Public Hearing - 7/12/2017

1

DEPARTMENT OF EDUCATION PUBLIC HEARING

JULY 12, 2017

On the 12th day of July, 2017, the following public hearing was held at Southern Methodist University, Underwood Law Library, from 9:00 a.m. to

4:00 p.m., before Terralyn J. Gentry, Certified

Shorthand Reporter in the state of Texas.

Collins Realtime Reporting - Dallas, Texas - 214-220-2449

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

2 MR. MANNING: Good morning. We'll go ahead

3 and get started. Good morning. Thank you for being

4 here. I'm Jim Manning, Acting Undersecretary at the

5 U.S. Department of Education, and I'm pleased to welcome

6 you to this public hearing.

7 I'm joined at the table by two other

8 department staff members, Greg Martin from the Office of

9 Postsecondary Education and Brian Siegel from the Office

10 of General Counsel.

11 This is the second of two hearings that we

12 are convening to gather input regarding the regulations

13 that govern Borrower Defense to Repayment and the

14 metrics used to gauge the success of Gainful Employment

15 programs.

16 AUDIENCE MEMBER: Excuse me, sir, I'm

17 having difficulty hearing you. Could you move the mike

18 closer? Thank you. I apologize for interrupting you.

19 MR. MANNING: That's okay. Increasing

20 access to an affordability of higher education is a top

21 priority for this administration as is developing fair,

22 effective, and improved regulations to protect borrowers

23 in fraud, ensure accountability across institutions of

24 higher education and protect taxpayers.

25 Secretary DeVos is committed to ensuring

1 that institutions that receive federal funds are serving

2 the students well. Moreover, she appreciates the

3 traditional postsecondary path is not the only option

4 for meaningful education opportunities, and that

5 students should have access to strong trade and vocation

6 programs at a variety of types of institutions.

7 The Secretary has made clear that her first

8 priority is to protect students, and she firmly believes

9 that fraud is simply unacceptable. She also recognizes

10 that last year's Borrower Defense rulemaking effort

11 missed an opportunity to get it right. The result is a

12 muddled process that's unfair to students and schools

13 and puts taxpayers on the hook for significant costs.

14 Therefore, it's time to take a step back and make sure

15 these rules achieve their purpose, helping harmed

16 students. It is the Department's aim and this

17 administration's commitment to protect students from

18 predatory practices, while also providing clear, fair,

19 and balanced rules for colleges and universities to

20 follow.

21 Thus, we approach this hearing in our

22 upcoming negotiated rulemaking with a commitment to

23 ensuring that every student has access to an education

24 that will put them on solid footing for success as they

25 define it, be it further education, a career, or

1 entrepreneurship and holding schools accountable for

2 practices that undercut their students and taxpayers.

3 We anticipate that the Borrower Defense

4 negotiating committee will begin negotiations in

5 November 2017, and the Gainful Employment negotiating

6 committee will begin negotiations in December 2017.

7 Federal Register notices seeking nominations for

8 negotiators will be issued in advance of those dates.

9 Again, thank you for your time and expertise to this

10 very important process. I appreciate your willingness

11 to share your perspectives. As to the logistics for

12 this hearing, many of you are already signed up for

13 times to speak, and we'll be calling your names as you

14 have signed up.

15 We have many slots left today. If you have

16 not signed up and would like to speak, please see the ED

17 staff at the front desk and Amy will be happy to give

18 you a time.

19 Speakers are limited to their remarks to

20 five minutes for this initial round. If you get to the

21 end of your five minutes, Greg will ask you to wrap it

22 up. Please conclude your remarks in 20 seconds after

23 receiving the notice. If there is time available -- and

24 I expect there will be -- everyone who wants to speak

25 and has spoken, we will be glad to have you come up for

1 a second round.

2 Please note that this hearing is being

3 transcribed and the transcription will be posted to our

4 website in the next few weeks. This is a public

5 hearing, so please be aware that there may also be

6 people in the audience who are videotaping and audio

7 taping.

8 We welcome your written comments. If you

9 have comments here today that you would like to submit,

10 you can hand them to me or the ED staff at the front

11 desk. You can also post comments to regulations.gov

12 through July 12th. We have three scheduled breaks. One

13 this morning from 10:30 to 10:40, a lunch break from

14 12:00 to 1:00, and a break in the afternoon from 2:30 to

15 2:40. If we don't have speakers scheduled, these breaks

16 might become longer.

17 We ask that you silence your cell phones

18 while in the room. You're welcome to use your cell

19 phones in the lobby. If you need assistance, please

20 speak with the ED staff. Amy at the front desk will be

21 glad to help you.

22 When you are called to speak, please begin

23 by sharing your name, and if you're here representing an

24 organization, the name of that organization. Thank you,

25 and we look forward to hearing your comments.

1 MR. MARTIN: Good morning. It's nice to

2 have you all here. I want to thank Southern Methodist

3 University for being our gracious host today. As

4 Mr. Manning pointed out, everybody will have five

5 minutes to speak. When you are at the five-minute

6 point, I will let you know that your time is up, and

7 nothing personal intended. I do it to everybody, and we

8 would expect you to wrap up within the next 20 seconds.

9 Okay. We're going to begin this morning's

10 comments with Ms. Whitney Barkley.

11 MS. BARKLEY: Good morning, my name is

12 Whitney Barkley-Denny, and I am a Senior Policy Counsel

13 with the Center for Responsible Lending. We're a

14 national nonprofit group that works to ensure a fair,

15 inclusive financial marketplace that creates opportunity

16 for all responsible borrowers regardless of their

17 incomes.

18 Prior to joining the center, I led Riley

19 Research, an advocacy on student loan issues. I worked

20 as a staff attorney at the Mississippi civil rights law

21 firm, the Mississippi Center for Justice. In my

22 capacity at MCJ, I was an alternate legal services

23 negotiator for the 2013 -- for the 2013 Gainful

24 Employment negotiated rulemaking. And because I am a

25 glutton for punishment, I was also a negotiator at the

1 2014 Programmatic Integrity rulemaking.

2 I am here today to strongly urge the

3 Department to leave the existing Gainful Employment and

4 Borrower Defense regulations in place and to enforce

5 them in the interest of students, borrowers, and

6 taxpayers. Further, I urge you to resolve the claims of

7 tens of thousands of borrowers who have already filed

8 Borrower Defense claims, making good on the promises

9 made to those who did everything they were supposed to

10 do in pursuit of the American dream, only to be harmed

11 by the institutions that were meant to help them achieve

12 it.

13 When the U.S. Department of Education's

14 approval of federal loan dollars isn't easily

15 interpreted by many as a Good Housekeeping Seal of

16 Approval in the eyes of students and taxpayers, if the

17 U.S. Department of Education is allowing federal

18 dollars, taxpayer money, to be sent to a school, it must

19 be a legitimate institution. The U.S. Department of

20 Education should not be in the business of sanctioning

21 predatory for-profit colleges that trap students in an

22 unending cycle of debt. Rather, ensuring the Department

23 of Education only allows federal loans to be sent to

24 programs that benefit students should be one of the

25 highest responsibilities of this administration and any

1 administration.

2 Of course, we all know in this room that

3 that calling hasn't always been met. In the case of

4 Corinthian Colleges, ITT Tech, Fast Train, Marinello

5 School of Beauty, and other schools that closed after

6 years after allegations of predatory behavior, borrowers

7 and taxpayers were left on the hook for tens of

8 thousands of dollars in tuition that went to enrich CEOs

9 and marketers.

10 Over the past several years, research from

11 the Center of Responsible Lending has consistently and

12 clearly found that student loan borrowers who attend

13 for-profit colleges have more debt and higher loan

14 default rates when compared to their public school

15 peers. In this sorry picture of the for-profit college

16 industry that our research revealed, it's hardly limited

17 to just a few schools or a few states. What we are

18 finding, as we're doing national studies as we compare

19 nonprofits and for-profit schools state by state is that

20 the problem with for-profit colleges are ubiquitous.

21 They're not contained to one school or to one region,

22 and they're not improving. Instead, they are consistent

23 across states and across the country. High costs, poor

24 outcomes, and leaving students deeply in debt without

25 the skills necessary to obtain Gainful Employment.

1 Beyond showing that for-profit outcomes

2 fall disproportionately on the poor, research from CRL

3 and others have found that minority students and women,

4 in particular, are seriously over-represented at

5 for-profit schools. First-generation students, students

6 with families, and students of color are better served

7 by lower-cost community colleges and HBCUs that offer

8 real student services and remedial classes that can help

9 them actually complete their education at a lower cost

10 than they are by high-cost, for-profit colleges that

11 leave them mired in debt.

12 Of course, there are real people behind all

13 of this research. In May and June of 2017, CRL

14 conducted focus group inquiries with former for-profit

15 colleges in Florida. Here's what some of those students

16 had to say. This is from a guy, he was in his 20s, I

17 would say, an African-American gentleman. "If they told

18 you ahead of time you're not going to make enough money

19 to pay this back, nobody would be coming. So I think

20 they're a little predatory in that way, you know.

21 They'll tell you every way you can get money and every

22 form you can fill out. I think there's some

23 responsibility there. If you are going to say, Hey, you

24 have all this money available to you, they should also

25 say, By the way, with this degree, you're never going to

1 make enough money in your lifetime to pay it all back."

2 The Gainful Employment rules finalized in

3 2014 have already begun to improve outcomes at our

4 nation's for-profit schools. Colleges have begun to

5 eliminate their worst-performing programs, to freeze

6 tuition, and to implement other reforms to improve

7 outcomes for their graduates. We welcome these changes.

8 As an example of this improvement right here in Dallas

9 where Brightwood College is apparently no longer

10 offering their zoned criminal justice program at their

11 Dallas campus.

12 However, other Texas programs are still in

13 trouble. At Southwest University in El Paso, borrowers

14 pay nearly $26,000 for a nine-month medical billing and

15 coding program that is failing the Gainful Employment

16 standards. The Department of Education has a

17 responsibility to students and to taxpayers to ensure

18 that they are not defrauded when attending a

19 Department-approved school, and if they are defrauded,

20 the Department can and must make it right.

21 Perhaps Helen, another of our focus group

22 participants, summed it up best. "My problem is that I

23 don't feel like I have a $70,000 education. No, not at

24 all. Even though on paper in the government computer

25 system, it says that's what I owe, the quality of the

1 education that I got is not worth $70,000."

2 MR. MARTIN: Time.

3 MS. BARKLEY: May I finish this one quote?

4 MR. MARTIN: Yes, please.

5 MS. BARKLEY: Okay. "Because to my

6 employer, I am not worth $70,000. It's not about our

7 education. It's not about the tools we are given to

8 succeed in the world. And it's -- it's about -- it's

9 not about making money. Well, they're the ones making

10 money, not us. I pay $418 a month for a 2013 car which,

11 I mean, I need it, so it's not that big of a deal but

12 you can't -- I want to move up. I want to be a

13 homeowner one day. I want to own things and leave

14 things to my son one day, and you can't do that when a

15 credit company looks at your credit report and says you

16 make $45,000 a year, but you owe $90,000."

17 MR. MARTIN: Thank you. You must conclude.

18 MS. BARKLEY: Thank you.

19 MR. MARTIN: Thank you. Thank you, Ms.

20 Barkley. Next will be Mr. Robert Shireman.

21 MR. SHIREMAN: Good morning, I am Robert

22 Shireman. I am a senior fellow at the Century

23 Foundation. Thank you for the opportunity to testify.

24 As a context for this rulemaking, I would

25 like to offer input on the big picture as far as the

1 laws and regulations that apply to federal college aid.

2 We've got one set of schools that says, we want access

3 to federal grants and loans; in exchange, we're going to

4 commit all of our money to education and then make extra

5 sure that we are not short-changing the public interest

6 in all of our operations. The decisions we make about

7 tuition, financial aid, what programs we offer, who we

8 enroll, and how we recruit them, we will be answerable

9 to people who cannot take the money for themselves.

10 This conflict-of-interest wall will serve as an extra

11 layer of protection for students and taxpayers.

12 Then you have this other group of schools

13 that says, we also want unlimited access to federal

14 grants and loans, but we do not want a

15 conflict-of-interest wall. We want the decisions at our

16 schools to be made by owners who can do anything they

17 want with the money.

18 U.S. taxpayers finance both sets of

19 schools, and lo and behold, at many of the schools

20 without a conflict-of-interest wall, disturbing behavior

21 has emerged, such as schools recruiting almost

22 exclusively students eligible for federal aid to avoid

23 the accountability that comes from serving employers or

24 higher income families, charging far more in tuition

25 than is spent on instruction, spending a huge amount of

1 revenue on recruiting, marketing, and advertising,

2 discouraging prospective students from shopping around

3 to compare their educational options, making advertising

4 and recruiting claims that are sleazy, if not illegal,

5 denying students their rights to go to court or to join

6 with fellow students to file grievances. Enrolling

7 students who are unqualified or who do not understand

8 what they are getting into, setting low academic

9 expectations, and closing the school with little or no

10 notice, leaving students in the lurch and taxpayers on

11 the hook. These are problems that in recent years

12 reached scandalous proportions.

13 Now, the idea that a conflict-of-interest

14 wall can be an effective way to protect the public

15 interest is neither controversial nor partisan.

16 President Trump embraced the idea last month in his

17 proposal to privatize air traffic control. He

18 emphasized it would be nonprofit. It would be able to

19 prioritize the system's mission, because its board would

20 be, quote, free of any financial conflicts of interest,

21 a conflict-of-interest wall to protect the public

22 interest.

23 The repeated history of scandals in

24 for-profit education indicates that the

25 conflict-of-interest wall is clearly effective, but it

1 is not required to be eligible for federal aid as an

2 institution. So, instead, Congress and the Department

3 have adopted numerous rules aimed at the specific

4 behaviors, problematic behaviors, that have emerged,

5 rules about misrepresentation, rules about refund

6 policies, rules about the way that accrediting agencies

7 are supposed to operate, and on and on, including the

8 Borrower Defense and Gainful Employment rules.

9 Nearly all of the rules were created to

10 address problems predominantly at schools that did not

11 have a conflict-of-interest wall, yet most of the rules

12 apply to all schools that want federal aid. That sort

13 of seems unfair to the nonprofit and public schools that

14 do have the conflict-of-interest wall, but they did not

15 sue to stop the Gainful Employment and Borrower Defense

16 rules. Instead, it is the colleges without the

17 conflict-of-interest wall, the for-profit schools, who

18 object. They want you to believe that the only thing

19 different about them is their, quote, tax status. That

20 would be like saying that the difference between vodka

21 and water is just calories.

22 Much more important, what makes nonprofits

23 different are the prohibitions on conflict of interests,

24 the restrictions on use of funds and for public

25 institutions, the accountability to taxpayers.

1 For-profit colleges do not have these protections, which

2 is why they so frequently prove to be poor stewards of

3 federal taxpayer dollars and require additional

4 protections given the lack of that conflict-of-interest

5 wall.

6 In examining the Borrower Defense and

7 Gainful Employment rules and their effects on different

8 sectors, the Department must keep in mind that public

9 and nonprofit institutions' behavior is less problematic

10 to start with because of that conflict-of-interest wall.

11 Thank you very much.

12 MR. MANNING: Thank you.

13 MR. MARTIN: Thank you. Our next speaker

14 will be Nicole Hochsprung. Nicole Hochsprung. Okay.

15 If she comes in, we'll add her. Mr. Steve Gunderson.

16 MR. GUNDERSON: Good morning, I'm Steve

17 Gunderson, President and CEO of Career Education

18 Colleges and Universities, and my presentation is a

19 little bit different, because the June 19th call for the

20 hearing said they will hold two hearings to discuss the

21 rulemaking agenda, so I want to focus on what we believe

22 should be a part of that agenda.

