UNITED STATES DEPARTMENT OF EDUCATION

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PUBLIC HEARING ON INTENT TO ESTABLISH

NEGOTIATED RULEMAKING COMMITTEES

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MONDAY,

JULY 10, 2017

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The public hearing met in the Barnard Auditorium, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC, at 9:00 a.m., Kathleen Smith and Annmarie Weisman, presiding.

PRESENT:

KATHLEEN SMITH, Office of Postsecondary Education

ANNMARIE WEISMAN, Office of Postsecondary

Education

AMANDA ANDRADE, Office of General Counsel

CAROLINE HONG, Office of General Counsel

ALSO PRESENT:

JEFF ARTHUR, ECPI University

DAVID BAIME, American Association of Community

Colleges

CHELSEA COATNEY, Center for American Progress

MEGAN COVAL, National Association for Student

Financial Aid Administrators

JOANNA DARCUS, National Consumer Law Center

JENNIFER DIAMOND, Maryland Consumer Rights

Coalition

HEATHER DONNITHORNE, Blue Star Families Executive

Team

JOHN GALGANO, The American Musical and Dramatic

Academy (AMDA) in New York, AMDA College and

Conservatory of the Performing Arts in

Los Angeles

KARLA GILBRIDE, Public Justice, P.C.

ALEXIS GOLDSTEIN, Americans for Financial Reform

ANNE GROSS, National Association of College and

University Business Officers

TARIQ HABASH, The Century Foundation

DAVID HALPERIN, Lawyer

CHARLOTTE HANCOCK, Higher Ed, Not Debt

ANTHONY HARDIE, Veterans for Common Sense

NEAL HELLER, Hollywood Institute of Beauty

Careers; American Association of

Cosmetology Schools

ALEGRA HOWARD, Consumer Action

WILLIAM HUBBARD, Student Veterans of America

MARC JEROME, Monroe College

JOHN KAMIN, The American Legion

BETHANY KEIRANS, Vietnam Veterans of America

LIZ KING, The Leadership Conference on Civil and

Human Rights

CHARLES LONG, Pittsburgh Career Institute

BETSY MAYOTTE, American Student Assistance

S. PAUL MAZZA, III, South Hills School of

Business & Technology

BEN MILLER, American Progress

CHARLES MODICA, St. George's University

JULIE MURRAY, Public Citizen Litigation Group

BARMAK NASSIRIAN, American Association of State

Colleges and Universities

WALTER OCHINKO, Veterans Education Success

TIMOTHY POWERS, National Association of

Independent Colleges and Universities

GARY RATNER, The Ratner Companies

ASHLEY REICH, Liberty University

VICTORIA ROYTENBERG, Legal Services Center of

Harvard Law School

ADRIENNE SCOTT, YTI Career Institute

REID SETZER, Young Invincibles

YAEL SHAVIT, Office of the Massachusetts

Attorney General

AARON SHENCK, PAPSA

CHRISTIAN SMITH, Center for American Progress

CHERYL SMITH, United Negro College Fund

LISA SODEIKA, ADTLEM Global Education

DONNA STELLING-GURNETT, Association of

Proprietary Colleges

BHAVNA TAILOR, Eastwick College and Hohokus

School of Trade and Technical Sciences

MARK TAKANO, U.S. Representative, California

41st District

MAGGIE THOMPSON, Generation Progress

KEVIN THOMPSON, Veteran

JOHNSON TYLER, Brooklyn Legal Services

DONNA WAITE, Paul Mitchell The School Franchise

Association

CHRISTOPHER WALCK, John Paul Mitchell Systems

JENNIFER WANG, The Institute for College Access

& Success

RANDI WEINGARTEN, American Federation of Teachers

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

9:07 a.m.

MS. SMITH: Good morning, and thank you for being here. My name is Kathleen Smith, and I am Acting Assistant Secretary for the Office of Postsecondary Education. I am pleased to welcome you to this public hearing. I also am joined at this table by two other department officials, Annmarie Weisman from the Office of Postsecondary Education, and Caroline Hong from the Office of General Counsel.

Our representative from OGC this afternoon will be Amanda Andrade. This is the first of two public hearings that we are convening to gather input regarding the regulations that govern both borrower defense to repayment and the metrics to gauge success for gainful employment programs.

Increasing access to and affordability of higher education is a top priority for this administration, as is developing fair, effective, and improved regulations to protect individual borrowers from fraud, ensure accountability across institutions of higher education, and to protect taxpayers. Secretary DeVos is committed to ensuring that institutions that receive federal funding are serving their students well. Moreover, she appreciates the traditional path to postsecondary education is not the only option for meaningful educational opportunities, and that students should have access to strong trade vocational programs at a variety of types of institutions.

The secretary has made clear that her first priority is to protect students, and while she firmly believes that fraud is simply unacceptable, she also recognizes that last year's borrower defense rulemaking efforts missed an opportunity, in our opinion, to get it right. The result is a bit of a muddled process that is somewhat unfair to students and schools and puts taxpayers on the hook for significant costs.

Therefore, it is time to take a step back and make sure that these rules achieve their purpose, helping harmed students. It is the Department's aim, and this administration's commitment, to protect students from predatory practices, while also providing clear, fair, and balanced rules for colleges and universities to follow. Thus, we approach this hearing and our upcoming negotiated rulemaking with a commitment to ensuring every student has access to an education that will put them on a solid footing for success as they define it, be it further education, a career, or entrepreneurship, and holding schools accountable for practices that undercut students and taxpayers.

We anticipate that the Borrower Defense Negotiated Rulemaking Committee will begin its negotiations in November of 2017, and the Gainful Employment Negotiating Committee will begin its negotiations in December of 2017. Federal Register notices seeking nominations for negotiators will be out before those dates. So again, we thank you for dedicating your time and expertise to this very important process, and I appreciate your willingness to share your perspectives.

As to the logistics for this hearing and this time, many of you have already signed up for times to speak, and Annmarie will be calling you up according to the times you have registered for. We have some time slots for today, so if you have not signed up and would like to speak, please see our ED staff out at the front desk to sign up for a time. Speakers are asked to limit their remarks to five minutes for this initial round. If you get to the end of your five minutes, Annmarie will ask you to wrap up, and we ask you to do so within 20 seconds of her notice. If there's time available at the end and anybody who wants to speak has spoken, we will gladly asked people to come up for a second round, again, if there's time.

Please note that this hearing is being transcribed, and the transcription will be posted to our website in the next few weeks. This is a public hearing. We have a lot of people with cell phones and cameras and recording devices. You may, in fact, be recorded, so you just need to be aware of that. We welcome your written comments, as well.

If you have comments here today that you would like to submit, you can give them to me at the end of the day, or you can submit them to our staff out front. You can also post them on regulations.gov through July 12th. We do have three scheduled breaks today, one in the morning, from 10:30 to 10:40, lunch from 12:00 to 1:00, and a break this afternoon from 2:30 to 2:40. If we get to a period of time and there aren't speakers signed up, those breaks could be extended. We do ask that you silence your cell phones while you're in this room. You can use your cell phones out in the lobby. When you're called to speak, please come up, give your name, and if you're representing an organization, what organization you're representing. We do look forward to your comments. Again, thank you for your time, and we look forward to an interesting morning. Thank you.

MS. WEISMAN: Good morning. Our first speaker is Jennifer Wang.

MS. WANG: Good morning. I'm Jennifer Wang, with the Institute for College Access and Success, also known as TICAS. We strongly oppose the delay, dismantling, or weakening of the gainful employment rule or the borrower defense rule.

Students, veterans and taxpayers have waited far too long already for these critical protections from unmanageable student debt, sudden school closures, and waste, fraud, and abuse in higher education. They cannot afford a pause in the Education Department's progress against waste, fraud, and abuse. Here are just some examples of the scores of failing programs with abysmal outcomes uncovered by the gainful employment rule.

The Art Institute of Fort Lauderdale's associate's degree program in video production charges $44,000 in tuition and fees, despite producing outcomes like a 17 percent on‑time completion rate, a 25 percent job placement rate, median graduate earnings of only $14,000, less than the federal minimum wage working full time, and median debt of $29,000.

The McCann School of Business and Technology associate's degree in medical assisting, in Hazleton, Pennsylvania, has a 7 percent on‑time completion rate, a 46 percent job placement rate, and its graduates typically earn only $20,000, less than the average earnings of a high school graduate.

Graduates from Florida Technical College associate's degree in medical assisting, in Orlando, earn only $14,500 a year, less than the federal minimum wage working full time, and owe over $17,000 in student loan debt. Students deserve to be proactively warned that these programs failed government standards, and the programs will lose funding next year if they do not improve. It is the Department's job to ensure that taxpayers do not continue to subsidize failing programs based on the next round of rates.

It is also the Department's job to ensure that schools are held accountable for ensuring that this information actually makes it to the hands of students and borrowers. However, its latest shameful action delaying the rule could mean most prospective students would never know about these warnings before they enroll.

That is unconscionable, given the outcomes at failing programs. Last month, a federal court upheld the gainful employment rule for the fourth time. The judge deliberately limited his order so as to avoid upending the entire GE regulatory scheme.

Yet, the Department is now citing this extremely narrow court ruling as a pretext to upend the entire regulation. But the evidence is clear. Delaying or weakening the gainful employment rule will lead to a new race to the bottom, as unscrupulous schools compete to enroll as many students as possible, without regard to the quality of the training, the students' preparation, or job prospects. According to the CBO, dismantling the rule would also cost the government a lot of money, to the tune of $1.3 billion over the next ten years. The borrower defense regulation was just finalized in November 2016.

There is simply no justification for revisiting it. Rather than wasting government resources on a new negotiated rulemaking process, the Department should use its limited resources to immediately implement the rule, including the provisions on forced arbitration and class action waivers. We urge the Department to immediately act on the tens of thousands of borrower defense claims pending under the 1995 borrower defense regulation.

The Department has, in its possession, evidence that students were defrauded at many schools. We are deeply disturbed that the Department has not approved a single new borrower defense claim since January 20th. Forty‑seven attorneys general, Republicans and Democrats, recently contacted more than 100,000 former Corinthian students eligible for discharges by attestation, which has likely generated a significant increase in claims. The Department has both a moral and a legal obligation to promptly review these applications and grant relief to defrauded students. Thank you.

MS. WEISMAN: Our next speaker is Victoria Roytenberg.

MS. ROYTENBERG: Good morning. My name is Victoria Roytenberg, and I'm a staff attorney with the Project on Predatory Student Lending at the Legal Services Center at Harvard Law School. The project represents low‑income student borrowers who've been harmed by predatory for‑profit schools.

Our clients come to us with crushing student loan debt from schools that defrauded them. As the Department is well aware, these schools enroll students by using deceptive advertising and unrelenting recruiting, and then try to silence students with Draconian contracts, including forced arbitration clauses. Every single day, we hear from borrowers from all across the country about their experiences at for‑profit colleges. Our clients were promised jobs in their fields and high salaries that never materialized. As a result of these unfulfilled promises made by these schools, our clients can't pay their debt. Subsequently, they default on their loans and experience coercive collection in their wages and tax returns. Our clients want to go back to school, but can't afford to because they've used up all of their federal student aid.

Our clients have ruined credit scores that, among other things, foreclose job opportunities. Our clients experience stress, anxiety, and depression as a result of all of this. In short, our clients' experiences at for‑profit colleges have caused them to suffer in every single aspect of their lives. In light of this, I urge the Department to do two things.

First, any new rule must include the ban on forced arbitration clauses and class action waivers that were included the regulations that were set to take effect July 1st. These provisions stop borrowers from bringing their claims in court and force them into secretive proceedings that don't permit discovery or appellate review. As a result, evidence from one arbitration that could be relevant to law enforcement and other students is kept confidential and hidden. Class action waivers prohibit borrowers from bringing claims together, denying them the efficiencies and access to representation that class actions typically provide.

Faced with the burden and expense of raising identical claims individually and of finding representation for a lawsuit to be prosecuted in a secret forum, few borrowers can pursue their claims against schools at all.

The new regulations enabled students to seek relief in court for harm caused by the for‑profit college industry and, in doing so, facilitated better oversight by the Department and for public enforcement. Second, the Department must grant relief right away to far too many borrowers who've been waiting for far too long.

Borrowers are entitled to a remedy for the crushing debt they hold as a result of attending schools that lied to them and defrauded them, and they need that remedy now. That remedy exists already in the higher education act and in existing Department of Education regulations that were promulgated in the mid‑1990s. The regulations that were set to go into effect on July 1st didn't create a new right. During this new round of rulemaking, the Department still has a legal obligation to grant relief to tens of thousands of borrowers who've been waiting. Over and over again, we have seen irrefutable evidence that schools have been defrauding borrowers.

Yet, the Department continues to collect on millions of loans induced by fraud and to delay granting relief, relief to borrowers who have been waiting years. The project currently represents hundreds of thousands of former students who attended ITT Tech, a national for‑profit chain that had 140 campuses in 38 states and online, that filed bankruptcy last year.

ITT had been sued by multiple federal enforcement agencies and state attorneys general, all of whom investigated ITT and identified numerous violations of the law, including that ITT misled students about loans, accreditation status, and job placement rates, used deceptive and high‑pressure tactics to get students to sign up, and had unfair, deceptive, and unconscionable terms in their enrollment agreements. The U.S. Senate found that ITT trained recruiters to use a pain funnel, asking potential students to identify the pain in their life and presenting ITT enrollment as a solution to it. The Senate investigation also found that ITT manipulated its low retention rates and high default rates, created fake scholarships, and preyed on veterans and service members to stay eligible for federal funding.

These are not mere allegations. These are findings based on federal and state investigations. Yet, thousands of borrowers continue to have their lives destroyed by bogus debt, including their wages garnished and their tax returns seized.

Only a tiny percentage of the thousands of ITT borrowers who have applied to the Department for loan cancellation based on their well‑documented defenses have even had their claims addressed. Students of ITT are not alone. ITT is just one in a long list of companies whose fraud and harm to students is well documented. The Department recently told members of Congress that there are over 70,000 pending applications. For many of those applicants, and many others who have not applied and, nevertheless, face down harmful and fraudulent debt ‑‑

MS. WEISMAN: Time.

MS. ROYTENBERG: ‑‑ the Department cannot possibly need more evidence than it has, and now is the time to grant relief. Thank you.

MS. WEISMAN: Ben Miller.

MR. MILLER: Good morning. My name is Ben Miller. I'm from the Center for American Progress. To keep my time short, I would just like to quickly make four points about the gainful employment regulation. First, the Department of Education has a legal requirement to continue enforcing the regulations on its books until the rules are rewritten and take effect.

Gainful employment became effective on July 1, 2015, and remains in effect until the effective date of any regulation that replaces it. It's been upheld in court several times, and that means the Department of Education must keep taking actions that are required for it to do under the rule. That means doing things like generating completer lists to be given to schools, sending data over to the Social Security Administration to obtain earnings information, and publishing debt to earnings ratios. Failure to faithfully follow the requirements in the regulation while the Department is in the process of discussing the rule again would raise serious questions about whether or not the Department is negotiating in good faith.

Second, the Department of Education has a legal obligation to ensure that the regulatory process is informed by the highest quality data available. This is particularly important for fulfilling obligations to engage in public consultation. Commenters must be able to analyze and respond to data on which the Department may ultimately rely to make various decisions.

The validity of any rule will be called into question if commenters cannot rely upon data already within the Department's possession or information it could obtain with reasonable effort. It would also raise questions about whether the Department fulfilled its obligations under the Data Quality Act. To be clear, this means the Department should be publishing debt to earnings data for the multiple additional years of students who completed gainful employment programs that the Department collected last year. It should also continue to collect and publish data for newer cohorts, to understand how circumstances have changed since the first data's publication.

Finally, it should also include repayment rate data and other elements currently listed for potential inclusion on the disclosure form. Third, developments since the last rulemaking show that circumstances still demand a strong rule. Gainful employment discourages the low quality programs that have closed to not come back, while ones with good results have nothing to fear, but problems remain.

There are still hundreds of programs with tens of thousands of graduates that leave graduates with unaffordable levels of debt compared to their income. Finally, transparency is no replacement for accountability. Simply disclosing information late in the application process is insufficient to protect students and taxpayers. Choice dynamics and higher education are ill understood and rely on a host of factors, including geography and marketing, that, cannot be solved with just transparency. Moreover, the taxpayer rightly gets no say in individual choices about where a student takes their federal aid. Therefore, taxpayers need to know that their money will not be used at low‑value programs that produce overly indebted graduates who are unlikely to repay their loans. Thank you.

MS. WEISMAN: Reid Setzer.

MR. SETZER: Good morning. My name is Reid Setzer, and I am the government affairs director at Young Invincibles, a national non‑partisan organization dedicated to expanding economic opportunity for young people and amplifying the voices of our generation in the political process.

Young Invincibles has advocated for students and consumers since our founding, and we were involved in the public comment and rulemaking processes for both the borrower defense and gainful employment rules. These opportunities were critical to us in our mission because too many young people were being taken advantage of by predatory, poor performing, for‑profit schools that weren't being held accountable. Because of the progress we have made in curbing those abuses, we strongly oppose the delay, weakening, or elimination of the borrower defense and gainful employment rules.

Before taking action, the Department of Education amassed a strong pool of evidence, indicating that many for‑profit colleges were dubiously profiting off of federal student aid, without providing quality educational programs that advanced graduates' career opportunities.

For example, in 2012, for‑profit education companies were found to enroll roughly 10 percent of students nationwide, but despite this, they received 25 percent of Pell grants and student Stafford loan dollars, and accounted for 47 percent of all federal student loan defaults.

In 2009, students who earned Bachelor’s degrees at for‑profit colleges had, on average, roughly four times the debt than students who graduated from public colleges and nearly double the amount of debt of private and non‑profit graduates. In 2014, the Department of Education reported that 72 percent of for‑profit college graduates earn less than those with just a high school diploma. Despite this grim picture, over the past few years, we've seen positive movement within the for‑profit sector to improve the quality of the for‑profit college market, spurred, in part, by the Department promulgating the gainful employment rule.

The rule has prompted voluntary improvements. Out of the over 500 career education programs flagged under the first year of applying the rule, over 300 have already been voluntarily shut down by the institution offering them. Many failing programs were at schools we already know were deceiving students and have closed, like ITT Tech and Westwood College, sparing untold numbers of students from burning their limited aid on worthless credentials.

Additionally, the rule has not had the catastrophic impact predicted by the for‑profit industry. Approximately 75 percent of all programs pass the debt‑to‑earnings ratios prescribed by the rule, and around 90 percent of colleges ‑‑ public, private and for‑profit ‑‑with career education programs had no failing programs at all, including proprietary chains, like Strayer University, Capella University, and several others. While the rule has had positive effects on the for‑profit higher education market, it is also important to know the majority of programs subject to the gainful employment rule are at public and private non‑profit institutions.

In fact, career education programs from Harvard and Johns Hopkins also failed the standards outlined by the rule, indicating that high‑debt programs with limited earning potential will be monitored regardless of sector.

While these developments are promising, there are still several schools operating various programs that fail the first round of the rule and are saddling students with debt that is more than double the average amount of annual wages earned by participants in that specific program.

The accountability measures within the rule must remain in place to protect students and taxpayers from ineffective and predatory programs operating in the market and prompt more voluntary, positive responses, like those we've seen so far. Equally key to supplementing the protections granted students and taxpayers by the gainful employment rule is the more recently finalized borrower defense rule. The borrower defense rule creates clear processes and strengthens protections for students who have been misled and are looking to get back on track towards their goal of obtaining higher education.

By delaying enforcement and opening a negotiated rulemaking to change the rule, the Department allows schools to continue subjecting defrauded students to mandatory arbitration clauses and a more opaque application process, both of which burden the exercise of their statutory rights.

The delay also hinders the ability of the Department to hold accountable schools that misrepresent key aspects of their educational programs. Delaying the rule will also eliminate notices given to students attending or considering attending schools that have been accused of illegal behavior by various government agencies. The need to enforce the borrower defense rule can also be seen in the slow discharge process that has led to tens of thousands of borrowers waiting anxiously as promises to discharge their debt remain unfulfilled, and applications that have been open for years go unresolved. The Department should be putting its weight and energy behind granting individual discharge applications and issuing group discharges wherever justified, not embarking on another set of negotiated rulemakings.

Over 50 organizations working on behalf of students, consumers, veterans, active service members, faculty and staff, civil rights, and college access all support the rules, as well as 20 state attorneys general, and dozens of members of Congress. Furthermore, 78 percent of Americans say that they support loan relief for borrowers whose schools provided deceptive information about their programs or outcomes.

These rules, after years of development and careful consideration by Department officials and stakeholders, should be given the chance to be fully implemented. The Department should end the negotiated rulemaking process they have begun and focus on protecting people, not predatory colleges and failing programs. Thank you.

MS. WEISMAN: Joanna K. Darcus.

MS. DARCUS: Good morning. My name is Joanna Darcus. I'm an attorney at the National Consumer Law Center. Today, I speak on behalf of our low‑income clients in support of strong borrower defense and gainful employment rules. We condemn the Department's decision to delay both rules.

Together, these rules provide critical protections to students and student loan borrowers who were ensnared by deceptive practices and false promises. These rules also serve to protect the schools that do right by students, providing a high‑quality education with the federal tax dollars they receive. Unfortunately, we haven't had a chance to see just what a difference strong rules can make in this sphere.

Stalling these rules disproportionately harms certain groups of students and student loan borrowers. Many predatory, for‑profit schools target first‑generation students, students of color, veterans, and other non‑traditional students. These groups represent a large share of those who stand to benefit from effective enforcement of the borrower defense and gainful employment rules. They deserve better. Predatory for‑profit schools targeted and ripped off our clients. Our clients are not unique. We work closely with thousands of civil, legal aid, government and private attorneys whose clients are similarly situated.

Students and loan borrowers tend to seek out attorneys when their situations feel dire. Often, they believe they have no recourse. They've done everything they could do on their own. With hopes dashed, time wasted, and unaware of further options for relief, they come to us in their distress. Saddled with debt they cannot afford to repay, many student loan borrowers have now experienced default and the debt collection activity that comes along with it.

Private debt collection contractors make money, while student loan borrowers struggle with wage garnishment and offsets of their tax refunds and Social Security benefits. Those who apply for borrower defense relief may receive respite in the form of stop collections or forbearances, but those are not permanent resolutions. Those who are in default continue to face onerous consequences that includes negative credit reporting, which can impede their ability to obtain housing, or even employment in some fields. The gainful employment regulations were created to ensure that more students do not find themselves in the same predicament as our clients.

The Higher Education Act requires career education programs to prepare students for gainful employment in a recognized occupation. Early reports suggest that the gainful employment regulations are working well. Yet, instead of fully implementing and enforcing the gainful employment rules, the Department of Education has chosen to focus its attention on rewriting them.

The Department does a disservice to students and taxpayers when it allows programs to continue to receive federal aid dollars, even when those programs cannot demonstrate that their graduates land well‑paying jobs that set them up to repay the debt they incurred to the federal government. The Department has taken the same delaying approach with the borrower defense rules. Students who were defrauded or left high and dry when their schools broke their promises have had the right to raise defenses to repayment of student loans for decades, but for years, the Department never saw fit to give them a process. As attorneys who represent individual student loan borrowers, we know that the absence of a process is often tantamount to denial of a right.

Our clients, and tens of thousands like them, are still waiting for the Department to review their borrower defense applications or grant relief and actually discharge their loans. This state of affairs is neither sustainable, nor acceptable. Students deserve relief, and they've waited too long for a process.

The Department should review claims and provide relief now because too many schools strip students of the opportunity to take fraud and deception claims to court. They force students into secret arbitration proceedings and prevent students with similar concerns from pursuing their claims together in class action proceedings. Lawsuits create public records that can assist law enforcement and regulatory agencies when they're investigating school practices. Delaying the borrower defense regulations will put student rights to go to court on hold. Students need their day in court now. The borrower defense regulations also provide important updates to other statutory discharges. For example, closed school discharges are available to many students, yet historically, only a tiny fraction of eligible students obtain that relief.

The provisions that make closed school discharges automatic after three years ensure that borrowers who are entitled to that relief actually receive it. The regulations also provide long overdue updates to the criteria used to discharge loans when schools falsely certify their students' ability to benefit from their programs of study.

