted before being denied.

18 I sincerely hope the Department
19 chooses to spend its current time and resources
20 working with institutions to help all of us
21 reduce costs, reduce regulatory burdens, and
22 advance innovative solutions to help all
23 institutions serve all our students better.

1 Thank you for the opportunity.

2 MS. MAHAFFIE: Laura Dunn.

3 MS. BRODKSY: Hi. So, I am
4 actually not Laura Dunn. I am Alexandra
5 Brodsky. She was, unfortunately, unable to
6 make it at the very last minute. So, forgive me
7 for the full reading, but this is what she had
8 hoped she would be able to say today.

9 "Good afternoon.

10 "My name is Laura Dunn."

11 (Laughter.)

12 "I am a survivor of campus sexual
13 assault who filed a Title IX complaint against
14 the University of Wisconsin-Madison back in
15 2007. Currently, I am a third-year law student
16 at the Maryland Carey School of Law, where I am
17 focusing on victims' rights and education law.

18 "I'm also a member of the IX Network,
19 a growing national coalition of students working
20 together to fight sexual violence at schools
21 across the country, and the founder of
22 SurvJustice.

23 "In 2011, I lobbied on Capitol Hill

1 for the passage of the Campus SaVE Act. As a
2 survivor, I spoke behalf of the bill and stood
3 by while Senator Patrick Leahy for a Senate
4 Judiciary Committee press conference. I spoke
5 again in 2013 with Minority Leader Nancy Pelosi
6 and the House Democratic leadership in support
7 of SaVE.

8 "This bill enjoyed my support for
9 one main reason. It bridges the gap between
10 Title IX and the Clery Act to ensure
11 comprehensive federal obligations for schools
12 to address campus sexual violence.

13 "In meeting with key congressional
14 members, I continually pointed out the
15 significance. The 2011 'Dear Colleague' letter
16 by OCR set forth progressive standards for
17 schools to address campus sexual violence in
18 accordance with Title IX.

19 "However, these standards lacked
20 the force of law needed to make a difference to
21 survivors like me. Hence, the Campus SaVE Act
22 was born.

23 "The Campus SaVE Act has the

1 potential to be a powerful tool to ensure
2 colleges and universities comprehensively
3 address sexual violence.

4 "My proposal is one the Department
5 of Education needs to seriously consider: to
6 create a joint task force to review any complaint
7 regarding campus sexual violence under both
8 Title IX and the Clery Act. A joint task force
9 recognizes the importance of the Campus SaVE Act
10 as a bridge between Title IX standards and the
11 existing Campus Sexual Assault Victims' Bill of
12 Rights under the Clery Act.

13 "This ensures proactive
14 enforcement, since many victims are filing
15 complaints on their own without legal guidance
16 and are unaware of the overlapping federal
17 obligations to address campus sexual assault
18 under both Title IX and Clery.

19 "Additionally, it ensures thorough
20 and consistent reviews and resolutions from the
21 Department of Education, so schools are clear
22 about all their federal obligations. Likewise,
23 it unifies the two independent federal statutes

1 to model for universities the need to address
2 sexual violence comprehensively, rather than
3 through disjointed and separated processes.

4 "A joint task force will also
5 maximize limited resources at the Department of
6 Education. Since the 2011 'Dear Colleague'
7 letter, there has been a significant increase in
8 Title IX complaints, and after the Campus SaVE
9 Act is enacted, the Department of Education
10 should anticipate even more.

11 "Between increasing media attention
12 on campus sexual violence and survivor-led
13 groups such as the IX Network educating other
14 students, there will be even more complaints,
15 given the epidemic of sexual violence on campus.

16 "The Campus SaVE Act empowers the
17 Clery Act by mimicking Title IX to ensure more
18 procedural rights for victims. However, unlike
19 Title IX, the Clery Act has intermediate
20 sanctions, meaning the Campus SaVE Act will be
21 a powerful tool to the Department of Education's
22 hands to levy fines against offending and often
23 unapologetic universities.

1 "For these reasons, the Department
2 of Education decreed a joint task force as part
3 of the implementation of the Campus SaVE Act to
4 ensure its union of the Clery Act and Title IX
5 obligations addressing sexual violence on
6 campus.

7 "Thank you."

8 MS. MAHAFFIE: Gail daMota.

9 MS. daMOTA: Hi. My name is Gail
10 daMota. I represent Education Finance Council,
11 the association of non-profit and state agency
12 student loan companies. Our public purpose
13 mission is to increase postsecondary education
14 access, affordability, and success.

15 Thank you for the opportunity today
16 to speak on the topics for negotiated
17 rulemaking. Ours are going to be focused on the
18 definition of adverse credit history for the
19 PLUS Loan Program.

20 EFC requests that, as part of any
21 discussion to modify the credit criteria of the
22 PLUS Loan Program, that the Department of
23 Education also include the reporting of the

1 delinquency and default rates for the PLUS
2 program as well as improve the transparency of
3 the program through greater disclosures.

4 We believe it is imperative that the
5 policymakers be aware of the performance of the
6 existing portfolio before altering the credit
7 standards for borrowers. Default and
8 delinquency data can indicate whether the credit
9 criteria should be eased or tightened. A PLUS
10 Loan made to a borrower that does not have the
11 ability to repay may or may not increases college
12 access for their child, but at what cost to the
13 family?

14 There are already indicators out
15 there that are pointing to possible default
16 problems in this program. One such indicator is
17 the examination of the student loan debt held by
18 senior citizens and retirees. The Federal
19 Reserve Board of New York reported that, by the
20 end of 2012, older Americans owed \$43 billion in
21 college debt and 12.5 percent of those seniors
22 were 90 days or more delinquent.

23 In addition, The Wall Street Journal

1 "Smart Money" reported in August of 2012 that
2 data they obtained from the Treasury Department
3 revealed that from January through August 6th of
4 2012 the government had garnished Social
5 Security payments of approximately 115,000
6 retirees in an effort to collect past-due
7 student loan debt. The New York Times reported
8 that, by the end of September that number had
9 jumped to 119,000.

10 Social Security garnishments
11 indicate that that debt is federal. However,
12 the data does not identify whether it is a PLUS
13 Loan or a Stafford. Without available default
14 rate and delinquency data on the PLUS Loan
15 Program, the Department of Education cannot make
16 an accurate analysis of the current PLUS credit
17 criteria, much less make an informed or
18 intelligent modification to it.

19 These statistics on older federal
20 loan borrowers are also an indicator that better
21 disclosures for PLUS Loans are also necessary.
22 Parents need to understand that the PLUS Loans
23 do not have the same repayment options as found

1 in the Stafford Loan Program, and the interest
2 rates and fees are higher. PLUS Loans are not
3 held to the same transparency and disclosure
4 standards as private education loans. Yet, in
5 some cases the PLUS Loan is more costly and less
6 flexible than other options, such as those
7 offered by state-based and non-profit student
8 loan organizations.

9 Parents have the right to fully
10 understand the risks that are involved with
11 borrowing under the federal PLUS Loan Program,
12 and the disclosure and transparency disparity
13 between federal and private loan program is
14 unwarranted and should not exist.

15 In addition to our PLUS comments,
16 EFC plans on submitting written comments to
17 include a proposal to ease the preferred lender
18 list rules to allow institutions to better
19 inform borrowers of more affordable loan
20 options.

21 Thank you for your time.

22 MS. MAHAFFIE: Thank you.

23 Don Mroz.

1 MR. MROZ: Thank you to the
2 Department of Education for these hearings.

3 My name is Don Mroz, and I am the
4 Provost and the Dean of the Malcolm Baldrige
5 School of Business at Post University in
6 Waterbury, Connecticut.

7 This past year we were fortunate
8 enough to receive that name of Malcolm Baldrige
9 for our Business School from the Baldrige
10 family. As you probably know, our namesake,
11 Malcolm Baldrige, was a successful business
12 leader and, of course, Secretary of Commerce
13 under the Reagan Administration.

14 Through his focus on quality,
15 leadership, innovation, and integrity, the
16 National Baldrige Quality Awards were founded.
17 After receiving the name of Malcolm Baldrige and
18 in speaking with family members, we found that
19 one of the beliefs and practices of Mac, as he
20 was often called, was to try to simplify the
21 complex. And he was a man of few words, but when
22 he spoke, people listened. And he was not
23 afraid to roll up his sleeves and make things

1 happen quickly and efficiently. He also had a
2 great sense of humor, which I think maybe we
3 could use a little bit more of in education right
4 now.