23 But let us begin with the basics. Our

24 sector looks forward to working with you, the

25 Department, and all parties to constructively seek a

1 consensus policy that can guide the work of higher

2 education in serving students. We support good public

3 policy, advancing the interest of both Gainful

4 Employment and outcomes for our students and the

5 Borrowers Defense to Repayment where fraud occurs. Any

6 regulation seeking to define outcomes for Gainful

7 Employment must serve all career programs across all

8 higher education; otherwise, we fail to protect

9 approximately 90 percent of the students.

10 So as we begin to develop the agenda for

11 these two hearings, we encourage the following topics.

12 For Gainful Employment, we suggest 10 such items:

13 No. 1. First, define the goal of a Gainful

14 Employment rule. Is the goal to ensure that all

15 students gain employment in their field of study of the

16 likely return on their investment or something else?

17 No. 2. Define Gainful Employment. If

18 Gainful Employment applies only to career programs, then

19 how does one ensure the same career programs offered by

20 different schools are also covered?

21 No. 3. Design consistent application to

22 all career programs. If the goal is to define a

23 baseline of acceptance outcomes, how can we define and

24 implement such baselines in the clearest way possible

25 for students?

1 No. 4. Determine if the rule is meant to

2 provide students important information, or is it meant

3 to be a regulation determining access to Title IV? The

4 answer to this question will lead us into the design of

5 the appropriate rule.

6 No. 5. Determine the metric that provides

7 the best, fairest, and most accurate assessment of

8 current career programs. Imagine if a rule existed

9 where no appeal process was needed because the same

10 information was available to all.

11 No. 6. Define and develop an appropriate

12 timetable going forward. Rules must be prospective,

13 giving all schools appropriate time to design programs

14 to comply.

15 No. 7. Design a rule that recognizes

16 economic income disparity across the country. We know

17 that the very same academic programs result in

18 dramatically different annual outcomes across the

19 nation.

20 No. 8. Design a Gainful Employment rule

21 that will support efforts to meet today's and tomorrow's

22 skilled designs and needs.

23 No. 9. Design a Gainful Employment rule

24 that evaluates the total cost of the program. It is

25 blatantly unfair to compare the very same academic

1 programs in two different schools if one is

2 substantially supported by public sector operating

3 subsidies, while the other school operates with no

4 subsidies at all.

5 No. 10. Achieve the right balance and

6 benchmarks and outcomes to protect both students and

7 also meet the increasing need for skills, access, and

8 opportunity.

9 For Borrower Defense to Repayment, we

10 suggest 12 items:

11 First, define the appropriate scope or

12 purpose of a rule related to protecting a borrowers

13 defense to repayment of Title IV loans.

14 No. 2. Design a rule that protects all

15 students and all schools. Academic fraud occurs,

16 unfortunately, in every sector of higher education.

17 No. 3. Articulate the basis for filing

18 such claims.

19 No. 4. Design a process that can provide

20 the cleanest, clearest, and quickest resolution of

21 claims made by students while protecting both the

22 student and their school.

23 No. 5. Develop the process for filing in

24 full consideration of claims by individuals and/or

25 groups.

1 No. 6. State the appropriate statute of

2 limitation for such filings.

3 No. 7. Make clear such a rule protects

4 both the student's right to relief and the school's

5 right to defense.

6 No. 8. Develop a clear and appropriate

7 definition of misrepresentation.

8 No. 9. Structure the Department's role in

9 managing the consideration of claims to protect the due

10 process rights of both the student and the school.

11 No. 10. Reconcile the use of arbitration

12 in this regulation with the broader federal statutes

13 that actually encourage such use.

14 No. 11. Limit the rule to its intended

15 purpose.

16 No. 12. Again, we must design a regulation

17 that is prospective in nature, providing both students

18 and schools the opportunity to prepare for such a

19 regulation before it becomes law.

20 We've learned much from the process and the

21 issues related within the current regulations. We hope

22 that we will begin this process with two important goals

23 that have universal support. We all want to protect

24 students, and we all want to meet the growing demand for

25 skilled workers. These two goals should serve as an

1 incentive for everyone to set aside the strident

2 ideological agendas of the --

3 MR. MARTIN: Time.

4 MR. GUNDERSON: -- and seek consensus in

5 ways that both protect the students and enable schools

6 to continue serving those students in achieving their

7 life dreams. Thank you.

8 MR. MANNING: Thank you.

9 MR. MARTIN: Next, Ms. Rachel Myers.

10 MS. MYERS: Good morning, everyone. I'm

11 Rachel Myers and serve as Liberty University Student

12 Financial Service's communication supervisor and have

13 been working in financial aid for a little over 11

14 years.

15 I'm especially thankful to the Department

16 for having something in Dallas, as I work remotely in

17 Lubbock, so it's not that far. Also, thank you to

18 everyone that's here to discuss these important issues.

19 I believe most of us here will agree that

20 the goal of Gainful Employment regulations are good. We

21 want students to have access to good quality programs

22 that have value that will serve them through their

23 lifetimes. However, the department has failed in the

24 implementation of Gainful Employment in several ways.

25 The regulation has been enforced inequitably. They have

1 failed to account fully for students purposefully taking

2 lower paying jobs due to a desire to serve in nonprofit

3 positions in our communities. Finally, the regulation

4 implementation has caused a serious administrative

5 burden and failed to properly handle data. I personally

6 understand the programs as I have been the project

7 manager for ensuring the institution disclosures are

8 accurate and completed on time.

9 If these regulations persist, it's crucial

10 to schools that the Department creates and releases a

11 mass upload tool to generate the Gainful Employment

12 disclosure forms. This one change would assist with

13 data disclosures by saving schools valuable time and

14 resources. There's truly no good reason for having a

15 mass upload tool for such a simple data form submission

16 process. I personally would rather spend my time

17 working on communication strategies that help with smart

18 borrowing and trying to help students find ways to repay

19 their student loans in a good way.

20 As for the Borrower Defense regulations,

21 I'm requesting the Department review, in earnest, the

22 concerns put forth by many attorneys who argue that the

23 latest regulations actually place students at a

24 disadvantage compared to the original '94 rules. A

25 number of legal professionals have brought up the

1 concerns about the new rules and is concerned with

2 Holder protections that currently apply under the '94

3 rules.

4 In short, the Holder rule deems that any

5 consumer who was provided a defective or fraudulent

6 product or service has the right to be credited back its

7 payment when the seller has extended the credit to

8 purchase the good directly or has a relationship with

9 the provider of the financing.

10 So if the Department deems that a school's

11 program has issued a fraudulent or defective educational

12 degree, they already have the precedent for the borrower

13 student loan relief. Since schools and the Department

14 most certainly have a financing relationship with one

15 another, because the Department is the only entity who

16 can provide federal student loans, borrowers should be

17 able to obtain relief through the Holder rule. As no

18 coincidence, the Minnesota Attorney General's website

19 specifically links to this information on a page

20 dedicated to student loans, student loan scams,

21 repayment and for-profit colleges.

22 Additionally, the Department already has

23 the authority to investigate any school and any program

24 at any time it deems necessary with numerous paths to

25 identify as fraudulent or defective program. The

1 Department already has the authority, long before

2 Borrower Defense, to launch a federal program review.

3 Institutions are given numerous opportunities to ensure

4 they're providing good, quality programs, and the

5 students are provided with multiple data points which

6 should provide them with the ability to make a complete

7 and informed decision on whether or not to enroll in a

8 specific school in a particular program.

9 Schools already provide Gainful Employment

10 disclosure forms, Net Price Calculator, College

11 Scorecard, and the Federal Shopping Sheet, and data

12 points from the FAFSA, in addition to what schools are

13 required for annual disclosure reporting. The true

14 obligation lies with the Department and the need for

15 them to be willing to stop poor programs from continuing

16 to have access to federal student aid.

17 I've seen firsthand what it's like for a

18 student trying to seek borrower payment through the old

19 Borrower to Defense Repayment rules, and the problem

20 isn't with the extent of what may be covered. In my

21 estimation, the issue lies with the unwillingness of the

22 Department to close down schools that have a recorded

23 history of abusing federal aid programs and providing

24 their students with useless degrees.

25 The Department has also been incredibly

1 overwhelmed with the number of applications that have

2 poured in. It's my hope that the students, schools, and

3 Department not find ourselves in the current situation

4 we're all facing by taking stronger preventative

5 measures.

6 Students, as a form of consumers, should

7 absolutely have access to make a clear and informed

8 decision when determining which school to attend and how

9 to finance their education. Providing students with

10 access to a college education in an affordable way is

11 critical. I ask the Department not layer on unnecessary

12 over-reporting, which drives up administrative costs

13 that's then passed along to the students.

14 It's unfortunate that this regulation

15 punishes bad-actor schools that duplicate accountability

16 tools that ED has had for years. Even more unfortunate

17 is the Borrower Defense burdens thousands of good-actor

18 schools and does it very effectively.

19 I thank you for your time.

20 MR. MARTIN: Thank you very much. Our next

21 speaker is Ms. Katherine Savers McGovern.

22 MS. McGOVERN: Good morning. My name is

23 Katherine McGovern. I'm speaking for myself. I'm also

24 speaking as a person who, back in 1968 and '69, was able

25 to obtain a loan under this Title IV to complete my

1 final year of law school at Georgetown University in

2 Washington. I have spent approximately 40 years

3 representing the interest of the people of the United

4 States, and 20 to 25 of those as an assistant United

5 States attorney on the civil side, which brought me into

6 the situation of prosecuting on behalf of the Department

7 of Education, efforts to recover defaulted student

8 loans.

9 The student borrower rules are a good rule.

10 We are -- I believe that the Department of Education is

11 totally wasting taxpayers' money by reopening this.

12 You've already had -- excuse me, gentlemen. You've

13 already had almost two years of rulemakings. We've

14 gotten through rulemaking notice. We've had comment

15 periods. We've had hearings. We've had the actual rule

16 publicized. It's supposed to go into -- it's supposed

17 to have gone into effect the 1st of July. All that rule

18 does is to level the playing field.

19 Now, we know that there would not be so

20 many schools that are under attack if all these things

21 that the prior two speakers suggested actually went to

22 the children and the young people who are trying to

23 build an education for the future by going to a school

24 where they think if they borrow this money, they will be

25 able to obtain the training to get a job to repay their

1 loans. That's not happening.

2 I remember last year, one of the biggest

3 examples was Trump University. Clear examples of why

4 the Gainful Employment and the Borrower Defense rules

5 are needed. It is wasteful of the taxpayers' time and

6 money for this notice to continue. They should close it

7 down and enforce the rule, which has already been

8 adopted consistent with the Administrative Procedures

9 Act and the Higher Education Act. These notice of

10 negotiated rulemakings violate the Administrative

11 Procedures Act because they do not comply with the very

12 structure that the Act insists upon and requires.

13 There's no notice. There's no opportunity for

14 discussion. There's no actual comment hearing period.

15 Instead, you get, now, This is what we're going to do,

16 and you get a chance to say whether you like it.

17 All the people, I suspect, who spoke prior

18 to me, because I didn't speak before, have spoken during

19 the two-year period with the decision being made

20 concerning the Borrower Defense and the Gainful

21 Employment rules. We all know that those are necessary.

22 We all know that, as time goes on and these are in

23 effect and we see how they work for the benefit of the

24 students, it's the level playing ground that we're

25 trying to get, not the issues of whether or not a school

1 thinks there's too many regulations, not whether or not

2 people think they should be able to run a school and

3 make a profit. We are using federal tax dollar money to

4 finance these loans. And if you go back to why this Act

5 was passed in the first place, it was to provide a step

6 forward, because many, many people in the country could

7 not get an education above high school because they

8 couldn't afford it, and their parents couldn't afford

9 it. And, thus, that's the way it was. Plus, they

10 didn't know how and what kind of job to get.

11 So this whole effort to undo what we have

12 already paid to have done, that is a rules -- rules that

13 level the playing fields for our children and our young

14 students so that they don't spend a lifetime in debt,

15 it's ridiculous. I'm not trying to be rude to you all,

16 but it is ridiculous. And if you are in a position

17 that's not new to the Department, you've already been

18 through this, so it must feel like déjà vu.

19 Also, the use of arbitration as a

20 requirement in these education loans is so ridiculous

21 and expensive and requiring a certain expertise that you

22 have to hire a particular attorney with that training.

23 Also, the arbitrator, who is the judge --

24 MR. MARTIN: Time.

25 MS. McGOVERN: -- is hired by the parties.

1 The people who use arbitration frequently are in

2 arbitration all the time, so who's paying the judge?

3 The person you're going against, if you are a student.

4 Thank you for your com -- thank you for

5 your courtesy, and I would urge you to not continue with

6 this proposed negotiated rulemaking.

7 MR. MANNING: Thank you for your comments.

8 MR. MARTIN: Our next speaker is Jerry

9 Valdez.

10 MR. VALDEZ: It's like following the

11 preacher on Sunday morning. Good morning. My name is

12 Jerry Valdez. I serve as the executive director of

13 Career Colleges and Schools of Texas, which is the

14 largest organization and association representing the

15 nearly 150,000 students enrolled in private-sector

16 colleges and universities in the great state of Texas.

17 We appreciate this opportunity. First and perhaps

18 foremost, we appreciate the opportunity of your coming

19 to Texas. It is a gesture that we don't take for

20 granted and very much appreciate, and we appreciate the

21 opportunity to provide commentary.

22 Our organization represents, as I

23 mentioned, approximately 150,000 students enrolled, and

24 we provide both degree-granting and non-degree-granting

25 training and education for our graduates, and we employ

1 more than 250 occupation fields in Texas and beyond. We

2 have a significant impact on the Texas economy, and, in

3 many cases, our graduates are first generation in their

4 families to cross the stage and graduate and that

5 become very proud and accomplished Texans with a first

6 taste of academic success.

7 We commend the Department for accommodating

8 the request in providing input. In past years, CTST has

9 struggled with a rather politically driven and

10 retaliatory approach to regulations by the Department.

11 Such outreach efforts, including your trip to the Lone

12 Star State, is very welcomed and an incredible gesture.

13 Ultimately, we seek regulations that are

14 fair and balanced to everyone. I will speak

15 predominantly on Borrower to Defense -- Borrower to

16 Defense Repayment issue and let last -- or, I guess, 10

17 days ago, the delay by the department on the

18 implementation of Gainful Employment speak for itself

19 with regards to the issues that occurred there.

20 So, specifically, with Borrower Defense to

21 Repayment, we seek a concise definition and applicable

22 instances that are very clear. Such regulations should

23 have a clear process for students and not have barriers

24 for students being able to make claims, also, while

25 containing a clear process for the institution to

1 respond and seek an immediate resolution that isn't

2 drawn out for months, if not years. A quick resolution

3 is very important to our universities and colleges,

4 owners, and operators.

5 Additionally, previous consideration has

6 been given to accept claims by groups and not by

7 individuals. This is a very significant concern on our

8 behalf and one that we would stand strongly in

9 discouraging the Department from considering. Claims

10 should not be stacked or widely and aggressively

11 solicited with promises of favorable outcome. It's very

12 important that the regulations are limited to their

13 intended purpose and not so broad that they lose meaning

14 or could be scrupulously taken advantage of by

15 plaintiff's attorneys. There has been a regrettable

16 history of this occurring, not only in our state but

17 across the nation.

18 Thank you again, gentlemen, for the

19 opportunity to share our views on the proposed

20 regulation and thank you for your outreach, again, in

21 your visit to Texas. Look forward to working with you

22 to achieve common goals for the regulations that are

23 being considered and, again, seek them in a way that is

24 fair and balanced to both the student and to the

25 institution. Thank you very much.

1 MR. MANNING: Thank you.

2 MR. MARTIN: Our next speaker is Adrian

3 Shelley. Adrian Shelley.

4 I will point out that we do have a few

5 unscheduled blocks here, so Ms. Shelley -- Mr. Shelley,

6 rather, is not scheduled to speak until 10:00. So what

7 I would do -- I'm going to ask if -- is Nicole

8 Hochsprung, did she arrive?

9 Okay. We do have some people that we know

10 are here who are scheduled to speak for the -- in the

11 afternoon. I'm not trying to put any pressure on you.