MS. WEISMAN: Time.

MS. DARCUS: The borrower defense and gainful employment regulations offer students and borrowers both prevention and a cure for the predatory practices that some schools employ. Thank you for this opportunity to speak on behalf of strong borrower defense and gainful employment regulations.

MS. DARCUS: David Halperin.

MR. HALPERIN: Good morning, and thank you. I'm David Halperin. I'm a self‑employed lawyer. For decades, the U.S. government has failed to adequately address an epidemic of waste, fraud, and abuse by for‑profit colleges using taxpayer dollars.

There are good schools, great teachers, and outstanding students in for‑profit higher education, but there are many bad, predatory companies, big and small, and the Department of Education's failures to establish and enforce strong rules has meant that those bad companies are not compelled to stop misbehaving.

It's meant a race to the bottom. The more colleges abuse students, the more they commit fraud, the more money they make. This disgraceful behavior has been documented by the Senate Health Committee and numerous media investigations.

I have spoken with hundreds of students, staff, faculty, and executives who have described broad patterns of abuses. There have been, in recent years, scores of law enforcement investigations and actions against for‑profit schools. Demand from owners for quick profits has led to relentless pressure to sign up as many students as possible, regardless of whether the program would help them; to charge astronomical tuition, often ten times the price of community college, and yet spend very little on instruction; to give false information to the Department and to students about accreditation, job placement, starting salaries; to use bait and switch lead generation tactics and high‑pressure sales pitches; to fake students' high school diplomas and financial aid status.

A librarian at Everest College called me, heartbroken because the school admitted a student who was severely mentally disabled, could barely read. He wanted to be a police officer, but that couldn't happen. Everest enrolled him in its criminal justice program anyway and took his money.

Its owner, Corinthian Colleges, was, at the time, getting $1.4 billion a year of our tax money. A Florida mom, named Sara Pierce, was misled by a Kaplan recruiter into signing up for an online nutrition science program that she learned, way too late, lacked the accreditation to get her the job that she sought. Tiffany Nesbitt, and other dental assistant students at a Kaplan program in Charlotte, had the same complaint, leading to an attorney general probe and a shutdown of the program. Mike DiGiacomo, an Army veteran who wanted to design video games, was misled by not one, but two big chains, EDMC and Career Education Corporation, and left with worthless credits and $90,000 of debt.

There's been bad behavior, also, at ITT, DeVry, Globe, Vatterott, Bridgepoint, and many others. The University of Phoenix reported a 4 percent graduation rate in its online division. The company was getting $2 billion a year from tax payers. The result, hundreds of thousands of Americans with their financial futures ruined.

Some came to the last rulemaking to tell how they'd been deceived and left with huge debt. The hardest hit were our troops and veterans, and then single moms, people of color, and older Americans, and the abuses, contrary to what the industry wants you to believe, are still widespread. The problem has been made worse because for‑profit colleges impose forced arbitration clauses that keep bad practices concealed and unpunished, and because there's been almost no debt relief for students who were defrauded by colleges that they believed had the Department's seal of approval. The previous administration had started getting a handle on the problem. It canceled recognition of a weak accreditor, ACICS. It rejected the conversion to non‑profit status of a school that continued to enrich the prior owner, Carl Barney.

It stepped up enforcement against abuses. After extensive rulemaking, it established the gainful employment and borrower defense rules. These are rules that would save taxpayers billions and help students by channeling federal aid towards those programs and schools that are actually helping them train for careers.

Now, you suspended these rules, which is unlawful, and you propose to throw them away, potentially. Don't do that. It sends the wrong message. It tells the scam artists, from the strip mall to Wall Street, that they're back in business. It tells America you're standing with predatory companies and against hardworking people seeking better lives. Cancel this rulemaking process. Focus, instead, on enforcing these common sense rules to protect students and protect taxpayers.

MS. WEISMAN: Julie Murray.

MS. MURRAY: Good morning. I'm Julie Murray, an attorney with Public Citizen, a non‑profit consumer advocacy organization here in Washington, D.C. Public Citizen has been involved in both the development and legal defense of the gainful employment and borrower defense rules.

I'm here to urge you, in the strongest possible terms, not to revisit these critical rules, which are important to protecting both students and taxpayers. If the Department walks away from these rules, it will effectively waive a white flag of surrender to predatory schools that defraud students and offer useless degrees.

As just one example of the need for these rules, I'd like to highlight the borrower defense rule's provisions on arbitration and class action waivers. The rule cuts off direct loan funding to any school that requires students to bring claims in secretive arbitration proceedings, including fraud claims, in many cases. Once in these proceedings, students generally can't join their claims with those of other students, so they've got to go it alone. Oftentimes, the deck is stacked against them in these private forum. Corinthian Colleges provides a case in point. It used forced arbitration provisions to evade accountability for years, and students and taxpayers have paid a steep price, indeed.

As of January 2017, the Department had canceled more than $558 million in federal loans held by students who attended one of the Corinthian schools. We know, and the Department found, that these students were harmed by systematic wrongdoing by Corinthian. They deserve relief that they could not get from their now bankrupt school.

The same is true for the tens of thousands of others who have borrower defense applications that remain pending and are not being processed, and many more who are eligible for relief, but who do not know it, and have not yet applied. Though many of these students could have been made whole by the wrongdoer, by Corinthian Colleges, or might never have been harmed by the school in the first place, had the company not been able to rely on forced arbitration provisions as it did. In the years just before Corinthian went bankrupt, Corinthian relied on forced arbitration provisions to force case after case out of court. Forced arbitration provided no meaningful avenue of relief for students and did not stand as an effective deterrent to Corinthian.

Using publicly available arbitration data, Public Citizen determined that between 2011 and 2015, only one student, a single student who attended Corinthian during that time, was able to receive a monetary award against the company through an arbitrator's final decision, and only 71 students brought arbitration against Corinthian in the first place, a reflection of the high cost of litigating individual arbitration proceedings, because that's what was required, and the poor outlook for recovery in that biased forum.

It's a drop in the bucket. There is no sound reason for taxpayers to subsidize a school that uses this kind of abusive scheme with its students to avoid accountability for its proven wrongdoing. The borrower defense rule should be implemented immediately, as the law requires, and the Department should abandon its plans to revisit the rule, which has already been the subject of extensive negotiation and public comment. Thank you for the opportunity to speak on behalf of consumers.

MS. WEISMAN: Thomas Gokey. Thomas Gokey. We'll try him again in a few minutes. We'll go on to the next person, who is Barmak Nassirian.

MR. NASSIRIAN: Good morning. My name is Barmak Nassirian. I serve as the director of federal policy with the American Association of State Colleges and Universities here in Washington. AASCU is a membership organization of about 400 public, four‑year colleges, universities, and state systems of higher education.

I do appreciate the opportunity to present brief comments on the Department's proposed reregulation of its two final rules, the gainful employment rule, for which I was a negotiator, and the regulation on borrower defenses to repayment. These two critical rules are interrelated, in that the former, gainful, is an effort at promoting program integrity and preventing future predatory practices, while the latter is intended to provide relief to victims of past predatory behavior, and simultaneously preventing subpar providers from shielding themselves from accountability through forced arbitration and class action waivers.

These rules were developed in response to well‑documented evidence of widespread waste, fraud, and abuse by unscrupulous providers, and both were promulgated in meticulous compliance with the Administrative Procedures Act and the applicable provisions of the Higher Education Act, including its negotiated rulemaking and master calendar provisions.

Both rules were subjected to, and survived, extensive judicial review. In addition, Congress had multiple opportunities to defund or rescind the rules, particularly through the Congressional Review Act, in the case of the borrower defense reg, and it chose not to do so. The Department's unilateral decision to postpone consumer notification provisions of the gainful employment rule and its delay of the July 1, 2017 effective date for the borrower defense rule, therefore, represents an extreme policy choice that runs counter to the public interest, harms vulnerable students, and exposes taxpayers to enormous future cost.

The harm to students and taxpayers, furthermore, will extend beyond the reach of the Department's own programs and will affect the nation's active duty service members, as well as veterans, through the funding revenues from the Department of Defense's tuition assistance program and the Department of Veterans' Affairs GI Bill educational benefits.

Ironically, and this is the most interesting aspect of this choice, by delaying these very minimal accountability assurances of the two regs in question, the Department also prolongs the enrollment and financial agony of the for‑profit sector, in whose benefit, some believe, these delays have been effected.

There's ample evidence that in partially addressing the most toxic programs and the worst practices within the sector, these rules were gradually restoring a measure of confidence in the sector, which will now suffer an additional couple of years of uncertainty and lack of public trust as the new regulatory process would unfold. Should the Department choose to embark on its regulatory process, it will no doubt be as impressed by the weight of evidence in favor of robust action on behalf of students and taxpayers as it was when it first developed these rules.

Unfortunately, even if any future rules prove adequate to the Department's duty to protect Title IV programs from waste, fraud, and abuse, the rules will take time to develop and will be unlikely to go into effect until July of 2019. Barring immediate remedial action, the decision to delay the borrower defense rule would unnecessarily prolong the suffering of tens of thousands of victims of past fraud.

Fortunately, the statutory language in the Higher Education Act provides clear authority for discharging predatory debt, and the Department needs to only organize its internal administrative processes to expedite relief for victims with legitimate claims under state law. In the interests of protecting students and taxpayers from ongoing fraud, the Department would also be well advised to administratively prevent the use of forced arbitration or class action waivers by unscrupulous providers. With regard to the gainful employment rule, the new regulatory process may, in fact, provide an important opportunity for more effective, but less complex and less onerous regulatory approach to the statutory provisions.

The Department may be able to provide significant regulatory relief, while simultaneously strengthening the substance of the regulation, if it chooses to do so. Success in this regard would require good faith action on the part of the Department in the selection of negotiators and its approach to the task it has undertaken. State colleges and universities stand ready to assist the Department in this important national effort. Thank you. Good to see you again.

MS. WEISMAN: Thomas Gokey. Randi Weingarten.

MS. WEINGARTEN: Good morning. I'm glad to be in this building for the first time since January 19th. My name is Randi Weingarten, and I have the great honor of representing the 1.6 million members of the AFT. We are the nation's largest union of college and university faculty, and we have members who work at higher education institutions that are both public and private, both not‑for‑profit and for‑profit. Many of our members have confronted, firsthand, the issues of affordability and accessibility of higher education.

This is why we offer our members student debt clinics, to help them learn how to lower their monthly payments on their federal student debt, and eventually have access to public service loan forgiveness. Our members have told us loads of stories in these clinics, and we know a lot, from them and from other places, about what happens when students have unaffordable college debt or attend a for‑profit college that promises an education it can't or won't deliver.

For this reason, we oppose any and all attempts by the Department to delay, dismantle, or weaken rules that protect students and taxpayers from predatory for‑profit colleges. We proudly stand with the 18 states that heard our call to step in, where the federal government has stepped away, and who filed suit last week against Betsy DeVos and the U.S. Department of Education over the delay of the borrower defense rule. What the Department should be doing is rigorously enforcing these current rules, including moving forward with providing relief to defrauded borrowers and preventing education con artists from fleecing American taxpayers.

Predatory colleges across the country have gutted the aspirations of working people, many of them first‑generation college students, veterans, and people of color, while offering them the false hope of a good job and a fair wage.

Just about the worst thing ‑‑ just about, actually, the thing that's worse than ripping off students with worthless degrees from for‑profit colleges is denying the help to relieve their substantial debt and allowing these predatory practices to continue.

The most recent borrower defense rule, which the administration now wants to delay and rewrite, standardizes the process for eligible students to relieve their student loan debt from unscrupulous colleges and implement important financial accountability standards for the riskiest programs. The gainful employment regulation is about two things, transparency, providing students information, and second, stopping federal funding to programs that leave students with a mountain of debt and a worthless degree.

AFT members teach in these programs that are subject to the gainful employment standards, and our members want them enforced. Why? Because we know the difference between the real educations that institutions provide and dead‑end make work that bad actors in the sector do.

Repealing the gainful employment regulation will cost the American people over $1.3 billion over ten years, so why does the Department of Education want to do away with a rule that protects students' and taxpayers' investments in higher education?

Let me be blunt. Students should not have to resort to lawsuits to deal with fraud, like that which Trump University was accused of, nor should they suffer when institutions like Corinthian College uses bankruptcy to try to avoid their bad deeds. When Secretary DeVos visited schools in Ohio with me this past April, seeing, by the way, the tremendous work that public schools can do, she asked several times whether we could find some common ground. I'm here to say this.

From preschool to graduate school, our students should be our common ground, and their needs and aspirations must trump profit and ideology. The administration's actions to delay and undermine these rules embolden predatory practices, and they wreak havoc on students who want to get a decent education and land good jobs.

The Department should protect students and taxpayers by rigorously enforcing the current borrower defense rule and the gainful employment rule. Abandon, please abandon the plans to delay, weaken, or otherwise roll back these regulations. Please move forward to provide relief to our future, provide relief to people who have been defrauded. Thank you.

MS. WEISMAN: Alexis Goldstein.

MS. GOLDSTEIN: Thank you. Good morning. I'm Alexis Goldstein, with Americans for Financial Reform. To be perfectly frank, I can't believe we're doing this again. Just last year, the Department of Education went through the rigorous process of negotiated rulemaking on borrower defense.

Previous to that, they did the same thing for gainful employment, and yet, here we are today, wasting the Department's time and taxpayer resources, when the Department has heard from all constituencies already in the two previous rulemakings.

The gainful employment and borrower defense rules should be rigorously enforced, as so many people have said so already today, not re‑opened to be dismantled. In the meantime, this administration has turned its backs on students who've been scammed by the very schools that these rules are meant to hold accountable.

These students still wait, their lives on hold, their credit ruined, in many cases, their wages garnished, their taxes offset, while the Department stonewalls even members of the U.S. Senate in a bipartisan request for basic information about the number of borrower defense applications discharged, received so far this year, and other basic information. While students wait and wait and wait for the debt cancellation they're owed by law, this current administration has hired Robert Eitel.

Robert Eitel took a leave of absence from being the vice president for Regulatory Legal Services for the for‑profit chain Bridgepoint, a chain that would benefit not only from the illegal delay of borrower defense that this administration has advanced, but benefit once again from any dismantling of this decades‑old rule.

The illegal delay of the borrower defense rule update will benefit the kinds of schools that have collapsed in recent years under the weight of their own fraud, schools like Corinthian which, before it went bankrupt, faced charges of false job placement statistics, predatory lending, securities fraud, unlawful use of military seals in advertising, all using billions in taxpayer back loans to make its executives into millionaires.

Schools like ITT Tech long abused not only its students, but also U.S. taxpayers, through its misconduct, facing numerous lawsuits and investigations, including, to name just two, one by the Consumer Financial Protection Bureau, and an investigation by 13 state attorneys general, for lying to students. Many students who were conned by these schools, including schools whose representatives I see in the room today ‑‑ I'll be very curious to see if they will give public testimony or just sit and listen and backchannel ‑‑ they wanted to come, but they couldn't take off of work.

They couldn't travel to D.C. because they don't have the money to do it. I'm going to read, as quickly as I possibly can, some of their words. Jessica King attended Everest, in Newport News, Virginia. She found out through her own research that the campus she attended would have failed the gainful employment standards had they been in place when she was enrolled.

She was told by an employer that she should remove her time at Everest from her resume because it was hurting her, due to the school's reputation. As it stands, she remains buried in debt, despite the fact that the school took out loans for her, without her consent. Alicia Stevens is a 71‑year‑old grandmother, who graduated from Florida Metropolitan University in 2007. She was diagnosed with breast cancer right after she graduated. She writes after surgery, I began looking for work. I didn't have much luck. Once I finally got an interview, I was informed by the HR person that my degree was worthless. I live in county housing, on Section 8, in order to afford living here.

At the age of 71, this loan will be forgiven when I die. Brian Pearl, also from Florida, writes, quote, I cannot even get any kind of licensure in the state I am currently living in, in New Jersey, because the state only recognizes degrees from regionally accredited institutions. The admissions people, he writes salespeople in parentheses, told us that national accreditation is better, end quote.

The organization I work for, Americans for Financial Reform, was formed in the wake of the financial crisis, where bad actors packaged and securitized the American dream and specifically targeted low‑income and minority communities. These are the same communities ‑‑ those same communities targeted by the subprime crisis were targeted once again by for‑profit colleges. In internal documents obtained by the Department of Justice, Corinthian described its target demographic as people who were feeling isolated and stuck. This targeting worked. The biggest increase in enrollment at for‑profit schools came in the immediate wake of the financial crisis, where the same people who lost their wealth due to the subprime crisis were once again targeted when many Americans were feeling stuck.

Dismantling the gainful employment and borrower defense rules will do nothing more than unleash a new wave of waste, fraud, and abuse. This country teaches its citizens that education is the path to a better life, but for far too many years, the Department of Education has been allowing Title IV funds to flow to institutions engaging in fraud that have turned this dream into a nightmare.

The Department has a choice of where it goes next. If it continues down this path of re‑opening the gainful employment and borrower defense rules, its legacy will be damning students to poverty, while making executives of proprietary institutions into millionaires.

MS. WEISMAN: Time.

MS. GOLDSTEIN: I sincerely hope the Department chooses a different path. Thank you.

MS. WEISMAN: Cheryl L. Smith.

MS. SMITH: Good morning. I'm Cheryl Smith, senior vice president for government affairs at the United Negro College Fund. I need to put on my glasses. UNCF's comments are informed by our 73‑year history of promoting college success for minority students.

We also represent private, regionally accredited, historically Black colleges and universities, institutions that provide an affordable and high‑quality education for academically and economically disadvantaged students, with high levels of student satisfaction.

As the Department begins a new borrower defense regulatory process, we urge the Department to keep five major goals in mind. First, protect students harmed by fraud and predatory practices. UNCF supports an equitable, transparent, and timely administrative process, and legal recourse without forced arbitration, for students harmed by institutions with a pattern of misconduct. In particular, the Department should allow the closed‑school discharge provisions in the current rule to go into effect, which would expedite relief for impacted students and enable all borrowers to receive earlier and accurate information about their loan discharge rights.

Second, UNCF urges the Department to continue to identify students impacted by school closures and ensure that their Pell grant eligibility is restored, so that these low‑income students have the necessary financial aid to finish their educational programs. Any needed regulatory improvement should be addressed in this rulemaking.

Third, ensure that the borrower defense regulation does not impose onerous burdens on HBCUs with unintended consequences. UNCF remains concerned about the overly broad definition of misrepresentation in the current regulation, which could unfairly leave HBCUs financially liable, with no time limitations for frivolous claims for debt relief. Regulatory language should distinguish and prioritize claims based on systemic, purposeful, and material misrepresentations from claims based on minor and inadvertent errors. By making these distinctions, the Department can focus its resources on legitimate claims based on wrongdoing.

At the same time, this would protect HBCUs from claims that lack merit but, nonetheless, would require unresourced institutions to spend precious resources on legal and other costs of participating in adjudicatory proceedings, resources that could be better spent serving students.

Fourth, strengthen due process protections. For example, the current regulation does not detail explicit timelines by which the Department will make debt relief determinations, which could leave both students and institutions in limbo. Nor does it provide equal opportunities for engagement by institutions.

The rule does not establish a process for institutions to appeal final decisions by the Department or request reconsideration based on new evidence. Any future regulations should include due process protections that are equitable and transparent for both students and institutions. Fifth, the Department should establish a separate rulemaking committee solely concerned with re‑evaluating financial responsibility standards for non‑profit institutions, with appropriate representation from HBCUs.

UNCF has provided ‑‑ and, I might say, our partner organizations ‑‑ has provided feedback to the Department on financial responsibility and disclosure provisions in the current regulation, which would require private colleges and universities, including private HBCUs, to pledge collateral or letters of credit based on certain triggering events that may not relate to financial condition of an institution.

Moreover, the current regulation layers these new financial demands on top of existing, but flawed, financial responsibility standards that the Department has failed to fix. These new requirements are a blunt instrument that could cause cascading negative financial impacts on small and under‑resourced private institutions that are not engaged in misconduct. Mandatory disclosures of required financial protections based on ill‑conceived criteria will prejudice students against enrolling in otherwise successful institutions. Put bluntly, these requirements could lead to irreparable financial and reputational harm to some HBCUs that are, in fact, providing quality educational opportunities to students. We look forward to working with the Department on regulations aimed at protecting students from bad actors, without harming HBCUs ‑‑

MS. WEISMAN: Time.

MS. SMITH: ‑‑ and other legitimate institutions that are working hard to bring educational opportunities to students. Thank you.

MS. WEISMAN: Aaron Schenck.

MR. SHENCK: Good morning, everybody. My name is Aaron Schenck, and I'm the executive director of PAPSA. We represent over 100 technical colleges and trade schools in Pennsylvania. Our membership includes both for‑profit and non‑profit institutions. First, let me publicly thank the Department for the decision to hit the pause button on both the gainful employment and the borrower defense to repayment regs. While I know some people in this room disagree with that decision, the decision was responsible and needed. These regulations may have been well intentioned, but the end result was many hundreds of pages of new rules and red tape on schools, which have led to subsequent data problems, confusion on compliance matters, countless time, resources, and costs directed to regulatory affairs, and not in the classroom.

I've personally traveled all over Pennsylvania and have personally visited approximately 100 different college campuses in our state. I spent hundreds of hours meeting with students, veterans, graduates, teachers, administrators, employees, employers, and community leaders at these visits.

I've heard story after story about positive experiences that everyone's had at these schools, but unfortunately, at almost every institution I visited, I've also heard about the many problems they're experiencing with federal regulation. I've sat here for the last hour, heard a lot of people mention terms like predatory, abuse, and other terms. If that's happening at any school, then those need to be held accountable. I don't think anybody in this room would disagree with that. But there’s effects to these regulations that are hitting the schools that are not bad actors. Let me give three quick examples. In Pennsylvania, we've had three of the oldest business colleges in the state, one 120 years old, one 150 years old, and one 130 years old, close their doors in the last two years.

These were not predatory, not bad actors, but all three cited excessive federal regulatory pressures as one of their top reasons for their decision to close. Next, in the survey of our schools, in our state, almost 40 percent of the respondents have reported some level of data problems they're experiencing with these regulations.

The worst cases of data problems I've seen include two separate small schools in Pennsylvania where the gainful employment loan data rate was double counted by the Department. This error caused a doubling of the debt‑to‑earnings ratio for these schools, placing most of their programs in the, quote, failing category for no other reason than a data error.

These schools still, to this day, are trying to work that problem out with the Department. My final example is that of one small, very niche school, that only teaches one program. It's a very popular program. It's so popular, it has a two‑year waiting list to get into the school.

I've asked the owner, I said why haven't you expanded capacity to meet that demand? His answer is quite simple. He doesn't want to put financial capital into doing expansion of his school at a time he feels ‑‑ he's actually fearful of federal over‑regulation.

These are just a few of many examples I can give on why these regulations need a pause and fix, but I know the goal of the hearing today is to get specific recommendations on how to improve them. Here's a brief summary of my suggestions, and I'll spend most of time on gainful employment.

My three things to improve the gainful employment reg include uniformity, transparency, and accuracy. Uniformity. First, apply the rule equally across all sectors of higher education. The existing rule is more punitive to schools registered for tax purposes as for‑profit, while exempting out many programs at public institutions and non‑profits, even though the latter educated a large majority of the population ‑‑ I believe the number's around 90 percent of higher ed students.

If the regulation that's developed here in these negotiated rulemakings is good public policy, and if this rule's about protecting students, then it should not arbitrarily leave out 90 percent of the students in the country out of these protections.

Second, the data calculations used in GE need to be consistent with other outcome calculations used in IPEDS, the college navigator, accreditors, etc. For example, the on‑time graduation rate in the GE template is calculated differently than every other way the Department calculates on‑time graduation rates.

For a tool to be fully transparent, it needs to have outcome measurements that are consistent across the board. Next, transparency. The existing regulation is punitive to students and institutions by threatening access to student aid. The new rulemaking should use this regulation more as a transparency tool, for students to make informed choices, not as a punitive weapon against certain careers. I say that because looking at the data from year one, the gainful employment reg does not measure academic quality of a program. It measures, basically, the reported earnings potentials for employees in specific career fields.