5 I would like to pose that there is
6 another way to look at the issues being discussed
7 here today. If our goal is to provide better and
8 more options to students -- and I believe it
9 is -- then we need to approach this with a
10 holistic, consistent way of thinking about what
11 we are all trying to achieve.

12 Current regulations are unbalanced
13 in their approach, difficult to understand, and,
14 of course, difficult and costly to execute.
15 They also single out certain institutions over
16 others rather than address the underlying issues
17 we all face.

18 Our university, which is a small,
19 for-profit university, does take this all very
20 seriously, and we generate programs to that end.
21 We are not publicly-traded. We are not a
22 mom-and-pop organization. Rather, we are a 120
23 year old institution that was about to go

1 bankrupt and saved by private equity about eight
2 years ago.

3 Private-equity-owned schools -- and
4 there aren't many of us around -- do not take
5 money out of the institution. Trust me, we
6 don't have those high salaries that I heard
7 quoted earlier. Instead, they reinvest the
8 money into the school.

9 Our university has a now-thriving
10 main campus and an online program. This school
11 that was about to go bankrupt has had \$40 million
12 put back into the main campus, renovating
13 dormitories that were not maintained; built a
14 new multi-sport field to support our NCAA
15 Division II teams; hired a team of scholar
16 practitioners with advanced degrees and more
17 than 1200 years of collective real-world
18 experience in their fields; developed new
19 outcomes-based educational programs; developed
20 an honors program which now has 20 percent of our
21 students engaged in it; totally redeveloped
22 classrooms; established a faculty center, and
23 continue to upgrade the entire campus. But we

1 have refused to engage in the traditional
2 college campus arms race to build country club
3 facilities that do not improve student learning.

4 At the same time, this year we made
5 the decision to keep our campus tuition at the
6 2012 tuition levels and had a zero percent
7 increase in tuition and room-and-board fees, and
8 have among the lowest five-year tuition increase
9 rate of any school in our state.

10 We have also built a reputation for
11 high-quality, truly student focused, online
12 programs specifically to meet the growing
13 populations of working adults looking to earn
14 undergraduate and graduate degree online
15 programs.

16 In the fall of 2011, we were before
17 the NEASC Commission for approval and
18 accreditation of two new master-level degree
19 programs. Toward the end of the hearing, one of
20 the Commissioners, who happened to be a Senior
21 VP of Research from MIT, said, "We all know
22 you're one of the very best concerning online
23 programs, and I am wondering how you are helping

1 other universities." You can imagine our
2 surprise. Since that time, we have been
3 supporting a number of other not-for-profit
4 organizations with implementation of online
5 programs, at their request.

6 The boundaries have changed when it
7 comes to education. And as it has been
8 mentioned, it is the adult population where the
9 growth is for education and for a new
10 technological environment.

11 It is our belief that students
12 should have choice. Distance, for-profit,
13 not-for-profit, community colleges, four-year
14 institutions, technical schools -- the key
15 should be quality programming, not where the
16 student receives their education.

17 Just as all tall people don't play
18 basketball, all for-profit universities are not
19 the same. Painting them all with the same brush
20 and subjecting them to costly, burdensome
21 regulations is risky at best and irresponsible
22 and discriminatory at worst.

23 Ninety percent of our students are

1 excluded from IPEDS calculations. So, the data
2 being used to evaluate us and, also, being shared
3 by more and more sites is completely misleading
4 and not at all helpful to the very students it
5 is meant to inform.

6 We respectfully ask the Department
7 of Education to take a more balanced approach to
8 ensure that all students have access to quality
9 education options in a variety of formats from
10 an array of colleges and universities.

11 I say all this to ask the Department
12 to certainly put in guidelines for quality, just
13 as Mac Baldrige would recommend, but also to not
14 make blanket statements or regulations
15 concerning only for-profits, but, rather, hold
16 all higher education institutions to the same
17 standards. These include gainful employment
18 and state-by-state authorization.

19 State-by-state fees and regulations
20 seem out of control. Or should I say there are
21 no controls on what the states are now asking
22 for? Having to meet various state regulations
23 as they are disparate and very inconsistent is

1 not only expensive, but also very
2 time-consuming.

3 Thank you, and I look forward to
4 seeing a common-sense approach to ensuring all
5 schools support students in their pursuit of a
6 quality higher education. Thank you.

7 MS. MAHAFFIE: Neil Ridley.

8 MR. RIDLEY: Hello. I am Neil
9 Ridley from CLASP, Center for Law and Social
10 Policy.

11 Thank you for the opportunity to
12 speak today in support of negotiated rulemaking,
13 and specifically on the gainful employment
14 issue.

15 Last month we joined over 40 other
16 organizations in calling on the Administration
17 to quickly begin rulemaking, so that the
18 Department can better enforce the statutory
19 gainful employment requirement for career
20 education programs. We commend the Department
21 for including it as one of the additional topics
22 for the negotiated rulemaking committee to act
23 on and strongly support its inclusion.

1 As our coalition letter pointed out,
2 a strong gainful employment rule is essential
3 for curbing abuses in certain career education
4 programs that routinely leave students with
5 debts they cannot repay. The Department's
6 gainful employment metrics, such as the loan
7 repayment rate and the debt-to-income ratio,
8 were a sound way to measure how former students,
9 both completers and non-completers, fare
10 financially after leaving a program.

11 The program data that the Education
12 Department published last year demonstrate
13 precisely why a strong gainful employment rule
14 is so urgently needed. Sixty-five percent of
15 the career education programs failed at least
16 one of three minimal tests aimed at protecting
17 students, and 5 percent, 193 programs at 93
18 different for-profit colleges, failed all three
19 tests.

20 The Institute for College Access and
21 Success, TICAS, has suggested several ways in
22 which the Department could largely maintain the
23 original gainful employment framework while

1 responding to the court's concerns. These
2 include providing more incentives for
3 improvement through intermediate consequences
4 for programs that fail two out of three gainful
5 employment tests. TICAS also recommends
6 narrowing the population of students for which
7 metric data must be collected.

8 We think the TICAS recommendations
9 make sense as a way to move forward within
10 existing legal constraints on the important
11 question of how to effectively enforce the
12 statutory gainful employment requirement. We
13 especially support the idea that the enforcement
14 goal could be met with less data collection by
15 deeming programs to have met the gainful
16 employment test if a majority of their students
17 do not borrow to pay for college. This would
18 also relieve a large administrative burden, the
19 regulations imposed on institutions for which
20 student debt burden is not a significant
21 problem.

22 Beyond enforcing the gainful
23 employment requirement, public reporting of

1 employment and earnings outcomes and debt
2 burdens for career education programs serves
3 another important purpose. It helps
4 prospective students and parents make informed
5 choices about which programs represent the best
6 value. The stakes are high, given the
7 skyrocketing cost of college and a
8 stubbornly-weak job market.

9 For this reason, CLASP supports
10 collecting employment net earnings and debt
11 burden information for a wider set of programs
12 than those subject to the gainful employment
13 provision of the Higher Education Act. Our
14 recent paper for the Gates Foundation
15 initiative, "Reimagining Aid Design and
16 Delivery," makes a number of recommendations for
17 improving metrics for higher education,
18 including expansion of employment and earnings
19 reporting for occupational programs.

20 This expansion could be
21 accomplished either by direct data collection
22 and matching by the federal government or by the
23 federal government working with the states to

1 supplement existing data collection
2 capabilities.

3 While this broader question of
4 collecting and sharing higher education
5 performance data is being sorted out, the
6 Department, through the negotiated rulemaking
7 committee, could move forward immediately on a
8 strengthened gainful employment regulation.
9 We encourage the Department and the Committee to
10 do all that they can to address this important
11 issue.

12 Thank you very much.

13 MS. MAHAFFIE: We are now going to
14 take a 20-minute break until 2:40.

15 (Whereupon, the above-entitled
16 matter went off the record at 2:19 p.m. and
17 resumed at 2:39 p.m.)