12 If you want to keep your afternoon slot, that's just

13 fine. We're absolutely fine with that. The

14 afternoon -- the situation we're in here is that we have

15 no further speakers scheduled until 1:00, and at 1:00,

16 we have a fairly full agenda, so I'll ask -- I'll

17 start -- and I hate to put people on the spot like this.

18 Actually, I don't. I enjoy it. Let's start with

19 Mr. John White. Is he here?

20 MR. WHITE: Yes, sir.

21 MR. MANNING: Would you like to speak now,

22 Mr. White?

23 MR. WHITE: Absolutely.

24 MR. MARTIN: Okay. Then we'll proceed with

25 John White.

1 MR. WHITE: Good morning. My name is John

2 White, and I'm with Champion Empowerment Institute.

3 We're an organization that develops life skill classes

4 as well as financial literacy, and we provide access to

5 over 12,500 grants and scholarships for students to

6 assist them with education, finances, child care,

7 medical, housing, and other challenging areas that might

8 otherwise get in the way of the student's success.

9 I'd like to talk to you over a concern of

10 Gainful Employment and Borrower Defense to Repayment

11 regulations. We really appreciate the Department’s effort

12 to move forward with more realistic and positive

13 definitions and calculation methods in certain portions

14 of the regulation. The overall tone and hyper focus of

15 one sector of higher education while looking -- while

16 overlooking similar or, in some cases, worse outcomes

17 among other sectors brings into question the reliability

18 of these program integrity regulations for Gainful

19 Employment and Borrower Defense to Repayment. If the

20 regulations are a true measure of quality and education,

21 they should apply to all sectors of higher education

22 with transparency for all. And only when this is in

23 place will our students and taxpayers' interests be

24 properly served.

25 As for Gainful Employment, much of the

1 information and the basis for opinions regarding the

2 scope and purpose of Gainful Employment regulations has

3 been manipulated in the press and in publicly-released

4 information. The original informational rates were

5 incomplete and inaccurate. The informational rates used

6 for current Gainful Employment regulations were also

7 incomplete. These formulas were not tested to the point

8 where numbers made sense. Percentages above 100 percent

9 would not result from formulas that work well.

10 Our greatest concern was that the former

11 Secretary and Department continued to move forward with

12 incomplete data for the sector that is most affected by

13 these regulations. For some schools, between 20 and

14 40 percent of their data was missing. This alone was

15 reason enough to cease publication of final regulations

16 until a complete set of data can be provided to all

17 institutions affected by these regulations and until

18 those institutions are given a sufficient period of time

19 to respond based on a full set of data.

20 With stand-alone metrics to eligibility, in

21 the original Gainful Employment regulations, the

22 criteria for passing was that the institution had to

23 pass any one of the three metrics and in the GE 2.0

24 regulation language, the institution must pass two or

25 more metrics. The pay-as-you earn repayment programs,

1 pay or repay, sets schools up for failing repayment

2 rates because these income-driven plans lower payments

3 to zero or lower, often putting students into a negative

4 amortization schedule where accrued interest is added to

5 the principal balance of the loan and extremely costly

6 for students and taxpayers. Depending on the interest

7 rates in place in any given year, the students' debt may

8 grow to completely intolerable amounts because interest

9 is being capitalized, and we believe that this practice

10 is prohibitive to student success both mentally and

11 financially. Most students under these pay and repay

12 and repay programs feel so burdened with debt that they

13 feel defeated knowing that they have growing debt and

14 repayment schedules that extend 20 to 30 years.

15 We ask that the Secretary consider changing

16 the criteria for passing to, again, be defined as

17 passing any one of the Gainful Employment measures if

18 the Secretary is going to adopt similar regulations.

19 Sources for earnings data and appeals

20 criteria, we ask that the Secretary consider using state

21 earnings data and bureau of labor of statistics data

22 instead of opening up databases across federal agencies.

23 We also ask that the Secretary consider appeals options

24 that address those industries where all income may not

25 be reported, as seen in the cosmetology district. And

1 we also ask for consideration to those students who

2 never intend to work full-time or in their field of

3 study.

4 In shorter transition periods, we ask that

5 the Secretary consider modifying the period back to

6 three or four years with passing measures. And the use

7 of the zone program, we ask that the Secretary change

8 the thresholds to include passing and failing with the

9 original final regulatory DE thresholds for 30 percent

10 of discretionary income and 12 percent of annual income

11 or consider a sliding scale that considers the at-risk

12 population of the program, as was discussed during

13 negotiations -- negotiations -- I'm sorry -- in GE 2.0.

14 We also ask that the Secretary impose a cap

15 on the amount of time for a final determination letter

16 to be delivered to an institution. A year from the

17 release of official data --

18 MR. MARTIN: Time.

19 MR. WHITE: -- would -- enough time for

20 challenges, adjustments, and appeals and would limit

21 burden for the schools of students.

22 For all these reasons, we ask that the

23 Secretary and Department work toward developing quality

24 controls that will apply to all institutions and will

25 support the students' and taxpayers' best interest.

1 Thank you.

2 MR. MANNING: Thank you.

3 MR. MARTIN: Okay. I'll ask, is Cheryl

4 Kesson here, and if she is, would she like to speak now?

5 MS. KESSON: Sure.

6 MR. MARTIN: We'll proceed with Ms. Kesson.

7 MS. KESSON: Good morning, everyone. I

8 would like to thank the Department for the opportunity

9 to comment today. My name is Cheryl Kesson, and I work

10 for Champion College Services. We are a

11 default-prevention company located in Phoenix, Arizona.

12 For the past 11 years, I've had the

13 opportunity to work with many different institutions,

14 but I do mainly work with proprietary schools. And, for

15 the most part, I have found that these schools truly

16 care about each of their students and provide not just a

17 place for education, but a place for students to feel

18 welcomed and given an opportunity to follow their

19 dreams.

20 Not every student is prepared to go to

21 public college. They often need the attention and

22 guidance regularly provided at proprietary institutions.

23 While some schools in all sectors should come under

24 scrutiny, most proprietary institutions provide quality

25 education options geared to at-risk students in fields

1 where important job training is needed and not being

2 fulfilled by other sectors. Regulation should be

3 written to address problems with under-performing

4 schools in all sectors. It should be effective and easy

5 for both government and schools to administer. I agree

6 that institutions should be measured on the outcomes and

7 successes of their graduates. However, this needs to

8 apply judiciously to all educational institutions.

9 All schools, including public and

10 nonprofit, need to be held to the same standards. It is

11 time to dispel the illusion that public equals quality

12 while proprietary equals substandard. Gainful

13 Employment can be difficult to manage and often ends up

14 being completed by financial aid staff. At smaller

15 institutions, this takes valuable time away from them,

16 time that could be used spending addressing the needs of

17 their students. Gainful Employment is complicated and

18 costly to administer and oversee and is not advancing

19 the goals of getting properly trained people into the

20 careers the country needs.

21 If the current metrics are to remain in

22 place, then changes need to be considered. A longer

23 period of time should be measured to determine earnings

24 potential. It is unrealistic to think any graduate

25 would start out in the middle to top of their career

1 path. Graduates need to build experience. Appeals

2 option should also be taken into consideration for

3 circumstances which schools cannot be held responsible,

4 industries such as cosmetology, where it is typical that

5 not all income is reported because they may be cash pay

6 or tip-based, and for students who never intended to

7 work full-time after graduation in their field of study.

8 For example, someone looking just to learn an additional

9 skill or is looking for a part-time job.

10 In addition, income-driven repayment plans

11 needs to be reconsidered. By lowering payments as low

12 as zero dollars a month, it's setting up both the

13 student and the institution for failure. It is

14 difficult for institutions to obtain passing metrics

15 when graduates are starting in lower paying entry-level

16 positions, and it often puts students in negative

17 amortization with accruing interest and other growing

18 loan balances.

19 Repayment plans using common sense need to

20 be developed so borrowers can develop good paying habits

21 and steadily decrease the amount of debt they have

22 instead of becoming overwhelmed with large balances.

23 Options to reduce interest or to apply payments to

24 decrease the overall accrual of interest would be

25 beneficial and would encourage students to continue

1 regular payments.

2 Lastly, we need to address the estimated

3 403,000 borrowers incorrectly placed into default during

4 the loan transfers to the Department. The Department

5 needs to reverse these defaults and clean up the credit

6 for the victims of the loan transfer errors. These

7 students did things correctly to take care of their

8 loans and should not be punished.

9 Thank you for your time and consideration.

10 MR. MANNING: Thank you.

11 MR. MARTIN: Is Sean Marvin here?

12 MR. MARVIN: Yes.

13 MR. MARTIN: We'll continue with Mr.

14 Marvin.

15 MR. MARVIN: My name is Sean Marvin. I'm

16 the legal director at Veterans Education Success, or

17 VES, and I'm also a veteran and a reservist.

18 VES is a nonprofit organization that

19 provides free legal services to veterans who have been

20 defrauded by their school. Thousands of veterans have

21 contacted VES since its creation in 2012, and here's

22 just what a few have said. "They made promises of

23 reduced tuition costs for veterans, no application fee,

24 guaranteed job replacement rates, programs and more. I

25 have no more knowledge than I already had with no job

1 and a mountain of new debt. I struggle every day to pay

2 my basic bills with no career as they promised, and now

3 I'm supposed to pay loans for an education that I never

4 received."

5 Another, "I was told my GI benefits would

6 cover the cost of my tuition in full, and that I would

7 have no out-of-pocket expenses. Now, two years after

8 graduating, I still have $50,000 left on my student

9 loans."

10 And yet another, "They offer a veteran

11 rate, but when you look at what they actually charge,

12 it's the same as they charge everyone. When you try to

13 get it adjusted, they make a big deal about it and ask

14 why I care when my GI Bills pays what they bill."

15 In Monday's hearing in Washington D.C., a

16 representative from the proprietary school sector noted

17 how the organizations that support the Borrower to

18 Defense and Gainful Employment rules regularly cite ITT

19 Tech and Corinthian, even though those schools are no

20 longer in business. The veterans I have quoted,

21 however, all go to schools that are still in business.

22 Moreover, VES continues to be contacted by

23 plenty of veterans who have had similar issues in

24 schools that still operate. While ITT and Corinthian

25 are, thankfully, no longer around, their business model

1 lives on. Veterans regularly describe to VES aggressive

2 and misleading marketing techniques that various schools

3 use. They describe misrepresentations that schools make

4 about the cost of their education, whether their credits

5 will transfer to other schools.

6 Some describe bait-and-switch tactics that

7 schools use where schools say one thing about the degree

8 requirements when they enroll students, but tell

9 students something different later on, adding to the

10 debt the students must incur. Many also describe how

11 schools make promises about their job prospects upon

12 graduation, but promises that do not bear out, leaving

13 student veterans with no remaining GI Bill and, in many

14 cases, student loan debt that they have no ability to

15 pay.

16 On top of everything else, typically,

17 because of mandatory arbitration clauses, these students

18 are denied access to justices in the courtroom.

19 Meanwhile, veterans who are currently

20 contemplating going to career colleges have the

21 limited -- have limited ability to adequately compare

22 such schools. As a prospective law student, I was able

23 to compare how graduates from different law schools

24 fared at finding jobs and their average starting

25 salaries. It shouldn't be too much to ask the same for

1 other career-focused schools, particularly when you

2 derive so much of the revenue from American taxpayers.

3 Strong career schools should welcome this

4 requirement, given that it will provide them with a tool

5 to better compete against weaker schools. In turn, this

6 should lead to more students and more revenue for good

7 schools, outweighing any associated administrative

8 expense.

9 Veteran organizations have already

10 expressed many of these concerns in writing to the

11 Department of Education. Earlier this year, VES and 30

12 other military and veteran organizations asked the

13 Department to implement the Borrower to Defense rule and

14 to act on the thousands of Borrower to Defense

15 applications pending before the Department, including

16 many that are from veterans.

17 VES has also asked to meet with this

18 Department concerning patterns of fraud towards student

19 veterans that it has identified at certain schools that

20 still exist. None of these requests have been met, nor

21 has this Department continued the regular meetings that

22 the previous Department held with veteran organizations.

23 This lack of support for veterans is beyond

24 disappointing. Nevertheless, we hope and ask that the

25 Department establish a meaningful dialogue with veteran

1 organizations by including them in defrauding student

2 veterans on both of its negotiating committees.

3 Veterans need a government that will stand up for them,

4 just as they stood up for their country. When they

5 leave the Service and are told that their military

6 experience doesn't translate to the civilian world or

7 simply want to add to their knowledge and skill set,

8 they need schools that see them as more than dollar

9 signs. They need schools that respect their service,

10 recognize their talent and drive and truly prepare for

11 their next phase of their life so they can continue to

12 lead at home, just as they did in the uniform. Thank

13 you.

14 MR. MANNING: Thank you. I might also just

15 add that we have offices at the Department that are

16 willing and ready to work with veterans, and I'll put

17 you in touch with them.

18 MR. MARTIN: Is Adrian Shelley here?

19 MR. SHELLEY: Good morning. Thank you for

20 the opportunity to deliver comments today and welcome to

21 Texas.

22 MR. MANNING: Thank you.

23 MR. SHELLEY: My name is Adrian Shelley.

24 I'm the Director of the Office of Public Citizen in

25 Texas. Public Citizen is a nonprofit consumer

1 organization headquartered in Washington D.C., and we

2 were deeply involved in both the development and legal

3 defense of the Borrower Defense rule and the Gainful

4 Employment rule. We also delivered comments in

5 Washington on Monday, and our comments will be submitted

6 in writing as well.

7 The adoption of both of these rules was an

8 important step in the crackdown on predatory schools,

9 most of those schools being clustered within the

10 for-profit industry. These schools rely on federal

11 student aid and fleece their students with low-value

12 educations. Some of these schools essentially rely on

13 fraud as a business model, to the detriment of their

14 students and to the taxpayers who fund student aid

15 programs.

16 The Department is taking a shameful step

17 backwards here by initiating a new negotiated rulemaking

18 to revisit these rules and by unlawfully delaying key

19 provisions in the meantime. Texas has students who are

20 going to pay the price for these delays, as do other

21 states around the nation.

22 I want to focus, though, in particular, on

23 the continued need for arbitration and class-action

24 waiver provisions in the Borrower Defense rule. I am

25 going to refer to an example from ITT Tech, and although

1 that school no longer exists, the past is prologue here.

2 In 2016, more than 3,000 students from ITT were left in

3 the lurch when the school abruptly closed and filed for

4 bankruptcy. ITT has been dogged by allegations of

5 wrongdoing for years. Before closing, it was being

6 investigated by numerous states' Attorneys General and

7 two federal agencies for fraud, deceptive marketing, and

8 steering students into predatory loans.

9 Some evidence from ITT's wrongdoing never

10 saw the light of day, because the school relies on

11 forced arbitration clauses that are contained in its

12 student enrollment agreements. These clauses require

13 students to bring all future claims against the school

14 in private proceedings with an arbitrator rather than a

15 judge, and the odds are, frankly, stacked against them

16 in these proceedings. ITT's arbitration provisions were

17 particularly pernicious because they contained gag

18 clauses which prohibited students from publicly

19 disclosing what happened in the arbitration process.

20 In one case here in Texas, ITT sued its

21 former students and their attorney to bar them from

22 releasing information about evidence and findings from a

23 previous successful arbitration that the student had

24 initiated against the school. ITT convinced the court

25 it would be harmed if the students could share the

1 findings with their peers who might then use that

2 information to seek their own relief from the school.

3 And we all know, of course, how the story ended. ITT

4 collapsed. Students and taxpayers were left holding the

5 bag.

6 As of January of this year, the Department

7 had received more than 2500 Borrower Defense

8 applications from former ITT students seeking to have

9 their federal loans canceled based on the allegations

10 that the school engaged in unlawful conduct. Some of

11 those students are here in Texas where, according to the

12 Department figures recently released to Congress, there

13 were more than 4300 Borrower Defense applications

14 pending at that time in January. There's undoubtedly

15 many more today.