Here are some examples. Occupations that typically have low starting wages, but strong long‑term wage potential, like culinary arts, are at a high risk of failing the metric. Another example is career fields that are tip based and have significantly unreported wages, like cosmetology and barber programs.

Another example are careers that work off commissions and are project based, that take a while to build a book of clients, like art schools, graphic design, and photography. These are great long‑term careers, but have not fared well under the GE metric. My final example is programs where graduates accept low wages in exchange for free housing, food, and entertainment, like hospitality and hotel management programs. Graduates of these programs live on resorts and cruise ships, love their job, and get paid in the process, but these programs all get crushed by the GE metric. Due to the punitive nature of GE, these students could lose access to student aid. This is why the regulation should not be punitive ‑‑

MS. WEISMAN: Time.

MR. SHENCK: Thank you.

MS. WEISMAN: You can take another 15‑20 seconds to wrap up.

MR. SHENCK: All right, I'll just ‑‑ last point, accuracy. For a transparency tool to be useful, numbers being provided to students need to be accurate. Here are a few suggestions to help with that.

Provide schools additional opportunities to review and challenge data to show accuracy, consider ways to use BLS data on career fields' median and long‑term earnings potentials, instead of individual student cohorts in their first three years of wages.

Provide schools better ways to appeal and ensure accuracy of the numbers through options like realistic student survey thresholds, employer verified data, state data, and/or data submitted to creditors. Two more. Provide ways to better account for tip‑based professions that historically have unreported earnings, and provide schools the ability to provide a narrative in their disclosures explaining why a certain career field may have benefits that make the career attractive and rewarding beyond just the first three years' reported earnings statement.

MS. WEISMAN: Time.

MR. SHENCK: Thank you.

MS. WEISMAN: S. Paul Mazza, III.

MR. MAZZA: Good morning. My name is Paul Mazza. I am the president of the South Hills School of Business and Technology in Central Pennsylvania. My parents founded the school in 1970, 47 years ago, in the shadow of the Pennsylvania State University.

As an attorney, my father struggled to find trained individuals to staff his law firm. In speaking with other attorneys and business leaders, he quickly saw the need for a school to prepare individuals with the skills to fill these critical jobs in the community. What began as a secretarial school now offers 11 AST and ASB degrees in business, technology, allied health, graphic arts, and criminal justice. Prior to his passing, my father traveled down to D.C., as I have done today, to speak in opposition to the first attempt at enacting regulations on gainful employment. He realized the harm this regulation would cause to small communities served by schools such as ours.

It threatened to destroy the educational opportunities available to many non‑traditional, underserved members of those communities and severely curtail their ability to achieve their goals. In the years following his death, GE 2.0 was enacted and has now begun to drain the resources of schools across the nation.

Its stated purpose was to rein in poor‑performing schools that saddled graduates with substantial debt and minimal earnings potential. It was claimed, at the time, that the evil for‑profit schools were the worst offenders, and thus the regulation was targeted primarily at these schools. We now know that the data supporting this claim was flawed and that, in fact, graduates from schools such as ours were no more or less inclined to pay down their school loans, as were those graduating from any other school. I mentioned earlier that our school is located in the shadow of Penn State. Penn State is a fantastic school. It draws tens of thousands of prospects from all across the globe, graduates about half of them, and sends them off in search of their dreams, again, all across the globe.

Very few PSU grads stay in the Central Pennsylvania region. In contrast, South Hills draws tens of tens prospects from a ten‑county area, graduates about 60 percent of them, and sends them out to employ their skills to help organizations within those communities from which they came. In fact, Penn State would have a very difficult time keeping their doors open were it not for South Hills graduates.

Penn State currently employs over 300 South Hills grads. Some of these graduates have been employed by the university for decades and currently hold high‑level departmental positions, where they are now hiring recent South Hills grads. On a personal note, my 21‑year‑old son has completed six of seven terms in our school in the business administration management and marketing program. He has a 3.97 GPA, which I'm not sure how he did that. His seventh term, which he's in now, consists of a 378‑hour internship program, the school sets up the internship programs for all of our soon‑to‑be graduates and ensures that they are placed in a viable educational internship.

He is fulfilling his internship requirements at Penn State's School of Hospitality Management. After three weeks, he has already proven himself to his internship supervisor and will likely be offered a wage payroll position within Penn State. Now, wage payroll has a certain cap of earnings.

It is unlikely that earnings cap that Penn State puts on their wage payroll employees would be sufficient to meet the metrics that were arbitrarily assigned in the gainful employment regulation.

With all of this, I would ask Secretary DeVos and the Department of Ed to simply dismantle the gainful employment regulations before it does ‑‑ or before they do any more damage. After 47 successful years and over 6,000 graduates, it would be unfortunate, indeed, if we were forced to close some of our programs due to the arbitrary metrics forced upon us by this onerous regulation.

MS. WEISMAN: Time.

MR. MAZZA: Thank you for allowing me to share my thoughts today.

MS. WEISMAN: Charles Long.

MR. LONG: Good morning. My name is Charles Long. I am the director of education for Pittsburgh Career Institute, located in Pittsburgh, Pennsylvania. I'm here to speak to you about an area of the country which, according to the 2015 census, 12 percent of our population makes less than $10,000 a year. We have a minority and African‑American population of 24.6 percent, and an unwed birth rate of 47 percent.

I give you these figures only to tell you that these are the lives that I change every day. I change these lives within regulations, and without predatory practices. Due to the high unemployment and stubborn skills gap, we are looking for qualified individuals to fill these positions. I believe that the Department should be judicious about issuing regulations that would reduce access to education and training for hundreds and thousands of Pittsburghers and Americans. There should be a reconsideration of the efforts to regulate private sector colleges, as well as community colleges, out of the higher education community.

The existing regulation is arbitrarily applied to schools based on tax status; whereas, schools registered as private for‑profit are regulated more heavily than public and private non‑profits, even though they educate about 90 percent of the higher education students nationally.

Many of these schools have similar programs that would fail GE metrics if they were placed upon them. I guess the question is why are we going to exempt approximately 90 percent of the students in the programs in the country of these protections? Along with this disparity, there's an overreach in regulation.

These questions arise to me about other sectors of education, which this does not touch. I, as well as everybody in here, have read about inflated tuition rates that have caused pause in the minds of Americans when it comes to Title IV issues. But I have to say why is my school, in particular, being put under the fire, when I'm held accountable to retain, graduate, and employ 70 percent of the students that I bring into my doors. I wish that this should apply to all institutions receiving Title IV.

Other issues that are apparent in the regulation is that it only looks at the first three years of wages, and not long‑term earning potential in a career, as well as it does not account for geographic wage disparities, where graduates with the same credentials, education, and career can make significantly different wages, based on geography and economic conditions in different urban/suburban/rural communities in regions of the country.

The new GE rulemaking should look at earning potentials throughout a career and not just entry level of the first three years after graduation. The GE rule was originally intended to define two words, gainful employment, but this has turned into an 800‑page regulation, with over 100 additional electronic announcements and other documents schools have to comply with. The significant time and burden upon staff that's put upon a school like mine, which happens to be what we term a mom‑and‑pop school, is significant. It takes so much time away from the education that we can deliver in the classrooms and helping the students get careers after they graduate. A lot of the schools that I hear that we are talking about up here, a lot of the bad actors, are no longer in business.

What this regulation is doing now is hurting the small, mom‑and‑pop schools, like mine, that are in business in Pittsburgh. We are the only career school left in Pittsburgh that happens to be a choice for students. Finally, when speaking about choices, if one of the goals of the regulation is not to have students graduate with debt loads that may not match their salary or potential, then the federal government should think more about curbing over‑borrowing.

Access to federal student loans is currently issued like a right to students, and students are eligible to borrow more than they often need to finish their programs. Schools can do little or nothing to counsel or limit how much a student can borrow to complete the program. The new negotiated GE regulation should give the federal government or schools more control and the ability to help counsel students against over‑borrowing. In conclusion, while I see and support the need for regulation, as it applies to Title IV, I believe the rules should be fair and unbiased, as to create a need for students to make an informed decision about their education. Thank you.

MS. WEISMAN: David Baime.

MR. BAIME: Good morning. My name is David Baime, and I'm senior vice president for government relations and policy analysis for the American Association of Community Colleges, very pleased to be here with you. We represent over 90 percent of all the nation's two‑year public institutions, as well as non‑profit two‑year colleges, as well as a couple of four‑year for‑profit colleges, as well.

Want to make a few comments this morning. First of all, to represent my institutions accurately would say that when the gainful employment regulations were initially established and promulgated by the Department, there was a lot of interest, and even enthusiasm, about the role that the regulations would play in taking a tough look at programs, including community college programs, and trying to help institutions keep debt levels down. That interest and overarching goal remains with the institutions. The implementation of the regulations, the cost of implementing them, and the confusion that has hit the campuses has been a tremendous issue for the community colleges.

We're very much hoping that in the next iteration of this regulatory process, if the Department does undertake that and issues new final regulations, that there is a stronger emphasis on the institutional compliance costs for our colleges. I mentioned we think that overall, the concept of debt to earnings is probably a sound one for gainful employment.

I think, though, in the interests of being accurate about the policy environment for this, the gainful employment definition was written by Congress in 1972. It has not been meaningfully reviewed by the legislature since that time. We think that in an ideal world, Congress would take a look at this and would debate this, along with the Department of Education, and give some guidance to the Department about exactly what it wants the Department to do. But in the absence of that, we think that it's incumbent upon the Department to move ahead with new, clear regulations in this area. Also want to point out most people don't associate community college students with borrowing; however, over 20 percent of all of our students, or about 20 percent of our students, credit students, borrow, and almost 40 percent of all of our full‑time students take out loans.

Even though, again, we're not necessarily associated with loans, the issue of student debt and default for community colleges and limiting student debt, where students can't manage it, is of a very high priority for our organization.

In terms of some of the information and disclosures that are generated through the last ‑‑ the gainful employment 2.0, as it was just said, this, too, has been problematic for community colleges because of all the information that they've had to upload to the Department and report, on the one hand, with, on the other hand, very little information being actually generated through that because of small classes in our technical programs, the programs that have fallen under the gainful employment rubric. The other thing that we feel very strongly about is that the gainful employment statute, as far as we can tell, was never envisioned to be a major disclosure requirement, reporting requirement disclosure scheme.

If you're going to require certain types of information to be disclosed, as has been the case under gainful employment, it's the type of information, for the most part, that should be provided for all programs across higher education, not just gainful employment programs.

My organization has put forward a series of legislative proposals based on a unit record data system that would enable institutions to easily report, through that unit record data system, completion and progression information, transfer information, so that we have a better understanding of our overall system, and then wages and earnings once people have completed their college educations and gone out to the workforce.

We don't think that these earning information should be at all limited to gainful employment programs. The last speaker talked a little bit about the burden of the regulation. I mentioned it, too. Department of Education has issued, in addition to the voluminous regulations, themselves, 106 communications to colleges under these regulations since the first set of them were come out. It's unconscionable, from our perspective.

Colleges do comply with these regulations, but it's been enormous effort from them to do that. We've consistently heard from our campuses about the confusion, the uncertainty, the cost, and just the sheer difficulty of them to comply with these regulations, so we urge the department, as it moves forward in this area, to again be very sensitive to this.

We also think, though, that given the nature of the SULA requirements and the enrollment information that institutions provide, there ought to be an easier way, a more efficient way, also using the Title IV data that colleges report, to generate some of the information that the Department has previously required, assuming that will be required in the future.

MS. WEISMAN: Time.

MR. BAIME: Thank you very much for giving me the opportunity to be with you this morning.

MS. WEISMAN: That concludes our speakers for this session, for this part of the morning session. We will take a break until 10:40. Again, we'll start back promptly at 10:40.

(Whereupon, the above‑entitled matter went off the record at 10:27 a.m. and resumed at 10:41 a.m.)

MS. WEISMAN: We do have a full agenda through lunchtime. We will take a break for lunch at 12:00 noon. To get started again, we'd like to call John Kamin.

MR. KAMIN: Good morning. On behalf of National Commander Charles E. Schmidt and the 2.1 million members of the American Legion, I thank you for the time to speak during this hearing. As the largest veterans' organization in the country, we do not come here with an ideological agenda. We're not interested in attacking one sector of higher education or another, but rather to ask the Department of Education a simple question. Will it continue to protect veterans and service members transitioning to higher education, completing degree programs, and obtaining career‑ready skills? If so, how? We can report that it is a fact that veterans are often singled out and targeted with deceptive, fraudulent, and predatory college recruiting practices.

The Eisenhower administration first discovered this with the original GI Bill, and the phenomenon continues 73 years later. As the drafters of the original GI Bill, the American Legion's abiding imperative has been to promote policies that ensure that every single veteran or service member who enrolls in higher education graduates with a credential or degree that is worth the cost and leads to meaningful employment, which will allow them to lead a successful life after their time in the service.

We will continue to assert that the Department of Education has a critical responsibility to enforce policies and rules that protect America's veterans and service members, especially from schools and programs that will leave them in deep debt for worthless degrees, do not lead to gainful employment, and recruit using fraudulent claims. As a membership‑based organization, all of our positions are derived from resolutions passed by our legionnaires. In accordance with Resolution No. 318, ensuring the quality of service member and veteran student education at institutions of higher education, we have three requests for the Department of Education as it's rewriting its rules.

No. 1, veterans must be included on any new negotiated rulemaking committee, as they have been for previous negotiations. We are happy to work with the Department and other VSOs to find negotiators who can accurately represent our unique experiences. No. 2, the Department must maintain strong rules to ensure that veterans and service members are gainfully employed.

We supported the gainful employment rules, as they were written, and we urge the Department to start the next round of gainful employment immediately. Programs that fail to prepare our members for gainful employment do not deserve taxpayers' or our veterans' dollars. Additionally, we are disappointed in the Department's decision to delay gainful employment disclosure requirements. With all the aggressive recruiting and predatory marketing that exists, disclosures ensure that our members know whether a degree is worth paying for, so they can be empowered to make informed decisions.

This consumer information needs to prominently be on school websites, in their advertising and enrollment materials, because our members deserve the right to know what they are paying for. Regardless of the sector, we want to champion the schools that demonstrate their value.

The Department needs to immediately enforce this section of the rule. In fact, in new rulemaking, the Department should consider ways to ensure that these disclosures specifically mention the debt, completion, and earnings outcomes of veterans and service members.

No. 3, the Department must have effective rules to help defrauded veterans and service members get full debt relief. Thousands of veterans have been defrauded over the years, promised their credits would transfer when they wouldn't, given false or misleading job placement rates in marketing, promised one educational experience when they were recruited, but given something completely different. This type of deception against our veterans and service members is unfair and shameful.

We also support key provisions in the current rule, including the standard for misrepresentation and automatic closed discharges after three years, simply because these provisions create the easiest path to relief for veterans when their school closes.

We believe there should be a process for group relief, so that in instances of widespread fraud, or when a state attorney general is acting on behalf of our members, veterans don't have to jump through a bunch of hoops, fill out unnecessary government paperwork, or participate in complicated bureaucratic hearings to get their loans forgiven.

Finally, the Department needs to implement the borrower defense rules that they delayed. This delay means that veterans who started school this fall could still be forced to sign predatory arbitration agreements. That's unacceptable. As we speak, thousands of pending applications for relief, including many of the veterans who attended schools like ITT Tech or Corinthian, remain unopened. These are the people who are left holding the tab as these questions are litigated today.

Until every veteran's application for a loan discharge has been processed, the American Legion will continue to demand accountability. We look forward to working with the Department of Education to correct these issues. Thank you.

MS. WEISMAN: William Hubbard.

MR. HUBBARD: Good morning. On behalf of Student Veterans of America, a higher ed non‑profit representing 1.1 million veterans in post‑secondary education, I stand before you strongly urging this body to stand with students and fully implement the borrower defense negotiated rule. My name is Will Hubbard.

I am a former chapter leader of Student Veterans of America at American University, and now serve on the national headquarters staff, as vice president of government affairs. I also served as a non‑federal negotiator in the original borrower defense rulemaking in 2015, representing the perspective of our military connected students. With rumors of these hard‑won victories to protect students being at risk, we delivered a letter this spring on behalf of dozens of military, veteran, and family organizations to the chairman of the Senate Health, Education, Labor, and Pensions Committee, and the House Education Workforce Committee.

In this letter, we identified four protections that our community is committed to fighting for, and more so today than ever. First, the gainful employment rule, which enforces the Higher Education Act's requirement that a career education program receiving federal student aid must prepare students for gainful employment in a recognized occupation.

This common sense requirement applies to career education programs of all types of colleges and protects both students and taxpayers from fraud, waste, and abuse. Veterans express anger when they discover that the government knew a career education program had a bad record, but allowed them to waste valuable GI Bill benefits at such a school. Second, new regulations on the federal student relief for defrauded borrowers and college accountability, which make it harder for schools to hide from and clarify avenues for students to receive loan relief they are entitled to under the Higher Education Act. America's heroes are targeted for fraud because of the 90/10 loophole, and they deserve relief they're entitled to under the law.

Third, the ban on incentive compensation in the Higher Education Act, which was enacted more than 20 years ago, with broad bipartisan support, to reduce high‑pressure, deceptive sales tactics and sales commissions incentivizing college recruiters to do anything or say anything to get veterans to enroll. Veterans who are frequently encouraged to enroll on the spot are particularly vulnerable to high‑pressure recruiting. Over 60 percent are first‑generation college students.

Fourth, the enforcement unit at the Department, which has been taking active steps to protect all students and explicitly embrace the goal of prioritizing veterans and service members. I must be frank with this body. What exactly is up for debate today? Some have called the previous rulemaking a muddled process, a comment which deserves open scorn for its sheer ignorance, at the very least. Is this Department interested in protecting students, or is it interested in protecting companies? As you linger on that question, consider for a moment the implementation of these students' protections. It should be openly embraced by schools that have strong outcomes.

These protections only negatively affect schools who are committed to defrauding taxpayers, students, and the broader American public. As institutions who have spent millions of marketing dollars cultivating the image that they are different, why, now, are they asking to be treated like all other schools? Who's being fooled by that? I'll tell you what.

We ought to relabel these predatory schools as bakeries because they've been having their cake and eating it, too, and they've been doing so for decades. The biggest loser in this scenario of reduced student protections are actually the schools that are doing it right. Many for‑profits have strong programs, with good outcomes, but they get the short end of the stick, as such predatory programs continue to cheat the system. They've cheated veterans, their families, and indeed, they've cheated capitalism, itself. The Department's stay of this rule deprives states and students of protections and enforcement mechanisms that were developed out of a consensus‑driven process, with all parties at the table.

On behalf of national organizations representing our nation's military service members, veterans, survivors, and military families, I vehemently urge you to ensure that important laws and regulations protecting students are not watered down or eliminated. We hope that an agreement is possible, in order to protect America's military heroes and their families. Thank you.

MS. WEISMAN: Jeff Arthur.

MR. ARTHUR: I'm Jeff Arthur, with ECPI University. Our university is fifth in the nation in the number of undergraduate computer science degrees awarded, and we award 2 percent of all such degrees awarded to African‑Americans. As we reconsider these regulations, I hope we can focus on solutions that help all prospective students take a more informed approach to higher education decision making, as they invest their precious time and resources. Much of the data available in the current gainful employment regulations, the College Scorecard database, which has over 1,500 fields ‑‑ many people don't realize that ‑‑ College Navigator, IPEDS, and other sources have the potential to help many optimize their higher education choices.

To be of any assistance, though, this data must be available across all programs and all institutions. I'm certain that the vast majority of persons entering higher education are doing so in hopes it will lead them to gainful employment. If data that measures gainful employment is only available for 10 percent of higher education, it truly becomes ineffective, as opportunities for comparison are very limited.

What is important to students varies greatly. For some, especially adult students, time to completion is of utmost importance. For others, the total cost of the program, based on actual completion time, may be most important. For most, the success rates and employment outcomes of graduates is certainly important. I think we should take approach, let's embrace the College Scorecard database as the platform to publish gainful employment related metrics. Add program‑level and military flags to the data already there, which now does include much data related to gainful employment, including salary information. Student loan records already include program information at the student level. It's already collected.

Enhance the database with other data that correlates to gainful employment, such as time to completion data, debt to earnings calculations with various time frames, recognizing the value of a degree is not determined in two and a half years. The total cost and debt, based on median time to completion ‑‑ this is by program, by institution. The number of graduates by program, which is currently available in IPEDS.

Finally, employment rates. Let's require programs subject to gainful employment to refer prospects to gainful employment related data identified as such in the College Scorecard. Let's enhance the College Scorecard platform to allow users to identify and compare information that's important to them. Do not make determinations on absolute eligibility requirements for eligibility until such time as better data is available for all of higher education, or until Congress better defines their intent. As we're increasingly exposed to various measures of student success, any regulation must consider that there clearly are programmatic, geographical, and demographic influences.

We must be careful not to limit educational opportunities. As the CIO of a medium‑sized institution, who has directly programmed or supervised IPEDS reporting for over 25 years, I attest that reporting can be streamlined in an efficient manner. Much of the data needed to make these calculations, at least on Title IV eligible cohorts, is already being collected. We are in an era of big data.

Many institutions are implementing big data solutions that are ingesting a plethora of data to help make faculty more effective and students more successful. We can report most any data that would be useful in a consumer information platform. Once you have scripts to extract data on a few programs, the effort to expand reporting to all programs does not require significant additional efforts. The current reporting requirements for GE programs are exponentially more complex than necessary and highly prone to reporting mistakes and errors in interpretation. They could have been done much simpler.

Additionally, I believe there's an opportunity in the gainful employment rulemaking to consider formalizing guidance to be given to allow institutions to award recommended loan amounts over full loan amounts. Giving institutions tools to better award and counsel students on debt will help their ability to be gainful employed with manageable debt.

Given that the vast majority of programs subject to the gainful employment requirements and statute are offered by proprietary colleges, the committee assigned to negotiate these regulations should include representation from different types of proprietary colleges. It's not possible to pick one person to represent the interests of all proprietary colleges. In borrower defense, I believe we've got an opportunity ‑‑ it seems the HEA would permit rules that would provide for partial loan forgiveness. I don't believe it should be interpreted as all or nothing. Students borrow vastly varied amounts for the same program. Some may take considerable amounts for necessary living expenses we all have, whether attending college or not.

Consideration should be given for the value of college credits and degrees earned, employment gained, and other benefits of having attended college, despite a legitimate fraud‑based claim. Let's ensure when a claim is granted, it is to the extent there is demonstrated harm. Thank you for the opportunity to make comments.

MS. WEISMAN: Betsy Mayotte.

MS. MAYOTTE: Good morning. My name is Betsy Mayotte, and I am the director of consumer outreach and compliance in the Center for Consumer Advocacy at American Student Assistance. ASA is a non‑profit who has been helping students realize their higher education dreams in a financially responsible way for over 60 years. I was also one of the negotiators in the prior negotiated rulemaking session that addressed the borrower defense to repayment rules. I'd like to start by thanking the Department for their dedication to the negotiated rulemaking process. I frequently say that helping students navigate their student debt is a team sport. Involving the various affected constituencies in the rulemaking process is the only way to ensure the rules are as fair and effective as they can be.

I saw an article in the Chronicle of Higher Education a few weeks ago that quoted an industry policy expert, who stated that the process was deeply dull. While I wouldn't have called the last borrower defense negotiated rulemaking session dull, I can assure you that the old saying goes, nothing worth having comes easy.

The regulations that came out of the last session were not only rules worth having, they were rules worth keeping if want to fulfill our responsibility of protecting students, families, schools, and the U.S. taxpayer. At the outset, I'd like to express my disappointment in the postponement of the borrower defense to repayment rule. The rule wasn't perfect, but keeping it in place while the new negotiated rulemaking session was going forward would have allowed us to see more clearly what fixes needed to be made, while not forcing borrowers to wait even longer for relief. As Cardinal Newman once said, nothing would be done at all if man waited until he could do it so well that no one could find fault with it.

The same could be said for this rule and for the gainful employment rule, which ASA will also be submitting written comments on later. I've been a negotiator in multiple negotiated rulemaking sessions and attended most of them for the past 15 years or so. I'll be the first to say that the DTR rule, at its base, is a complex issue. For that reason, I urge the Department to restrict the agenda for this particular session to DTR alone.