18 MS. MAHAFFIE: Terrence Maher.
19 Did I butcher your name?

20 MR. MAHER: Maher.

21 MS. MAHAFFIE: Maher. Sorry.

22 MR. MAHER: No problem.

23 Good afternoon.

1 My name is Terry Maher. I am the
2 General Counsel to the Network-Branded Prepaid
3 Card Association, or the NBPCA.

4 The NBPCA is the primary trade
5 association, and our members include the various
6 payment networks, the banks or financial
7 institutions which issue prepaid cards which
8 hold the underlying funds, balances on the
9 prepaid card, and which also are responsible for
10 legal compliance and regulatory compliance with
11 respect to the prepaid card programs; the
12 program managers, which are retained by the
13 banks for purposes of helping to market and
14 manage the prepaid card programs, as well as the
15 processors, which are involved in handling the
16 data that is associated with the prepaid card
17 account.

18 We appreciate this opportunity to
19 speak with the committee today. We also will be
20 submitting written comments with the Department
21 on the negotiated rulemaking.

22 Network-branded prepaid cards are a
23 convenient and safe means for consumers to

1 access funds with pricing that is in many cases
2 less than that for similar financial tools.

3 Over the past two years, there have
4 been several studies where prepaid cardholders
5 have expressed significant satisfaction with
6 their prepaid cards as well as with the fee
7 structures that are associated with their
8 prepaid card programs. And there have been
9 other studies which show that the cost that the
10 consumer incurs in connection with having a
11 prepaid card account is often less than the same
12 cost for maintaining a low balance checking
13 account, because, again, a lot of banks are
14 requiring fairly high deposit amounts or fairly
15 high transaction activities to waive monthly
16 fees, and so forth, as well as those consumers
17 who don't have a bank account, and they are
18 incurring fees for check-cashing, purchase of
19 money orders, and also the cash and carry. They
20 don't have the safety of having their funds in
21 a financial institution.

22 Prepaid cards bear the logo of one
23 of the payment networks, which includes American

1 Express, Discover, MasterCard, Visa. While
2 they in many ways look or are similar to a
3 checking account or to a debit card that is
4 associated with a checking account, there are
5 differences. Unlike credit cards, they are
6 prepaid. There is no need to go through a credit
7 application process. There are no subsequent
8 payments required in connection with the
9 account. You can only spend as much as what is
10 preloaded into the prepaid card account, and you
11 avoid the pitfalls of credit as well as payment
12 of finance charges.

13 They are also different from debit
14 cards. We have heard a lot of talk about debit
15 cards today. A debit card is usually tied to a
16 particular consumer account, such as a
17 transaction account. We refer to them as a DDA,
18 or a Demand Deposit Account, a checking account.

19 And in a prepaid card account, the
20 funds are deposited into a pooled account at the
21 financial institution which issues the card, and
22 they qualify for FDIC pass-through deposit
23 insurance to the full amount available to the

1 cardholders. And the cardholders do not incur
2 NSF or overdraft fees because they can't
3 overdraft their accounts. In fact, we are not
4 aware of any prepaid card programs associated
5 with campus cards which are assessing any type
6 of overdraft or negative balance type of fees in
7 connection with their prepaid cards for their
8 campus cards.

9 Prepaid cards are issued by
10 financial institutions, and they could be used
11 by students to pay for purchases at the
12 point-of-sale or online -- and we all know how
13 important that is today -- to pay bills and to
14 access cash at ATMs or even cash back at the
15 point-of-sale that is frequently available from
16 various retailers.

17 The financial institutions that
18 issue prepaid cards are highly regulated. They
19 are banks. You know, it is not an unbanked
20 entity. And they are subject to the same types
21 of consumer protections as are associated with
22 a Demand Deposit Account. And in fact, the
23 Treasury Fiscal Services Rule requires that, if

1 you are going to receive federal funds into a
2 prepaid card account, you have to have
3 pass-through deposit insurance available and
4 consumer protections that are equivalent to
5 those of Regulation E issued by the Federal
6 Reserve Board.

7 They are also subject to FDIC
8 Deposit Insurance requirements, as well as the
9 banking regulators and the CFPB's requirements
10 with respect to unfair, deceptive, or abusive
11 acts or practices, as well as the privacy
12 provisions of the Gramm-Leach-Bliley Act, and
13 all the regulations that would apply under the
14 Department of Education rules.

15 The banks which issue prepaid cards
16 also have a significant obligation to oversee
17 the program managers and processors that they
18 engage in connection with the management and
19 operation of their prepaid card programs.

20 The prepaid cards intended for use
21 on campuses share all the same benefits and
22 features as other prepaid cards, but offer
23 significant additional benefits over other

1 types of financial relationships. Campus cards
2 can serve as an effective financial management
3 tool, a teaching tool for students, many who have
4 no or limited experience with managing a bank
5 account or financial management in general prior
6 to entering college.

7 Campus cards allow students to place
8 their wages, their Title IV funds and other funds
9 into one device or one account, and they can
10 monitor their balances on a real-time basis
11 through apps that are available on their
12 smartphones, text alerts, or other types of
13 online access. And in fact, they offer a much
14 broader array of products and services to allow
15 real-time balances than what you would see with
16 your traditional checking account.

17 As a result of these features and
18 benefits, they promote financial literacy and
19 they can serve as a stepping stone as the student
20 progresses into further financial
21 relationships, including mortgages, credit
22 cards, or automobile loans.

23 The NBPCA does believe that students

1 should make fully-informed decisions about how
2 they receive their student aid disbursements and
3 the financial institutions with which they do
4 business. We support complete transparency of
5 the terms associated with both campus card
6 programs as well as the other options made
7 available to students to receive their Title IV
8 fund refunds.

9 Ultimately, educational and
10 financial institutions should market campus
11 card programs so the students are aware of the
12 benefits offered under the program, ensure that
13 the terms of the programs are fully disclosed to
14 the students and to the parents, and the student
15 understands that the programs are not their only
16 option to receive their Title IV fund refunds.

17 Turning to the rulemaking, we
18 believe that many of the issues that are sought
19 to be addressed in the rulemaking with respect
20 to disbursement of Title IV funds, at least as
21 they pertain to prepaid cards, are already
22 adequately addressed.

23 And turning to the significant

1 protections required in such free access to
2 funds underlying the account, as well as
3 on-campus ATM access, the current regulations
4 require the protection of prior authorization
5 with full disclosure. Written authorization
6 from a student or parent is required to obtain
7 a campus card. Further, the written
8 authorization comes only after full disclosure
9 of all the terms and conditions applicable to the
10 campus card program.

11 Under the Department's current
12 regulations, and under Dear Colleague letters,
13 holders of Title IV funds, including the
14 providers of campus cards, are basically in the
15 role of a fiduciary. They have to look out for
16 the best interests of the student.

17 And the role the fiduciary imposes
18 on these holders, they hold them to the highest
19 standard of care possible in administering and
20 accounting for the Title IV funds. And again,
21 the funds are held in a financial institution
22 which is examined by the banking regulators and
23 subject to FDIC Deposit Insurance.

1 As far as the duty to disburse Title
2 IV credit balances as soon as possible, but no
3 later than two weeks from the date that the
4 balance is determined, we believe that, as we
5 found out with the IRS and some of their tax
6 refund programs, sometimes when you speed things
7 up, it creates opportunities for fraud. So,
8 just be careful with that.

9 The universities, and so forth, need
10 to make sure that, if you accelerate that
11 two-week process that it doesn't lead to more
12 opportunities for fraud in connection with the
13 programs.

14 We thank you for the opportunity to
15 provide the Committee with information on this
16 important topic, and we look to answer any
17 questions you may have. We also recommend that
18 you review our comment letter when we submit it.

19 Thank you.

20 MS. MAHAFFIE: Thank you.

21 Karenann Carty.

22 DR. CARTY: Good afternoon, and
23 thank you for the opportunity to speak today.

1 My name is Karenann Carty, and I have
2 been an educator for 30 years. I have taught
3 elementary and high school. In higher
4 education, I have worked at a private, liberal
5 arts, religious-affiliated college and at a
6 proprietary college, Monroe College. And I
7 just sent my younger of two daughters off to
8 college last year. So, I am all too familiar
9 with the joys and pitfalls of the college search
10 and selection process.

11 You should know why I have chosen to
12 make Monroe College my professional home. One
13 simple reason, every conversation starts with a
14 single question: What is best for our students?

15 As a professional, and especially as
16 a mother, I have found this approach to education
17 to be comforting, but, unfortunately, uncommon.
18 I say "unfortunately" because all too often
19 people in our profession lose track of what
20 should be our highest priority, our students.

21 This year Monroe College celebrates
22 its 80th anniversary of its founding. We began
23 in 1933 in the Bronx by offering seven women the

1 opportunity to sharpen their skills to enter the
2 workplace in the height of the Depression.