16 We don't yet know how many millions of

17 taxpayer dollars could have been saved had ITT not been

18 able to evade public scrutiny of its wrongdoing through

19 forced arbitration clauses and gag orders. But we know

20 the use of forced arbitration clauses in the for-profit

21 education industry continues. In a recent study, the

22 Century Foundation uncovered more than 90 for-profit

23 schools in the country that rely on federal aid and that

24 had used forced arbitration clauses in their enrollment

25 agreements.

1 Nearly a dozen of these schools were

2 identified through a Texas open-records request, and a

3 number of them do remain in operation here in Texas, for

4 instance, Lincoln Technical Institute in Grand Prairie,

5 Texas. They used an egregious one-sided arbitration

6 clause that required students to arbitrate any claim

7 relating to the enrollment agreement but kept the

8 school's ability to sue students in court to collect on

9 delinquent accounts. In other words, the clause

10 would permit the school to go to court for claims it's

11 most likely to bring, but force students' claims into

12 private arbitration.

13 Another arbitration agreement we uncovered

14 in my home city of -- the Art Institute of Houston,

15 required students to bring all claims against the school

16 in arbitration and expressly prohibited them from

17 participating in class actions, regardless of whether

18 the alleged wrongdoing harmed one student or hundreds.

19 There's no reason why taxpayers should help

20 fund schools using arbitration provisions like this.

21 Public schools and the vast majority of private

22 nonprofit schools do not need to rely on them, and

23 reputable for-profit schools do not either. I urge you

24 to stop wasting government resources by revisiting these

25 common-sense regulations. We do not need a regulatory

1 reset here. We need the Department to stand up for

2 rights of students over for-profit executives. Thank

3 you.

4 MR. MANNING: Thank you.

5 MR. MARTIN: Okay. I'll ask is Nicole

6 Hochsprung here? No? Okay. When in doubt, always

7 consult with your counsel, so I'm going to do that for a

8 moment here.

9 All right. The situation we're in here is

10 that we don't have anybody scheduled to speak,

11 currently, until this afternoon. So we have a couple of

12 options. One, I could use my fine tenor voice -- you

13 probably don't want to hear that. So we are going to

14 open the floor for -- if anybody else would like to make

15 additional comments, again, we would limit you to the

16 five-minute period of time to speak. Mr. Shireman. He

17 spared you my singing, so you owe him a bit of

18 gratitude.

19 MR. SHIREMAN: I think we should take a

20 vote. I think if we voted, actually, people would vote

21 to hear you sing.

22 MR. MARTIN: Until they heard it.

23 MR. SHIREMAN: So let me just start by

24 following up a little bit on my earlier remarks. We

25 keep hearing folks from the industry saying we want

1 rules to apply to all. I want everyone, every time you

2 hear that, to think, wait, they're refusing to comply

3 with the precise rule that has been most effective in

4 keeping schools on the straight and narrow, and that is

5 that conflict-of-interest wall. They want to be held --

6 they want everybody to be held equally, except to the

7 most important rule and the most effective rule that is

8 out there, so keep that in mind every time you hear them

9 say we should apply rules to all. That's fine. I'm all

10 for applying all rules to all schools, but let's not

11 exclude the rule that has been most effective and is the

12 reason that all of the examples that come up, these

13 situations, the Public Citizen example of the school

14 that is happy to have the right to sue the student when

15 the student hasn't paid tuition but is insisting that

16 the student not have the right to sue the school in the

17 cases of fraud and abuse. It is absolutely -- that's

18 horrible, and we have found no examples of things like

19 that at public and nonprofit schools, and it's because

20 of that conflict-of-interest wall.

21 I want to say a little bit about the

22 repeating history that we are dealing with here. These

23 problems first emerged with the -- after the GI Bill in

24 the 1940s, and there was an explosion creation. The

25 idea was, great, let's give veterans aid to go to

1 school, and it worked great for most veterans. But you

2 had this subset, explosion of for-profit schools, that

3 were created and growing. The idea was, let's give

4 people a voucher to be able to go to a school that has

5 otherwise proven itself in the market. But what happens

6 is the schools end up just serving the people with the

7 vouchers, and the voucher -- the eligibility for the

8 voucher from the government gives people the impression

9 that this must be a good-value program. So it ends up

10 lacking the market accountability from being a school

11 that can operate -- a for-profit school that is

12 demonstrating its effectiveness to -- in a regular

13 private marketplace.

14 So very early on, after the problems in the

15 1940s, they tried to create kind of a market anchor to

16 say a decent proportion of the students need to be

17 paying without any kind of federal aid. That kind of

18 has remained on the books, but the for-profit schools

19 have found loopholes around it, so now, the -- so they

20 use veterans aid to satisfy the Department of

21 Education's requirement that there be some market

22 accountability there. So if we're looking for ways to

23 rein in the problems that we're seeing here, trying to

24 repair that market anchor would be a good way to look.

25 There have been repeated efforts.

1 With the scandals of the 1940s-50s, then

2 the scandals in the 1970s, the scandals in the late

3 '80s, all of them involved efforts to solidify the

4 job-training aspect of things to say, okay, let's make

5 sure that at least as far as these for-profit schools

6 are -- that there's something more measurable that they

7 are aiming for, because that seems to be part of the

8 problem, so a lot of efforts to require job placement

9 rates. And, always, there are definitions -- there's

10 going to be arguments about exactly how you do all of

11 these -- how you handle all of the data. We're finding

12 that now. It's never going to be perfect. Enormous

13 effort went into the definitions around Gainful

14 Employment, the definitions around Borrower Defense. It

15 will never be perfect. But what ends up happening is

16 because of the imperfections, the industry comes in,

17 after a few years of implementation, when the rules

18 actually work for a while, and the industry comes in and

19 says, Oh, those were the problems of the past where, you

20 know, everything is cleaned up now, everything is going

21 to be okay, so you can relax some of your enforcement,

22 we can change some of these rules, and as we saw in the

23 early 2000s, you can go ahead and repeal some of these

24 rules. And, sure enough, after the repeal of the rules

25 and the decline in enforcement, we had yet, again, the

1 fourth massive round of fraud and abuse by mostly

2 for-profit schools.

3 Another theme through history has been

4 trying to strengthen accreditation.

5 MR. MARTIN: Time.

6 MR. SHIREMAN: I think it's really been

7 difficult to really make that work, but it's been an

8 effort.

9 Thank you so much. Oh, I should mention, I

10 am submitting a series of history papers that the

11 Century Foundation published. They are online, but I'll

12 also be submitting them electronically for the

13 Department.

14 MR. MANNING: Thank you.

15 MR. MARTIN: Is there anybody else who

16 would like to speak again or anybody who walked in?

17 Okay. Well, then the situation we're in is that we have

18 our next scheduled speaker at 1:00 p.m., so we're going

19 to adjourn until 1:00.

20 MR. MANNING: Thank you.

21 MR. MARTIN: We do have some additional

22 slots in the afternoon. If anybody would like to sign

23 up, please see Amy Wilson at the desk out front.

24 (Recess from 10:07 a.m. to 1:00 p.m.)

25 MR. MANNING: Welcome back. We'll go

1 ahead and get started with the afternoon session.

2 MR. MARTIN: Okay. We're going to begin

3 the afternoon schedule with Maggie Buchanan.

4 MS. BUCHANAN: Good afternoon. My name is

5 Maggie Jo Buchanan, and I'm the Southern Director of

6 Young Invincibles, a national nonpartisan organization

7 dedicated to expanding economic opportunity for young

8 people. Young Invincibles strongly opposes the delay,

9 weakening, or elimination of the Borrower Defense and

10 Gainful Employment rules.

11 Students across the country, as well as

12 here in Texas, face a job market where higher education

13 is a necessity for advancement, but far too often comes

14 with costs that can cripple young adults' ability to

15 achieve economic security in the short and long term.

16 Both the Borrower Defense and Gainful Employment rules

17 were needed recognition by the Department of Education

18 of this problem. It is clear that these consumer

19 protections are about student outcomes, not for-profit

20 schools.

21 The majority of programs subject to the

22 Gainful Employment rule are at public and private

23 nonprofit institutions. In fact, career education

24 programs from notable schools such as Harvard and Johns

25 Hopkins failed the standards outlined by the Gainful

1 Employment rule. But it is a fact that for-profit

2 schools were disproportionately represented among those

3 that were profiting from taxpayer funds without

4 providing a quality education. In fact, for-profit

5 education companies enroll only 10 percent of students

6 nationwide, but receive 25 percent of Pell Grants and

7 Stafford Loan dollars, and they account for 47 percent

8 of all federal student loan defaults. Further,

9 72 percent of for-profit college graduates earn less

10 than those with just a high school diploma.

11 Higher education should represent a promise

12 at career advancement, a promise of buying a home in a

13 nice neighborhood, of sending your kids to good schools.

14 For many students attending for-profit schools, however,

15 that promise is a pipe dream, not because of their own

16 work ethic, but because of the school's predatory

17 practices. The Department's decision to take action has

18 already brought relief to students. Out of the over 500

19 career education programs flagged under the Gainful

20 Employment rule, over 300 have already been shut down by

21 the institutions offering them. This is significant

22 progress. But, of course, that leaves hundreds of

23 schools with tens of thousands of students with the odds

24 stacked against them that their degree will bring

25 financial success.

1 And simply because a school closes doesn't

2 mean the problems of its former students are over. The

3 closure of ITT Tech, for example, including its 10 Texas

4 campuses saved precious student aid from many students

5 and prevented them and many others from being taken

6 advantage of. And while at the time some appeared to

7 blame students for not being suspicious enough about the

8 schools they attended, the confusion among former ITT

9 Tech students on what rights they have and how to

10 exercise them shows the need for robust enforcement of

11 the Borrowers Defense rule.

12 Currently, students face an extremely slow

13 discharge process. The Department should be putting its

14 weight and energy behind granting individual discharge

15 applications and issuing group discharges wherever

16 justified, not embarking on another set of negotiated

17 rulemaking that will yield unnecessary -- excuse me --

18 unnecessary uncertainty for students and taxpayers, at

19 best, and rob them of essential protections, at worst.

20 While higher education has, undoubtedly,

21 become business similar to any other, it is still a

22 business that should measure its success by the success

23 of its students -- and everyone has to forgive me for a

24 little bit of paper shuffling. On my way to Dallas this

25 morning, I was asked to share the following story from a

1 woman unable to make it today. Her name is Brittany

2 Prock (phonetic), and she is a Texas native who attended

3 Corinthians Everest online in Brandon campus. She says,

4 "I have faced a real traumatic hardship as a result of

5 this bogus degree and insurmountable debt. I have lost

6 my job. My home was foreclosed on during my studies at

7 Corinthian, but they assured me my degree would improve

8 my circumstances. Corinthian students are looked down

9 upon and rejected by many companies. I know because I

10 have tried to obtain employment in my field of study and

11 have been turned down many times because a company

12 doesn't see Corinthian as an actual accredited

13 university. Colleges and universities won't even look

14 at transcripts from Corinthian because of this bogus

15 accreditation. The credits are no good and will not

16 transfer. These schools have failed me as well as

17 others in making sure we had a clear-cut understanding

18 of what we were signing. I am pissed, because it was

19 the school's responsibility to do so."

20 Again, we strongly oppose the delay,

21 weakening, or elimination of the Borrower Defense and

22 Gainful Employment rules. Respectfully, we call on the

23 Department to, instead, enforce the existing rules and

24 help more students as opposed to excusing predatory

25 colleges and failing programs.

1 Thank you for the opportunity to speak

2 today.

3 MR. MANNING: Thank you.

4 MR. MARTIN: We're going to continue with

5 Mr. John Turnage.

6 MR. TURNAGE: My name is John Turnage, and

7 I want to thank you for allowing me time to express my

8 thoughts and concerns with the Gainful Employment and

9 Borrower Defense to Repayment regulations.

10 As an owner of all or part of eight

11 cosmetology schools located in Oklahoma, Texas,

12 Colorado, Virginia, Maryland, and Florida, which employ

13 over 200 people and educate about 1200 students each

14 year, I am deeply concerned with the aspects of both

15 sets of regulations. Because of that, I'm grateful that

16 the Department is considering a new round of negotiating

17 rulemaking on these two regulations and hope that my

18 concerns can be considered during the process.

19 With respect to the Gainful Employment

20 rule, I recently went through the alternative --

21 alternate earning appeals process after receiving zone

22 in four of my schools. This whole process was

23 frustrating for me because I knew that we provide our

24 students with a quality educational experience and that

25 they have excellent career outcomes. I knew that we

1 exceed the required standards of graduating, licensing,

2 and placing our students as mandated by our accrediting

3 agency. I knew that our graduates were gainfully

4 employed in every sense of the role. However, because

5 the Department decided to use Social Security

6 Administration data in determining earnings for my

7 graduates, although they are aware that this data is

8 heavily flawed for our predominantly cash-based

9 industry, my schools were given a Zone program level

10 that raised questions in the public's mind, not to

11 mention the Department's, about the effectiveness and

12 the value of the programs we offer. I set out to prove

13 that the Social Security Administration earnings data

14 used in the Gainful Employment metric was wrong and to

15 clear the representation of our programs by taking part

16 in the appeals process so that all programs could be

17 demonstrated to pass.

18 However, the process was not as easy as it

19 might appear on paper. It took months of hard work and

20 tens of thousands of dollars, but we were able to show a

21 70 to 75 percent increase in earnings data over the

22 Social Security Administration earnings number through

23 the graduate survey responses. Yes, an upwards of 75

24 percent increase. That means for my graduates for the

25 measured cohort, for example, an aggregate earnings

1 number by the Social Security Administration of $25,000

2 was actually $43,750.

3 While I felt vindicated at the new data

4 which reinforced my pride in our schools and our

5 graduates, I was also appalled that the original

6 earnings data were that far off and that we had been

7 required by law to label our programs as Zone to the

8 public.

9 The system is not workable, and I urge the

10 Department to carefully evaluate how to structure the

11 rule, if there is to be one, to account for such flawed

12 Social Security Administration data without requiring

13 schools to file an appeal to obtain the program status

14 that they should have had in the first place. Even the

15 issuance of a draft Gainful Employment rate that is

16 failing or in the Zone without the loss of Title IV

17 consequences is a harm to the schools who are offering a

18 program to the students. Our resources are better spent

19 allocated to educational services.

20 I care about my students. It's important

21 to me that my schools remain in business so they

22 continue to change the lives of students. Just last

23 night, we had the graduation for our Dallas and

24 Arlington schools at the Verizon Theater in Grand

25 Prairie, where 175 students walked across the stage and

1 were handed their honors and certificates. The pride

2 their families felt as well as our team was evident by

3 cheering in the over 900 people in attendance. We do

4 everything we can to elevate the education of every

5 person that walks through the doors.

6 I'm also very concerned with the Borrower

7 Defense to Repayment regulation. The most troubling is

8 the potential that it has to shut down schools if

9 certain triggers are tripped, which require compounding

10 layers of financial security. These financial

11 securities, such as letters of credit, are expensive for

12 our schools to obtain. We are a small family business,

13 and while a requirement to have financial securities to

14 cover 10 percent of the previous year's federal student

15 loan income, would be extremely challenging to deal

16 with, to have multiple requirements at 10 percent each

17 would be devastating. It would have an immediate

18 detrimental impact that could very well shut down the

19 school completely, leaving the students with fewer

20 options.

21 While I appreciate the Department included

22 some discretion about where the additional security is

23 necessary in the final rule, it is still ambiguous in

24 which situations this will happen and is not

25 independently determined. While on this subject, the

1 final rule is also ambiguous in that it only provides

2 conceptual examples of would-be misrepresentations

3 sufficient to support a successful defense to repayment

4 and potential repayment of the student loan by the

5 school to the Department.