Allowing the negotiators to focus on DTR and the subset of issues contained within DTR will help to ensure a meaningful outcome and show the Department's commitment to success. Additionally, I strongly recommend that the next session continue the discussion from where the last negotiated rulemaking left off and try to improve the most recent final rule. There was a lot of hard work done in the last session, and while time did not allow us to come to consensus, the conversations we had were valuable, as were the public comments submitted as a result of the NPRM. It would be a waste and, in my opinion, setting the upcoming neg reg for failure to start the new session from scratch.

Before I speak about particular nuances in the final rule, I'd like to point out a myth about the DTR rule that has been perpetuated both in the press, by people that have spoken here today, and by other industry participants. The DTR rule is not aimed at for‑profit schools, nor is it designed to be a penalty to any particular school type.

It's protection for borrowers and, with a few minor exceptions, the rule applies equally to all school types. Calling it a for‑profit rule distracts us from the point of the DTR regulations, which is to protect all students, regardless of what kind of school they attend, from predatory practices. I've been in the industry for more years than I care to admit, and I can tell you that I've seen excellent outcomes from all school types, and fraudulent behaviors from all school types. Fraud is committed by greedy and dishonest people, and greedy and dishonest people can and do work in all sectors. This rule does not aim to target for‑profit schools, and should apply to every school type, as the recent final rule did. The argument that this rule would result in schools closing is also inaccurate.

With, perhaps, one exception regarding pending lawsuits, the final DTR rule does not contain anything that will put a transparent institution with robust educational programs at risk. To put it bluntly, if you're not doing anything wrong, if you are working to protect the best interests of your student borrowers, the rule will not result in your school closing.

The rule is also intended to protect the U.S. taxpayer from having to foot the bill when such fraudulent activities occur. This is another important aspect that is often overlooked when discussing the borrower defense rule. We all know about the Corinthian College debacle that started our discussions on borrower defense to repayment, but did you know that this case, alone, cost the U.S. taxpayers over $500 million? That's enough for Pell grants for 103,000 low‑income students; $500 million would also fund the GEAR UP program, which is slated for a 30 percent reduction in funding by the current administration's recent budget proposal. This was just one school.

In 2012, Florida institution FastTrain Corporation was found to have fraudulently originated loans for students with no high school diploma or equivalent. That amounted to over $4 million in fraudulent loans and $2 million in fraudulent Pell grants.

MS. WEISMAN: Time.

MS. MAYOTTE: In 2016, Massachusetts American Career Institute admitted defrauding students to the turn of $30 million. Time flies when you're having fun, doesn't it? We'll submit the remainder of our comments in written format, but the bottom line of our position is that the majority of the DTR rule that was made last year should remain.

It should remain during the current negotiated rulemaking process. The key aspects of this rule will continue to be important, regardless of the outcome of this session. Thank you.

MS. WEISMAN: John Galgano.

MR. GALGANO: Good morning. My name is John Galgano. I am the chief of staff and general counsel for the American Musical and Dramatic Academy, or AMDA, for short. AMDA is both a college and conservatory for the performing arts, offering students the option of earning a Bachelor of Fine Arts degree in music theater, acting, dance theater, or the performing arts, or the option of completing a rigorous course of study in our two‑year conservatory program in either musical theater, dance, or acting.

AMDA is a not‑for‑profit post‑secondary institution in existence for 53 years, with campuses in New York City and Hollywood, offering our students unique access to the entertainment capitals of the world, while being taught by accomplished faculty members who are working professionals in the performing arts industry.

In short, AMDA is continually and consistently educating this country's next generation of singers, dancers, actors, and performing artists. AMDA quite literally helps populate the Broadway stage. In the last two years, AMDA has had over 60 alumni grace the stages of Broadway. Two of our esteemed young alumni were cast in the history making Broadway musical Hamilton. Christopher Jackson and Anthony Ramos originated the roles of George Washington and John Laurens, Philip Hamilton.

AMDA represents a part of American culture that we all hold dear, the arts. Since opening our doors to students in 1964, AMDA has been a sine qua non for the musical theater world. Quite literally, without AMDA, the entertainment world would not be the same.

For over half a century, AMDA has been committed to providing a rigorous performing arts training to a very diverse student body, which includes such iconic and influential artists as Paul Sorvino, Tyne Daly, Jesse Tyler Ferguson, and Jason Derulo, just to name a few.

While we are proud of our accomplished alumni and our wonderful working faculty, we are also humbled by the importance of our mission. With this picture of our school in mind, we are here today expressing our support for a new rulemaking process on gainful employment. We need to get this process right this time, or this well‑intentioned regulation may end up regulating schools like ours, non‑profits that have served tens of thousands of students dedicated to theater, dance, and the arts, right out of existence.

AMDA has two programs which finished in the zone on last year's initial gainful employment metrics, with one finishing very close, at 8.1 percent of annual debt to earnings. Title IV aid is critical for our students to cover the cost of college. Without it, this 53‑year‑old not‑for‑profit institution would be forced to close. I don't think that was the intention of this regulation.

The application of debt‑to‑earnings tests in the gainful employment rule make little sense for our music, dance, acting, and theater students. For them, the long and storied path for even our very best students is the well‑chronicled life of an artist that they know awaits them from day one, part‑time employment at night and on weekends, and audition after audition during the day. This part‑time, often out of field employment requires them to make financial sacrifices in the early years of their career. This purposefully means putting off longer‑term, more stable employment in the short term to follow their careers in the arts. The pay is often low, the hours long, and there is no guarantee of success, but this is what our students have signed up for.

They know what they are getting into. A very important note is that AMDA's student loan default rate is 3.4 percent. It's extraordinarily low. Our students successfully pay back the loans they've taken out to get the training they need by attending our school. We know that the path of the performing artist is a difficult one, and we work hard to help our students manage financial challenges.

We specifically advise students of their likely post‑graduation financial situation when they enroll. Additionally, we have post‑graduation assistance designed to help our students find part‑time employment. Very simply, the earnings that our graduates make in the first few years after leaving our school are not indicative of their earning or employment potential throughout their lives. This has been the formula that has worked for students who have attended our school for the past 50 years. No matter how well‑intentioned this regulation is, fancy new metrics from Washington bureaucracies cannot measure the success or failure of our school and our students, and we respectfully ask for this regulation to take the unique needs of our students into account.

If future versions of gainful employment are to apply to certificate programs like those at our school, the rules should recognize the difference in how our graduates will earn their living versus those graduating from other schools and other programs, who can more readily find long‑term, high‑paying employment.

As the Department considers who may serve on a negotiated rulemaking committee on these issues, AMDA also stands ready to serve, to ensure the needs of our students are recognized in any new rule. Thank you for considering our views today.

MS. WEISMAN: Neal Heller.

MR. HELLER: Good morning. My name is Neal Heller, and I'm here today representing the American Association of Cosmetology Schools. We have over 600 member schools across the country. I'm also the owner of Hollywood Institute of Beauty Careers, which is a company that owns three cosmetology schools in the State of Florida.

We want to thank the Department today and applaud your courage in re‑opening the rulemaking process for what we would consider to be ill‑conceived and poorly crafted gainful employment and borrower defense to repayment rules. We all agree that students should be protected against fraudulent practices, misleading practices, illegal practices.

However, as the gentleman before me has clearly stated, these rules do not accomplish that purpose and, in many cases, are putting good, decent schools out of business. In the face of relentless pressure from certain members of Congress, ideologues from the previous administration and U.S. Department of Education, and their friends in the media, it is truly commendable to re‑open a dialogue that so desperately needs to take place in a more fair and balanced environment. An example of unfair media coverage can be found in today's Washington Post, in an article which merely echoes a New York Times article and editorial of several weeks ago. Today's article states, quote, 98 percent of the programs that fail to meet gainful employment standards are offered by for‑profit colleges.

Wouldn't it have been nice of the reporter to have added that 98 percent of the programs under gainful employment are only offered at for‑profit colleges, a little perspective on the subject? This type of misleading, deceptive reporting would have landed the Washington Post in hot water under the current borrower defense to repayment rule.

Perhaps I should demand my $2 back for today's edition, and then perhaps we should send a letter out to every single subscriber and buyer of the Washington Post today and ask them to simply check a box if they'd like their money back, as well. That is how ludicrous the currently written borrower defense to repayment rule is, as it stands. Some other perspective on gainful employment. Somehow, if a student, a graduate, doesn't earn any money, that zero counts in the calculation. Yet, in the same calculation, if a graduate from that cohort didn't borrow any money to go to school, that zero doesn't count.

Another example of the unfairly written way gainful employment came out in its final rendition, it also dismissed the Department's own words in the preamble, which stated clearly that they know certain earnings data is flawed, i.e. for cosmetology schools and cosmetology related programs.

Yet, it took a lawsuit from AACS to get that, now, turned around, so that the Department has the opportunity to rewrite the earnings requirements and the appeals requirement under gainful employment which, again, I commend the Department for extending that to all schools.

Again, we talked about simply borrower defense to repayment, where you simply check a box, if you get a letter in the mail, if you want relief on your student loan. You don't even have to say why, just check the box. One validated claim results in the Department sending out that letter to every single graduate of that program, at that school, asking them to check that box, and that one validated claim also results in the school having to post, in some cases, multimillion dollar letters of credit. There was also no appeals process for the erroneous data, such as interest rates that were being used by the Department.

In my case, the median student had a 6.8 interest rate used on the debt calculation, when only one third of her debt was at 6.8 percent. Two thirds was at 3.5 percent. Thus, that program would have been a passing program, instead of being in the zone, had the Department used real interest rates across the board.

Some recommendations. On‑time completion rates, revise the GE template, public and not‑for‑profit schools get six years to graduate their students in four‑year programs. Why not us?

MS. WEISMAN: Time.

MR. HELLER: 150 percent is exactly the calculation that's used in financial aid. We'll have other recommendations, but I guess I won't get to them. I think all schools should be judged fairly and equally, regardless of their tax status. Judge us on performance, and thank you very much for doing what you're doing. Thank you.

MS. WEISMAN: Donna Waite.

MS. WAITE: Thank you for granting me a few minutes to speak here today. My name is Donna Waite. I'm a Paul Mitchell school owner, and I'm also the president of the Franchisee Association. I represent, standing here today, 112 schools across our nation. I'm also the co‑owner of several Paul Mitchell schools located in Idaho, Oklahoma, Arkansas, and California.

I have come here to express support for the Department's efforts to review the regulations pertaining to both the borrower defense to repayment and gainful employment. I also support the proposal to establish two new committees to review, revise, draw up new regulations, or perhaps eliminate those established under the previous administration.

When the current rules for gainful employment were being written, and before they were finalized, members of our association informed the Department the cosmetology sector was much different from other for‑profit schools, largely because our graduates rely on tips, and are often paid in cash. As a result, we said that the data the government would rely on for gainful employment for cosmetology schools would be inaccurate and unreliable. Our real‑world experience has proven that to be the case.

Fortunately, our corporate partners at Paul Mitchell helped us navigate the Department's troublesome compliance website and assisted us in setting up a system to interview over 2,000 graduates of our schools for programs that were in the zone or failing. From that experience, we learned that graduates from those schools under‑reported their income by an average of 65.5 percent.

That is a huge margin of error, an error that has, in turn, cost our franchise owners and corporate partners hundreds of thousands of dollars, as we work to comply with the Department's compliance and appeals process. To us, it seems like a very expensive and cumbersome paperwork and compliance nightmare. But our schools are lucky. After our interviews were made, nearly all our schools moved into the passing grade, and a few moved from failing into the zone. None of these appealing remained in the failing category. Unfortunately, many small mom‑and‑pop cosmetology schools that don't have a corporate partner, as we do, have had to evaluate whether they could take current employees away from their normal responsibilities to work on this expensive compliance nightmare. We suspect many gave up and closed their doors.

We know they did. Although this hearing comes too late for the owners who've given up, I am grateful that Secretary DeVos and her team have undertaken to review the impact of these regulations. For the record, as I said, there are 112 Paul Mitchell schools located in 39 states, nearly all of them are owned by small business people like me.

According to publicly available information, a typical owner will invest $1 million to $2 million to establish a school. Our owners are generally not wealthy. Many mortgage their homes to establish a school or invest their life savings in a school. We refer to our students as future professionals, a term chosen to inspire them to greatness within the cosmetology industry. Last year, over 9,600 future professionals graduated from Paul Mitchell schools, and we ended the year with over 13,000 students enrolled. Of our graduates, 97 percent receive their state licenses each year. Nationwide, we have a job placement rate of 77 percent. That means that nearly 8 out of 10 Paul Mitchell graduates have a job as soon as they graduate.

Perhaps more importantly, from a taxpayer perspective, our graduates have a student loan repayment rate that is better than the national average for all institutions. Put another way, our student default rate in 2013 was 10.6 percent. That's better than the average for‑public institutions and better than the average for those who attended proprietary, for‑profit schools.

The only group that beats us are the private schools, such as Harvard, Yale, Notre Dame, and Stanford. You can see data in my written testimony to support that. Despite the fact that our students have a better than average student loan repayment rate, when the gainful employment assessments were sent out by the Department of Education, 58 of our 112 Paul Mitchell schools had a program in the zone or failing. That doesn't make sense to us. Clearly, if our graduates are repaying their loans, they're not being hurt by the cost of the education we provide. That is why we support the Department's review of gainful employment regulations and the establishment of the two committees. Speaking to ‑‑

MS. WEISMAN: Time.

MS. WAITE: ‑‑ two committees, let me briefly address the borrower defense to repayment. Simply put, we believe the whole regulation should be reworked. As an owner of a school, I have a lot of compliance that I'm held to, placement rate, completion, licensure, payment of loans that they have to do. I'm trying to put my arms around, now, why I'm also held accountable to what my graduates are reporting on their income tax ‑‑

MS. WEISMAN: Time.

MS. WAITE: ‑‑ as reported income. Thank you.

MS. WEISMAN: Christopher Walck.

MR. WALCK: Good morning. My name is Christopher Walck, and I am the director of public relations for John Paul Mitchell Systems. I'm here representing various Paul Mitchell cosmetology schools owned by JPMS, and as a part of the Paul Mitchell Franchisee Association, which is comprised of 112 schools across the United States. With this nationwide network of schools in 39 states, Paul Mitchell cosmetology schools graduate nearly 10,000 qualified cosmetologists each year.

The gainful employment and borrower defense to repayment regulations have been of concern to the Paul Mitchell schools since their inception. While we understand that there may have been legitimate motivations for the Department to promulgate these rules, we feel that they are heavy handed, overly burdensome, and over reaching in many ways.

Let me first begin by discussing gainful employment. At the time gainful employment regulations were published, the Department stated that the primary purpose of the rule was to protect students at career colleges from becoming burdened by student loan debt they cannot repay. However, we have felt, from the beginning, that there was a much better way to evaluate how graduates are able to repay their student loans by using existing cohort default rates. Many of our students are non‑traditional students, whether it is because they started their program with the intention of only working part time to supplement their family's income, or have a change in life circumstances, such as having a baby, that pushes them to drop to part‑time status, or to stop working altogether.

Many make these decisions knowing that they will be able to still sufficiently cover their student loan debt. However, their choice of part‑time employment brings down the students' debt‑to‑income ratio when compounded by others in the same situation, which can significantly bring down a school's GE ratio.

Based on the gainful employment rates released by the Department in January, 58 of the 112 Paul Mitchell cosmetology schools either had a program that failed or were in the zone. Many of these schools took advantage of the costly and burdensome earnings appeal process, and 41 of the schools have now reached the 50 percent threshold that was required under the process. Our GE ratios were based on annual earnings data that averaged $15,410 for each graduate. However, as Donna stated earlier, our survey data shows the annual average earnings of $25,498, a 65.5 percent increase.

Interesting enough, in the recent opinion for the American Association of Cosmetology Schools case, Judge Contreras noted that the Department acknowledged that the data was flawed when it stated that it was aware that some self‑employed individuals may fail to report or under‑report their earnings, and that experts submitted evidence that tip income and self‑employment income are under‑reported as much as 60 percent in the cosmetology industry.

It is clear that the Department must do something to improve the accuracy of the data that it's using to hold schools accountable. The Department cannot argue that the earnings appeals process is sufficient to overcome the inaccuracies in the earnings data.

On average, these appeal surveys cost each of our schools participating more than $13,000 in hard costs and countless hours of personal time to conduct the survey. Carried across our network of schools, the cost came to more than a half a million dollars, not to mention the over‑reaching costs of complying with burdensome gainful employment regulations. These are all resources that should be devoted to improving our students' educational experience. Lastly, we feel that it's unfair to hold career colleges to a different standard to that of non‑profit colleges and universities.

If debt‑to‑income ratio is so important for the protection of higher education students, then it should be applied to all educational programs equally. To do otherwise reflects a bias and agenda against for‑profit schools that cannot stand. Now let me turn to borrower defense to repayment.

The most significant concern in the regulation is the potential requirement for debilitating financial security, such as letter of credit for a variety of triggers. While the final rule provides some relief by giving the Department discretion to not only require financial security above 10 percent of the previous year's income from federal student loans in some instances, this leaves schools without a clear understanding of the potential financial impact. However, this is not all. We are troubled that the regulation puts the Department into a prosecutorial and judicial role in bringing the action, and then deciding the outcome, which creates a conflict of interest.

We are troubled by the fact that students are happy with their education experience may be incorporated into another student's action at the discretion of the Department, without the satisfied student's input.

Finally, we are troubled that the regulation removes statutes of limitation for the discharge of borrower loan balances, the lack of which will impede fairness of any proceedings against a school. To conclude, both regulations are harmful to the higher education institutions and need to be repealed or undergo significant revisions.

We are grateful for the Department's action and would like to be a part of the negotiated rulemaking process to lend our voice towards making appropriate decisions regarding these important issues. We would like to ask the Department to, where appropriate ‑‑

MS. WEISMAN: Time.

MR. WALCK: ‑‑ rely on student loan default rates and student outcomes in the areas of completion, placement, and licensure, to evaluate the effectiveness of educational programs.

MS. WEISMAN: Marc M. Jerome.

MR. JEROME: Good morning. My name is Marc Jerome. I'm the president of Monroe College, in the Bronx, New York. Reflecting our community in the Bronx, most of the 8,000 students that we educate are first‑generation college students, and we have worked very hard to have among the best outcomes in the country in graduate rates, default rates, and earnings.

I was a member of the 2013 GE Negotiated Rulemaking Committee, and I've spent, actually, the last eight, maybe ten years with a team of six people at Monroe living and breathing issues related to debt‑to‑earnings, repayment rates, and cost of attendance which, as you can imagine, makes me the life of every cocktail party I go to. I'm going to talk a little bit differently than most of the speakers. First, I think most of the speakers who have been speaking on behalf of borrowers have been conflating behavior of institutions with outcomes. So I'm asking the Department to focus on data when they go forward. One thing that hasn't been mentioned ‑‑ and the phrase I use is that the silence is deafening ‑‑ when you look at data across all of higher education, outcomes for low‑income students, whether it's graduation rates or student debt or earnings, are generally abysmal.

What's happened is the focus on one particular subset of colleges has caused both the entire journalistic community, and some of the regulatory community, to forget that the Department is responsible for protecting all students. I'll just give a few examples. I believe there are over 2 million students attending institutions where less than 10 percent of students graduate on time.

In fact, in New York City, where I work, there are many institutions where on‑time graduation rates are below 5 percent, and sometimes below 1 percent, and yet, these institutions are either not subject to gainful employment, or the way it's written, they would have passed it because gainful employment has no graduation rate. Default rates, you'd think sometimes that student default is only happening in one sector. Actually, there are over 1,000 institutions in the whole country where more than 20 percent, that's 1 in 5, default. My second request is that the Department revisits the data. I actually am looking for someone in the journalism world to take on this challenge.

I'll start with GE. When I was a negotiator with GE, I was certain the Department was holding information that showed debt‑to‑earnings for for‑profit programs were much worse than not‑for‑profit. I made a formal request to see that data. That request was denied.

Since the GE rule has been passed, though, there's much more data that's surfaced that should give the Department pause to really look at whether or not the GE metrics are correct. First, there's terrific programmatic data from the University of Texas that is insightful both on the 8 percent and 12 percent rate. Second, the Scorecard now has the most comprehensive data on institutional debt‑to‑earnings and repayment rates. I'm understanding that the Department is starting to put together, finally, programmatic information on both debt‑to‑earnings. As far as I know, that data has never seen the light of day. On repayment rates, which is my second topic, a year ago, I came to the suspicion that the Scorecard was incorrect.

I contacted the Department, and eventually, the Department recognized that the Scorecard repayment rates were incorrect. The issue with both debt‑to‑earnings and repayment rates is this. If these metrics were ever applied across all sectors of higher education, I believe they would show that millions of students are attending programs that would fail these metrics, especially institutions that serve low‑income students.

Said a little more bluntly, if the rules were applied across all sectors, there would be thousands of program closures and many institutional closures. In fact, if you go to the Scorecard data on the historically Black colleges and universities, which were referred to earlier, you would see that if the rules were applied to them, they would be decimated. Almost all of them would have to close. So I will end with ‑‑ because my time is up ‑‑ that if the Department looks at the data and really looks at it across all segments ‑‑

MS. WEISMAN: Time.

MR. JEROME: ‑‑ of higher education, it will inform a much better rule. Thank you very much.

MS. WEISMAN: Donna Stelling‑Gurnett.

MS. STELLING‑GURNETT: Good morning, and thank you for this opportunity to present this testimony on behalf of the Association of Proprietary Colleges. My name is Donna Stelling‑Gurnett, and I'm the president of the association. APC was founded in 1978 and represents the interests of the degree granting proprietary sector in New York State.

We wish to thank the Department for pausing and taking the time to appropriately reflect on the gainful employment rule and the borrower defense to repayment regulations in an effort to verify that these regulations actually accomplish what they were intended to do. I would like to take a few moments to discuss ideas we would like to see incorporated during the upcoming regulatory processes on these issues. Let's start with the gainful employment rule. While our membership has always agreed with the stated aim to ensure that students enrolled in certain higher education programs receive a quality education that adequately prepares them for gainful employment, we have questioned the relevance of the metrics that the regulation relies on to assess program value and have argued that they are unrealistic and politically biased.

The GE rule is incredibly complicated and ambiguous, so much so that the Department had significant difficulty in implementing it. APC and our member colleges have the highest regard for the competency of the Department staff. However, when the Department originally published the draft GE rates in 2011, many institutions reported extremely high rates of errors with the repayment rate metrics in aspects of the debt‑to‑earnings metric.

Compounding these concerns is the Department's acknowledgement last year that it had to recalculate all of the repayment rate data on the College Scorecard, due to a coding error. This coding error translates into incorrect data that confused both students and institutions. If the Department decides to proceed with the GE rule, we believe the rule must apply to all programs at all institutions equally. The problem of student loan debt is a serious one, and the nation's trillion‑dollar student loan crisis affects all sectors of higher education.

For example, there is a well‑respected, highly competitive fine arts college in New York City that happens to be a for‑profit college. It has a high graduation rate of 66 percent, and a low student loan default rate of just 7 percent, which are undeniably exemplary outcomes. However, because its graduates pursue creative and fine arts careers that simply do not pay a lot in the first few years after they graduate, its programs won't pass the regulation.

The metrics don't consider student outcomes; they just focus solely on loan metrics. Therefore, although nearly every fine arts program in the country would fail the GE rule, only for‑profit college programs will fail and be shut down because they are the only institutions subject to the GE rule. Finally, we would recommend the Department utilize the GE rule as a disclosure metric for all institutions, rather than a high‑stakes loss of Title IV eligibility regulatory standard, singling out just one sector of higher education. Let's move on to the borrower defense to repayment. APC recommends that the Department first focus on the claims of individual students.

The association believes strongly that students who have been defrauded or misled should have just recourse. With regards to the claim, we believe that a student should file a claim first with the institution, prior to asserting any defense to repayment. This would be an efficient way to resolve meritorious claims without having to literally make a federal case out of a resolvable issue.