3 Today we educate nearly 7,000
4 students on two campuses in New York. Our main
5 campus is still in the Bronx, and we have a
6 thriving residential campus in New Rochelle.

7 Just a few facts about Monroe:

8 Seventy-six percent of our students
9 receive Pell.

10 Our students' median family income
11 is \$21,000.

12 Monroe's main campus is in the 16th
13 Congressional District in the Bronx, the poorest
14 in the nation.

15 While our New Rochelle campus
16 attracts hundreds of international students in
17 addition to many students from the Northeast,
18 the student body on our Bronx campus reflects the
19 realities of its surrounding community, where we
20 serve as an anchor institution.

21 Yet, despite the strained
22 circumstances -- financial, personal,
23 educational -- our college has had remarkable

1 success. We are ranked No. 1 in New York State
2 in the number of undergraduate degrees awarded
3 to Black and Hispanic students. Our graduates'
4 placement rates are impressive, 85 percent for
5 2012. We place over 1600 interns each year in
6 businesses, non-profit organizations, health
7 facilities, and government agencies.

8 And despite the fact that we are
9 surrounded, fully surrounded, by public and
10 independent colleges, thousands of students
11 choose us as the place to pursue their education.
12 That is because they can feel the Monroe culture
13 of care as soon as they walk in the door, and
14 students know that we are with them every step
15 of the way.

16 Often, a student faced with a choice
17 of a program offered at Monroe and at a
18 neighboring public institution, they choose
19 Monroe, mostly because of the personalized
20 service we provide.

21 From the beginning, Monroe has been
22 actively engaged in the national conversation
23 surrounding gainful employment. This will be

1 the focus of my remarks.

2 The gainful employment effort has
3 been helpful to the extent that it provided us
4 with data to craft better strategies for helping
5 students finance their education, particularly
6 with respect to student loans.

7 We have taken the opportunity to get
8 a handle on over-borrowing, to intensify our
9 student loan counseling, and implement a
10 comprehensive financial literacy program.
11 Additionally, data related to the
12 debt-to-income measure by program has allowed us
13 to examine our offerings and assure that
14 students are aware before and during their
15 studies of certain realities of the industry
16 they plan to enter.

17 Much less helpful, however, were the
18 repayment rates. These rates have simply told
19 us that students of lower-economic status
20 initially have more difficulty repaying their
21 loans in the first few years out of college. The
22 Department's own initial data demonstrated that
23 almost all colleges serving a majority of

1 low-income students have a low repayment rate.

2 At Monroe College, our low repayment
3 rate does not reflect the long-term repayment
4 behavior of our students or the quality of our
5 education. At 10 years out, our students have
6 an 82 percent repayment rate.

7 For students, including my elder
8 daughter who recently graduated, few of them
9 have an easy time in the first couple of years
10 out of college in terms of repaying their loans.

11 While the Obama Administration has
12 taken positive steps to add options, such as Pay
13 As You Earn and income-based repayment, these
14 programs designed to assist students just like
15 ours, the regulation is designed to penalize
16 institutions when they take advantage of these
17 options, when students take advantage of these
18 options.

19 Ultimately, the great flaw of
20 gainful employment was that it was not developed
21 from the student's perspective. What do I mean?

22 Any measurement of the quality of an
23 education should help perspective students and

1 their parents make an informed decision about
2 college. If that measurement is not applied
3 across the full range of institutions, then how
4 could a student make an informed decision?

5 If the measurement is so complex
6 that a prospective student can't understand it,
7 then how can it contribute to an informed
8 decision? If the student has no simple way of
9 looking at the data, how can they make an
10 informed decision? They can't.

11 However, there were two specific
12 tools the Department provided to help us to be
13 clear and transparent. The shopping sheet
14 passes the test, right? The shopping sheet is
15 a simple, standardized way to look at tuition and
16 cost of attending an institution, graduation
17 rates, average default rates, and loan amounts
18 that graduates will incur, all contained on a
19 single page. That was a worthwhile
20 accomplishment.

21 The College Scorecard, provided by
22 the Department to provide better information to
23 students and parents about college

1 affordability and value, is another helpful
2 tool. It provides meaningful information and
3 is simple, clear, and consumer-friendly.
4 Another worthwhile step.

5 The gainful employment regulatory
6 process has been a taxing one for us, and we have
7 spent countless hours trying to understand the
8 regulations and trying to figure out their
9 impact. Despite the difficulty, we have felt
10 that our college, which for 80 years has been
11 focused solely on doing what is best for our
12 students, has been heard at the federal level,
13 and we are enormously grateful.

14 As we enter this new season of open
15 hearings and negotiated rulemaking, if I were to
16 offer advice, it would be simply this: before
17 developing or enacting any new regulations,
18 start by seeing their impact from the
19 perspective of the students. Make it easier for
20 students and families to make an informed
21 decision about which college will serve them
22 best. Doing so respects the great strength of
23 our country's higher education system, its

1 expansive diversity, while also assuring
2 clarity and transparency.

3 Monroe College would be happy to
4 work in partnership with the Department on
5 determining how any future regulations
6 specifically impact institutions serving a
7 majority of urban Pell-eligible students.

8 Thank you for the opportunity.

9 MS. MAHAFFIE: Thank you.

10 Diane Rosenfeld.

11 (No response.)

12 Diane Rosenfeld.

13 MS. BRODKSY: She says she is
14 walking up the stairs right now. We are right
15 after her.

16 MS. MAHAFFIE: Okay. Okay. Why
17 don't you come up?

18 MS. BOLGER: Good afternoon.

19 I am Dana Bolger. I am a senior at
20 Amherst College, where I work with fellow
21 student activists to reform campus
22 anti-violence policies and practices.

23 MS. BRODKSY: I am Alexandra

1 Brodsky. Actually, this time I am an incoming
2 student at the Yale Law School and an alum of Yale
3 College.

4 While an undergrad, I was a
5 signatory on the 2011 Title IX complaint against
6 the University.

7 We are both survivors and members of
8 the IX Network, a coalition of students working
9 together to fight sexual violence at schools
10 across the country.

11 MS. BOLGER: When I left home for
12 college four years ago, I thought I would be
13 spending my days writing research papers and
14 staying up late talking to friends. I didn't
15 know that I would be raped, stalked, and harassed
16 during my time there. I didn't know that my
17 fellow survivors and I would spend every day
18 fighting for our rights to an education.

19 The past few years have brought
20 story after story of school administrations
21 standing by while students endure rampant sexual
22 violence on their campuses. Too often, when
23 students turn to their universities for the

1 protections and accommodations to which they are
2 legally entitled, they are, instead, ignored,
3 silenced, pressured to drop out, or forcibly
4 institutionalized.

5 In response, we are working with a
6 group of survivor activists from across the
7 country to develop Know Your IX, a campaign to
8 educate students about their rights under the
9 1965 Higher Education Act, Title IX, the Clery
10 Act, and the Campus SaVE Act.

11 Armed with this basic legal
12 education, students will be empowered to
13 pressure their colleges and universities to meet
14 their legal responsibilities to combat sexual
15 violence and to accommodate survivors' needs.

16 MS. BRODKSY: However, the burden
17 of enforcing the law shouldn't rest on student
18 shoulders. Department of Education, that's
19 your job.

20 We are unspeakably proud of our
21 partners across the country who, while juggling
22 full course-loads and campus jobs, are making
23 headlines with their anti-violence activism.

1 But every hour of studying a student has to
2 sacrifice to fight his or her university's cruel
3 policies is another reminder of how much more the
4 Department of Education needs to do.

5 MS. BOLGER: If the Campus SaVE Act
6 is to effect real change and make American
7 campuses safer, the Department of Education must
8 be proactive. Men, LGBTQ students,
9 undocumented survivors, and young people of
10 color are particularly unlikely to come forward
11 with their stories of violence.

12 Given this reality, the government
13 cannot rely on students to bring official
14 federal complaints. Instead, the Department of
15 Education must take the initiative to actively
16 monitor schools and investigate dangerous
17 environments.

18 The mainstream media is doing half
19 the job already, researching and highlighting
20 injustices across the country. But the
21 Department too rarely responds to documented
22 abuse with action.

23 You have read the horror stories

1 coming out of Amherst. Why haven't you done
2 anything yet?