6 The Department must provide greater due

7 process to institutions to defend such claims and more

8 guardrails as to what is and is not a misleading

9 statement on which a claim could be based. I say all of

10 this with the expectation that my schools will never

11 need to worry about anything contained with the Borrower

12 Defense to Repayment regulations, because we do not

13 misrepresent our programs, costs, or outcomes. However,

14 I am not naive enough to think that our employees, as

15 highly trained as they are --

16 MR. MARTIN: Time. Twenty seconds.

17 MR. MANNING: You can finish.

18 MR. TURNAGE: -- will never make a

19 misleading statement or mistake. So that ambiguities

20 with regulation will not be abused by someone. You

21 cannot buy a car and two years later decide you do not

22 want it and then complain that it did not drive the way

23 you wanted it, so you want your money back. I would

24 request that we be included in the decision-making and

25 the negotiating rulemaking, as all Paul Mitchell schools

1 across the nation. Thank you.

2 MR. MANNING: Thank you. And for a matter

3 of clarification, for anyone that wasn't here this

4 morning, there's a five-minute rule. You have

5 20 seconds at the end of that to wrap up.

6 MR. MARTIN: Ms. Audra Turner.

7 MS. TURNER: Good afternoon, and thank you

8 for holding this hearing today in Texas. My name is

9 Audra Turner, and I'm the Executive Director of the Paul

10 Mitchell Schools located in Ardmore, Oklahoma,

11 Arlington, Dallas, San Antonio, Texas, and Miami,

12 Florida.

13 I'm here to voice my support for the

14 Department's efforts to review the Borrower Defense

15 Repayment and Gainful Employment regulations. Like John

16 Turnage I, too, hope the Department will consider

17 representatives from our Paul Mitchell School network on

18 both Gainful Employment and Borrower Defense Repayment

19 committees. I've been working in the hair care industry

20 for 30 years as a stylist, a salon owner, and an

21 educator. That experience has helped shape the remarks

22 I'm sharing today.

23 As you can imagine, in our industry, it's

24 mostly women. The reality is 95 percent of people who

25 enter cosmetology schools are women. Many of them are

1 single, and some of them are single mothers. Future

2 professionals who are single often enter training

3 thinking they will stay in the business for a few years

4 full-time and then transition to a part-time

5 supplemental income as they marry and have children.

6 Yet they know they have a school that they can employ

7 full-time that will take care of their families should

8 the need arise.

9 In contrast, single mothers often enter our

10 programs because the cosmetology training is quick.

11 It's about a year. When licensed, a career in

12 cosmetology offers a flexible work schedule to allow

13 part-time or full-time as your family needs dictate.

14 These realities are not reflected in the

15 one-size-fits-all approach under Gainful Employment

16 regulations which currently only consider full-time

17 employment to have sufficient value. The reality is the

18 schools are unable to dictate the degree of work a

19 graduate chooses. Again, our graduates are frequently

20 second-income earners and decide to work part-time or

21 not at all. We fully support these decisions but feel

22 it's inappropriate for the reduced or missing income

23 from these graduates to harm a school's GE ratios,

24 especially when their household income clearly shows

25 sufficient means to repay these loans.

1 I would also hope the committee will

2 examine the need for schools to provide greater direct

3 counseling for students taking out federal student

4 loans. Too often, we see students who come in and

5 borrow too much money or more than they need. Of

6 course, some of these students need additional income to

7 pay for rent and transportation. However, we know a few

8 instances where they take significantly more. For

9 example, one young woman told a school owner that the

10 extra money from her student loans would be used by her

11 mother to renovate the family kitchen. Unfortunately,

12 under Gainful Employment, the school that that young

13 lady attended is now being held accountable for the

14 unwise and excessive federal student loan. Currently,

15 there is nothing this school can do or say to prevent

16 it. That's just not appropriate.

17 Another concern that I have with Gainful

18 Employment is that our schools are to be held

19 accountable for what our graduates report. The reality

20 is that cosmetology is a cash- and tip-based industry.

21 People dealing in cash often underreport their income.

22 The IRS estimates a substantial chunk of our $458

23 billion tax gap likely comes from underreported

24 small-business income, and especially those dealing with

25 cash.

1 According to the Tax Policy Center,

2 individual taxpayers fail to report about 65 percent --

3 or sorry -- 63 percent of income from sources from which

4 there is no information reporting, such as credit cards.

5 That is consistent with the recent results we received

6 when we did our appeals process with our Paul Mitchell

7 Schools. After interviewing our graduates, their income

8 underreported -- was underreported an average of 65.5

9 percent across our network. To conduct these earnings

10 appeals, we needed to call most of our graduates

11 multiple times and were required to impose upon them by

12 questioning their income, many of which had

13 underreported to the IRS.

14 Just finding our graduates is a major task.

15 As mentioned before, our graduates are women, and they

16 change their names upon being married. It's often

17 difficult for our schools in military bases, because

18 these now married women follow their spouses to move

19 multiple locations and sometimes abroad. These factors

20 add significant costs in our efforts to track down and

21 document how much money they really made. The Gainful

22 Employment regulation has been poorly planned in its

23 implementation but, especially, as it applies to

24 cosmetology.

25 Now, I would like to discuss the Borrower

1 Defense to Repayment regulations. I, again, express my

2 support for the Department's suggested review of the

3 rules and regulations and current implementation of that

4 effort. There is, certainly, a need for a fair process

5 for the students and the taxpayers. We need to be

6 protected from unscrupulous schools, but the Borrower

7 Defense to Repayment process as established under the

8 previous administration has added a negative effect on

9 cosmetology schools. Lenders and landlords are anxious

10 about the regulations that provide stackable penalties,

11 and the risk of those penalties can turn the owners to a

12 place where they're apprehensive about opening new

13 schools.

14 I would really like to ensure that we find

15 a solution so that we can continue to provide future

16 generations with the opportunities that I have enjoyed

17 in this industry.

18 Thank you for allowing me to speak on

19 behalf of cosmetologists.

20 MR. MANNING: Thank you very much.

21 MR. MARTIN: Sandy Sarge.

22 MS. SARGE: Good afternoon. My name is

23 Sandy Sarge, and I'm the president of Sarge Advisors, a

24 C-level consulting firm that specializes in finance,

25 accounting, and operations for higher education. In my

1 career, I've worked as a stock broker in the '80s, I was

2 an auditor and a CPA with Pricewaterhouse, and I spent

3 over 15 years in the mortgage business before finding my

4 passion in higher education. I am also the mother of

5 two college students who have benefitted from the

6 federal student loans programs.

7 First, I'd like to preface my comments by

8 saying that I know that the Department of ED does not

9 write legislation. Congress does. But I also know that

10 the Department is in the best position to influence

11 Congress's thinking and is, in fact, ethically obligated

12 to point out when legislation ends up hurting more than

13 helping its intended beneficiaries, and, in this case,

14 that's our college students.

15 With that said, I'm here to ask the

16 Department to put the 90/10 rule on the agenda for the

17 upcoming GE negotiated rulemaking session. I have many

18 thoughts about how to change, improve, or challenge the

19 current GE regulations, but first and foremost, I think

20 we should focus on what caused us to even need Gainful

21 Employment in the first place.

22 One of the key reasons proponents of 90/10

23 favor it is because it supposedly bars for-profit

24 colleges from receiving more than 90 percent of its

25 revenues from Title IV federal student aid programs.

1 But what really happens is that it just forces these

2 schools to increase their tuition rates by at least

3 11.1 percent over whatever the average student gets in

4 aid. It doesn't limit the school from getting all the

5 aid, it just forces the cost of education up for

6 students, and all that excess falls to the bottom line,

7 thereby increasing the school's profits and perpetuating

8 the stigma that all for-profits are greedy. Seems like

9 this is doing exactly the opposite of what was intended

10 and hurting students in the process.

11 Let me show you the math. If you'll be so

12 good as to turn to page 11 of the presentation I handed

13 out, that would be great. We've also passed out page 11

14 to the audience.

15 Here, I have two examples of simple income

16 statements. The first column is before 90/10, and the

17 second column is after 90/10. The first example assumes

18 that a school, after doing its planning and all of its

19 competitive analysis, decides to set its tuition at a

20 rate of $7,500 per student. And that its costs -- it

21 costs them $6,000 per student to run the school. That

22 leaves a profit of $1500, or 20 percent. By the way,

23 that presumed margin is above the current highest margin

24 generator on the public market, which is at

25 18.3 percent.

1 Now, let's look at that same school under

2 90/10 where a student is eligible for $9,500 in aid. In

3 order to pass 90/10, the school raises its tuition to

4 $10,800. So what happens to costs? Nothing. Nothing

5 happens to costs. Costs don't change just because

6 tuition goes up, it stays at $6,000 in this example, so

7 all this excess tuition just goes to profits.

8 Now, the school will make $4,800, or

9 40 percent, for no other reason than to pass 90/10.

10 That seems crazy to me. And you know who loses? The

11 students. They end up maxing out their aid, most

12 importantly their loans, and still end up having to pay

13 out of pocket. We have to find a better way.

14 Two of the greatest issues facing students

15 today are rising tuition costs and high debt levels.

16 Debt is high, because tuition is high. Tuition is high,

17 in part, because of regulations like 90/10. Every time

18 Congress increases federal aid, in an attempt to help

19 students cover these rising costs, the cycle spins

20 higher and higher. The sad thing is that the students

21 who are hurt the most are Pell recipients, the poorest

22 of the poor, because they get the most federal aid.

23 If we can find a way to solve these

24 problems, I believe we are morally obligated to do so,

25 regardless where you stand on the for-profit versus

1 nonprofit education argument. I want to be part of the

2 team who eliminates arbitrary and unnecessary rules like

3 90/10. I want to be part of the team --

4 MR. MARTIN: Time.

5 MS. SARGE: -- who recommends enhancements

6 to legislation that actually focuses on what is best for

7 students. I believe we should use the Gainful

8 Employment negotiated rulemaking session as an

9 opportunity to dig deeper into the consequences of

10 legislative decisions without regard to ownership

11 structure and get rid of what's not working. Then and

12 only then will we begin to change students' lives.

13 Thank you.

14 MR. MANNING: Thank you for your comments.

15 MR. MARTIN: We'll continue with the

16 Reverend Dr. Frederick Haynes.

17 REV. DR. HAYNES: Thank you very much.

18 Good afternoon. I am Frederick Douglas Haynes III. I'm

19 Senior Pastor of Friendship West Baptist Church here in

20 Dallas, Texas. I also serve as adjunct professor at

21 Paul Quinn College, which is a historically black

22 college institution here in the Dallas/Fort Worth

23 Metroplex.

24 Our congregation, Friendship West, takes

25 seriously the biblical mandate to get wisdom. We

1 understand that the success of a people, the success of

2 a nation, has everything to do with educational

3 opportunities. And with that being the case, our church

4 has donated over $2 million to historically black

5 colleges and universities. We've also donated in excess

6 of $3 million in scholarships to our members, as well as

7 to persons who live in our community, yet we also

8 recognize that the Bible warns us against educational

9 environments that prey on the possibilities of those who

10 are aspiring to go higher in this life. And with that

11 being the case, I rise to speak about the Gainful

12 Employment rule and for-profit colleges.

13 We take the education of students and the

14 protection of taxpayer investment seriously. As college

15 becomes increasingly more unaffordable, especially to

16 those who live on the wrong side of town, we have seen

17 the rise of student loan debt, coupled with that of

18 unscrupulous actors often found in the for-profit

19 education industry.

20 Ironically, this morning, I just left a

21 meeting -- or should I say a counseling session with one

22 of our members, who was victimized by such a for-profit

23 educational experience. And with that being the case, I

24 have seen up close and personal how this hurts the

25 African-American community from our students to schools,

1 which have consistently and effectively educated black

2 students for over a century.

3 In order to protect students, particularly

4 students of color, the Department should enact and

5 implement strong regulations like the Gainful Employment

6 rule that are clear, consistent, and that provide

7 necessary relief for students who have been defrauded by

8 these harmful institutions and practices. Any new rules

9 should take into account the disproportionate impact of

10 for-profits on students and communities of color, as

11 well as the havoc these institutions wreak on our

12 economy as a whole. African-American students

13 disproportionately attend for-profit colleges, borrow

14 more, and have lower graduation rates, which makes them

15 more likely to be victims of harm from for-profit

16 institutions. Twenty-eight percent of African-American

17 students enrolled in a four-year institution attend a

18 for-profit college compared with just 10 percent of

19 whites. This disparity is present for two-year and

20 less-than-two-year colleges as well. Also, nearly

21 80 percent of African-Americans do not complete

22 for-profit programs, so the cost of for-profit schools

23 are more greater -- are much greater than other

24 institutions, so a substantially greater share of

25 students borrow to pay for their education.

1 The Center for Responsible Lending found

2 that in the 2011-2012 academic year, 35 percent of

3 African-American students at for-profit colleges,

4 four-year institutions, took out $8,900 or more in

5 federal loans compared to 28 percent at private

6 nonprofit institutions and 18 percent at public

7 institutions. For-profit college students are more

8 likely to experience worse educational outcomes and a

9 higher incidence of default.

10 Many for-profit institutions engage in

11 fraudulent and predatory practices such as high-pressure

12 recruitment, misleading students about job placement

13 opportunities and salary claims for when they graduate,

14 and supplying unqualified instructors and inadequate

15 courses. These courses and instructors at nondegree

16 programs inadequately prepare students for a career.

17 The Gainful Employment rule is a way to monitor this and

18 keep certificate programs in check by monitoring

19 graduates' debt-to-income ratio. In the movie "Selma,"

20 there's an interesting metaphor. Martin Luther King,

21 Jr., the drum major for justice, is speaking after

22 Abernathy. He's discouraged, somewhat depressed about

23 the direction of the movement. Ralph says, "Keep your

24 eyes on the prize." Dr. King responds insightfully,

25 metaphorically," What good is it to integrate a lunch

1 counter if we do not have the resources to buy a burger

2 or the education to read the menu?"

3 Without the Gainful Employment rule,

4 without necessary regulations on for-profit colleges, we

5 won't have the resources to buy a burger, and we sure

6 won't be able to read the menu. Thank you.

7 MR. MANNING: Thank you.

8 MR. MARTIN: Continuing with Ryan Clark.

9 MR. CLARK: Hi. My name is Ryan Clark, and

10 I'm coming to speak on behalf of myself and other

11 veterans today. As a veteran with a distressed

12 postsecondary experience, I have taken a particular

13 interest in some of the rules at issue today.

14 My story begins upon entering the Army

15 after deciding that it would be more prudent following

16 in my family's footsteps rather than finishing my

17 secondary education right out of high school. The

18 opportunities provided by the military were too much to

19 pass up for a young 19-year-old. So, of course, when I

20 joined the Army, they decided to send me to school. I

21 attended the Defense Language Institute in Monterey,

22 California and later graduated from the Institute of

23 Arabic Studies Program. After a brief stint learning my

24 trade craft, I was assigned to an NSA billet at Fort

25 Gordon in Georgia. While I had learned Arabic, it came

1 to light that I was also skilled with computers and

2 quickly became an instructor for network intelligence.

3 During this period, I felt that my duty to

4 my fellow soldiers who had deployed multiple times was

5 failing, so I took it upon myself to volunteer for an

6 intelligence position in Iraq. Thankfully, I was

7 selected, and while I was deployed, I routinely found

8 myself with a few hours of spare time during my off

9 hours given the nature of my deployment. After speaking

10 with my fiancée about how to spend the down time, it was

11 suggested that I should further my education. With this

12 suggestion, I felt it best to simply pick up the same

13 tracks I was walking when I last attended college.

14 I reenrolled with Devry University and

15 began classes again during November 2010 under a

16 condensed schedule. I felt being able to isolate

17 classes and take a condensed curriculum, which amounted

18 to two classes per eight-week schedule versus four

19 classes for an entire 16-week semester offered me the

20 best opportunity to not lose focus, both on my mission,

21 foremost, and on my education.