If the parties agree to pay all or part of the loan back, the institution would notify the Department and make the payment. If the student and institution cannot resolve the matter, then the borrower claim of defense should go to the Department. The Department can review each claim and, after some initial process of weeding out claims without merit, the Department should hold an administrative process to resolve the matter and make a determination. This process should involve the individual borrower that wants to assert the claim and the institution at all phases of the process. Lastly, given as these rules will need to be negotiated, we also suggest the Department add additional constituencies of interest to this session.

In addition to the typical required parties, we believe having a chief financial officer, chief business officer, or a legal chief officer from an institution of higher education on the panel would provide for a better informed committee. APC has participated in past negotiated rulemakings, and we welcome the opportunity to participate in the process as it moves forward for these two regulations.

In conclusion, New York State has a long‑standing history of working together with institutions of higher ed in all four sectors, our state university system, city university system, independent non‑profit and proprietary sector, to the benefit of all New Yorkers. This commitment to equality and parity across all sectors has created a robust and diverse education system that should be an example for the Department.

MS. WEISMAN: Time.

MS. STELLING‑GURNETT: Finally, I thank you for your continued support of our students and for the opportunity to present this testimony today. Thank you.

MS. WEISMAN: Adrienne Scott.

MS. SCOTT: Good morning, and thank you for the opportunity to share our thoughts on regulations affecting gainful employment and borrower defense to repayment. My name is Adrienne Scott, and I am the vice president of operations and education for a school located in Pennsylvania, called YTI Career Institute, which is owned by Porter and Chester Institute.

YTI has been educating and training students for 50 years, and Porter and Chester has been doing so for slightly over 70 years. I would first like to address the regulations surrounding gainful employment. The following items are not necessarily in order of importance, but all are important for consideration. Item 1, gainful employment is a lookback measure, which schools have no ability to influence. The students being evaluated graduated long ago, and there's no opportunity for schools to affect their debt loads or a program's historical cost.

At a minimum, the rates need to be considered informational, until we reach a time period where schools have had a chance to adjust to items such as a program's tuition, length, curriculum, and delivery model, in an attempt to improve effective programs.

Item 2, if debt load in comparison to typical wages is such an important metric, then it should be applied across all types of institutions, including traditional schools of higher education, and all across all degree programs and majors. Item 3, we have concerns regarding the GE methodology.

It only looks at Title IV students in a program and discounts the effect of students who are not accessing Title IV funds. Therefore, it skews the median loan debt, since these students typically do not have any debt. Additionally, it looks purely at income and wages, as opposed to income and wages earned from the field of study. Therefore, there is no true correlation between the education a student received and the job that they are currently holding. Item 4, GE addresses nothing in regards to the quality of the program. In effect, it is a tuition price control measure. One suggestion on how to improve a failing program has been to tell schools to find a way to reduce students' debt.

However, the fault with this logic is that a school can only counsel students on debt borrowings. Schools have no ability or authority to limit the amount of money that a student chooses to borrow. Item 5, an identical program offered at two different schools could conceivably end up with different GE rates, simply because one program is eligible for state grant aid, and the other program is not.

In other words, the programs have the same tuition, the same graduation and employment rates, and the same median income levels, but because students attending the program at School A are able to access state grant aid, their median debt levels are lower. Therefore, the program at School A receives a passing GE score. Meanwhile, at School B, students in the exact same program do not have access to state grant funds and, therefore, they end up with a higher median loan debt, resulting in the program at School B receiving a failing GE score. With regard to borrower defense to repayment, we find this legislation to be overly burdensome, complicated and, in some areas, vague. Some pertinent points regarding this legislation.

Point 1, we strongly object to the fact that all provisions of Section 668.41, Reporting and Disclosure Information, regarding a loan repayment rate of less than or equal to zero, are applied only to proprietary institutions. If a low loan repayment rate is worthy of notification to enrolled and prospective students at proprietary schools, it is also worthy of notification to such students at all other schools.

As proposed, this regulation creates a very uneven playing field and denies information to enrolled and prospective students who could benefit from this warning. It also creates a situation of potential misrepresentation, as prospective students comparing a proprietary school with a warning and a public or not‑for‑profit school without a warning would conclude that a low loan repayment rate did not exist at the public or not‑for‑profit school when, in fact, the loan repayment rate for that school could be worse than the one at the proprietary school.

However, no one would know this unless the Department treats all schools equally and fairly and calculates this rate for all schools. Since the purported goal is helping students make informed decisions, we believe it is important to help students at public and not‑for‑profit institutions with this information.

We understand that the Department feels that a minority of public and not‑for‑profit schools would have low repayment rates, but that is no consolation to the students and prospective students at those schools who do have low loan repayment rates, who find themselves faced with the same challenges as students at proprietary schools with low repayment rates, but they will not have received any advance warning.

MS. WEISMAN: Time.

MS. SCOTT: This requirement does not cause any additional administrative burden to schools that have adequate loan repayment rates and, therefore, should not be a reason to systematically exclude all public and not‑for‑profit schools, and unfairly burdening one sector of schools is unnecessarily punitive. Thank you again for your time.

MS. WEISMAN: Bhavna Tailor.

MS. TAILOR: Good afternoon. My name is Bhavna Tailor. I represent ‑‑ my title is vice president of operations, and I represent Eastwick College, which is located in northern New Jersey. I'd like to begin by thanking the Department for reviewing both of these regulations, gainful employment and borrower debt to repayment.

We, in higher education, look forward to working with all of these rules that require more discussion to protect all students in the right way. All students who attend academic institutions should gain employment in their chosen fields of study, and it should not be limited to a small sector. Although the concept of gainful employment regulation sounds like a good idea, the actual regulation finalized in 2014 is arbitrary and counter‑productive. It does not account for many real‑life scenarios and has significant implementation and data problems that will have a negative impact on students and institutions.

The GE rule was originally intended to further define two words, gainful and employment, but turned into over an 800‑page federal regulation, along with 100 additional electronic announcements and other documents schools have to comply with.

The significant time, staff, resources, and costs allowed to comply with these over‑regulations would have been better spent on students, classrooms, and improving education offerings and helping tuition cost. GE assumes every student pursues full‑time employment upon graduation.

If graduate choose to work part time, this will negatively impact the GE rate. The regulation does not account properly for tip‑based professions, like cosmetology or beauty programs, where federal governments have acknowledged there under‑reporting of income. Commission‑based career fields and other passion‑driven fields that are not always considered earnings, like arts, are not considered in the GE. It is not a one size fit all metric. There are no considerations for GE for benefits for a job that does not have direct earnings.

For example, hotel and hospitality management programs, graduates sometimes accept jobs and receive ‑‑ in exchange for housing or food assistance. GE only looks at the first three years of wages, and not the term earnings potentials in a career. In some cases, we consider education to be a lifetime investment; however, we're not looking at the metric as a lifetime investment.

The process to appeal the data in the current regulation is extremely burdensome and difficult to achieve. The student survey response thresholds are high, and they are complicated, biased metrics using the surveys that are skewed results and available in state‑level data systems are scarce. There have been some significant data problems reported by many institutions on loan debt data, and also earning data used by the government in calculating the GE rates. Nothing in the regulation has anything to do with the quality of a program, graduate rates, placement rates, employers' needs for programs, or student satisfaction levels. These are the outcomes that matter, not complicated government‑created metrics, calculated government data that does not account for real‑life personal scenarios.

Schools educating a greater percentage of low‑income or at‑risk populations of students get punished more by the current GE rule because these populations often need to take out more loan assistance from the area that they live in and go to school in.

Our potential recommendation is to remove the arbitrary application of the regulation on the private sector, primarily, or to consider applying it to all Title IV institutions, to reduce the length of the 800‑page regulation, the scope, and the burden of the regulation. Transition the regulation from being a punitive tool against programs in school and, instead, turn it into a transparency tool to help students make informed choices on their own.

MS. WEISMAN: Time.

MS. TAILOR: I also wanted to make a quick comment about borrower debt to repayment, the same comment as GE, that it should apply to all institutions equally. Thank you very much.

MS. WEISMAN: Gary Ratner.

MR. RATNER: Good morning. I appreciate this opportunity to speak to you in favor of the Department's efforts to establish negotiated rulemaking committees. My name is Gary Ratner. My company is Ratner Companies. Our firm was started by my grandfather in 1936.

Ratner Companies operates nearly 1,000 salons in 14 states in the District of Columbia, east of the Mississippi. We also have a partnership that owns three Paul Mitchell cosmetology schools in Florida and Virginia. The companies we currently run employ about 10,000 W2 licensed stylists.

Our employment packages include a full complement of benefits that include, but are not limited to, health and dental insurance, paid time off, and 401(k) programs. In short, we offer real jobs, with real benefits. We are always hiring, and when we hire, we're looking for the best salon professionals available. Most every stylist we hire, we employ, has been trained at one of the nation's cosmetology schools, including schools we own. They are accredited by a variety of accrediting agencies. Cosmetology schools are also governed by regulatory boards in each state and local and state health departments.

With these regulatory bodies in mind, I believe there are several questions the two committees to be established should review, including do we need more federal regulations around cosmetology? If the decision is made to retain gainful employment, should cosmetology schools be included or excluded, or should ways be found to address the realities of the cosmetology business?

On that latter point, if cosmetology schools are included, it is my belief that the Department should do a better job than it has in addressing the unique realities of the cosmetology business. You may know many cosmetologists in smaller chains or independent salons are sometimes paid in cash. Those who are paid in cash are known to under‑report some of their incomes. That's a reality. It's not right, but it's also not fair to cosmetology schools to be held accountable for the under‑reported income of their graduates, as is currently the case under the present gainful employment regulations. To hold schools accountable for the actions of its former students is akin to holding the Department of Education responsible for the actions of its former employees.

That would not be fair to the Department. However, if cosmetology schools are going to be responsible for the income reported by their graduates, the Department should work with the schools on making it easier to track and report graduates' income. Is the real issue not income, but rather default rates on loans?

A federal judge, Rudolph Contreras, recently noted, in his recent opinion in the case between the Department of Education and the AACS, that the Treasury Department has found that people receive ‑‑ that people that receive their income from tip‑based or self‑employment sources are estimated to report a lower amount of their income for tax purposes. As stated before, this is consistent with the findings of Paul Mitchell schools. After serving thousands of recent graduates from its schools, the surveyors following the Department of Education survey protocols also discovered that graduates under‑reported their income. Once the income levels were adjusted, as allowed for by the Department, nearly all of its schools moved into the passing zone.

Assuming this is the case for nearly all cosmetology schools, I am left wondering if the present gainful employment rules are needed at all. Let me take one minute for borrower defense for repayment. The collapse of Corinthian colleges left the Department scrambling to develop an adequate system to protect students and taxpayers.

We fully understand the reasoning, but feel strongly the Department missed the mark on its solution. Under the present regulations, there is a laundry list of triggers that could require a school to get a letter of credit for 10 percent of the total income from federal student loans for the previous year. Those offenses are stackable. If a school hit four triggers, it could soon be faced with requirements that it be able to pay back 40 percent of student loans upon demand by the federal government. This will put many schools out of business, without having a chance to defend themselves. It will place a huge chill on any lenders considering whether or not to back the construction of a new school and put less stylists into the job market.

This is what we're here for, to create jobs, on my side. This is why I, again, reiterate my support for moving forward with the two committees. My recommendation request is that the representatives ‑‑

MS. WEISMAN: Time.

MR. RATNER: ‑‑ from the cosmetology school business and larger industry be appointed to the committee examining borrower defense repayment and other committee examining gainful employment. Thank you.

MS. WEISMAN: Kevin Thompson.

MR. THOMPSON: Good morning. Thank you for listening to Brian's story because I'm one of the people that will be affected, along with my family. I'm AWO‑1, retired, Kevin Thompson. I served in the Navy for 20 years. I have accomplished over 35,000 hours of flight time, and I've done multiple tours in support of Desert Storm, OEF and OIF. I have instructed, mentored, and trained over 200 individuals. Like many individuals like myself, who exit the military, our jobs do not relate to anything in the civilian world. Thus, I had to go to college to redo everything I learned.

At this point, I went to Illinois and attended community college, where I earned one B, and the rest As, and I earned two associate's degrees. My family and I moved to Phoenix, Arizona, where I attended ITT Tech, where I saw, in an advertisement, where you can complete your degree in 18 months.

As I only had 17 months and 23 days left on my GI Bill, I finally contacted ITT Tech, in Tempe, Arizona, and was told that I could not complete my degree that I had previously picked. They picked project management for me at this point, which allowed me to complete the degree in the amount of time that I had.

They also said that they would be able to provide jobs for me during the class and after the class, both were false. I gave them my resume and never was heard from again. ITT Tech also stated that the GI Bill would cover all the fees associated with attending the classes, and that nothing else would be needed. I had applied for the Pell grant before moving to Arizona and was approved. Neither I, nor any of my fellow classmates, have ever received funds from the Pell grant, as I had in every other school that I had attended.

ITT Tech did receive the grant money, but it's unclear where it went because me and my family were homeless twice during the period that I was attending ITT Tech. The instructors at ITT Tech were like most. Some were good; some were bad. It was all about reading a paragraph and writing a six‑page paper on it. If this is what our education comes to, I would greatly worry.

They did this in order to meet the requirements by the accrediting association. The instructors did bring to class the actual experiences from what their job was associated with and the subject being taught, yet the school fell short of providing the resources they had promised, such as job placement and how the school would be paid. Of course, the ability to obtain the degree needed a lot of time, as they closed September 6, 2016. I heard this was closing while on a job, on the radio station. We were not even given the ability to plan ahead, which would have been nice. With the ITT Tech closing, the VA is now trying to collect on funds they had given ITT Tech prior to the class starting.

I was left without a degree, and now loans that I cannot repay, and I was left with 6 months and 13 days of the GI Bill. After contacting many colleges, I was unable to find one that would accept any of the credits and allow me to finish my degree in the allotted time.

Finally, I found a university that would accept some of the credits that was provided by ITT Tech, but could not say if I would be able to complete my degree on time. I am now two classes short of my BS in technical management and unable to complete the degree, due to the GI Bill not covering the classes or the living expenses that I've been living on. I request that you do anything that you can to stop schools like ITT Tech from taking individual's funds, lives, and dreams. Make schools more open about what types of jobs graduates are able to be employed in, be it an area of study or general, and lastly, hold schools accountable for the false promises and enable individuals like me, myself, and my wife, to recover the funds that we give these individuals.

MS. WEISMAN: Time.

MR. THOMPSON: Thank you for your attention.

MS. WEISMAN: Yael Shavit.

MS. SHAVIT: My name is Yael Shavit, and I'm an assistant attorney general in the consumer protection division of the Office of Massachusetts Attorney General Maura Healey. I am here today to convey Attorney General Healey's opposition to new rulemaking to replace the borrower defense rule and the gainful employment rule.

Nearly two years ago, our office participated in a public hearing at the exact same point in the process, at the initiation of the negotiated rulemaking that resulted in the borrower defense rule. That process was robust and thorough. Our office, numerous stakeholders, and dozens of Department staff participated in the extensive rulemaking process. We are dismayed by the Department's decision to cast aside all the hard work and progress achieved during its previous rulemakings and disheartened that the Department has decided to turn its back on the critical protections that it promised to borrowers.

Our office believes that this is both a waste of resources and a betrayal of students who count on the Department to protect them from abuse at the hands of predatory schools. Both the borrower defense rule and the gainful employment rule were promulgated after comprehensive negotiated rulemaking processes and established protections for students and taxpayers from predatory schools, including those in the for‑profit education sector.

The Department is well aware of the abuses that students are subjected to by predatory for‑profit schools and the need for these rules. Just last year, then Secretary of Education John King joined Attorney General Healey in Boston and promised that the Department would, quote, take action to protect students and taxpayers from unscrupulous companies trying to profit off of students who simply want to better their lives. Unfortunately, rather than fulfilling this promise, the Department's decision to revoke and replace the protections that so many of us worked for imperils students and emboldens for‑profit schools.

Over the past several years, our office and attorneys general across the country have made addressing the abuse of student borrowers by for‑profit schools a priority. Through our investigations, we have documented outrageous misconduct on the part of such schools.

We regularly speak with students who were lured into programs with the promise of employment opportunities and higher earnings, only to be left with little to show for their efforts beyond unaffordable debt. Our offices have undertaken numerous enforcement actions against schools to combat these types of practices.

The Department, likewise, has a crucial and indispensable role to play in preventing misconduct by predatory schools, protecting students from abuse, and protecting taxpayers from bearing the costs of schools' misconduct. The borrower defense rule and the gainful employment rule were designed to make progress towards these very goals. The borrower defense rule was established to ensure that students have a fair and transparent process to effectuate a defense to loan repayment when their schools commit misconduct.

This rule also protects taxpayers by ensuring that schools engaging in misconduct take financial responsibility when their unlawful actions result in discharges of borrowers' loans, and by prohibiting schools from using arbitration agreements and class action waivers to stop students from bringing claims directly against schools in court.

Similarly, the gainful employment rule was designed to ensure that students attending vocational programs receive education that will allow them, at a minimum, to repay their federal student loans. The rule enables prospective students to receive important information about student outcomes of the programs they're considering. This empowers students to make informed decisions and protects students from programs that will leave them with burdensome debt and poor job prospects. The gainful employment rule also protects taxpayers by ensuring that federal student loan dollars are not spent to fund career training programs that consistently fail to prepare students for gainful employment in a recognized occupation.

Students count on the Department and offices like ours to protect their interests. The gainful employment rule and the borrower defense rule are steps in the right direction. These rules are the products of a significant amount of time and effort on the part of numerous stakeholders and the Department.

Simply abandoning them is both a waste of Departmental resources and an injustice for the students that these rules were designed to protect. For this reason, we call on the Department to fulfill its responsibilities to students and reconsider its decision to revoke and replace these critical protections. Thank you for the time to speak today.

MS. WEISMAN: Anne Gross.

MS. GROSS: Hello. My name is Anne Gross. I'm vice president of regulatory affairs at the National Association of College and University Business Officers. I appreciate the opportunity to share our concerns with you. NACUBO supported Ed's efforts to update its regulations on borrower defense to repayment.

It's important to protect students from misleading, deceitful and predatory practices and ensure that student borrowers are not left in the lurch by the sudden closure of their institution. We're primarily concerned about the changes last year's rulemaking made to the financial responsibility standards.

Ed's intention to include this subpart in the negotiations was not disclosed in a transparent manner, in the appropriate notices, and Ed did not invite anyone with expertise in higher education finance to participate in the rulemaking. Consequently, the borrower defense rulemaking made significant changes, without having the right people at the table.

We urge you to appoint a separate negotiating committee to address financial responsibility standards for non‑profit institutions. This smaller group could work concurrently with the Borrower Defense Committee and coordinate, as appropriate. I have participated in and observed many negotiated rulemaking efforts over the years and truly believe that a more targeted approach has a much better chance of success. Frankly, the right stakeholders for borrower defense to repayment don't have the necessary knowledge or interest in the financial responsibility standards, and vice versa.

This is the right time to take up the financial responsibility standards for non‑profit institution for three main reasons. One, first of all, we have the changes that the borrower defense rules made to the financial responsibility standards, based largely on anecdotal information and conjecture, rather than data, and without the involvement of any experts in the field.

They added multiple triggers, without evidence of their likely importance or impact. There is no materiality threshold. For most schools, it simply added new hoops to jump through and jeopardy based on their ability to put systems in place to report things in a timely manner. No. 2, last summer, the Financial Accounting Standards Board issued new rules for non‑profit institutions that will alter the way non‑profit institutions present their financial statements and render the current definitions and ratio calculations obsolete.

Institutions will be required to comply with the FASB rules for their financial statements for FY 2018 and '19, but are encouraged to implement sooner. Many may do so for the FY 2017‑18 financial statements; some are already doing it this year for their financial statements this year.

That is going to cause a problem in calculating the composite scores for these institutions. A number of the changes include a change to the temporarily restricted category of net assets, which will not exist anymore and is used in some of those calculations.

There's also changes in how endowment losses will flow through the statements. Liquidity and availability disclosures won't work quite the way they do, so there's a number of reasons there really calling for the Department to deal with this, and to deal with it in a timely manner. Our third reason is long‑standing concerns that NACUBO and others have had about Ed's interpretation of the current rules and how they calculate institutions' composite scores. NACUBO has been trying for more than eight years to resolve these issues, without success.

Most of them relate to differences between non‑profit and for‑profit financial statements in areas of endowments, pension plans, investment, and physical plan, pledges, and the like, where there are significant differences between for‑profit and non‑profit institutions.

The federal government should not be building additional layers of complexity on top of a faulty foundation, as they have with the changes made to the financial responsibility rules in the borrower defense. Thank you.

MS. WEISMAN: That concludes our speakers for the morning part of our session today. We do have a few time slots remaining in the latter part of the afternoon. If you have not yet signed up and do wish to speak, please see someone at the front desk to schedule a time. We will take an hour for lunch. We will resume at approximately 1:10, so please be back by 1:10.

(Whereupon, the above‑entitled matter went off the record at 12:07 p.m. and resumed at 1:10 p.m.)

MS. WEISMAN: Good afternoon. We're going to resume with our testimony in just a minute. As we get started, as some of you may have joined us later in the day, we'd like to remind you to please silence your cell phones. We will do five minutes per speaker.

If you get to the five‑minute mark and have not stopped speaking yet, I will let you know that time is up. At that point, you can wrap up your testimony. You'd have another 15 to 20 seconds to do so. We will take a break at approximately 2:30. We do still have some slots available in the afternoon session, from 2:40, until we finish at the end of the day, at 4:00.

Because this is a public hearing and we've publicized that we will be here until 4:00, we will stay until that time, whether or not speakers are here. We do want to let you know, though, if you have not signed up yet to speak, please do so at the desk. At the time of the break, we'll look at the schedule and see if we can consolidate. We'll call people; if they're early, that's fine; if not, we will call them up again at their assigned time, but we may have extra breaks this afternoon. To get started again, we look to call Walter Ochinko.

MR. OCHINKO: Hi, my name is Walter Ochinko. I'm the research and policy director for Veterans Education Success. We're a small non‑profit dedicated to the promise and integrity of the GI Bill. I'd like to use my five minutes to explain why the 2014 gainful employment regulations and the 2016 borrower defense regulations matter to veterans.

First, let's be clear that these regulations are necessary because of predatory schools like Corinthian and ITT Tech. The hallmark of predatory schools is the use of misleading advertising to recruit students. The 90/10 loophole incentivizes such bad actors to prey on veterans and service members.

Their hard‑earned educational benefits allow predatory schools to enroll nine individuals who depend on federal student aid for every veteran or service member. As Holly Petraeus said, the 90/10 loophole puts a target on the back of veterans. The 2012 senate health investigations of for‑profit schools documented the use of Title IV revenue for aggressive recruiting, use of psychological manipulation to enroll students, pain points, reliance on lead generators to identify potential recruits, which results in incessant phone calls and emails, excessive expenditures on recruiting while short‑shrifting instruction.

Veterans are particularly vulnerable to high‑pressure recruiting. They are frequently encouraged to enroll on the spot. Over 60 percent are the first in their family to attend college. Many are married, have children, and work. The promise of immediate enrollment and quick degrees are compelling, as are the false promises about cost, accreditation, job placement, and post‑graduation earnings.

Since 2012, the FTC, CFPB, Justice, and numerous state attorneys general have concluded 17 settlements with for‑profit schools. The basis for these settlements were findings of misleading and deceptive advertising and recruiting, including misrepresenting costs, quality, accreditation, transferability of credits, job placement rates, and post‑graduation salaries. ED documented widespread misrepresentation at job placement rates by Corinthian. GE will help protect veterans by shutting down and requiring warnings for career education programs that leave students with too much debt relative to income. In fact, many such programs have already been eliminated because of gainful employment. VES helps veterans who are deceived by for‑profit schools.

Their stories mirror the findings of federal and state settlements. The ban on mandatory arbitration in the BD regulation will allow the voices of these veterans to be heard and serve as a deterrent to predatory behavior. One frequently voiced complaint is that schools originate federal student loans that veterans don't need, want, or authorize because they have the GI Bill.