3 MS. BRODKSY: Further, the
4 Department and its coordinated bodies must
5 deliver real sanctions to schools out of
6 compliance with the law. While the National
7 Institute of Justice estimates that 63 percent
8 of universities shirk their legal
9 responsibilities to address sexual violence,
10 and though the Department of Education has
11 investigated dozens of these institutions,
12 uncovering unambiguously illegal abuses, no
13 school has ever faced serious repercussions.

14 In 2012, at the end of an extensive
15 campus investigation, the Department's Office
16 of Civil Rights admitted to my co-complainants
17 and me that Yale had clearly been violating Title
18 IX for years. However, the OCR refused to risk
19 controversy by making an official finding of
20 non-compliance, denying federal funding, or
21 referring the case to the DOJ.

22 Over two years later, Yale is
23 finally facing sanctions through the

1 Department, a fine for violations of the Clery
2 Act. While \$165,000 is less than one student's
3 tuition, the fine, I hope, represents a new
4 spirit of enforcement within the Department.

5 Schools, like campus rapists, are
6 repeat offenders. Those who have the power to
7 stop their cruelties but do not are complicit in
8 the abuse.

9 MS. BOLGER: We ask the Department
10 to take the passage of the Campus SaVE Act as an
11 opportunity to enforce new and old civil rights
12 law alike with the necessary force and
13 precision. We ask you to be courageous, so we
14 can just be students.

15 As one Amherst alum wrote, "I went
16 to Amherst to go to school, not to be a crusader."

17 MS. BRODKSY: Thank you.

18 MS. BOLGER: Thank you.

19 MS. MAHAFFIE: Diane Rosenfeld.

20 (No response.)

21 Daniel Carter.

22 MR. CARTER: Good afternoon.

23 I certainly had two very impressive

1 heroes of mine to follow.

2 Thank you for the opportunity to
3 address you today. This is the third negotiated
4 rulemaking process that I have had the honor of
5 being a part of, focusing on campus safety
6 issues.

7 I helped to develop the original
8 Campus Sexual Assault Victims' Bill of Rights
9 back in 1991, when I was a student, and the Campus
10 Sexual Violence Elimination Act, as a
11 professional both at Security on Campus, now the
12 Clery Center for Security on Campus, and in my
13 current position as Director of 32 National
14 Campus Safety Initiative, a program of VTV
15 Family Outreach Foundation.

16 The VTV Family Outreach Foundation
17 is a national non-profit organization founded by
18 the families of the victims and survivors of the
19 April 16th, 2007 shooting tragedy at Virginia
20 Tech. And the VTV Family Outreach Foundation
21 and 32 NCSI was created for the purpose of
22 creating a living legacy to enhance campus
23 safety across the country.

1 And we were honored to be a part of
2 a vast coalition of experts that came together
3 to help develop and advocate for the passage of
4 the Campus Sexual Violence Elimination Act as
5 part of the Violence Against Women Act
6 reauthorization.

7 I don't really think I can say more
8 than what has already been said, but I do have
9 a few technical details that I would like to
10 address.

11 Really, the Campus SaVE Act, indeed,
12 was intended to bridge the gap between Title IX
13 and Clery, and the different implementation
14 options that exist within the Clery Act. And it
15 is also intended to provide a baseline for
16 institutions of higher education to help them
17 better respond and, most importantly, to prevent
18 sexual violence in our nation's college and
19 university campus communities.

20 I believe that, as we pursue the
21 regulatory process, there are certain
22 additional things that do need to be specified,
23 but I hope -- and I hope this will be something

1 that will be well-received by the
2 audience -- based on the comments I have heard
3 today, we certainly need community flexibility.
4 There is no one-size-fits-all.

5 There are certain things that should
6 be guaranteed to survivors of sexual violence;
7 for example, written notification of outcomes.
8 But prevention initiatives may vary vastly,
9 depending upon the type of institution, the type
10 of audience, and institutions are going to need
11 to have flexibility to fully embrace those
12 principles in their own community.

13 But there are certain things that
14 were left out of the statute, and I think largely
15 left to the Department to address. And this
16 includes defining certain critical terms. And
17 for reference -- and we can speak to this more
18 in detail as the process goes forward -- but the
19 original legislation did define these terms:
20 awareness programming; bystander intervention;
21 significantly, primary prevention.

22 The Campus SaVE Act is an
23 aspirational title to eliminate sexual

1 violence, and primary prevention is something
2 adopted from the public health sector, where you
3 try to eliminate the environment that is
4 conducive to the adverse consequences, where you
5 eliminate the tolerance for sexual violence to
6 begin, so that you don't have more victims; you
7 have less victims. You don't have more young
8 ladies like who just spoke before me have to go
9 through what they have gone through, as brave as
10 they are, and as honored as I am to know them and
11 have had the chance to work with them. You know,
12 it is a sad circumstance that that has had to be.

13 The definition of results of conduct
14 proceedings can largely be adapted from existing
15 FERPA guidelines, but I would hope that Clery
16 regulations would formally fold that in, so that
17 they are fully integrated and adapted into this
18 context.

19 Define risk reduction. And in
20 conjunction with existing Title IX guidelines,
21 define what it means to be prompt, fair, and
22 impartial, as well as to explain the overlap with
23 the burden of proof required for conduct cases,

1 which the Office for Civil Rights currently
2 defines to be the preponderance of the evidence
3 standard.

4 The Campus SaVE Act requires that
5 institutions disclose the standard used, and
6 there should be care taken to ensure that there
7 is consistency between the two interpretations.

8 I would also encourage the
9 Department to explore what is meant by written
10 notification in a world where there is an
11 electronic communication.

12 And I would also encourage the
13 Department of Education to include in their
14 negotiated rulemaking process the
15 anti-retaliation statement which is also a part
16 of the new amendments to the Clery Act. When the
17 original anti-retaliation statement was
18 included in 2008, there was no formal regulation
19 to implement it. There was also no regulation
20 implemented to address the new Memorandum of
21 Understanding requirement. And I would hope
22 that this might afford us an opportunity to
23 address both of those two.

1 And on behalf of all of us at VTV and
2 32 NCSI, I greatly appreciate this opportunity
3 again and look forward to working with the
4 Department and everyone in this room to help keep
5 our nation's campuses safe.

6 Thank you.

7 MS. MAHAFFIE: Thank you.

8 Diane Rosenfeld.

9 (No response.)

10 Okay, she is lost.

11 Bethany Little.

12 MS. LITTLE: My name is Bethany
13 Little, and I am a managing partner at the
14 non-profit organization America Achieves.

15 Results for America, a key
16 initiative of America Achieves, is committed to
17 ensuring that taxpayer dollars are
18 strategically invested in programs and
19 initiatives that yield their intended results.
20 As such, Results for America urges the
21 Department to move swiftly to promulgate an even
22 stronger gainful employment rule that will be
23 more effective in weeding out predatory

1 institutions of higher education to protect
2 students and taxpayers.

3 Prior to joining America Achieves,
4 I spent three years as the Chief Education
5 Counsel of the United States Senate Health,
6 Education, Labor, and Pensions Committee. In
7 this role, we undertook an investigation of the
8 for-profit college sector, resulting in
9 hundreds of pages of findings and documents that
10 are available online at harkin.senate.gov.

11 Perhaps more disturbing than any of
12 the cold facts that have been recounted today and
13 that can be read; there are the countless
14 students, veterans, faculty, and recruiters who
15 spoke to us of the outright fraud and abuse
16 perpetrated by predatory institutions.

17 When we launched the investigation,
18 we were told time and again that these stories
19 were the exception, the result of only a few bad
20 apples in the barrel. But it became evident
21 after tabulating millions of numbers and sorting
22 through millions of pages of documents that
23 included recruitment training manuals exhorting

1 employees to use the pain points of potential
2 students to get them to enroll, and pointing out
3 that mothers on welfare and victims of abuse are
4 particularly ripe targets for enrollment, was
5 that the core of this business model is rotten.

6 The financial markets love this
7 model because the federal largesse makes the
8 dollars bottomless and easily captured. There
9 are some institutions that may operate
10 differently, but, by 2009, at least 76 percent
11 of students attending for-profit colleges were
12 enrolled in a college owned by either a company
13 traded on a major stock exchange or a college
14 owned by a private equity firm.

15 So, why does that matter? Because
16 the fiduciary duty of these corporations is not
17 to the students or the taxpayers, but to the
18 stockholders. As a result, there is no reason
19 for them to shut down or improve a program that
20 ruins lives with debt, but no diploma, so long
21 as that program can continue to recruit new
22 students, relieve them of their Pell Grant,
23 student loans or GI benefits, and send them off

1 with debt but no diploma.