22 The first offerings, I was granted while

23 using the student FAFSA and completed with above-average

24 grades. I decided to continue my degree into a second

25 semester by using my sponsor tuition assistance. After

1 providing all of the documentation and paperwork for the

2 TA to be allotted, I proceeded to take additional

3 courses from Devry. Through this semester, I returned

4 back to Georgia, and while proceeding to enroll for my

5 follow-on courses, I hit a proverbial brick wall.

6 Through a series of conversations and

7 regulations, it came to light that the tuition

8 assistance which covered the course rate from my

9 previous classes was never allotted, due to the fact

10 that the institution had not converted my accounts or

11 received the payments. The only explanation I was given

12 was provided by the DOD Education Department which

13 stated that Devry never filled out paperwork to allow

14 for the payment. While Devry consistently deferred my

15 inquiries to another representative before finally

16 stating that it was my own fault, no matter how much

17 this explanation was belied by my paper trail. The cost

18 of the contested classes was then conveyed on to me at

19 the regular student rate rather than the active-duty

20 military tuition rate, thus, almost doubling the cost

21 that I was instructed to pay out of pocket.

22 Due to the amalgamation of horrid

23 happenstance, I was unable to receive recourse from the

24 DOD TA program due to the fact that a new fiscal year

25 had begun. And while I was able to get Devry to

1 eventually change my financial obligation to reflect my

2 active-duty status and the subsequent rate that

3 accompanied it, they refused to offer any further

4 assistance in resolving my issue beyond advising the

5 Yellow Ribbon Program. The program did not address my

6 frustration, and as all obligation was placed upon me, I

7 was left unable to further my education in light of this

8 brick wall.

9 On top of learning of my debt, it also came

10 to light that Devry had unceremoniously and without my

11 knowledge, changed my major, thus negating over half of

12 my credit hours. This was a chain on my life for the

13 next few years until I moved to Denver, Colorado to

14 begin my post-military civilian life. It was at this

15 point that I reconnected with a former friend and fellow

16 veteran who now runs Post One for the VFW who advised of

17 a university in the Denver Metro area.

18 Upon enrolling, I quickly found out that

19 the hysteria surrounding my post enrollment -- or my

20 past enrollment with Devry was coming back to haunt me,

21 A hold in the place of my status with Devry, and after

22 several conversations with Admissions, it became clear

23 that the institution would not provide my official

24 transcripts until I had paid the previously disputed

25 obligation. Thankfully, my counselors at Metro State

1 University were incredible and proceeded to waiver

2 numerous prerequisites to allow me to take my more

3 advanced curriculum. But every good thing must come to

4 an end. Eventually, I was advised that they could no

5 longer continue that practice and I was, again, forced

6 to withdraw from a postsecondary institution. To date,

7 I still have not been able to fully utilize my GI Bill

8 benefits without starting my education from scratch and

9 scrapping over 60 credit hours that I obtained from

10 Devry.

11 For my conclusion, I do not wish to rehash

12 my story but convey that this is not an isolated

13 incident. Through my distressed history with for-profit

14 colleges, I have listened to countless other veterans'

15 tales with abject horror at how they were treated. In

16 my own experience, I felt it was my own vulnerability

17 and ignorance that was exploited for --

18 MR. MARTIN: Time.

19 MR. CLARK: -- further gains by the

20 institution over my best interests.

21 This would be my true conclusion, that, too

22 often, our education institutions who operate for

23 explicit profit are given the benefit of the doubt that

24 they're working in the best interest of the student who

25 is, in fact, simply viewed as a number and an invoice.

1 I was an active-duty deployed soldier and still felt

2 exploited. If this is a situation where one does not

3 call for the increased protections provided by these

4 rules, I am unsure how further an institution can fall

5 before sufficient action should be taken. Thank you.

6 MR. MANNING: Thank you.

7 MR. MARTIN: Next, we'll hear from

8 Dr. Janice Knebl.

9 DR. KNEBL: Good afternoon. I'll just pass

10 those to you.

11 My name is Dr. Janice Knebl. I'm an

12 osteopathic physician and chair of the American

13 Osteopathic Commission on Osteopathic College

14 Accreditation, known as COCA. Thank you for the

15 opportunity to present comments on behalf of the COCA

16 today.

17 I commend the Department of Education for

18 initiating a new negotiating rulemaking process to

19 address some of the shortcomings in the current Gainful

20 Employment regulations, particularly as they apply to

21 graduate and professional schools.

22 As the Department begins to consider the

23 preliminary agenda for the negotiated rulemaking

24 committees, I ask that you consider the value

25 osteopathic medical education can bring to the nation

1 and to strengthen opportunities to provide that

2 education.

3 I'd like to tell you a little bit about the

4 COCA. We are a Department recognized accrediting agency

5 and serves the public by establishing, maintaining, and

6 applying accreditation standards and procedures to

7 ensure the academic quality and continuous quality

8 improvement delivered by colleges of osteopathic

9 medicine reflect the evolving practice of osteopathic

10 medicine. The scope of the COCA encompasses crediting

11 COMS, and the COCA is the only accrediting agent who

12 accredit these osteopathic medical schools in

13 the United States. Currently, there are 33 accredited

14 osteopathic medical schools operating in 48 states.

15 This number will increase by some 25 percent as the COCA

16 has received in 2017 eight applications to establish new

17 colleges of osteopathic medicine and four applications

18 to establish additional locations for COMS.

19 Graduates of accredited COMS earning Doctor

20 of Osteopathic Medicine Degree. In the United States,

21 physicians licensed to practice medicine are either DOs

22 or MDs. DOs practice in every medical specialty,

23 applying a patient-centered philosophy to treat their

24 patients. DOs are one of the fastest growing segments

25 of healthcare professionals in the United States.

1 Currently, there are more than 100,000 DOs in active

2 practice and one of every four medical students in the

3 country are osteopathic medical students. While DOs

4 practice in all medical specialties, more than

5 60 percent of all DOs specialize in primary care that

6 includes family medicine, general internal medicine and

7 pediatrics. Osteopathic schools and training programs

8 also represents care to rural patient population for

9 whom gaps and access to care are much more pronounced.

10 COCA is pleased to support educational

11 opportunities for future physicians in those geographic

12 areas and in the most needed specialties and to support

13 workforce development to address healthcare provider

14 shortages.

15 And the final rule on Gainful Employment,

16 the Department set out two metrics. No. 1, a

17 debt-to-earnings ratio and No. 2 a program cohort

18 default rate. Programs are required to satisfy both of

19 these metrics to maintain Title IV eligibility under the

20 Higher Education Act. We have strong concerns regarding

21 the metric on debt-to-earnings ratio because the

22 parameter that students would need to spend no more than

23 8 percent of their annual income or 20 percent of their

24 discretionary income on their student loan payments is

25 prohibitively narrow for medical school graduates.

1 Osteopathic medical student graduates can expect to

2 graduate with more than $200,000 in student loan debt

3 with large monthly loan payments immediately following

4 graduation when they are still in training in

5 three-year -- or more -- residency programs for state

6 licensing and, potentially, an additional several years

7 for fellowship.

8 However, as soon as they complete this

9 training, their income will increase exponentially.

10 This increase in income is in stark contrast to other

11 careers which may not incorporate extensive

12 post-graduate training. Regarding the program cohort's

13 default rate, osteopathic medical students generally

14 have default rates that are substantially lower than the

15 30-percent threshold. In fact, as far as we are aware,

16 no COCA-accredited programs would fail this criterion.

17 We believe the statistic supports the value

18 of osteopathic medical education, programs, and training

19 and preparing high-quality medical professionals.

20 Additionally, we would support exceptional

21 performer recognition to include programs with a lower

22 program default rate than 30 percent threshold and high

23 licensure rates.

24 We appreciate the intent of the Gainful

25 Employment regulations to ensure education programs

1 provide adequate financial value to their graduates.

2 Further, we understand the need to apply

3 some criteria to programs in order to identify

4 deficiencies. However, we caution that the current

5 approach applies narrow criteria to a broad range of

6 programs. We suggest that the Department consider the

7 unique nature of certain programs, such as medical

8 schools, and develop appropriate metrics for each

9 category of programs. In particular, for osteopathic

10 medical education programs, we urge the Department to

11 either No. 1, exempt such programs from the

12 debt-to-earnings ratio or, No. 2, only collect data on

13 such programs but enforce new penalties where a

14 high-quality program has met an exceptional performer

15 threshold.

16 Finally, medical professionals are in short

17 supply in many geographic areas of the United States,

18 particularly in rural parts of the country. Federal

19 regulations like the Gainful Employment regulation

20 should not contribute to this shortage by redirecting

21 qualified medical professionals away from the regions

22 where the shortage exists. We urge the Department to

23 review the impact of the Gainful Employment regulations

24 on the program --

25 MR. MARTIN: Time.

1 MS. KNEBL: -- To ensure that the

2 regulations do not stifle the abilities of high-quality

3 medical education to train future physicians. In sum,

4 we support the spirit of the Gainful Employment

5 regulations to provide consumers with better information

6 about the cost of the educational programs and resulting

7 debt. In addition, we support the goal of increased

8 institutional accountability to ensure the students have

9 adequate information to make choices about incurring

10 loans to fund our educational programs.

11 Finally, we applaud the Department for

12 addressing this important issue, and we look forward to

13 continued dialogue. The osteopathic medical profession

14 remains ready to ensure a strong physician workforce for

15 our nation. Thank you very much.

16 MR. MANNING: Thank you.

17 MR. MARTIN: Meredith Martindale

18 MS. MARTINDALE: Thank you for the

19 opportunity to speak today. My name is Meredith

20 Martindale, and I'm here to urge the Department to leave

21 in place both the Gainful Employment and Borrower

22 Defense rules. It is a waste of taxpayer money to redo

23 rules that were thoroughly debated during the last

24 administration. Gainful Employment ensures that schools

25 are giving quality education to students so that they

1 could obtain jobs after graduation that allow them to

2 actually repay their loans, and the Borrower Defense

3 rule is there to provide relief to students whose

4 schools broke the law.

5 But perhaps the strongest message I could

6 send in defense of these rules is through the words of

7 students who were scammed by schools in the past. I

8 want to share some of their stories with you today. Amy

9 Schneider (phonetic), who attended the negotiated

10 rulemaking for Borrower Defense last year in D.C.

11 writes, and I quote, "I attended EDMC's Art Institute

12 campus in Schaumberg, Illinois from 2007 to 2010 and

13 graduated with honors from my BSA program. I was unable

14 to gain gainful employment after graduation, and my

15 degree is seen as a joke in the industry. I enrolled at

16 that school based upon falsified career placement

17 statistics, lies about the quality of education I could

18 expect from the program, and the content of my courses,

19 among other things like outdated materials, programs,

20 and equipment. I amassed over $130,000 in debt at this

21 point between my mother's Parent Plus loans and my own

22 loans.

23 While these rules are not perfect, they

24 were a compromise made after an extremely lengthy

25 process, and they're working as intended. Schools

1 should prove that their programs have favorable outcomes

2 if they are siphoning federal subsidies and taxpayer

3 money in order to operate. Schools should be required

4 to post letters of credit so that taxpayers are not left

5 on the hook if the school is sued. Arbitration clauses

6 should not have any place in education. Students

7 deserve recourse in the form of strong and well defined

8 Borrower Defense rules.

9 Sandrus Fabaris (phonetic) writes, and I

10 quote, "In 2003, my wife and I both made the unfortunate

11 decision to attend the Art Institute of California in

12 San Diego. I want to make it clear, the school lied to

13 us. It was inflated false job-placement stats which

14 convinced me to enroll, and what we experienced were

15 unprofessional adjunct teachers, an unfocused

16 curriculum, lack of access to equipment, and lack of

17 job-placement assistance. It was a horrible experience

18 which has haunted our lives and finances for the last 11

19 years.

20 To this date, my wife and I have paid

21 $96,000 towards our loans. Due to interest, we still

22 have another $158,000 more. We will be in our late '50s

23 before they are paid off, close to $1,000 a month for an

24 education that we never benefitted from. We have never

25 missed a loan payment, but this bad debt has taken a

1 very heavy, irreversible toll on our lives. We have

2 moved eight times for jobs in the last 10 years. We

3 have not been able to save responsibly. We have

4 foregone starting a family."

5 Drawing out debt cancellation for students

6 who were defrauded is nothing less than torturous and

7 asinine. Stop hiding behind what you call process and

8 fight to enact change. Make an immediate difference to

9 the people you were sworn to serve. Each day, desperate

10 people fall victim to more debt forgiveness schemes that

11 thrive upon your lack of action.

12 Mandatory arbitration clauses need to be

13 thrown out retroactively. Blanket cancellation for

14 defrauded students needs to happen. Title IV funding

15 needs to be discontinued for bad actors that create

16 indebted masses without providing them with the tools

17 for success.

18 Richard Garcia wrote, and I quote, "I am a

19 single father of two boys and graduated from ITT Tech in

20 2016 with an AS in Electrical Engineering. Never having

21 any help from ITT for job placement, my degree is now

22 useless, as no one sees attending ITT as a real

23 education because of all the fraudulent actions that

24 went on. I am now stuck with $30,000 in student loans

25 and no prospect of a career in my field. This is not

1 fair for me, nor all the other students in the same

2 situation."

3 I just want to end by urging the Department

4 to discharge the debt of these students who worked so

5 hard to better their lives through education, only to be

6 conned by schools intent on getting rich off of

7 taxpayer backed loans. These students will never get

8 their time back, but the Department can at least let

9 them start over. Thank you for your time.

10 MR. MANNING: Thank you.

11 MR. MARTIN: Mr. William Dunbar.

12 MR. DUNBAR: I'm Dr. William Dunbar. I'm

13 president of the Midwest College of Oriental Medicine.

14 We are a multi-state approved accredited program

15 offering a Master's Degree in Oriental Medicine. We are

16 a for-profit college.

17 There are a few points I would like the

18 Department to consider when revisiting the Gainful

19 Employment rules as it applies to colleges of

20 acupuncture and Chinese medicine, a very narrow concept.

21 The education of ACM students is

22 substantially different in career choices and education

23 than other goals of other graduates, programs and

24 students of other student accredited programs. The

25 theme for me today is: Hold me accountable for what I

1 can control; don't hold me accountable for what I can't

2 control. And one of the things about ACM students is

3 that many of them, not like other industries, are not

4 choosing to be employed, or not choosing to be employed

5 full-time. In fact, one of our graduates whose husband

6 is a cardiologist chose to receive financial aid and is

7 practicing at a local tennis club part-time, may not

8 even be charging people.

9 I have a graduate who recently moved to

10 Florida whose husband is a prominent internist. She

11 decided to go to school, obtain her master's degree,

12 pass the national boards, obtain licensure, with the

13 expectation that she would have a number of children

14 before practicing after they were 18.

15 I have a senior retired Korean graduate who

16 chose to do the education for the sole purpose of

17 treating patients in his community church in the

18 basement for free.

19 Another graduate, a student, who, during

20 the application process, indicated that the sole purpose

21 of her education was the life-long treatment of her

22 autistic child. She felt that the acupuncture helped

23 the autism but couldn't afford the life-long treatment

24 so she felt it would be better to receive the education

25 and never intended on practicing.

1 Some graduates choose to volunteer at

2 low-cost clinics. There's a practice called Community

3 Acupuncture where there's a sliding scale between $5 and

4 $20 a treatment, and, subsequently, our graduates adjust

5 their lifestyle and adjust their choosing to earn less

6 money.

7 I mentioned this to a friend and he said,

8 Well, how can that be? How can you be held responsible

9 for your graduates' choices?" And I can't.

10 Our graduates are 80 percent women. The

11 average student is between 38 and 42 years old. Many

12 women students wait until having children and they were

13 independent before returning to acupuncture in Chinese

14 medicine. Some graduates choose to rely on the support

15 of their spouses and to operate how-they-like practices.

16 So the idea that there's immediate

17 employment is nonexistent. We do have graduates in

18 hospitals and medical centers across Illinois and

19 Wisconsin, but most graduates choose independent

20 practice. They choose to be entrepreneurs, and, as you

21 know, it takes a number of years before we can break

22 even.