For‑profit schools are incentivized to originate federal loans because GI Bill dollars are much slower to arrive, particularly when the veteran enrolls on the spot and hasn't applied for the paperwork to start using his GI Bill benefits. As you know, many for‑profit schools are in precarious financial condition, due to declining enrollment and the negative publicity generated by federal and state investigations and settlements. In June 2014, Corinthian notified ED that it would have to declare bankruptcy if ED delayed aid disbursement by just 21 days. In September 2016, ITT Tech abruptly shut its doors after ED cut off financial aid to new students.

Corinthian had no letter of credit, and ED was in the process of substantially increasing ITT's when it closed. As a result, taxpayers will bear all or most of the cost of these closed school discharges. The financial responsibility requirements of borrower defense will give schools skin in the game, act as a deterrent to predatory behavior, and help protect taxpayers from the cost of forgiving federal student loans when a school closes.

While strong ED regulations make it easier for borrowers to obtain the relief that they are entitled to under existing federal law, loan forgiveness will not make veterans whole again. If they use some or all of their 36 months of entitlement at a predatory school that encouraged them to enroll with false promises, those GI Bill benefits are gone forever. I'd like to conclude by asking you not to delay the implementation of current regulations, as written. Thank you.

MS. WEISMAN: Chelsea Coatney.

MS. COATNEY: Hi, everyone. My name is Chelsea Coatney, and I work with Higher Ed, Not Debt, a multi‑year campaign project dedicated to solving the problem of student debt by addressing the root causes of college unaffordability and tackling problems of accountability and transparency within the student loan system.

Thank you for this opportunity to share some of the personal stories I've come across in my work engaging with student loan borrowers and for‑profit college students. I'm here to ask the Department to implement the borrower defense rule now. The first story I'll share is from Destiny, a student loan borrower from North Carolina.

I attended the Art Institute of Pittsburgh from 2009 to 2012, with hopes of getting my Bachelors of the Arts degree, with help from financial aid. When I started classes, I found that most of the instructors had little to no experience in the fields they were teaching, and often couldn't provide technical assistance on how to achieve something in the programs we were using. I realized my own self‑taught skills with the programs was at least on par with what they knew, and often, I was offering alternative ways of doing things to other students and the moderators, themselves.

After paying massive tuition costs, lab fees, class fees, and application fees, and stretching my finances to the max, I started having trouble paying my bills, even while I was working full time. After a few years in, I found out that all of these unforeseen and totally unknown to me costs were piling up to double the cost of tuition I had seen on the website when I had applied.

I applied for and received a few grants to aid me in pursuing an education full time, while I continued to work full time. The grants were awarded, sent to the school, but never applied to me. The financial aid office later told me that online students are not eligible to apply grant aid to attendance costs, despite the online school being clearly stated in the application before approval. After three years of working to excel in and complete the program, the school claimed I had used up all of my financial aid and was no longer eligible to attend and finish my BA. I was forced to settle for an associate's degree. I'm nearly $75,000 in student debt, and after years of stress and financial instability, I have a useless associate's degree and don't even get interviews for the job I trained for.

The career center, whom I worked with continuously and extensively during my time there and following graduation, made me one offer, to place me in a minimum wage retail job. I, like many who attended the Art Institute of Pittsburgh, are struggling to find a way to use their degree effectively and to make ends meet.

Although the federal government sued the school in 2011 for $11 billion, none of us saw a penny to help us in our struggle, all the while interest piles up on our unpayable student loans. Next, I will share a story from Bianca, a graduate of ITT Tech, who sent us her story just a few weeks ago because despite being one of the thousands of borrowers that the Department had approved for loan forgiveness, due to the closure of ITT Tech, the security of Bianca's financial future still remains in limbo, as she waits for the loan forgiveness that was promised her. I emigrated with my family from Mexico when I was 3 years old. I learned to speak English by the time I reached first grade. I had high hopes and dreams of working in the criminal justice system.

I was passionate about justice, helping and serving my country and fellow citizens. When I started in high school, I enrolled in ROTC for four years and dreamed of serving in the armed forces and serving our great country. When I was 18 and a high school graduate, I was speaking with an Army recruiter, ready to go into the armed forces. My parents were proud, and so was I.

One afternoon, I received a call from an ITT Technical Institute recruiter. I remember his words. He actually discouraged me from serving in the military. He said, and I quote, I served in the Marines, and it didn't help me. I'm telling you, coming to ITT Tech will help you more than the Army. I was completely ignorant to the higher education system, being the first one to attend college in the family. My parents were also misled. My mother attended the admissions appointment with me and was misled into co‑signing for my outrageous tuition of $66,000 for a non‑legitimate criminal justice degree. While in school, three of our criminal justice instructors warned us about our degree, stating that once we graduated, our degree would not be of any use, since it wasn't accredited.

I didn't understand what they meant by that until I graduated and was unable to find a job in the criminal justice system. When I graduated from ITT Tech, the employment department sent me a few job openings for security officers, a position that does not require a four‑year degree and pays the minimum wage.

I could have found that job on my own, without a degree. I'm currently working for a security company that pays me only $11.50 an hour, and this doesn't come close to helping me pay down an $800 a month student loan. I finally gave up. I was on the verge of serious depression and emotional distress. I am desperate for help. Everywhere I applied, I was turned down. I can't understand why I have to pay back loans for this disservice this institution did to me and my future. I'm looking for justice, and I'm looking for someone to help me get the loan forgiveness I deserve. On behalf of these borrowers, I'd like to ask the Department, in the words of a story recently submitted to us by the student loan borrower, Deborah, to erase these debts like you did for‑profit's crimes. Thank you.

MS. WEISMAN: Christian L. Smith.

MR. SMITH: Good afternoon, everyone. Thank you for the opportunity to speak on the borrower defense to repayment rule currently under regulatory negotiation by the Department. I'm an organizer with Generation Progress and its Higher Ed, Not Debt campaign.

I work in youth advocacy and on the policies that affect the affordability of post‑secondary education, student loan borrowers, consumer rights, and the $1.4 trillion student debt burden being borne by students of all ages and types. Amongst the students I regularly work with, there is a broad opposition to beginning a new rulemaking process and to delaying the borrower defense rule that should have been implemented July 1st. The Higher ED, Not Debt campaign has heard from thousands of students who attended for‑profit colleges over the years. To this day, many are either waiting on loan discharges after their schools were shut down for committing fraud, or they are currently dealing with present day bad actors whom the Department needs the borrower defense rule to keep accountable.

I'm here to put a face to these borrowers and to the defense rule, as well, and the pain that is being caused every single day that its implementation is delayed. For example, Koty, from Martinsburg, West Virginia, should be eligible for loan forgiveness, but instead, he is watching the high interest on his loan tick up daily. Here's his story.

Quote, I went to WyoTech to get a head start on getting some experience, so I could get a better job than $10 an hour. They came to my home and promised me all these great things about the school and how they would even help me get a job with their career service department. They never helped with finding me a job and three months later, after finishing WyoTech, I was making $9 an hour. Since then, I have bounced around from job to job, trying to make more money to pay different loans I paid for the school with. So here I am, forced into higher interest federal and private loans. I had to pay $600 to get the federal loan into a program that they halfway lied about, and I'm still stuck with the ridiculously high interest private loan.

I'm not asking for $1 million, but just for things to be made right. The school was able to get away from paying out what they were supposed to, so what about us? Both my diplomas are useless to me, so why should I have to pay more for what I was supposed to get from them?

Another student, Kai Naihe, from Otto, North Caroline, said that she was defrauded and harassed by her for‑profit, Florida Metropolitan University, a subsidiary of Corinthian Colleges, Incorporated, saying, quote, I was intentionally misled by Florida Metropolitan University in the way of career placement, grants I didn't have to repay, and refunds due me from 2001 to 2005. Florida Metropolitan University is predatory and would not stop calling me until I enrolled and was told I would go nowhere in life without their help. Former students like Julie, in Irvine, California, had this message for the Department of Education, upon hearing about the rule delay, quote, I'm not only a 17‑year breast cancer survivor, but I'm also an Everest College Medical Assistant graduate, with honors, from April 2015, with no diploma to show for it, as well.

I was used by Corinthian Colleges to inflate their graduation numbers, with them signing me up for school loans without my permission. I was super excited to get my degree, in order to make a difference in other cancer patients' lives, after my mom had just passed before I began Everest College, in Anaheim. Please don't take away or delay my right for loan forgiveness.

It wasn't our fault for the CCI's bankruptcy and the flat‑out blatant lies which they kept telling us. Risha Bowman, of Alabama, had this to say about the Department's delay of the rule. I am shocked to hear that you are blocking this rule on loan forgiveness. I attended Everest University and did receive my paralegal degree. However, $35,000 later, I am no better off than I was before. I tried, on many occasions, to leave the college, but the recruiters/advisors kept me on the phone for hours, until I changed my mind. The last semester I also was told the college did not update my federal database, so I had to borrow money from their private lenders in order to graduate. I was happy with the Trump administration until today, when I heard this.

I am from a middle‑class family and struggling to pay the bills. I don't mind paying for an education, but believe I was defrauded. The strength of the institutional accountability and financial responsibility requirements of this rule allow the Department to catch problems like these earlier, and to ensure that if a school is engaging in unscrupulous practices, it will be the school, not the students, that must pay for these actions.

The rule has a very real consequence for students' financial health and consumer rights, and this delay is harmful to borrowers already struggling ‑‑ my colleagues will be speaking later on the specific items within these particular requirements of financial responsibility ‑‑ and directly act as preventative measures to the problems faced by the victims of deceptive practices. Namely, the director of Generation Progress, Maggie Thompson, will speak to these institutional accountability and financial responsibility requirements within borrower defense. I hope that these stories serve to contextualize the impact this rule will have on real people who desperately need the Department to seek their best interests and protection. Thank you for your time.

MS. WEISMAN: Lisa Sodeika.

MS. SODEIKA: Good afternoon. My name is Lisa Sodeika. I am the senior vice president of external relations and regulatory affairs at ADTLEM Global Education. I'm here today on behalf of the Title IV participating institutions at ADTLEM, AUC School of Medicine, Carrington College, Chamberlain University, DeVry University, Ross University School of Medicine, Ross University School of Veterinary Medicine, and the nearly 73,000 students that we serve.

At ADTLEM, our mission is to empower students to achieve their goals, find success, and make inspiring contributions to our global community. We recognize we cannot empower students for success without first providing quality faculty, academic programs, and student services. Doing those things well should translate to positive student outcomes. That is why ADTLEM has, and continues to, support efforts to heighten institutional accountability across higher education.

We support the underlying premise of GE and agree that aspects of the current GE rules have been beneficial. Yes, perhaps surprisingly, you have a for‑profit higher education organization standing before you today confirming that aspects of the GE rules have proven beneficial. In our case, ADTLEM institutions reviewed their programs and found that 5 out of approximately 89 of our programs failed.

The debt to earnings measures provided us with insights and led us to alter program curriculum and credential levels to better align the costs of these five programs with the earnings of our graduates. However, as with most public policy, there is the possibility of unintended consequences. Within the ADTLEM family of institutions, we have a clear example of an exceptional program that, nevertheless, is a casualty of the GE rules, as they are currently written. That program is our Ross University School of Veterinary Medicine. Ross Vet provides a very high‑quality Doctor of Veterinary Medicine program and contributes significantly to the U.S. workforce. Approximately 300 graduates per year, and our alumni population, account for nearly 4 percent of the current U.S. veterinary workforce.

Ross Vet is accredited by the American Veterinary Medical Association, AVMA, which is the sole accreditor for all U.S. and Canadian veterinary programs. Let me tell you about the quality of our graduates, of our students. At 83 percent, our students score above the 80 percent North American veterinary licensing examination score threshold for AVMA accreditation.

Additionally, Ross Vet's tuition rate is mid‑range among U.S. private and out‑of‑state public tuition rates. In at least one survey by the AVMA, Ross Vet graduate earnings are above the median for all veterinary school graduates. Importantly, as income and ability to repay student debt is a key premise behind the need for the GE regulation, our Ross Veterinary students repay their student loans. The three‑year cohort default rate for this program consistently runs less than 1 percent for fiscal year 2013, for instance, our cohort default rate, .7 percent.

Ross Vet's outcomes provide clear, quantified evidence of a professional education program that graduates students who are contributing significantly to the U.S. veterinary workforce, passing their licensing examinations, and repaying their Title IV loans at a very high rate, 93 plus percent, yet it is falling into the zone, according to current GE rules.

We believe the elimination of a high‑quality program such as this was not the intention of GE. Ross's veterinary program is, instead, an unintended casualty brought about from having a single, standalone measure applied broadly across all levels of education.

Therefore, we'd like to provide a few potential solutions that apply not only to our graduate veterinary program, but also to other high‑quality graduate programs. We believe the rulemaking committee could consider the following ideas. Consider other performance measures that give the rule flexibility to not harm quality programs that show their value through other outcomes, such as licensure pass rates and low‑cohort default rates. Consider the value of the disclosure required under GE. We find these disclosures useful and believe they are informative to all students, regardless of program type or institution. For instance, considering eliminating the zone as a pathway to ineligibility, but rather use it as a high debt warning disclosure.

MS. WEISMAN: Time.

MS. SODEIKA: Given that GE's intent was to lower debt on credential programs, consider exempting graduate professional degrees. In any rulemaking scenario, ADTLEM does believe that we should continue to be very transparent on outcomes, and we thank you for allowing us to participate today.

MS. WEISMAN: Charlotte Hancock.

MS. HANCOCK: Hello, my name is Charlotte Hancock, and I am the program director for Higher ED, Not Debt, a multi‑organization campaign dedicated to the premise that a high‑quality higher education should be affordable and accessible to all, without the burden of financial hardship. Thank you for the opportunity to submit comments today. At Higher ED, Not Debt, we have heard from more than 9,000 students who attended for‑profit colleges. The majority of these students shared their stories with us and all have demanded a refund from their school. These stories run anywhere from five sentences to 4,000 words.

They take place at schools from the 1980s through present day, and they're nothing less than heartbreaking. Higher ED, Not Debt, and the thousands of borrowers we work with and come here on behalf of strongly oppose the delay, dismantling, or weakening of the gainful employment regulations finalized in October 2014 and the borrower defense to repayment and college accountability regulations finalized in November 2016.

Every day of delay allows more students to fall prey to unscrupulous colleges that have profits, not students, in mind in their operations. Students, veterans, and taxpayers have waited far too long already for these critical protections from unmanageable student debt, sudden school closures, and waste, fraud, and abuse in higher education. Students and taxpayers cannot afford a pause. Their interest continues to accrue, and their credit scores continue to suffer. The students we hear from are not looking for a free ride. They're looking for a fair shot. Any school or program properly doing its job for students will not find it hard to comply with the rules as they should have gone into effect.

I hope to keep this brief, as our stance is much the same it was during the last year plus the Department has dedicated time to this. These rules are important and must be implemented now. The rules should include the following, as Higher ED, Not Debt has previously asked for. Students who were deceived by their schools should be made as whole as possible through the processes laid out in the rule.

Students that attend a college that breaks its promises will never recover the time, transportation costs, and other out‑of‑pocket costs they may have wasted pursuing an education that did not live up to its promise. Additionally, the rule should eliminate arbitrary limitation periods on a borrower's ability to assert a borrower defense claim. Common law generally allows a debtor to assert a claim at any time, as long as repayment is ongoing. Additionally, the process by which a student's eligibility for borrower defense is determined must be transparent and independent, and not a function of the Department's ability to recoup damages from a school.

Next, the process for individual claims must be simple, accessible, and transparent for borrowers. It is important that this process is not overly burdensome for an individual borrower who will not have access to the same resources and evidence that an institution may have. The regulation must protect students from large‑scale misrepresentation by educational institutions.

In cases where common facts and claims demonstrate that there is a basis for borrower defense, this regulation must require that the secretary grant relief for borrowers in that established group. We also ask that the rule maintain sections that ensure borrowers are not financially penalized for making a borrower defense claim through the use of tools like forbearance. Finally, we ask that the Department is able to recover costs from unscrupulous institutions. We support the Department's ability to recover costs from an institution associated with their financial liability for failing to perform their function as Title IV recipients. Thank you again for your time. We just ask that you keep students' lives and their financial responsibilities in mind in this.

MS. WEISMAN: Maggie Thompson.

MS. THOMPSON: Good afternoon. My name is Maggie Thompson. I'm the executive director of Generation Progress. We're the youth engagement arm of the Center for American Progress. At Generation Progress, we work with and for young people to promote progressive policy solutions to political and social challenges faced by our generation, the largest and most diverse in American history.

I also served as a non‑federal negotiator representing the interests of consumers during the original negotiated rulemaking for the borrower defense rule, where representatives from multiple sectors, with diverse perspectives, openly and publicly negotiated the current borrower defense rule. As my colleague, Charlotte, noted, Generation Progress's Higher ED, Not Debt campaign has heard from over 9,000 students who have demanded a refund from their for‑profit college. We strongly oppose the delay of both the gainful employment and borrower defense rules, or the dismantling of either. Students have waited far too long already to be made whole.

These are critical protections that they need now. I want to focus my remarks on the aspects of the borrower defense rule, though, that don't just protect students, but really protect taxpayers and ensure that public dollars flowing to schools through the Title IV program are not misused by institutions to amp profit margins or drive students into debt with degrees that are next to worthless.

Financial responsibility requirements for schools are vitally important to protect taxpayers and ensure the health and long‑term integrity of Title IV programs into the future. The collapse of Corinthian Colleges, more recently ITT Tech and other institutions, underscores the importance of these preventative measures enshrined in the financial responsibility sections of the current rule. The strength of the financial responsibility requirements of the rule will allow the Department to catch problems with institutions earlier and ensure that if a school is engaged in unscrupulous practices, it will be the school, and not taxpayers or students, that must pay for those actions.

Clearly defined triggers for institutions to obtain letters of credit, for example, are crucial. Without these clearly defined financial penalties, it is far too easy for institutions to engage in behavior that is not in the best interests of students, and then close down without warning. Currently, when this happens, taxpayers or students are stuck paying the bill for any student loan discharges or forgiveness, when it's possible.

This is not a burdensome regulation. This rule simply defines clear guardrails for schools to earn the right to receive our public dollars. Finally, students should never be compelled to sign away their legal rights in order to enter a classroom. The borrower defense rules prohibition of pre‑dispute mandatory arbitration clauses and class action bans in student enrollment agreements is crucial. As the Department has recognized, arbitration clauses that limit students' ability to sue make it more difficult to hold the institutions of higher education accountable. Yet, such clauses have been ubiquitous among for‑profit colleges.

Billions of dollars in federal financial aid have flowed to institutions with these types of provisions in their enrollment agreements, effectively giving education programs a free pass for low quality. Limiting the use of litigation also hampers regulatory effectiveness. Legal developments can indicate to regulators and policy makers pressing issues towards which they should direct their resources and enforcement actions.

When arbitration has been used as a dispute resolution mechanism, the processes and outcomes have often been opaque, due to confidentiality agreements. But empirical evidence to date generally suggests both a lower likelihood of success in arbitration, relative to the courts, as well as lower financial amounts returned to wronged individuals. We applaud the Department's inclusion of this provision in the rule. For those three reasons, those three sections of the rule, this is vitally important, again, not just to protect students, but taxpayers. The borrower defense rule is simple and important. If an institution commits fraud, its students deserve a discharge of their federal loans.

Fraudulent schools, not taxpayers, should be on the hook to pay those debts, and no student should ever have to sign away their legal rights just to get into a classroom. Thank you for your time.

MS. WEISMAN: Timothy Powers.

MR. POWERS: Good afternoon, and thank you for the opportunity to offer these public comments on behalf of the National Association of Independent Colleges and Universities.

NAICU serves as the unified national voice of independent higher education and reflects the diversity of private, non‑profit, higher education in the United States. Our member institutions include major research universities, church‑related colleges, historically Black colleges, art and design colleges, traditional liberal arts and sciences institutions, women's colleges, two‑year colleges, and schools of law, medicine, engineering, business, and other professions. With over 3 million students attending independent colleges, the private, non‑profit sector of American higher ed has a dramatic impact on our nation's larger public interests.

NAICU supports the need for regulations which consistently and fairly implement the borrower defense to repayment statutory directive, as instructed by Congress in Section 455(h) of the Higher Education Act.

Further, NAICU supports both the statutory language that allows students to receive student loan forgiveness when defrauded by an institution and the regulatory concept that allows the federal government to be reimbursed by the offending institution when such relief is granted.

That does not mean that the current regulatory construct is perfect, but any changes should provide protections for defrauded students and taxpayers, while also protecting against frivolous lawsuits. While the Department's final rule did take several appropriate steps to address some of the major problems identified by NAICU in its notice of proposed rulemaking, one aspect which remains particularly troubling to independent colleges is the reliance on the flawed system of financial responsibility standards as an indicator of institutional financial health.

There are several specific concerns with this aspect of the current borrower defense to repayment regulations. First, the financial responsibility process was included in the 1992 reauthorization of the Higher ED Act as an indicator of whether an institution was at risk of precipitous closure. Notably, we know of no non‑profit college or university which has closed precipitously since the provision has been enacted.

Second, in promulgating borrower defense regulations in 2016, the Department of Education did not disclose before the negotiated rulemaking sessions that it intended to modify the existing financial responsibility standards, nor did it include on the negotiated rulemaking panel experts with non‑profit accounting experience to lend in the development of these new policies. This, despite the fact that NAICU and other associations, some of whom you've heard from today, have raised the concerns about the validity of the measure, as indicated in the 2012 task force report. The 2016 regulations added more consequences to the financial responsibility system, without correcting its inherent problems.

The financial responsibility standards have not been updated by the Department since 1997 and have unfairly and inappropriately affected non‑profit institutions, often due to misclassified and miscalculated composite ratios. There are numerous examples of the Department of ED mistreating assets unique to the non‑profit sector, such as endowments and pension liabilities, often requiring institutions to post expensive and unnecessary letters of credit.

The need to revisit the current financial responsibility standard is no longer an option. For the first time since the 1990s, the professional standards used in the calculation of the financial responsibility composite scores, as required by the Higher Education Act, have been revised. These forthcoming changes to non‑profit accounting standards issued by the Financial Accounting Standards Board, or FASB, will make significant changes to existing reporting methodologies, only intensifying the need to re‑evaluate the Department's administration of the financial responsibility standards.

Private, non‑profit colleges and universities must be in compliance with these updated standards by FY 2018‑19, though many colleges are expected to adopt early. The financial responsibility standards must be updated to reflect these changing accounting principles.

Therefore, in addition to the negotiated rulemaking panels to address the gainful employment and borrower defense to repayment regulations, NAICU requests that a separate negotiated rulemaking panel be convened to focus on the financial responsibility standards, as applied to private, non‑profit college and universities.

The focus of this panel is to improve upon current practices and to bring the financial responsibility standards in line with evolving Financial Accounting Standards Board's practices. The panel should run concurrent to the borrower defense panel, if the financial responsibility standards remained intertwined with the borrower defense regulations. NAICU has worked to identify many of the current problems with the financial responsibility scores, including the formation of the aforementioned task force dedicated to searching for solutions to fix these problems.

MS. WEISMAN: Time.

MR. POWERS: The NAICU 2012 report on financial responsibility provides detailed background on the issues, and some of these recommendations could be implemented immediately. Thank you for your time, and we look forward to working with you.

MS. WEISMAN: Karla Gilbride.

MS. GILBRIDE: Thank you very much for the opportunity to speak to you today. My name is Karla Gilbride, and I am a staff attorney at Public Justice. Public Justice brings high impact litigation and advocates on behalf of low‑income consumers and others who are harmed by predatory corporate conduct. I can think of no better example of predatory corporate conduct than the high‑pressure sales tactics engaged in by some representatives of for‑profit universities that have been well‑documented in media accounts and in the well‑researched report of the negotiated rulemaking committee, documenting how for‑profit schools often target their outreach to veterans, to low‑income students and students of color, and to students who are the first in their families to attend an institution of higher education and are trying to better their job prospects by getting a degree which, all too often, turns out to be worthless, not to provide gainful employment, and to leave the students saddled with thousands, sometimes hundreds of thousands of debt that they are unable to repay.

We have had tens, dozens, maybe hundreds of people contact us, through our members and directly, with horror stories of how they have been victimized by for‑profit schools.