2 Congress has failed to create any
3 counterincentive to this drive for profit. It
4 is my understanding that some today have
5 suggested that Congress is the appropriate place
6 to handle this. You only hear that suggestion
7 from those who have millions of dollars to spend
8 on campaign contributions and lobbying to ensure
9 that nothing, in fact, happens in Congress.

10 The most intense, pervasive, and
11 manipulating lobbying I have seen in 20 years of
12 federal policy work was on this issue. And I
13 think that the expectation that Congress in this
14 particular congressional environment is going
15 to take this on in a meaningful way is laughable.

16 There is today almost no meaningful
17 check on a business model that victimizes
18 millions of Americans, absent a gainful
19 employment rule that finally pushed some
20 institutions to improve their practices or shut
21 down the worst programs, a rule that must be
22 designed to be stronger and tighter than before.

23 Another revelation of this Senate

1 investigation was the length that some companies
2 are going to manipulate cohort default rates and
3 90/10 calculations. These practices are
4 unconscionable and must be added to your agenda
5 for regulation.

6 I know that you will hear stories
7 from the other side as well, some likely told by
8 people who worked hard for the degree from a
9 for-profit college and who are rightly proud to
10 have earned it. But the point is that it is not
11 this Administration's job to decide which
12 stories are more compelling or even more
13 prevalent. It is the Department of Education's
14 responsibility to ensure that taxpayer dollars
15 and student debt are not accruing to programs
16 that do not meet the statutory requirement of
17 preparing students for gainful employment.

18 You have developed metrics to
19 measure that expectation, and specific changes
20 can be made to ensure that these metrics are more
21 viable in a new rule. You have the advantage
22 this time around of additional information
23 unearthed by the Senate investigation, the DOJ,

1 the CFPB, and myriad state attorneys general.

2 The program data yielded by the
3 short lived application of the rule offers one
4 of the most critical points. There were schools
5 miserably failing by wide margins, two of the
6 three tests, and yet, they were untouched in
7 their operation.

8 You should not offer a "nine strikes
9 before you are out" approach again and should
10 address extremely low performing programs
11 earlier, with interim steps to push program
12 improvement. Because, at the end of the day,
13 that is the point of the gainful employment rule,
14 to apply data to weed out or force improvement
15 for those programs that are consistently leaving
16 almost all who enroll unable to repay the debts
17 they incurred for a substandard education.
18 Those programs quite clearly are not preparing
19 students for gainful employment.

20 In the absence of the gainful
21 employment rule, more taxpayer dollars will be
22 spent without yielding any real benefit for
23 students or contributing to the development of

1 a skilled American workforce. And those few
2 improvements for students that have been made in
3 the past few years will likely slip away.

4 Thank you for the opportunity to
5 speak in support of protecting students and
6 taxpayers through regulations that must include
7 a stronger gainful employment rule and
8 protections from cohort default rate
9 manipulation and 90/10 manipulation.

10 Thank you.

11 MS. MAHAFFIE: We are going to take
12 a five-minute break, and we will come back at
13 3:18.

14 (Whereupon, the above-entitled
15 matter went off the record at 3:12 p.m. and
16 resumed at 3:24 p.m.)

17 MS. MAHAFFIE: Diane Rosenfeld.

18 MR. ROSENFELD: Is it on?

19 MS. MAHAFFIE: I think it is on.

20 MR. ROSENFELD: Is this thing on?

21 This is like one of my classes where
22 everybody sits in back and I make them all come
23 to the front, like "No, no, you're still going

1 to get called on back there."

2 (Laughter.)

3 There are plenty of seats in front
4 if anybody would like to come up. Higher grades
5 for those who sit in front.

6 (Laughter.)

7 Okay. You win.

8 Good afternoon.

9 I am Diane Rosenfeld. I am very
10 happy to be here and sorry for being a little bit
11 late. I actually got kicked out of a cab on the
12 way here, which was an interesting experience.
13 Otherwise, I actually love D.C. and was going to
14 volunteer my services to help with
15 implementation of this Act, but the next cab
16 driver was much nicer. So, I think he has
17 restored my faith.

18 But, on a more serious note, I am a
19 lecturer on law and the Director of the Gender
20 Violence Program at Harvard Law School. And for
21 the past six years, I have taught a special
22 seminar on Title IX that focuses explicitly on
23 campus sexual assault and violence elimination,

1 and it is the only such seminar in the country.

2 So, I have been at this for a long time.

3 I want to congratulate the
4 Department for its groundbreaking work to
5 promote the civil rights of all students through
6 this new Campus SaVE Act.

7 I have had the honor of working with
8 former Assistant Secretary Russlynn Ali over the
9 past few as she worked on her legal policy
10 development, and I also served as the senior
11 counsel to the Office of Violence Against Women
12 in the Clinton Administration.

13 So, I think it is fair to say I am
14 pretty familiar with these issues. I currently
15 provide legal policy advice to schools and to
16 students across the country.

17 I can say that this is a complex
18 problem with which I have dealt from inside the
19 government and outside government. And it is a
20 problem that has particular sensitivity around
21 all of its dimensions. So, it requires really,
22 really thoughtful approaches and innovation if
23 we are actually going to effectively stop sexual

1 violence on campus. And I firmly believe that
2 this new Act is our best hope and strongest tool
3 for making that happen.

4 The effectiveness of this new law
5 will depend upon its enforcement and thoughtful
6 implementation. Anticipating this, the Act
7 calls for the Secretary of the Department of
8 Education to seek counsel and guidance from both
9 the Department of Justice and the Department of
10 Health and Human Services. Each of these
11 agencies, in my opinion, is critical to the
12 successful effort to eliminate sexual violence
13 on campus.

14 Among the actions that schools need
15 to undertake immediately to prepare for
16 compliance by March 2014 is to perform due
17 diligence with their policies and procedures.
18 An effective response will have to be reality
19 based, meaning schools have to really look at the
20 problem, as it is no longer acceptable or
21 compliant with Title IX to try to bury your head
22 in the sand and pretend that the problem doesn't
23 exist at your school.

1 We must, instead, confront the
2 reality that one in five or one in four women will
3 be sexually assaulted during her time in school.
4 So, it is happening often on every campus. Most
5 of us think our campuses are unique, and we don't
6 confront the reality of that statistic. We
7 think it happens elsewhere to other schools, to
8 other people. It is happening at your school.
9 So, we need a really thoughtful response, and
10 this Act gives us a very clear roadmap about how
11 to achieve that.

12 All educational institutions
13 receiving federal funds should exercise this due
14 diligence to prevent sexual harassment, protect
15 its targets and victims, and punish its
16 perpetrators, including by promptly
17 investigating all reports, however informal,
18 and by providing effective remedies for all
19 resulting harms.

20 In conducting this due diligence,
21 schools should be mindful of pre-hostile
22 environments, school cultures that breed the
23 type of contempt for women that we see acted out

1 in cases such as Steubenville.

2 Schools play an enormously
3 important role in shaping campus culture and
4 must intervene affirmatively to teach gender
5 equality and sexual respect. Moreover, rules
6 should be instituted and clearly communicated
7 regarding post-assault retaliation.

8 The lack of school action to prevent
9 retaliation and gossiping among students has had
10 tragic consequences in cases such as Lizzy
11 Seeberg, who was assaulted by an athlete and
12 threatened by one of his teammates, and Audrie
13 Pott, who committed suicide in the wake of
14 multi-perpetrator sexual assault, otherwise
15 known as a gang rape. And I personally have been
16 seeing more and more and more of these fact
17 patterns cross my desk.

18 Schools should learn, moreover, how
19 to investigate cases using social media. As an
20 aside, we shouldn't have to rely on Anonymous to
21 get at social media to prove rape cases that we
22 should know how to investigate.

23 I think that schools currently seem

1 to miss critically important evidence in their
2 collections and their investigation when they
3 don't know what they are doing with social media.
4 But kids know how to investigate social media.
5 My students can do an investigation in one hour
6 and come up with things that could prove a case.
7 So, I want schools to know how to do this, to get
8 smart about what we don't know and what we need
9 to know.

10 The most promising practice, in my
11 opinion, will involve a top-down, bottom-up
12 approach. You need presidential leadership.
13 I have spoken to college presidents across the
14 country in groups and individually. You need a
15 really committed president who makes a statement
16 and means it and backs it up.