23 My second point is that there are 60

24 colleges, approximately, teaching Chinese medicine and

25 acupuncture in America. 50 percent are for-profit.

1 50 percent are not-for-profit. We all teach, basically,

2 the same curriculum, we have similarly qualified

3 faculty, we have very similar fixed costs for

4 operations, yet 50 percent of the schools are not

5 required to comply with these regulations. The

6 not-for-profits are totally not evaluated for any of

7 these criteria, which we think is very unfair. We need

8 an equal opportunity for protection under the

9 regulations, both for not-for-profit and for-profit.

10 Again, getting back to: Hold each college

11 accountable for the measurements. Are the colleges

12 charging more-than-available financial aid? It's real

13 simple. We don't. We operate very much like a

14 not-for-profit. We establish a budget, determine what

15 number of students to make the budget, and that's what

16 we charge in tuition. So if a college is charging less

17 than the financial aid available, publish it. Come out

18 there and say, we're taking 40 percent of your available

19 financial aid. We're taking 110 percent of your

20 financial aid. That gives a consumer an indication of

21 what it costs and how responsible the college is.

22 I believe in consumer protection

23 100 percent, and I believe the Department needs to do

24 more in terms of disclosures, other than the Gainful

25 Employment little web page that may be hidden on the

1 websites. We need a Carfax-like disclosure. We need

2 multiple factors that are presented to prospective

3 students at the time of their application or the time of

4 their tour, the time of the interview.

5 Let's talk about faculty qualifications.

6 Let's talk about the fact that I have 87 percent of my

7 last four years' graduates in practice. They're in

8 practice because we enabled them to pass the Boards. If

9 you can't pass -- first of all, we have an 85 percent

10 completion rate. If you can't pass the Boards, you

11 can't get a license, which means you can't choose not to

12 work full-time. So licensure in professions is

13 important. Passing the boards and completion rate is

14 important. These should be disclosed --

15 MR. MARTIN: Time.

16 MR. MANNING: You have 20 seconds.

17 MR. DUNBAR: Finally, there is a big

18 difference between -- there is a gray area between

19 not-for-profit and for-profit, and I suggest the

20 Department consider eleemosynary for-profits. These are

21 for-profits that don't issue dividends or issue very

22 little dividends. These are colleges that the primary

23 stockholders, myself and my partner, are stockholders.

24 We are both full-time employees, and we are making wages

25 commensurate with not-for-profit positions in our same

1 regard.

2 If we choose to reinvest in the college

3 in non-revenue-generating sources like library, student

4 services, free tutoring, that should be recognized as a

5 separate entity, and an eleemosynary for-profit should

6 be a separate category and it should have less

7 regulations attached to it, and it can be shown on

8 audits. It could be part of the --

9 MR. MARTIN: That's all, sir.

10 MR. DUNBAR: Thank you for your time.

11 MR. MANNING: Thank you.

12 MR. MARTIN: Anthony Abbate.

13 MR. ABBATE: Hello. Thank you for this

14 time. I appreciate it. I'm Anthony Abbate. I am CEO

15 of Southwest Acupuncture college. We have campuses in

16 New Mexico and a campus in Colorado. We've been in

17 business for 35 years, and I'd like to suggest that if

18 the Department of Education continues to use

19 debt-to-earning ratios, that the earning measurements

20 point should be career-specific. As they've done with

21 MDs, and DDS, they've made the measurement point be

22 between six and nine years after graduation, and this is

23 reasonable because those professions need time to get

24 established and build a practice.

25 MDs also especially have to do internship.

1 The acupuncture and Oriental medicine community is very

2 similar. 75 percent of all of our graduates choose to

3 go into private practice, and most of them don't get

4 licensed before six months to a year. Some states like

5 New Mexico only offer a board exam once or twice a year.

6 So, often, students have to wait for that to come

7 around, and then by the time they're ready to set up

8 their practice, they have a big expense doing that, and

9 they'll have a big expense for furniture and equipment,

10 rent, and expanding that over the next couple of years

11 as they do build clientele.

12 Also, if the Department chooses to continue

13 with debt-to-earnings ratios -- sorry -- they should

14 also consider doing it for all schools, not just

15 for-profits, but also the nonprofits. In our

16 profession, there's very little difference in the

17 programs and the cost of the programs and the outcomes

18 and what the graduates end up making. It's all very

19 similar. And doing it -- applying it only to

20 for-profits doesn't really do anything, because there's

21 another 30 for-profits that are going to continue

22 charging the same amount because they're not being held

23 accountable, and, you know, the outcomes will be the

24 same.

25 The graduates will still be making what

1 they're making now, so it really doesn't serve a

2 purpose. And, actually, the only thing that it really

3 does is that it's going to eliminate thousands of jobs,

4 and it's going to bring less taxes to the states and the

5 federal government, because for-profits are the only

6 ones that pay taxes, and it's also going to hurt many,

7 many patients.

8 Between 2013 and 2016, my school treated

9 53,000 patients for low cost or no cost, and all of the

10 free treatments that we gave during that period, if you

11 use the average of what's charged for an acupuncture

12 treatment today, comes to a total of two thousand

13 nine -- I mean, $2,975,000. And that's just one school.

14 And so if a lot of schools don't meet the default --

15 they don't meet those rates, the GE rates, then they

16 will be put out of business, and the same thing is going

17 to happen in those towns as well. Also, I just want to

18 say that the schools have been in business for over 30

19 years, and they've been receiving financial aid.

20 They all have both for-profits and the

21 nonprofits. They all have very low default rates. The

22 rates are mostly in the one digit, and it's especially

23 important to understand that we are very small schools.

24 We have hundreds of students, not thousands. So if you

25 have 100 students and you have a 3-percent default rate,

1 that's three students compared to a school that has

2 thousands. If you have a 3-percent default rate at

3 1,000 students, it's 30 students. So our defaults are

4 very, very low, and we think that, you know, that makes

5 a big difference.

6 We think that there could be an alternative

7 method of complying with the regulations and staying

8 with financial aid.

9 MR. MARTIN: Time.

10 MR. ABBATE: Okay. I'll leave it at that.

11 Thank you.

12 MR. MANNING: Thank you.

13 MR. MARTIN: Mr. Ronald Holt.

14 MR. HOLT: Hello, my name is Ron Holt. I'm

15 an attorney in Kansas City, Missouri with a law firm

16 called Douthit Frets. My firm and I represent colleges

17 around the nation, mostly for-profits, but also some

18 nonprofits, and I thank the Department for this

19 opportunity to speak.

20 Albert Einstein once famously remarked,

21 "It's not that I'm more brilliant than other people,

22 it's just that I spend more time with problems." And I

23 think the Gainful Employment regulation and the Borrower

24 Defense regulation are problems, and I applaud the

25 Department for taking this time to examine them.

1 They're not problems because of their objectives. We

2 all want to prevent fraud and we all want to screen out

3 under-performing programs. They're problems because of

4 their mechanics and the means that were chosen.

5 So I want to suggest that the Department in

6 this rulemaking for Gainful Employment consider whether

7 or not the statute really requires a debt-to-earnings

8 ratio. Consider, secondly, whether or not it's even a

9 viable way to determine whether a program leads to

10 Gainful Employment. And, third, as many speakers have

11 suggested, consider whether there are viable and more

12 appropriate alternative means to measure quality.

13 Now, looking at the Statute, since its

14 adoption in 1965, it includes this requirement for all

15 programs at for-profits and for non-degree programs at

16 nonprofits and publics. Those programs have to prepare

17 a student for Gainful Employment in a recognized

18 occupation.

19 For 45 years before the Obama

20 administration, those words meant, simply, that the

21 program had to equip a student with the knowledge and

22 the skills to gain employment in a recognized

23 occupation. You couldn't get Title IV money for an

24 avocational program. Like, I want to learn Northern

25 Italian cooking so I can impress my friends and serve

1 them a nice dinner. I want to improve my gardening

2 skills or bird watching. No, you can't get Title IV

3 dollars for that, and that's how it was understood. And

4 I submit to you that if program qualifications need to

5 be examined, the Department can do that separately. But

6 that's not what those words in the Statute mean.

7 Now, if there's any improvement that could

8 be made to what had been done for 45 years, it might be

9 to require that a program have a definite length through

10 its’ SIC code to a SOC code that's on the O\*NET website,

11 show that there's a direct correlation between an

12 academic program and a recognized occupation. Secondly,

13 we might even require that the program be relevant by

14 showing that the unemployment rate in that program in a

15 particular region is not substantially higher than the

16 national unemployment rate or the regional unemployment

17 rate, in general, for everything. And, third, we could

18 require too that the programs not only meet, but exceed,

19 any accrediting requirements on placement and licensure,

20 and if, in fact the accrediting body doesn't have those

21 because it's a regional accrediting body, the Department

22 could set its’ own reasonable level. That would be a way

23 to ensure that a program prepares a student for gainful

24 employment in a recognized occupation.

25 But I submit to you that debt-to-earnings

1 is not. It's not viable. And you've heard people speak

2 here today throughout the course of the day about the

3 many problems. First, the law prohibits the Department

4 from making it fair. You can't include all graduates in

5 the rate. You can't collect information on non-Title IV

6 graduates right now. How can you evaluate the quality

7 of a program comparing average earnings to average debt

8 when you're not including the debt and the earnings of

9 all the graduates? You're screening out the non-Title

10 IV graduates. And, in fact, most of those people would

11 have lower debt which would result in a lower gainful

12 employment or debt-to-earnings ratio, so it's not fair,

13 and it can't be fair unless Congress changes the law,

14 and until the law changes, there shouldn't be a

15 debt-to-earnings rate.

16 Secondly, as other speakers have said, the

17 way Congress wrote this law, we're only looking at some

18 of the academic programs, not all. Degree programs at

19 nonprofit and public institutions aren't measured under

20 any kind of a Gainful Employment requirement. Well, if

21 it makes sense to measure programs based on a

22 debt-to-earnings metric, we should do it for everybody.

23 All students would deserve that protection if it's

24 really valid.

25 Now, let's talk about viability. On the

1 viability side, you've got programs and problems that

2 have been alluded to already. When do you measure

3 earnings? Certain careers like the medical careers,

4 acupuncture and massage careers, two of the prior

5 speakers who are my clients as well have pointed out the

6 fact that it takes a long time to develop a client base.

7 So if you were to retain a debt-to-earnings rate, you

8 would have different multiple measurement periods to

9 administer. Added to that, you have different multiple

10 life choices that people make. You've heard about that.

11 Some people only plan to work part-time. Some people

12 plan to not work at all. Some people plan to take off

13 when they have a child and wait until their children

14 reach school age or even beyond that. Some people have

15 elderly parents. Some people have ill family members

16 and friends. They take off for various reasons. The

17 rule that we have right now doesn't account for those

18 variables if those people are out of the workforce in

19 the earnings year because of personal life situations or

20 choices. And imagine how difficult it would be to write

21 a rule and administer it with all the labor hours it

22 would take to manage all those --

23 MR. MARTIN: Time.

24 MR. HOLT: -- circumstances. It's not

25 viable.

1 Finally, on the Borrower Defense, I just

2 want to say that we need a clear process. It needs to

3 be fair. Schools need to have an opportunity to

4 participate, and I think you need to focus just on

5 Borrower Defense, not on separate topics that require

6 separate expertise. For example, financial

7 responsibility, letters of credit and arbitration, those

8 are matters that require their own separate examination.

9 Thank you for the time.

10 MR. MANNING: Thank you.

11 MR. MARTIN: Mark S. McKenzie.

12 MR. McKENZIE: Thank you. I also want to

13 just take a moment. Ryan, thank you for your service.

14 Greatly appreciate it.

15 My name is Mark McKenzie. I'm the

16 Executive Director of the Accreditation Commission for

17 Acupuncture and Oriental Medicine, so, apparently, we

18 have a large representative group here today. ACAOM is

19 a USDE recognized, specialized accreditor for graduate

20 degree programs in acupuncture and in Oriental medicine.

21 We are both an institutional and a programmatic

22 accrediting agency. We currently accredit 56

23 institutions, nationally, representing approximately

24 8,000 students enrolled in 95 graduate programs located

25 in 22 states. The average total enrollment per school,

1 as was alluded to earlier, is 143. Schools range from

2 about 20 students to a maximum of around 600, so these

3 are small institutions. 26 of the 56 schools are

4 private -- are considered private proprietary

5 institutions, or for-profit, that are offering graduate

6 programs, many of which will be negatively impacted

7 without reasonable revisions to the GE regulations.

8 Three of these institutions actually happen to be

9 located in Texas, and three of the institutions -- or at

10 least two of them are providing testimony before you

11 today.

12 So, first, I want to emphasize that ACAOM

13 fully supports the concept of Gainful Employment and,

14 more fully, the protection of student loan borrowers

15 from any institution that employs misleading, deceitful,

16 or predatory admissions, financial aid, or other

17 practices that negatively impact students.

18 Second, ACAOM supports the Department's

19 decision to delay implementation of the regulations

20 pending an appropriate review or revision process to

21 eliminate the unintended consequences that the current

22 regulations will have on the institutions that ACAOM

23 accredits. You've heard some of the issues already. My

24 comments are based on the perspective from the

25 accreditor and this limited narrow field of acupuncture

|  |  |  |  |
| --- | --- | --- | --- |
| 1 | and Oriental medicine. |  |  |
| 2 | The fact is all | of our programs are |
| 3 | graduate health care programs | in a developing field. | As |
| 4 | As a developing field, there are | few full-time salaried |  |

5 positions, and the majority of graduates who choose this

6 profession by default typically become small business

7 owners. These regulations simply do not accommodate the

8 differences between established and mature professions

9 with salaried positions in large organizations and

10 developing professions where you have to create your own

11 path and your own business. Any of you that have

12 started your own business know that it takes a while

13 before you're able to bring home the paycheck.

14 There are a couple of other reasons these

15 regulations need refinement. The GE regulations purely

16 are discriminatory between private proprietary, or

17 for-profit institutions, and nonprofit institutions

18 based purely on their organizational structure, and have

19 assumption of things that -- or perceptions of things

20 that have happened in the past, rather than an actual

21 practice or institutional outcomes. As an accrediting

22 agency, we monitor these outcomes, including default

23 rates, graduation rates, national Board scores, and I

24 can tell you, there is no statistical, significant

25 difference between the schools that we accredit when it

1 comes to their organizational status. Whether they're

2 for-profit or nonprofit, it makes no difference. For

3 example, loan default rates. The national average right

4 now for grad schools for nonprofit institutions is

5 6.5 percent. It's 14 percent for for-profit

6 institutions, nationally. Within ACAOM schools, those

7 numbers are 4.16 percent for nonprofit and 4.43 percent

8 for the for-profit institutions. So, basically, there

9 is no difference in those institutions.

10 ACAOM graduate programs lead the licensure,

11 currently, in 46 states and the District of Columbia.

12 And the program length, which is the primary determinant

13 of an overall program cost is, in large part, determined

14 by state regulation and accreditation standards.

15 Therefore, schools have little control over the income

16 thresholds encountered by their graduates and the known

17 challenges with utilization of the Social Security

18 income data. They have very little control over that,

19 and so it's very challenging to hold schools responsible

20 for those issues.

21 As far as the Borrower Defense to Repayment

22 regulations, in our evaluation of that, there are two

23 examples of areas that we believe need revision to

24 include -- which include the low burden of proof

25 required to initiate claims of misrepresentation --

1 MR. MARTIN: Time.

2 MR. McKENZIE: -- and then due process

3 issues inherent in THE regulations regarding letter of

4 credit requirements. So I thank you for your time.

5 Appreciate the opportunity.

6 MR. MANNING: Thank you.

7 MR. MARTIN: Okay. We're going to take

8 approximately a 15-minute break and we'll reconvene at

9 2:30. Oh, I should say we do have available time slots

10 for the afternoon if any of you wish to sign up for

11 those. Okay. On second thought here, we do have

12 somebody here. Ms. Pamela Gant-Lee here?