That's why I'm particularly disappointed and frustrated by the need to come here today. Because the Department has looked into these issues and has engaged in a thoughtful and well‑considered negotiated rulemaking process over years, with all of the affected stakeholders having a seat at the table. That long‑term negotiated rulemaking process has resulted in two excellent rules. Perhaps they're not perfect.

Nothing that's the result of compromise is and doesn't give everyone everything they would have hoped, but those rules represent a huge step forward for holding recipients of federal financial aid accountable, for protecting students when they're defrauded, and as others have mentioned, for protecting the taxpayers, who are often left paying the bill and holding the bag when these fly‑by‑night institutions go out of business, close their doors, and stop serving students.

The gainful employment rule provides an important spotlight and disclosure on the results of schools, so that students, before they commit to taking on debt, before they commit to spending a bunch of money on a degree, have reliable information about the employment rates in their chosen fields and other reliable indicators that are not marketing from the schools, themselves, but that they can compare apples to apples across particular programs that they're investigating. The borrower defense rule ensures that when schools do defraud students, the schools, and not the students, themselves, or the taxpayers, are held financially responsible in a uniform manner.

One of the most important things that the borrower defense rule does ‑‑ because many of the documented cases of fraud that we've seen over the last few years with Corinthian Colleges and with ITT Tech are practices that were the same across the board, that affected many students in similar ways, things like inflating job placement rates and misleading people about the types of jobs that graduates were getting.

In the case of ITT Tech, misleading students about whether credits would be transferrable. These were uniform practices that affected people across the country and in particular states similarly and would have been ideal candidates for class actions that would have changed the practices of these schools, created a significant deterrent to their actions and, ideally, caused them to change their practices. But because of the proliferation of class action bans and pre‑dispute arbitration provisions, students were not able to join together and file these actions and privately enforce their rights in an effective way. Without that ability to band together and bring what might, individually, be small‑value claims on a joint basis, schools could act with impunity, continue to defraud students, and not be held accountable in any systematic way.

If the Department does go back to the drawing board and begin again with a new rulemaking process, we would strongly encourage that any new borrower defense rule include the same limitation on the use of mandatory, pre‑dispute arbitration and class action bans that is contained in the current rule.

However, our primary request is that there be no further delay, that the Department, instead of going back to the drawing board and engaging in a regulatory reset, simply enforce the existing borrower defense and gainful employment rules that it has promulgated. Thank you.

MS. WEISMAN: Representative Mark Takano.

MR. TAKANO: Good afternoon. I'm here to express my profound concern with the Department of Education's effort to delay and undermine the rules protecting students and taxpayers from unethical practices in the for‑profit college industry. As a public school teacher for 24 years, and as a community college trustee for two decades, I had the privilege of seeing our education system open up opportunities to thousands of students.

But I also saw for‑profit colleges exploit my students' hunger for opportunity by recruiting them with dubious promises of a brighter future and sending them, instead, to financial ruin. The Department of Education has a responsibility to protect students, not the earnings of for‑profit colleges.

Delaying, weakening, or repealing the gainful employment or borrower defense to repayment rules abandons the Department's mission and betrays the students and taxpayers who deserve fairness and effectiveness in the American education system. The gainful employment rule provides students with essential information to choose a career education program that will meet their needs. The transparency and accountability it creates is valuable both for potential enrollees, as well as the taxpayers that provide billions of dollars into these programs every year. Lobbyists for for‑profit colleges often spin the gainful employment rule as a limit on accessed institutions.

But as champions of education and as stewards of taxpayer money, the measure of our success is not the quantity of career education programs supported by federal dollars, it's the quality of instruction and outcomes that these programs provide.

Any program that leaves students with more debt than they can pay and fewer job prospects than they were promised is not deserving of taxpayer support. The gainful employment rule is critical to protecting both students and taxpayers from predatory and abusive practices.

If implemented as it should be, the updated borrower defense rule could serve an equally important function in protecting students. The new rule would provide students and taxpayers the financial relief they deserve when they have been defrauded by a school. In addition, it ensures real accountability by prohibiting mandatory arbitration clauses, which schools use to evade the consequences of illegal or unethical behavior. When an institution uses deceptive practices to collect financial aid money, the school, not the student, and not the taxpayer, should be responsible for repayment.

The administration's decision to delay and undermine accountability in for‑profit education will leave many students vulnerable to predatory practices, but I am particularly concerned about one group, and that's America's veterans.

In 2014, eight of the top ten schools receiving post‑9/11 GI Bill money were for‑profit institutions, and two of those schools were the now‑defunct ITT Technical Institute and Corinthian Colleges which, together, collected more than $1 billion in veterans' benefits from 2009 to 2015.

When veterans return home, they should be met with our gratitude and support. Instead, too many are met by an army of for‑profit recruiters seeking to cheat them out of the education benefits they earned through their service. By delaying the gainful employment and borrower defense rules, the Department of Education is putting the interests of for‑profit companies above the interests of student veterans. I was struck by Secretary DeVos's recent characterization of these rules as burdensome on for‑profit institutions.

The true burden we should be discussing today is the burden placed on Ruben Marlong (phonetic), a veteran from southern California who enrolled at ITT Tech because he was promised that his credits were transferrable and the school's accreditation was secure, only to discover that neither of those promises were true, or the burden placed on Jose Morales, also a veteran, who was recruited by DeVry University on the promise of a scholarship that never materialized, leaving him with a balance he couldn't pay.

Regulatory weakness, not regularly overreach, has created a business model that does not work for students, veterans, or taxpayers. We need to keep the gainful employment rule. We need to keep borrower defense. If you take one thing away from my comments, I hope it is this. The Department of Education is not responsible for protecting fraudulent for‑profit companies. It is responsible for protecting students and taxpayers, by holding for‑profit colleges accountable for unethical and illegal practices. Thank you for your time, and I hope that you will decide to implement and keep these rules. Thank you.

MS. WEISMAN: Jennifer Diamond.

MS. DIAMOND: Good afternoon. My name is Jennifer Diamond. I'm here on behalf of the Maryland Consumer Rights Coalition. We are a statewide coalition of individuals and organizations that advance financial justice and economic inclusion for Maryland consumers through research, education, direct service, and policy advocacy.

As an organization that represents Maryland consumers, including our state's borrowers, we're here today to strongly oppose any weakening of the gainful employment regulation or borrower defense rules. American policymakers have been touting an education gospel, that education is the way to success, with students for generations. While many schools and career training programs have helped elevate its students to reach success, predatory for‑profit schools and bad actors in the education marketplace have been cashing in on students' dreams. It's up, now, to the Department to uphold the strong gainful employment and borrower defense rules to make sure that cannot happen any longer.

Drawing on our research and organizing efforts in Maryland, I'd like to tell you why preservation of these rules is so important to us and to Maryland students. Well over half of Maryland students take out student loans in order to complete an education. On average, our students borrow approximately $27,000. The students with whom I work, in particular, in Baltimore, make up some of the lowest income of Maryland's graduates.

Many are from the city. Many grew up in low‑income areas. Many are first‑generation college students, and nearly all of them have been targets of a predatory for‑profit college or career program. Last year, we released a report called Making the Grade that looked at cost, graduation, and employment rates across for‑profit colleges and private career schools in Maryland. The report also included qualitative analysis drawn from focus groups I conducted with former for‑profit school students. Our report findings concur with what many other students on the federal level have done.

We found that these schools cost three to five times more, on average, than their public counterparts in Maryland, did a far worse job of getting students living wage employment post-graduation. In Maryland, we found that only 33 percent of students pursuing a Bachelors degree at for‑profits reached graduation, and overall, only 58 percent of students in for‑profit schools in Maryland who managed to graduate found employment.

We know that these schools spend millions marketing to low‑income students, people of color, and veterans. In Maryland, of the total number of African‑Americans enrolled in post‑secondary education, 62 percent were enrolled at for‑profit and private career schools, even though African‑Americans only make up 30 percent of the population in our state. In communities where wealth building is more critical, predatory for‑profit schools are building a legacy of debt. I want to tell you about one woman I worked with, Ms. Norris, who signed up for a for‑profit beauty school to pursue a dream of becoming a hairdresser. She looked at other schools, but none made as direct a promise about job placement rates, education opportunities, and the success of graduates.

She was a first‑generation student to pursue higher education, and they told her a lot during a rushed recruitment process, but they did not tell her that no one on staff was dedicated to helping place students in jobs. There was no one to complain to on staff about a myriad of problems that arose, including a never‑ending cycle of unprepared teachers, and the fact that the certification she was preparing for in school was for a Minnesota certification test, not a Maryland test.

Upon graduation, Ms. Norris found herself unprepared to pass that Maryland test, without a job, without a certification, and with over $10,000 in student loans she had no way of paying off. Her story is just one of thousands in Maryland like it, one of many more throughout the nation. For‑profit schools are harming our most vulnerable students, those with the greatest yearning for the American dream and the least amount of means to pursue it. These rules protect students like Ms. Norris. They put in place clear guidelines for institutions and allow the Department to put an end to bad practices.

If schools are simply doing their job in fulfilling the mission they set out to pursue, they'd have nothing to worry about. But when they begin harming students, these rules create a recourse. In particular, I'd like to point out the importance in the borrower defense rule's protections of arbitration and students' access to courts.

Had arbitration clauses not stopped them, the thousand students who were attending ITT Tech in Maryland at the time of its disorderly closure in 2016 could have joined together to condemn them for proven fraudulent practices. Instead, they're left repaying student loans to a school that defrauded them. There's too great a risk in delaying or dismantling these critical rules. Doing so would signal to predatory educational institutions that the doors have been opened to them, and the American dream of educational attainment is fading farther into the background. Thank you for your time.

MS. WEISMAN: Alegra Howard.

MS. HOWARD: Good afternoon. My name is Alegra Howard, and I am with Consumer Action. Consumer Action is a national non‑profit education and advocacy organization that works to empower low and moderate income, limited English speaking, and other under‑represented consumers nationwide, since 1971.

I am here to day on behalf of consumers to convey Consumer Action's strong support for the continued implementation and enforcement of the gainful employment and borrower defense to repayment rules.

These rules contain critical accountability measures that are designed to protect students and taxpayers from crippling student debt and waste, fraud, and abuse in taxpayer‑funded higher education programs. The Department of Education's recent announcement to delay most of the borrower defense rule was made without soliciting feedback from stakeholders or the public. Consumer Action opposes the Department's plan to replace the borrower defense rule and abandon critical federal protections that were set to go into effect on July 1st. Consumer Action opposes all motions to delay, weaken, or repeal the gainful employment rule, incentive compensation, or recent borrower defense to repayment and college accountability regulations.

Consumer Action believes in doing so, the Department of Education is violating current federal law. The Department's intent to establish a new, and in our view, unnecessary rulemaking process provides no basis for the Department to refuse to implement and enforce the existing finalized regulations in the interim.

Pausing the gainful employment rule perpetuates an environment for unscrupulous colleges, which compete to enroll students into their program, using fraudulent and misleading marketing practices, without regard to the quality of the training, the students' preparation, or industry job prospects. In addition, the Congressional Budget Office estimates that repealing the current gainful employment regulation would waste taxpayer funds, costing taxpayers $1.3 billion of the next ten years. We believe a new rulemaking process on this matter is a waste of limited government resources. In fact, the 2014 gainful employment regulation has already shown a significant positive impact.

Colleges are choosing to eliminate their worst‑performing programs and implementing internal reforms to improve outcomes for their graduates. At the same time, gainful employment has brought to light scores of failing programs that taxpayers are currently subsidizing. The borrower defense to repayment rule was finalized in October, after nearly two years of negotiations, public scrutiny, and review.

Given that the updated borrower defense regulation was finalized less than a year ago, we see no justification for revisiting it. Instead, we urge the Department to immediately implement the rule, as is, including the provisions on forced arbitration and class action waivers. The borrower defense rule is especially important for students of for‑profit colleges, many of whom come from low‑income communities or communities of color. Many are veterans, single parents, or the first in their families to attend college. The new rule makes it much harder for students to hide fraud and evade accountability by blocking access to the courts. No student should be asked to sign away their legal rights in order to attend college, a job training program, or a job training program with the intent of bettering their future.

It should be fraudulent schools, not taxpayers, who should be liable to repay debts incurred during useless or fraudulent programs. If Corinthian College students had the ability to sue the school for falsifying job placement records and graduation rates, taxpayers would likely not be the ones responsible for eating the costs associated with the $550 million in federal student loan discharges of the former Corinthian College students.

Lastly, on June 26th, the Department of Education released data showing that no new loan discharges have been approved under borrower defense since January 20th. Since January, the Department has only processed relief for applicants that the previous administration had already granted. Some borrowers have been waiting well over a year for this loan relief, while their wages, tax returns, and Social Security benefits continue to be garnished. We urge the Department to move forward with the processing of these loan discharges and approve the tens of thousands of applications that are still pending.

If the Trump administration is serious about helping defrauded students and protecting students from predatory practices, the Department of Education must implement the borrower defense and gainful employment regulations in full and without delay.

Each of these accountability measures is essential to protect students and taxpayers from sudden school closures and other misconduct by unscrupulous colleges and to maintain the integrity of our federal financial aid program. Thank you for the opportunity to speak today.

MS. WEISMAN: Bethany R. Keirans.

MS. KEIRANS: On behalf of Vietnam Veterans of America and its more than 75,000 members, I appreciate the opportunity to speak today regarding gainful employability and borrower defense. The Oxford American Dictionary defines the noun scam as a dishonest scheme or a fraud. As a verb, to scam means to deceive or swindle.

Since the advent of the post‑9/11 GI Bill, tens of thousands of veterans have been scammed, victimized by predatory for‑profit institutions of higher learning, for which profit is the bottom line, and educating our men and women who have put their lives on the line is not a factor.

Stories of benefits wasted on bogus degree programs at such institutions as ITT Tech and Corinthian are countless. Veterans have been left holding the proverbial bag, a worthless degree, a wasted opportunity to achieve their version of the American dream, and often accompanied by a mountain of debt they had been deceived into taking on.

Where there is an opportunity for fraud, sharks and profiteers wade in, to the detriment of the students of these predatory schools. We at VVA are all too familiar with the veterans who have not, and will not, benefit from the post‑9/11 GI Bill because they were taken advantage of by educational predators. Let me relate a few incidents for you to consider. Corporal Jared Toma (phonetic) was honorably discharged from the United States Army in 2005. He utilized his GI Bill benefits to attend DeVry University, starting first in Columbus, Ohio, and then finishing his degree in Westminster, Colorado.

While a student at DeVry, Jared encountered numerous issues, including key courses being removed from the advertised curriculum. Jared shared his concerns with several administrators, but was reprimanded for doing so. Despite recruiting promises, few of his professors had real‑world experience, and he learned that his DeVry credits would not be accepted by other accredited universities.

Jared's only option was to stick it out and finish his degree with DeVry, since transferring elsewhere put him at risk of losing all of his credits and his used educational benefits. Jared graduated from DeVry in 2015 with a Bachelors of Science in electronics engineering technology, and while he is employed, he is not in the industry that he was trained for, and his hourly wages net significantly less income than those in his industry. As a result, he struggles to pay his monthly bills, and because his debt to income ratio is so high, he has been unable to obtain a loan to buy a home for his wife, 9‑year‑old daughter, and 3‑month‑old son.

Jared's borrower defense application was submitted in 2015, and he is now on his second year of forbearance on student loans. Petty Officer Second Class Ryan Peterson, whose name I have changed for his security and privacy, he served ten years in the United States Navy. After being honorably discharged in 2004, he utilized his Montgomery GI Bill education benefits to attend ITT Technical Institute.

Although Ryan graduated near the top of his class, he has since been unable to transfer his ITT Tech degree to any other institution. Ryan is currently employed with the Department of Veterans Affairs and recently enrolled in public service loan forgiveness for federal loans he received while attending ITT Tech. Having used the entirety of his GI Bill benefits, he cannot continue his education, and instead faces years of loan repayments with a degree that holds no value. Sadly, it is obvious to us that the Education Department is reversing field in the effort to protect veterans who have been scammed, often while turning a blind eye to what has documented for years, both by the government and the media, as a burgeoning problem.

By undermining the gainful employment regulation that enforces the Higher Education Act's requirement that all career education programs receiving federal student aid prepare students for gainful employment in a recognized occupation, and by loosening limits on the ability of schools receiving federal student aid to use pre‑dispute arbitration clauses and class action waivers to evade accountability, this Department is doing a disservice to its student veterans.

I stand before this body today to remind you that this is not what helping veterans through higher education is about, and that it's time to clamp down and increase protections for both students and taxpayers. Thank you for the opportunity to speak today, and I urge you to consider how these regulations directly affect the livelihood of our veterans and their families. Thank you.

MS. WEISMAN: Johnson M. Tyler.

MR. TYLER: Good afternoon. My name is Johnson Tyler. I'm one of 350 attorneys at Legal Services of New York City. We are the largest provider of legal services in the country, serving over 80,000 low‑income New Yorkers annually.

I am a student loan lawyer. Every day, I deal with borrowers, some of whom have been scammed by for‑profits. They have no skills; they have very high debt. My office is in Brooklyn. Down the road from me in Brooklyn is ASA College. I'm focusing today on ASA College because I know it, but it doesn't get the publicity that ITT Tech gets.

It doesn't get the publicity that other for‑profits do that are prosecuted by state attorney generals. It earns, every year, $73 million accepting loans from the Department of Education and grants, as well as from New York State, serving 10,000 students. I have students who are borrowers who come in there. They have no earning capacity. It struck me over and over again ‑‑ years and years I say to myself why is it that this place can just keep going? Why doesn't the Government cut off the money? The reason is the only metric that we have now, and that we have now because the Trump administration has withdrawn gainful employment, is the cohort default rate as a means to withhold federal funding.

Otherwise, you've got to get a state attorney to come in there and prove fraud, which is very time consuming. Why doesn't cohort defaults work? Cohort defaults is a meaningless metric these days. It's designed to pull federal funding when a large number of your borrowers stop paying.

With income‑based repayment, it is completely legal for schools like ITT Tech, who did this, to hire people to get people into income‑based repayment plans. They are no longer going to be in that cohort default. If you look at ITT Tech, their cohort default rate was 19 percent. That was in the safe area. If you look at Corinthian, it was below that, as well. If you look at ASA College, which has been taking your and my money for years, their cohort default rate is 10 percent. They're completely clean. If there's no regulation, how are these schools going to be closed down? The gainful employment rule really is a game changer in this way. I turn again to ACA College. In 2017, the first Scorecard came out. ASA did really poorly. They had ten programs.

Eight of those programs are either failing or in the zone of failing. They've got to change their game. They probably have been changing their game, trying to ensure that they keep getting the money in the future, probably improving the instruction, which is what we want them to do.

But now they can just sit back and forget about it. That is a real shame because our taxes are going to schools like that, and borrowers are stuck with these debts, as well. As I mentioned, again, I focused on ASA not because they've been highlighted in the media or anything like that. They are a typical program, but they are a very big program. Gainful employment is a very important, game changing method by which it would be much easier to police for‑profits that are preying on low‑income people and burdening taxpayers with debt, too. Thank you.

MS. WEISMAN: Ashley A. Riech.

MS. REICH: Good afternoon, everyone. My name is Ashley Riech. I'm the senior director of financial aid compliance and state approvals for Liberty University, located in Lynchburg, Virginia.

We serve students from the associate's degree all the way through doctoral programs, and we also have over 50 certificate programs, which is why gainful employment is a topic of mine that I'll discuss today. I've been working in financial aid for over ten years now.

I've worked in pretty much every area of financial aid, from state and federal grants, and most recently, my responsibilities include all of the university compliance, as well as program integrity and state authorization. I'm also very active within my state organization, VASBO, and have served on the board there for many years in different capacities. I'm very grateful for the opportunity today to advocate for specific topics of gainful employment, borrower defense to repayment, and state authorization. These are topics I'm passionate about and want to see done right for our students, and I look forward to negotiated rulemaking sessions that will take place later this year.

If any of the gainful employment or borrower defense to repayment regulations remain in the future, they must be crafted in an equitable manner and ensure that institutions do not inherit an unnecessary administrative burden. The concept of the gainful employment regulations provide students with the access to quality higher education.

However, they have been an administrative nightmare for schools. Even when they're implemented, they only provide only partial information that varies in scope by sector. On a personal note, I've been knee‑deep in the task of ensuring our institution's gainful employment disclosures are accurate and completed on time. The current disclosure template requires a program by program manual update and is overly burdensome for institutions. There are many technological enhancements being made at the department level that could be explored to possibly provide a mass upload option for these templates if gainful employment requirements remain. This would at least create a timely and uniform process for institutions, while still providing the students with the required disclosures.

As for the borrower defense to repayment regulations, I'm requesting the Department review, in earnest, the concerns put forth by many attorneys, who argue the latest regulation changes actually place students at a disadvantage, as compared to the original '94 borrower defense regulations.

A number of legal professionals have brought up the concerns about the new rules effectively demolishing the older rule's protections that currently apply to students seeking relief under the borrower defense to repayment.

As a result, there's an already established legal precedent for student borrower loan relief. In addition, the Department already has the authority to investigate these situations long before borrower defense regulations. In fact, the Department is mandated, by law, under Section 498(a) of the Higher Education Act, to conduct program reviews and give priority for program reviews to institutions of higher education that are reported to have deficiencies and that may pose a significant risk of failure to comply, among other reasons.

Regarding state authorization, I recognize that this particular item is not on the docket for negotiated rulemaking at this time; however, the regulations for state authorization are set to be effective in July 1, 2018, and have similar issues as gainful employment, borrower defense, and the recently delayed cash management disclosures.

It's understood that states will be afforded the same opportunity to enact their own requirements for institutions not within their state, which begs the question of why the Department needs additional oversight. In addition, the duplicative disclosure requirements for state authorization need to be reviewed. There are multiple portals and reporting methods for the gainful employment disclosure forms, net price calculator, College Scorecard, NCES and IPEDS, the federal shopping sheet, data points provided on the FAFSA, state level reporting data, annual consumer disclosure reporting, and the looming cash management and state authorization disclosures.

There must be a more efficient and uniform process to report the required disclosure information by institutions, without accessing multiple portals to provide duplicative data, in order to guarantee that students are giving clear, accurate, timely, and applicable disclosures, in order to make an informed decision on their pursuit of education.

In closing, our institution will be submitting more detailed comments on all the topics discussed to help provide guidance prior to the negotiated rulemaking sessions. I thank you for your time and consideration today.

MS. WEISMAN: Megan Coval.

MS. COVAL: Good afternoon. On behalf of the National Association of Student Financial Aid Administrators, I thank you for the opportunity to comment on the Department's proposal to reopen negotiations on borrower defense to repayment and gainful employment. NASFAA represents financial aid administrators at nearly 3,000 colleges and universities across the country. I'll first speak about borrower defense and financial responsibility. NASFAA supports the intent to hold schools engaging in fraudulent activities accountable.

We also believe that there is merit in examining the fiscal strength of institutions to ensure that taxpayers are not fully on the hook in case of a school closure. However, a finer balance must be struck between holding institutions financially accountable and the federal government potentially pushing them into closure.

To that end, our first and strongest recommendation is to separate financial responsibility issues, including possible triggers for pre‑emptive action, from borrower defense. ED should establish a committee only for financial standards with negotiators who have solid expertise in that area.

Financial responsibility is a major factor of institutional eligibility and should be isolated from narrower issues. We are troubled by the long‑standing criticisms of current financial standards. NACUBO and NAICU are experts in this area for non‑profit institutions, and our second recommendation is to urge the Department to consider carefully their advice. Steps to protect the federal interest should be taken only when a clear and imminent threat is detected by thresholds to which expert parties agree.

Our third recommendation is to expedite processing of borrower defense claims under rules equally applicable to both parties. We continue to support ED's goal of expediting discharges for borrowers harmed by school closure, substantial misrepresentation, or other clear cases of authorized discharge. Delays in making those former students whole only exacerbates the harm already done to them.

However, the process should apply the same rules, to the extent possible and reasonable, to both parties in any dispute over fraud or liability. Related to misrepresentation, we recommend that ED should be transparent in applying their rules and should carefully monitor their use for fairness and consistency. Rules against misrepresentation are a key element in student protection and in ensuring proper stewardship of public funds. NASFAA has long supported strong rules regarding intentionally deceitful or misleading practices. Borrower defense and recovery of discharged loans from schools that misled students rely on balanced, but enforceable, misrepresentation rules.