17 You need trained administrators who
18 know how to receive a case and who know what to
19 do with it, who know how to give resources, who
20 know how to do the administrative things that a
21 student will need in order to help her stay in
22 school, for example.

23 And you need to listen to the

1 students. The students know what is going on in
2 their culture. They know whether they are safe
3 or not.

4 We are all on the same page, I would
5 venture to say, on not wanting our students to
6 get harmed. Students are in school to receive
7 an education. We all want that to happen. We
8 all want to create an environment that is as safe
9 and healthy and thriving, promotive as possible.
10 We want our students to succeed. And
11 eliminating sexual harassment, eliminating
12 sexual violence is the best way to have that
13 happen.

14 So, schools educate. That is the
15 most important thing that schools do. And we
16 can use our role as educators to really stop
17 sexual violence through changing the culture and
18 really talking honestly, facing honestly and
19 plainly and clearly without the kind of blinders
20 what is going on in our sexual culture.

21 And I think that there is some
22 anxiety among schools right now concerning
23 compliance with the new Act, but I think that the

1 government can easily provide guidance to allay
2 the schools' concerns. Here is one way of
3 looking at the issue:

4 The three things, the three critical
5 components that make up an effective Title IX
6 policy are mandatory preventative education,
7 strong support services, and academic
8 accommodations for survivors, and prompt and
9 equitable adjudication for cases of sexual
10 misconduct.

11 And interestingly, these areas map
12 onto the three agencies who are charged with
13 implementation of the Act, and there is some
14 overlap between the agencies as well.

15 So, for mandatory preventative
16 education, that is the Department of Education
17 primarily. And they are the best suited to
18 provide guidance on education policies that
19 ensure equal access to educational
20 opportunities.

21 This was quite evident in the Dear
22 Colleague letter that Vice President Biden
23 announced to the world at the University of New

1 Hampshire in April of 2011. That was an
2 outstanding guidance to schools about what they
3 should do. It clarified a great deal.

4 And now, the Department of
5 Education, in conjunction with the Department of
6 Justice and HHS, should produce another guidance
7 on the implementation of this new Act.

8 Regarding support services for
9 survivors and academic accommodations, the
10 Department of Health and Human Services can be
11 especially helpful in teaching us about rape
12 trauma syndrome in an academic context. We know
13 about rape trauma syndrome, and there are lots
14 of studies about it, but there are not
15 correlative studies on how it affects a survivor
16 at school. It is really a different world, as
17 we in the academic world -- we have all been in
18 the academic world, but we know that there is a
19 time warp, first of all, because you live your
20 life in semesters.

21 And there is also the very serious
22 problem that, if a young woman has been assaulted
23 and she is in this closed, confined universe with

1 her perpetrator, then she is experiencing
2 re-trauma every time she sees him in the dining
3 hall or in a classroom or crossing the quad. So,
4 we have to be very mindful of that. That is the
5 kind of information that we can get from HHS.
6 That is where they can be extremely valuable;
7 also, in doing a public awareness campaign.

8 So, it is a little analogous to the
9 problem of having to salute to one's perpetrator
10 in the military context, as is currently being
11 discussed in other rooms in Washington right
12 now.

13 So, the time constraints in an
14 educational context are more intense because of
15 the semester, academic calendar, and the
16 responses by the school should be calibrated as
17 such, which brings us to prompt and equitable
18 adjudication.

19 Based on my experience, I would say
20 that this is where schools have the most
21 difficulty figuring out how to comply. And it
22 is also my observation that this is not brain
23 surgery. This is not rocket science. This is

1 really fairly simple.

2 And if you have a good, solid policy
3 that you have created with a large group of
4 people, like the top-down, bottom-up approach
5 that I was talking about, if you have a good
6 policy, you know the rules of the road, it is not
7 going to be so hard to implement. And some
8 schools are doing it already quite well.

9 The area is problematic for schools
10 because they often operate out of fear of
11 liability. Therefore, a sound investigation
12 and adjudication policy is in the best interest
13 of all schools. All claims should be
14 investigated promptly and taken as extremely
15 serious violations because they are.

16 The theory of "He said/she said"
17 should be replaced by "He said/they said," a term
18 developed by a colleague of mine, Tom Tremblay,
19 who was the Director of Public Safety for the
20 State of Vermont.

21 And there is lots of evidence that
22 exists to prove by a preponderance of the
23 evidence whether or not a sexual assault has

1 happened. And, remember -- and I will probably
2 say this several times, although I am almost
3 done -- this is a civil rights context. And
4 everybody who is concerned with this Act has to
5 take that as the starting point.

6 While the behavior might well also
7 constitute criminal violations, what we are
8 concerned with here is school-based behavior is
9 an educational context where you have a civil
10 right to equal access to educational
11 opportunities.

12 The Campus SaVE Act is the strongest
13 civil rights law in an educational context to
14 date. For this reason, it is essential that the
15 Department of Justice Civil Rights Division and
16 the Office for Civil Rights of the Department of
17 Education establish a clear, open channel of
18 communication to foster the most effective
19 enforcement policy.

20 And having worked at Justice, I can
21 say that that collaboration would present us
22 with the best chance of real enforcement of this
23 act, of true realization of civil rights on

1 campus. I see this collaboration as incredibly
2 critical.

3 The three Departments should
4 convene to produce a clear guidance to schools
5 on the implementation of the Act's provisions.
6 Just as schools need to let students know the
7 rules of the road on sexual misconduct, so, too,
8 should the government guide schools about the
9 rules and how to best implement them.

10 Likewise, the government should let
11 schools know what the consequences will be for
12 violating the civil rights of students by
13 tolerating, permitting, and failing to
14 eliminate a hostile environment.

15 In conclusion, I stand ready to
16 assist the Department in any way possible.
17 Along with my students, my law students in the
18 Gender Violence Program at Harvard, we have
19 great resources and a depth of knowledge that we
20 are very happy and ready to share with the
21 Department, should you request it. And I think
22 that we could be a valuable asset in moving
23 forward to make equal access to educational

1 opportunities a reality for all.

2 Thank you.

3 Okay. Do I take questions or
4 anything?

5 Thank you.

6 MS. MAHAFFIE: We are expecting two
7 other speakers who are not here yet. So, we are
8 going to break until they come. We will be here
9 until four o'clock. If anybody else is
10 interested in speaking, please let Amy know at
11 the front table.

12 Thank you.

13 (Whereupon, the above-entitled
14 matter went off the record at 3:39 p.m. and
15 resumed at 3:50 p.m.)

16 REP. DAVIS: Well, thank you very
17 much. Let me, first of all, thank the hearing
18 offices for giving us the opportunity to be here
19 and holding this until we were able to make it.

20 We always are a bit afraid whenever
21 we have something timed because generally it
22 doesn't work quite the way we timed it, and
23 especially if there are going to be some votes.

1 (Laughter.)

2 But I am delighted to be here this
3 afternoon. I am Representative Danny Davis
4 from the 7th District of Illinois, but I also
5 serve as Co-Chair of the Congressional Black
6 Caucus' Task Force on Education.

7 The PLUS Loan Program was
8 established to expand college access by
9 providing low-cost loans to graduate and
10 professional students and the parents of
11 undergraduate students. Unfortunately, the
12 2011 decision by the Department of Education to
13 reinterpret the definition of adverse credit has
14 resulted in a profound disproportionate impact
15 on Historically Black Colleges and Universities
16 and the African American students they educate
17 and graduate.

18 Without conducting an impact
19 analysis or seeking stakeholder comment, the
20 PLUS Loan changes denied this critical federal
21 aid to 14,616 HBCU students. In addition to the
22 personal hardship inflicted on these students
23 with suddenly attempting to find the dollars to

1 stay in school, this change resulted in revenue
2 losses of approximately \$5 million per HBCU.

3 We know that once the student leaves
4 college, he or she is very unlikely to return.
5 Indeed, the Department's own figures indicate
6 that only about 80 percent of students whose
7 families are denied PLUS Loans remain in school.

8 I am deeply troubled by the extreme
9 negative effects this decision is having on
10 low-income and minority students and
11 institutions. As HBCUs and Predominantly Black
12 Institutions prepare for the 2013-2014 academic
13 year, I and my colleagues in the Congressional
14 Black Caucus are profoundly concerned that the
15 current policy will continue to deny the college
16 dreams of thousands of students. Therefore,
17 the Congressional Black Caucus strongly
18 recommends the following:

19 That the Department review all PLUS
20 Loan applications for the current and upcoming
21 academic year while new eligibility criteria is
22 studied under the 2013 negotiated rulemaking
23 process.

1 That the Department consider fair
2 and flexible credit criteria for the PLUS Loans
3 under the negotiated rulemaking. The criteria
4 should not penalize families who have been
5 impacted by the recession and the housing
6 crisis.

7 In addition, the Department should
8 consider regulations that do not rely solely on
9 credit history to determine eligibility, but
10 take into consideration other factors, such as
11 current credit status, income, and employment.

12 In the absence of data that the
13 previous process for PLUS Loans was broken,
14 there should be no attempt to simply fix it. The
15 changes in the market included in the recession
16 argue for making it easier for parents who have
17 rebounded from the adversity and are now on
18 financially-sound, should-be-presumed
19 creditworthy.

20 The entire parent PLUS pipeline
21 prior to the shift in regulatory interpretation,
22 2013 to 2017, should have their loans evaluated
23 using the pre-2011 criteria. Regulations

1 should be promulgated to ensure our federal loan
2 programs expand access to higher education and
3 the goal of American adults attaining a two- or
4 four-year college education by 2020.

5 We realize that there is no
6 simplicity in trying to arrive at what we would
7 call an adequate fix for these students and for
8 these processes, but we also know that, without
9 some profound changes, changes that actually
10 result in the ability of these students to attend
11 the colleges and universities of their choice,
12 not only are the students going to be denied an
13 opportunity for higher education, but also the
14 institutions who are already hanging by threads
15 in many instances will be severely financially
16 impacted.

17 So, once again, we thank the hearing
18 offices for giving us the opportunity to be here.
19 We recognize that there are some tough decisions
20 and tough choices to make. But we believe, in
21 the end, there are solutions to be found, and
22 they will be found. And these individuals can,
23 in fact, continue to dream what for many has been

1 the impossible dream, and they will, in fact, be
2 able to experience the goodness and greatness
3 that this great country we call the United States
4 of America has to offer.

5 So, I thank you very much, and we
6 really appreciate the opportunity.

7 MS. MAHAFFIE: Thank you.

8 Congressman Richmond.

9 REP. RICHMOND: Well, first of all,
10 let me thank you for having us here as we have
11 this hearing.

12 In an attempt to not to repeat
13 everything that Congressman Davis just said,
14 then I will adopt all of his remarks as my own
15 remarks. So, everything he said, I will echo
16 that.

17 But I will take just a different
18 slant, and I know that the Department, through
19 this process, and many advocacy groups, we have
20 talked about four key stakeholders in this
21 process, the taxpayer, the student, the school,
22 and the parent. And I would like to focus-in on
23 those four things.

1 And I would start with the school.
2 We have to make sure that not only our HBCUs which
3 get an impact of about 28,000 students, but all
4 of our colleges -- and you are talking about
5 400,000 students that in the future could be
6 jeopardized. The fixed costs at universities
7 don't change much in terms of a fiscal plan and
8 all those things. So, to take a hit in terms of
9 students, and then to prepare, properly prepare,
10 and have strategic plans for universities, you
11 need some stability and you need to know what the
12 rules are going to be, and you need to be able
13 to adequately plan.

14 So, for our schools, both HBCUs and
15 non-HBCUs, we need to make sure that we have
16 something that is predictable, something that is
17 fair, and something that does not hurt them.

18 Second, if we go on to the student,
19 which I think is the most important part of this
20 equation and the most important factor should be
21 what is best for the student. And we all agree
22 that education is the best path out of poverty,
23 and having successful members participating in

1 the economy is a plus for everyone.

2 So, the goal should be to make sure
3 that we as a Department, we as a government, that
4 we are doing everything we can within our ability
5 to make sure that a student has the ability to
6 go to school.

7 And a lot of times we talk about, and
8 especially with this process, when a kid gets
9 into college and he makes the grades to
10 matriculate to the next level, but can't get
11 there because of funding, then that is a failure
12 on us and that is a failure on government, in my
13 opinion, because he has done what we have asked
14 him to do, and finances should not be a reason
15 why an otherwise matriculating student should
16 not be able to matriculate to the next level.

17 And we have to remember that it is
18 more than just numbers and facts and data; that
19 at the end of the day, we have to remember that
20 it is still about purpose and fulfilling a dream
21 and making sure that you contribute to society;
22 make sure that you change the world. And you
23 can't do that without a proper education.

1 The third thing is parents, and I
2 know a lot of people in here are worried about
3 the parents, and people come from both sides.
4 But I think we are all concerned on the financial
5 burden that we are putting on parents. And I
6 will just give you my two cents on that from a
7 person whose mother is from the poorest place in
8 the country, who did take out PLUS Loans so that
9 both of her sons could go to Morehouse College
10 at the same time. And we are worrying about
11 their ability to pay it back, their ability to
12 not go into bankruptcy.

13 But I will tell you that my mother
14 would have went into bankruptcy 10 times if it
15 meant both of her sons would graduate from
16 Morehouse because that is a generational change.
17 That changed our family for years to come.

18 So, I know oftentimes, especially
19 for people who may not have all the finances, us
20 educated people like to think for them. But, in
21 this case, I would say that we can't always think
22 for other people. So, the fact that some
23 parents who may be on the borderline of being

1 able to afford it or not afford it, the decision
2 should be up to them because the only thing that
3 I know that was important to my mother and to my
4 grandparents was that both my brother and I
5 graduate from college. Because she knew that,
6 if we graduated from college, no matter what
7 financial difficulty she was in, she would be
8 okay because her children were going to graduate
9 from a great institution, get jobs, and be able
10 to take care of her.

11 So, I am not saying that we shouldn't
12 at all factor in the debt that parents are
13 saddled with, but we shouldn't insert our
14 judgment for theirs, once they make the decision
15 that this is a priority.

16 And with that, as Congressman Davis
17 talked about, the things we look at in
18 determining whether someone should get a loan,
19 I would also say that we should look at, in terms
20 of credit history and all of those things, we
21 should look at their credit history in some
22 specific ways. So that if they have
23 demonstrated making education loans a priority,

1 and they may be late on other bills or other
2 things, but they paid the high school tuition and
3 they didn't default on that -- so, if a person
4 has a demonstrated ability of prioritizing
5 spending on education or on their mortgage, I
6 think that should bear more weight because
7 nowadays some high school tuitions are close to
8 college tuitions, especially in the HBCU area.
9 So, if a parent has a track record of paying that
10 tuition at a high school, then I think that
11 should be used as the No. 1 indicator that they
12 value education; they put it as a priority, and
13 they will make their PLUS Loans, too.

14 And then, the last factor is the
15 taxpayer. This is where it is going to take a
16 lot of different opinions, but I will just tell
17 you, from being in a state legislature for 11
18 years, Chair of Judiciary, and very involved in
19 criminal justice reform, that we can take a
20 chance on a student and some parents right now.
21 And you can take a chance on them. We can assume
22 any arbitrary you want, and this is purely an
23 arbitrary number, but you could take a chance on

1 them for \$30,000, and we may lose. But if we
2 don't take a chance on them, it is \$30,000 a year
3 to incarcerate someone.

4 So, when we start talking about the
5 numbers and the fact that we will have some
6 people default, and we will, the question
7 becomes what is a better investment. Do we try
8 to stop it on the front end? Do we try to produce
9 a great taxpaying citizen with a bright future
10 who contributes to society and maybe find that
11 cure to cancer? Or do we take the very cautious
12 approach, hold our resources, and pretty much
13 push someone into other decisions and other
14 challenges?

15 And not all people will go to
16 college. Some will be very successful without
17 going to college.

18 But we should err on the side of
19 making sure we are as inclusive as possible
20 because, for every default, there is going to be
21 more and more costs that we pay other places.
22 So, if we are going to start comparing, let's
23 make sure we look at a global picture to make sure

1 that, as a Department, as a government, we are
2 doing everything we can to give everybody every
3 opportunity to succeed.

4 So, once again, I will adopt the
5 recommendations made by both Congresswoman
6 Corrine Brown and Danny Davis.

7 And thank you again for allowing me
8 to testify.

9 MS. MAHAFFIE: This concludes our
10 hearing.

11 Thank you very much for coming.

12 (Whereupon, the above-entitled
13 matter went at 4:05 p.m.)
14
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16