We believe current regulations do not need further strengthening, but just as schools must be scrupulous in the integrity of information that informs a prospective student's decision to enroll, so must ED be vigilant and fair in a reasoned approach to applying those rules.

Moving on to gainful employment, we support defining the term, but wish to point out that given the widespread ramification on program and institutional eligibility, it is our strong preference that Congress weigh in on what it deems appropriate to measure whether a program leads students to being gainfully employed. There has been significant burden on schools to implement this regulation, and re‑adjudicating it just adds to more administrative costs, unpredictability, and most importantly, a diversion of institutional resources away from students. We believe a new gainful employment regulation should be grounded in the following two principles. First, a recognition that proxies will always be imperfect, and leeway should be built in to recognize that fact.

Second, that any accountability metric must be completely transparent and challengeable by an institution. We offer the following three recommendations. One, design metrics that are appropriate to the academic level and purpose of the program. A major deficiency of ED's definition is that it makes no effort to distinguish among the wide range of non‑degree programs.

For example, it makes no sense to use the same major of effectiveness for a program that seeks to instill basic trades in students who never completed high school, and a program that seeks to refine a graduate student's field of expertise. Metrics, or even the need for any, should be appropriate to the academic level and purpose of the program. Recommendation 2, reconsider automatic waivers and exemptions. For example, in the preamble to the final rule, ED stated we will continue to consider ways to recognize exceptional programs. We ask what progress has ED made in that endeavor? Recommendation 3, reconsider alternate definitions in metrics.

For example, ED stated that further study is needed to adopt a program‑level cohort default rate, a metric that takes into account the outcomes of the students who do not complete a program, or other metrics based on CDR. We ask, again, has ED undertaken such studies?

We offer more examples in our written comments. Finally, whatever regulations are promulgated related to gainful employment, there must be significant implementation time, with adequate testing, in order to avoid the major problems that occurred in last time's rollout. We are appreciative of the opportunity to weigh in. Thank you for your time.

MS. WEISMAN: Our last speaker before the afternoon break is Charlie Modica.

MR. MODICA: Hi, my name is Charles Modica. I'm the chancellor and founder of St. George's University in Grenada, West Indies. I'm the chancellor because I am the founder 40 years ago. I have an institution that is not in the zone, or anywhere near it, in fact. At the same time, it is a for‑profit institution. After hearing some of the young people here this morning who have had horror stories about their lives being ruined by the for‑profit industry, I have to say I denounce those institutions that took advantage of them in a fraudulent manner.

I participated in the negotiated rulemaking a number of years ago, and I have thought about some of the comments this morning and recognize that perhaps the high interest rate all of our students are paying now, in whatever institution they are in, should have a portion going to those people who were victimized by a set of regulations that did not provide protection for those people.

Our school of medicine has a default rate not only not near the zone, but actually above the U.S. schools ‑‑ below the U.S. schools, I should say, of 1 percent, a school of veterinary medicine one‑ups that, zero. Our average graduation rate in our M.D. program, including transfers to U.S. schools, which we consider touchdowns, is about 88 percent, and in the veterinary school, it's about 90 percent. We have students from all over the world, and in the last six years, we have provided more physicians to the United States of America workforce than any other single American medical school.

In fact, we have provided more physicians to the United States of America workforce than any other single school in the world. I'm here witnessing a dilemma between the for‑profit, which we are, versus the not‑for‑profit industry. There are bad actors in both, but certainly the bad actors in the for‑profit industry have been highlighted, and they should have been.

I've served on not‑for‑profit boards of a university and college in the United States. I was the chair of a not‑for‑profit university board for many years. I believe tough rules, with further refinements that include all institutions are needed. Even if a short delay for implementation is the result of this, if it results in more inclusive regulations that protect all students, it's worth it. We should not look to where they went to school or the nature of that institution as for‑profit or not‑for‑profit. We should look at the student, his or her life after they leave that institution. Is their degree worth anything? Is the job marketplace so bad that they have nowhere to go? It doesn't matter what type of institution they went to; it matters the program they went into and their expectancy as they enter it.

I say let's expand and broaden the positive effects of these regulations, whether that takes a short delay to implement or not. I'm not sure what the Secretary will do, but if she does need to delay these regulations to expand and broaden them to all institutions, this will be a win‑win for the young men and women who are about to enroll institutions in the next number of years. I'd like to volunteer to become another negotiated rulemaker if that should be. Thank you.

MS. WEISMAN: That concludes our speakers for the first half of the afternoon. We do have numerous blocks still available to speak for the afternoon session, after our break. Please see the staff at the front desk if you'd like to sign up for a time to speak, if you have not done so already. Otherwise, we will extend our breaks. But at this time, we are schedule to come back at 2:45. We'll resume at 2:45 with our next speaker.

(Whereupon, the above‑entitled matter went off the record at 2:32 p.m. and resumed at 2:47 p.m.)

MS. WEISMAN: We are ready to resume for the afternoon. Our first speaker is Liz King.

MS. KING: Hi. My name is Liz King, and I am the director of education policy for the Leadership Conference on Civil and Human Rights in Washington, D.C. We are a coalition charged by our diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States.

Through advocacy and outreach to targeted constituencies, we work toward the goal of a more open and just society, an America as good as its ideals. The civil rights community has long recognized equal educational opportunity as central to our struggle to achieve equality for all Americans. The Higher Education Act of 1965 provides the framework for the college access and success vital to social, political, and economic opportunity for all people. Originally passed on the heels of significant civil rights legislation, including the Civil Rights Act of 1964, the Higher Education Act is a civil rights law, and regulations governing the implementation of the law's most recent reauthorization should preserve that legacy.

Whether African‑American, Latino, Asian‑American, Native American students, women, students with disabilities, immigrants, or those from low‑income families, the challenges are different than they were in the 1960s, but the stakes are at least as high.

The federal government's investment in students' futures and the economic health of our nation, through the Higher Education Act Title IV financial aid program, is premised on the idea that students are receiving an education of sufficient quality so as to justify the expense. The student loan program specifically presumes that a higher education raises a student's earning power sufficiently to allow for debt repayment. In response to for‑profit colleges' wide‑spread abuse of the federal investment in higher education and the devastating impact on students newly trapped in debt for worthless courses, the Department of Education rightfully intervened, through the regulatory process, to ensure the implementation of the law consistent with Congress's intent and the stated requirement that programs provide students an education, which would allow them gainful employment in a recognized occupation.

While there are far too many examples of profit motive leading to the exploitation of lower income people, who are disproportionately people of color, the federal government's facilitation and complicity in this instance creates a unique and urgent obligation for the Department of Education to intervene.

The civil rights community fought hard to ensure the Department of Education published regulations protecting students from the exploitative practices of too many for‑profit colleges. In a 2014 brief co‑authored by the Leadership Conference, Children's Defense Fund, the Lawyers' Committee for Civil Rights under Law, the Center for Responsible Lending, MALDEF, NAACP, the National Council of La Raza, and the NAACP Legal Defense and Educational Fund, we demonstrated that African‑American and Latino students were over‑represented in for‑profit colleges, institutions where students were much less likely to graduate, much more likely to incur high debt and default than their peers at other schools

These realities combine to trap students of color in debt for a high cost, low quality education that often fails to aid them in obtaining a well‑paying job in the field for which they went to school. A situation only possible through the exploitation of a law meant to serve the very students these institutions are harming.

In that brief, we called for a strong gainful employment regulation that protected students and curtailed abusive practices used by these institutions. We urge the Department not to reopen and weaken the rule and, instead, to robustly enforce the laws and the regulations protections on behalf of marginalized students. Despite spurious claims to the contrary, for‑profit colleges do not serve Black and Latino communities. These companies profit from deep cultural commitments to education, students' belief that the Department of Education would only make financial aid available for worthwhile programs, and the determination of students to make a better life for themselves and their families.

In the name of these students and their families, the Department must preserve this regulation and protect students. In addition to the gainful employment regulation, we urge the Department, in the strongest terms, to preserve the borrower defense to repayment regulation. This regulation similarly provides needed protection for borrowers who are the most likely to be misled and taken advantage of.

MS. WEISMAN: Time.

MS. KING: Denying wronged students access to the courts, as forced arbitration would do, is a fundamental denial of their access to the basic structures of democracy. Similarly, creating leniency for fraudulent institutions, those institutions that have violated the law, serves only to undermine the fundamental purpose of the underlying statute and betrays the Department's obligations to students. Thank you.

MS. WEISMAN: Alexis Goldstein.

MS. GOLDSTEIN: Thank you for giving me this opportunity to read some stories that I could not fit in my first testimony, since we have some openings in the schedule. This is from Edward Harlovic. He attended the Art Institute. He writes, quote, the decision to continue my education pushed me down from the middle class into poverty.

I graduated with honors in 2013, with a BS in photography from the Art Institute. I pursued my education with a single‑minded focus and determination. Shortly after I graduated, I was hired under false pretenses for a, quote, Google‑trusted agency, end quote, where I worked unpaid overtime, bought my own equipment, over $1,000 of my own equipment, and was never reimbursed for business expenses.

The working environment was terrible, and I was laid off. I spent four years of my life and invested tens of thousands of dollars just to be hired for a temporary job that didn't even require a college education, for a company that violated the law. I have nothing to show for my hard work but misery and shame. I am currently on food stamps and am working an $11‑an‑hour job unrelated to my field of study, which requires no post‑secondary education. I was exploited, manipulated, and coerced for someone else's personal profit, to my detriment and at my own expense.

I gave my very best and only received the worst of the worst in return. I can never get back all the time and energy that I put into my, quote, career at the Art Institute, but I can honestly say the decision to pursue my education was not worth it. Please help me move forward and put the past behind me.

Teddy Billiot, who is living in Montegut, Louisiana, writes, quote, back in 2010, I decided to go back to school for Homeland Security, through Everest University online. I received my associate's degree in 2013, and since then, it's been a total nightmare. Corinthian left me deeply in debt for a worthless degree. Corinthian may have filed for bankruptcy protection, but students cannot declare bankruptcy on their loans. I am still liable for my debts, despite the fact that Corinthian broke the law. It is very important for students to get the help they need when it comes to corruption of this magnitude. Every time my representatives are up for election or re‑election, one of the first things they say is that they're going to clean up corruption.

Well, Teddy writes, start with the Department of Education. Natalie Curiel writes, quote, I want to know why it's taken over two years now that my borrower defense application to be reviewed and processed. I was defrauded by Corinthian since the first day I walked into the building. I was a high‑school dropout, without a GED, and the first lie I was told was a promise to help me study and take my GED test before finishing my program.

To this day, I do not have a GED or a high‑school diploma, but I owe over $40,000 to a so‑called college, under the name of Everest Ontario Metro. Edward Mariano writes, quote, I graduated in August 2008 from ITT in Liverpool, New York. The experience was not what I was promised. I was promised a job starting out in the mid‑$400,000 as a network administrator. I was promised expert instructors and hands‑on training on current hardware and software, and I was promised that they had a record of 80 percent job placement. I graduated with perfect attendance and a 3.92 GPA. GPA is pretty much meaningless from there because they pass almost everyone if they show up at least half of the time.

After I graduated, they called me constantly and wanted me to come down and sign some paperwork saying that I got a job in my field of study, but I was in the roofing business. My course of study was computer networking systems. Repeatedly, instructors did not know how to do the stuff they were trying to teach us and would confuse the class.

They had a math teacher that relied on students to explain how to do the work because the instructor had no clue how to do the math, which made it extremely difficult for me because I had been out of school for so long. Exams were open book because they never knew what the heck they were teaching, so half of the students didn't know the material. My total debt on student loans, as we stand today, is $62,000 for a two‑year degree, and this is after I've been in wage garnishment for four years, and my income taxes have been taken every year. Only in this country are taxpayers forced to bail out the banks at their expense, and then also, I'm forced to pay back ridiculous loans, interest, and fees. I'm getting penalized every way around. My credit report is ruined.

I had to file bankruptcy, and I'm still in a debt that will haunt me for the rest of my life, all for a two‑year degree that was pushed on me from early childhood. You must go to college. You will never get a job without college. They forgot to tell me about all of the predatory college scams and the ridiculous costs, interest, and penalties of college.

They forgot to tell me that when the banks collapsed, I will bail them out with higher taxes, but my loans won't be forgiven when I'm jobless and starving. Chrissy Seaman writes, quote, I signed up for ITT Tech in 2007. I went to the admissions offices at ITT Tech in Greenville, South Carolina. I wanted to get a higher education to better my life because I was on disability, as a disabled dependent of my dead military parent. I was told that ITT Tech had a 98 percent success rate putting graduates in a career of their field of study. The woman lied to me ‑‑

MS. WEISMAN: Time.

MS. GOLDSTEIN: ‑‑ in the admissions office. It was not a better education. It did not better my life. I did not get a career in my field of study, and they pushed me to take classes I could have tested out of. In conclusion, I would just urge the Department ‑‑ there is absolutely nothing stopping you from forgiving the debts of students like these stories that I have just read.

There are many more stories where that comes from. There is absolutely nothing stopping you from discharging the debt of the applications you have already received. I urge you to release information about the number of discharge applications you have received so far, after January 20, 2017, in response to bipartisan letters from the United States Senate. Thank you.

MS. WEISMAN: Tariq Habash.

MR. HABASH: Thank you. My name is Tariq Habash. I am a policy associate at the Century Foundation. Thank you so much for the opportunity to provide input into the Department's announced intention to open up the new negotiated rulemaking sessions concerning the gainful employment and borrower defense regulations.

Before I begin my prepared remarks, I want to open by setting the record straight on a statement from a commenter this morning regarding gainful employment. To be clear, the majority of gainful employment programs are at public and non‑profit colleges, and of the programs large enough to have the data to report, one third to one half of GE programs are at public and non‑profit colleges, not the 2 or the 10 percent stated this morning.

Last year, at the Century Foundation, we conducted research into the contracts that colleges require students to sign when they enroll. We identified four kinds of clauses that were clearly designed to make it difficult for students to pursue complaints or to provide public disclosure of the disputes. We found forced arbitration clauses that prevent students and former students from going to court. We found clauses that prevent students from teaming up with one another when they have similar complaints. We found gag clauses that prohibit students from telling other people about the complaint resolution process or about specifics of any final ruling, and we found clauses that force complaints to stay internal to the school.

While the clauses themselves were disturbing, as they so clearly impinge on the rights of students, what was perhaps more interesting about the findings was that the clauses were being used almost exclusively by for‑profit colleges. Last year, the Department addressed some of these clauses in the borrower defense regulations.

Now, the Department has delayed, and may even repeal those changes. One driving factor seems to be the for‑profit colleges' claims that the rules are unfair to them. If denying students is somehow inherent for being a for‑profit ‑‑ if denying students' rights is somehow inherent to being a for‑profit, then the disparate impact of a ban on forced arbitration might be evidence of unfairness. But we found many for‑profit colleges that do not use forced arbitration. In fact, the only colleges that were consistently using these clauses are also ones that use federal aid, so denying students' rights seem to be a strategy specifically designed to scam more money from taxpayers, in particular.

Some industry leaders, like DeVry University, have actually voluntarily removed forced arbitration clauses from their enrollment contracts, and we believe others should follow suit. But without action from the Department, investor pressure will push for‑profit colleges in the other direction, seeking to extract as much money from students and the taxpayers as possible, by preventing students from pursuing their complaints and keeping information from the Government until it's too late, as in the cases of Corinthian and ITT Tech.

The industry's claim of unfairness is a cynical ruse. Unfair is what has happened to students and taxpayers in the absence of borrower defense and gainful employment. Therefore, the Department should implement and enforce these rules in their current forms. Thanks.

MS. WEISMAN: Heather Donnithorne.

MS. DONNITHORNE: Good afternoon. Thank you for providing this opportunity to speak to you today on the issue of gainful employment regulation, revision, and the delay of borrower defense protections and reimbursement. My name is Heather Donnithorne. I am with Blue Star Families.

Through our membership of 150,000 plus members worldwide, we touch more than 1.5 million military families every year. Through our annual survey, we hear their voice, we share their stories, and then we work to advocate for and broker solutions to the challenges they face. I am here today to do just that, to be the voice of the military spouses and college‑age military dependents.

Having said that, I will also tell you I'm an Air Force military spouse myself, and before the Air Force life swept me away, I had a career in higher ed for 13 years. In each of these facets, I have seen firsthand how bad actor schools have harmed military families. You see, it isn't just the veterans who receive GI Bill funds. In our 2016 annual military family lifestyle survey, with over 8,000 respondents, 75 percent reported that they had, or planned to, transfer the GI Bill benefit to a dependent spouse or child. It is no secret that the 90/10 loophole makes that GI Bill money attractive to for‑profit schools.

Because military families are frequently moving, and because we live in a time where dual income households are essential to financial security and the ability for families to thrive, we have found that military spouses often seek out the certification and quick degree programs that for‑profit colleges, many of them online, offer.

This all culminates into a perfect storm. Research backs this up. Four of the top five reported military spouse careers were certification and licensure employment, mainly in the fields of healthcare, administration, financial, and business services.

Military spouses and dependents are an easy target for these predatory colleges. These are the promised career fields/opportunities for‑profit schools market. I'd love to share several of our member stories with you, but I only have five minutes. I'll share just one. Ms. Meadows is one of our Blue Star Family military spouses. She's currently in Montgomery, Alabama. Her husband is active duty. She is unable to work in the career field she trained for in 2014. She shared with me that she's in debt to the tune of $15,000 plus for a national certification as medical assistant from Fortis College.

However, her certification is not recognized as valid from this school in the State of Alabama. Not only did they put her in debt with nothing to show for it, they also applied her MyCAA scholarship, which is for military spouses whose spouse is in the earlier stages of their military career, and GI Bill funds to the cost of the training.

Here's what I have to say, in a nutshell. The families of our all‑volunteer force make unprecedented sacrifices as it is. One of the benefits that eases the sacrifice is being targeted. Military spouses should not have to experience any of this in order to fill their personal goals and accomplishments and/or to financially contribute to the essential, vital, dual‑income family lifestyle that we live today. More importantly, though, should they suffer the hardship caused by a predatory educational experience, they should not, for any reason, suffer long delays in a confusing appeal process to get it corrected. Borrower protections and gainful employment provisions that address this issue on the front end are 100 percent necessary, and they needed to be implemented not today or tomorrow, but yesterday. Thank you.

MS. WEISMAN: The next speaker is not scheduled to speak until 3:30, but if Anthony Hardie is present, please come forward now. Anthony Hardie. Okay, then we will take a break until 3:30. Also, at this time, Anthony is our last speaker for the day. We will be here until 4:00, if anybody else would like to sign up, please do so at the desk.

(Whereupon, the above‑entitled matter went off the record at 3:07 p.m. and resumed at 3:32 p.m.)

MS. WEISMAN: We'd like to resume. Our first speaker is Anthony Hardie.

MR. HARDIE: Thank you. Good afternoon. Assistant Secretary Smith, Counselor Andrade, and Director Weisman, really appreciate the opportunity to testify before you today and thank you for hosting this public hearing. I'm Anthony Hardie. I'm the director of Veterans for Common Sense. We are here with regards to the borrower defense rule and the gainful employment rule. On June 9, 2017, we were one of 31 veterans and military service organizations that wrote to both Congress and Secretary DeVos and requested a delay in implementation ‑‑ requesting that there's no delay in implementation of the borrower defense rule. There are important provisions in the borrower defense rule that are particular to veterans, as well.

Also, with the gainful employment rule, we understand that there's consideration for re‑writing that regulation, and we are very concerned about this being re‑written. Veterans, in particular ‑‑ not only with private schools that sometimes fail, as has happened in recent years, they not only incur debt, but they also expend their limited GI Bill benefits, or both. This is extremely concerning, so our position is that we are ‑‑ it's very simple. We are requesting no delay in implementation of the borrower defense rule, and we are requesting that these considerations be taken under consideration when re‑writing the gainful employment regulation. I just came in from Florida about 20 minutes ago, and I appreciate the opportunity to speak before you today. Thank you very much.

MS. WEISMAN: Our next speaker has asked to speak a second time, due to the inability to finish the first time. We'd like to recall Charlotte Hancock.

MS. HANCOCK: Hi there. I was going to read a few more stories of borrowers, as well, that I would have liked to include in my previous testimony. Thank you. As I mentioned, I'm Charlotte Hancock. I work with Higher Ed, Not Debt, and we have heard from more than 9,000 students who have attended for‑profit colleges and been defrauded by those for‑profit colleges.

I'm just going to read a few of their stories. I was told that my debts were going to be one price, and now I'm at $69,000 more than the University of Phoenix told me. They also added ten more loans that I didn't know about. I was never informed. I was told once I graduated, I would be able to find something in my field. Now they told me I'm not qualified for any help with my loan. I'm stuck with a loan that the University of Phoenix made promises about, as well as Navient. That's from one of our borrowers, Milagros Hernandez. The next story is from J.P. Fullerman, in St. Petersburg, Florida.

J. P. wrote I attended ITT Tech from 2010 to 2012, for the visual communication program, aka graphic design. Five years out of college and still no job in my field of work. I shouldn't have to pay for a scam and for being lied to about my future. The next story is from Ricardo Garcia, in Lake Worth, Florida. Ricardo wrote I am a single father of two boys.

I graduated ITT Tech in 2016. I never had any help from ITT for job placement. My degree is now useless, as no one sees attending ITT as a real education because of all the fraudulent actions that went on, and I am now stuck with $30,000 in student loans and no prospect of a career in my field. The next story is from Benjamin Merrill. Benjamin attended two acupuncture schools over a period of seven years. These graduate schools are cult‑like vocational businesses that delude students into believing they are entering a career paying $60,000 to $80,000 a year. The truth is that 15, more than half of the for‑profit acupuncture schools, failed the gainful employment standard. There are less than 60 acupuncture schools. The one I attended, in Roseville, Minnesota, had a median graduate annual income of $16,251.

Twelve schools among the fifteen GE standard failures are suing Betsy DeVos for the right to continue living off of student debt. I went to 2 of those 12. These schools reason that graduate income is low in the first few years after graduation because former students are establishing new businesses. What schools fail to disclose to the feds, and to students, is the incredibly washout rate of acupuncturists.

Community acupuncture discussion threads have suggested that the washout rate has reached 50 percent within ten years. Research by Steve Stumpf has dispelled the fantasy that the profession is growing. Few acupuncturists ever make it to the salaries suggested within schools which would justify the debt burden taken out by students. There are also some bad qualities to acupuncture schools. The two I attended had coercive, cult‑like atmospheres that supported the delusional view of the profession through contract boosterism. The teachers were either unqualified for teaching or coerced into silence concerning student achievement because they were bound to their employer.

The student clinic was a labor scam, where students were essentially used as employees, paying a business to work, all with little supervision. Grades meant little at these schools, and the students were ill‑prepared to be involved in any kind of medicine. One student was near graduation when she complained about a test question in class, referring to something above her head.

It was the reference to mitochondria that had caused her such frustration. Student behavior was downright insane. Behavior that would get someone rejected from a bar was tolerated in the name of collecting tuition money. The accreditation agency, ACAOM, is a collegial style consultant that exists solely to promote the predatory school business. I learned that the hard way because I complained in writing. These are just a few of the stories that we hear on a regular basis, and we ask that stories like this not be able to continue to exist by ensuring that the regulations that had been decided on go into place, and that borrowers put first when considering this. Thank you.

MS. WEISMAN: That concludes our scheduled speakers for the day. If there is anyone present who has not yet spoken and would like to do so, you may come forward at this time. As I mentioned, it is a public hearing, and we have said that we would be here until 4:00, so we will remain at the table, in case anyone does decide to come forward to speak this afternoon. If not, we'd like to thank you for coming and presenting today and/or listening. We'd also like to remind you that when exiting our building, please do not go through the doors that are marked with the big red signs emergency exit. Please go through one of the regular exits, and if you are unsure of where that exit is, please see one of our ED staff members. Thank you.

(Whereupon, the above‑entitled matter went off the record at 3:39 p.m. and resumed at 4:00 p.m.)

MS. WEISMAN: That concludes our hearing for today. Thank you.

(Whereupon, the above‑entitled matter went off the record at 4:00 p.m.)