13 MS. GANTT-LEE: Yes, I'm here.

14 MR. MARTIN: Why don't we have you come

15 speak now, and then we have one other person after that.

16 That's Pamela Grant-Lee, G-r-a-n-t L-e-e, is that

17 correct?

18 MS. GANTT-LEE: It's G-a-n-t-t.

19 MR. MARTIN: Oh, I'm sorry. It's Gantt.

20 Pamela Gantt, G-a-n-t-t hyphen L-e-e. I'm sorry.

21 MS. GANTT-LEE: Good afternoon, everyone.

22 MR. MANNING: Good afternoon.

23 MS. GANTT-LEE: The right to education.

24 Education is a fundamental human right and essential for

25 the exercise of all human rights. It promotes

1 individual freedom and empowerment and yields important

2 developmental benefits, yet millions of adults remain

3 deprived of educational opportunities made as a -- made

4 as result of poverty. My name is Pamela Gantt-Lee, and

5 I am a teacher at DISD. I have 20-plus years of

6 experience. I am also an adjunct professor at DCCD, and

7 I've been there for two years, and my field is

8 education.

9 I am here on the behalf of my profession

10 and union, which is a medical federation of teachers who

11 defend, and Gainful Employment and Borrower Defense

12 rules which are based on two simple ideas. One, the

13 education that describes itself as career training

14 actually improves students' livelihoods. Two, that

15 colleges that use the promise of higher education to

16 trick students into debt should be punished, and those

17 students made whole. Basically, what I'm talking about

18 is some of the technical schools that you might know of,

19 Devry, ITT, and I could throw all of them in the same

20 bag together. It is well understood that a high school

21 diploma is no longer sufficient to enter the middle

22 class in this country.

23 People who know college is important, such

24 as myself, but have traditionally had a hard time

25 accessing higher education, including veterans, so

1 there's no reason -- there's a reason for me being

2 dressed patriotic today -- had a hard time accessing

3 higher education, including veterans, parents, people of

4 color, have been sold a bill of goods by schools that

5 care more about their bottom line than adult education.

6 These are students like young men named

7 Michael Odono (phonetic). So I'm standing in the gap

8 for some of these names that I'm going to name today.

9 Michael had a dream of success in career technology.

10 Corinthian College promised Michael that they would

11 provide him with a high quality education in computer

12 information science, with hands-on experience using the

13 latest technology, along with lifetime career placement

14 services. Instead, Michael found outdated software,

15 obsolete hardware, and was left with $30,000 in debt.

16 With a subpar degree that employees discarded as

17 meaningless, Michael's college dream became a nightmare.

18 Another one is Mia McCarthy (phonetic).

19 Mia is a former ITT Tech student who says that when ITT

20 Tech recruited her, she was highly vulnerable. She is a

21 first-generation American whose family was forced into a

22 marriage with an abusive man when she was 15 years of

23 age. She became pregnant while in high school and was

24 kicked out of her family house, but ITT Tech was a high

25 school that recruited her and promised her easy class

1 schedules and easy time finding a job at ITT Tech.

2 As Mia explains -- and I'm standing in the

3 gap of Mia -- "What ITT offered sounded amazing. I went

4 in and talked to an advisor, signed a couple of

5 documents that weren't explained to me, and began taking

6 classes. I learned absolutely nothing the entire time I

7 was at the school." While Mia didn't learn anything at

8 the school, she did leave something tangible, more than

9 $20,000 in student loans. She didn't know what she had

10 signed up for.

11 The community college I worked for would

12 never treat students like that. I'm part of the DCCD.

13 That's because we have an oversight structure that

14 promise students learning, not shareholding profits.

15 Cedar Valley College has over two dozen programs

16 affected by the Gainful Employment rule like all other

17 schools that accept federal student aid.

18 Would be impacted by the Borrower Defense

19 rule. Some claims that one sector of higher education

20 is being targeted by these rules are simply false.

21 As stewards of billions of taxpayer dollars

22 meant to support the public good through higher

23 education, the Federal Department of Education should

24 stand with students against predatory institutions.

25 MR. MARTIN: Time.

1 MR. MANNING: 20 seconds.

2 MS. GANTT-LEE: The Gainful Employment and

3 Borrower Defense rules should be allowed to move forward

4 to provide students the information they need and the

5 debt relief that they deserve.

6 And I thank you for this time to speak.

7 MR. MANNING: Thank you.

8 MS. GANTT-LEE: Thank you.

9 MR. MARTIN: Is Ashley here now? I didn't

10 get the last name.

11 AUDIENCE MEMBER: I'll go see if she's

12 outside.

13 MR. MARTIN: Okay. Because if she is, we

14 can proceed with her now.

15 I would also ask -- rather inform everybody

16 that we do have additional time slots, so if you want to

17 sign up to speak after we are -- have concluded with the

18 next speaker, you may do so. Otherwise, I will begin

19 singing now. No -- I don't want to do it but I feel I

20 have to. Yes?

21 MS. HARRINGTON: I believe you called me.

22 Ashley Harrington. Do you want me to go now?

23 MR. MARTIN: Yes, I'm sorry, Ms.

24 Harrington. Yes, well, she was originally scheduled for

25 2:45, but if you can go now, that's great.

|  |  |  |  |
| --- | --- | --- | --- |
| 1 |  | MS. HARRINGTON: | Thank you for this |
| 2 | opportunity. | I am with Center | for Responsible Lending, |

3 Ashley Harrington, and we just wanted to share a few

4 borrower stories to emphasize the need for strong

5 regulations -- strong regulations and the need to keep

6 the current regulations.

7 So this is a story from a female

8 31-year-old African-American. "I think predatory

9 lending has something to do with it. Ignorance of the

10 law is not an excuse for you to break the law. I think

11 that same concept applies here, but I do feel as though

12 the lack of information -- not lack of information but

13 informing the participant and really not analyzing to

14 see if that participant has a good conceptualization of

15 the actual repercussions of these large amounts of sums

16 that we're getting. To me, it seems like education is

17 this new form of slavery, because everybody's trying to

18 get to that next level, but in the midst of us getting

19 to that next level, we are being bound with all these

20 large sums of debt.

21 This is an African-American male, a Devry

22 student. "You were saying they showed you numbers?

23 Yeah, per degree you go towards. Since I was going for

24 network communications manager, you are going to be

25 starting off with this bachelor degree at 64,000

1 starting off, and so each program had a number

2 associated with it. Each number had that. Each degree

3 from bachelor's to associate, so even with network

4 communication management, they would have network

5 associates and so forth, and they would show you the

6 difference to try to entice you for the bachelor's. Was

7 there any warning that these were averages? No. None

8 was given."

9 We had another -- this is -- we had another

10 female, 28, Hispanic, who went to Everest. "This is

11 crazy. The program was an eight-month program, and I

12 started noticing about the second or third teacher had

13 quit, and we kept getting new teachers every month. We

14 had -- I had about five different teachers in the

15 eight-month program there, and everybody had their own

16 teaching style. Everybody wanted to change it up and,

17 like, the students were getting frustrated and mad at

18 the teachers, because we already were used to learning

19 it one way, and then a new teacher would come in and

20 change, and it was really frustrating."

21 Sonja (phonetic), a Devry student, female,

22 40, Hispanic. "I don't have the credit, and right now,

23 I wish I could just go buy a house and I can't, because

24 that's in there. I can't even buy a new car because

25 that's in there, so I feel that I'm tied up, that I'm

1 being held back from moving forward in life because I

2 have student loans that I really can't afford to pay."

3 And these are all students who were a part

4 of the focus group that we did in Florida. Each of them

5 attended a for-profit school and had some -- the general

6 sense was that for-profits were preying on these

7 students and giving them unsustainable amounts of debt

8 for an education that was pretty much worthless.

9 So we just encouraged the Department to

10 enact strong regulations or just to keep the regulations

11 that you already have and regulate these for-profits and

12 stop them from preying on our communities. Thanks.

13 MR. MANNING: Thank you.

14 MR. MARTIN: Okay. Do we have anybody else

15 who would like to have an additional slot? Yes, ma'am.

16 MS. SARGE: Do you want me to go now or

17 wait for the break?

18 MR. MARTIN: You may go now. Just state

19 your name again when you get to the podium, please.

20 And, again, it will be an additional five-minute slot.

21 MS. SARGE: Again, my name is Sandy Sarge,

22 and I am a consultant for higher education. I had two

23 choices today when I was deciding which topic to discuss

24 with you. I'm very passionate about 90/10 because, for

25 me, I'm just a math geek, and 90/10 is about the math,

1 so I wanted to emphasize a fact-based numeric example

2 for you, because I think that that's the best way to get

3 to the root causes of things. My other speech was a

4 little bit more impassioned.

5 In the final GE rule that we received on

6 October 31, 2014, the Department stated in their summary

7 that it is, quote, "Concerned that a number of GE

8 programs, 2, provide training for an occupation for

9 which low wages do not justify the program costs." So

10 it came up with a debt-to-earnings calculation, and I

11 would say arbitrarily determined that if this ratio is

12 greater than 12 percent, a program must not be worthy or

13 of high quality. That's what brings me back into the

14 90/10 information that I talked about earlier. It's a

15 major driver for for-profit schools, only for-profit

16 schools, because it, in essence, sets an arbitrary floor

17 on how low tuition can go. Otherwise, they break the

18 rule.

19 Many for-profit schools are legally

20 classified as for-profits. These schools are often

21 good, ethical entities who got into the business of

22 providing education and training because of a sincere

23 desire to better their communities. In fact, I know

24 many that I would say don't even or didn't even realize

25 that they would be considered different simply because

1 they paid their taxes. When you're a small school and

2 you started off in your garage or in a one-room office

3 to provide occupational therapy, oftentimes, you just

4 put out your sign, said, come to school, I'll teach you

5 how to do this, and you paid your taxes at the end of

6 the year because somebody paid you for that service you

7 gave them. It isn't until several years later,

8 sometimes 10 or 15 years of operating as a non-Title IV

9 school, that they go through the process of being

10 Title IV eligible or getting eligible, but they find out

11 that they are somehow now different than their

12 counterparts.

13 If we're truly interested in bringing down

14 the cost of tuition and lowering student debt, we need

15 to do away with these regulations that force higher

16 prices on students. Students who don't take the debt

17 out in the first place because it can be covered by

18 Pell, the cost of the school could be covered by Pell,

19 or have very little debt because we've brought the

20 tuition rates down, we wouldn't have to worry about

21 getting them gainfully employed. They could utilize the

22 repayment plans that work for them, and if all else were

23 equal, they shouldn't default. It would be a win-win

24 for everybody.

25 Don't get me wrong. I am all for weeding

1 out unscrupulous players in the industry. I want those

2 who cheat the system to be punished, but when these

3 rules cause a school like Harvard to suspend admissions

4 into its graduate program in Theater, you've got to

5 wonder if we're really addressing what's best for

6 students. This was a top-rated program that would

7 arguably give students an advantage on their resume,

8 regardless of the high ticket price. All GE did in this

9 case was take away student choice. So as the saying

10 goes, let's not throw out the baby with the bath water.

11 Thank you.

12 MR. MANNING: Thank you.

13 MR. MARTIN: Okay. Currently -- yes?

14 MR. SHIREMAN: I'd be interested in taking

15 another minute, if you wouldn't mind.

16 MR. MARTIN: Hold on just a second.

17 MR. MANNING: After the break?

18 MR. SHIREMAN: Sure. Either way.

19 MR. MARTIN: Okay.

20 MR. SHIREMAN: Either way is fine.

21 MR. MARTIN: All right. Here's the

22 situation you're in. You'd be the last speaker. We

23 don't have anybody else.

24 AUDIENCE MEMBER: May I go one more? I

25 have some more stories.

1 MR. MARTIN: Okay. Fine. Why don't we

2 just take a -- I'm taking a break, finally. No one can

3 dissuade me from this. We're taking a break, unless Mr.

4 Manning says I'm not taking a break. But let's take a

5 10-minute break and then come back at approximately

6 2:40, and we'll convene again.

7 (Recess from 2:29 p.m. to 2:44 p.m.)

8 MR. MARTIN: We're going to reconvene. As

9 I pointed out earlier before the break, we do not have

10 any more scheduled speakers, but we have -- I think we

11 have two people that want to -- would like to speak

12 again, right, if I'm not mistaken. So we will entertain

13 that. And, at that point, according to the schedule, we

14 will have no further speakers. However, the event is

15 scheduled to continue until 4:00 so we will be here

16 until that time, regardless of whether anybody is

17 speaking or not. Okay. So, Bob, ready to speak again?

18 So we'll begin with Mr. Bob Shireman.

19 MR. MANNING: Welcome back.

20 MR. SHIREMAN: Thank you very much. I just

21 wanted to -- the topic of this rulemaking is not the

22 90/10 rule, and much of it is said in statute, so

23 there's not a lot that the Department can do in terms of

24 regulations, but I did want to respond to the statements

25 that have been made about 90/10.

1 The concept of 90/10 has a very long

2 history, really, from the very first problems that

3 emerged from the GI Bill after World War II where

4 schools were being created where, basically, they found

5 out the amount of aid that was available, priced their

6 programs based on that aid, and recruited soldiers by

7 saying, Hey, this is totally covered, come here, do this

8 program, you'll get a great job.

9 In 1976, the Federal Trade Commission found

10 that similar kinds of things were happening in the

11 student financial aid program that the Department of --

12 that was pretty new then at the U.S. Department of

13 Education, and here's what they had to say in the 1976

14 report from the Ford Administration: "Often, the mere

15 mention of the federal government to potential students

16 implies and is understood as government inspection and

17 approval of course content and job placement

18 capabilities." A salesman testified to the FTC at the

19 time, "I could go down in the ghetto and stand on the

20 corner and enroll all kinds of people if it is free. He

21 doesn't care if the course is airlines, insurance

22 adjusting, hotel management or what, if it's free, going

23 to be paid by the government, and you can get him a job,

24 he would have to be crazy not to do this. This is a

25 salesman's dream."

1 Ted Bell, who later became President

2 Reagan's Education Secretary said, "I personally

3 question the soundness of an institution whose existence

4 is totally derived from signing up students who

5 qualified for federal aid." He actually adopted a rule

6 that said that no more than 60 percent of the enrolled

7 students could use federal loans, and that rule kind of

8 mysteriously disappeared later. So that is the --

9 that's where 90/10 comes from, that at least 10 percent

10 of the students at a school need to be affirming the

11 private -- the value of the program at the price that is

12 being offered. It's to prevent schools from pricing

13 their education, pricing tuition based on the

14 availability of federal aid. They should demonstrate a

15 market price, and that is what the federal government is

16 willing to pay.

17 Now, if schools follow the intent and the

18 wording of 90/10, it works that way. What most of the

19 for-profit schools have done is they have changed their

20 interpretation, and it works with the wording. The

21 wording is "revenue" and not "students." So they say,

22 Well, 10 percent of the revenue has to be outside of

23 federal aid, so they hop up the tuition and -- by the

24 11 percent that was mentioned by the earlier speaker --

25 and that becomes the 10 percent of non-federal revenue.

1 But it is a complete perversion of the intent of the

2 rule and not really the honest way to comply with 90/10.

3 90/10 is about 10 percent of the students being not on

4 federal aid as a private sector indicator of value.

5 Thank you.

6 MR. MANNING: Thank you.

7 MR. MARTIN: Thank you. And we have one

8 additional speaker. Please state your name again when

9 you come to the podium.

10 MS. BARKLEY: Sure. Hi. I'm Wendy

11 Barkley-Denney, with the Center for Responsible Lending.

12 So we have a few more focus group stories that we wanted

13 to share and -- I apologize, this is directly from our

14 focus group, so there's a moderator and someone talking

15 back to the moderators. This is somewhat of a dramatic

16 reading to close the day out.

17 So first of all, I'll be the moderator.

18 "Come back to the question, how the school approached

19 you, and it could be a positive story." Hanna. The

20 names have been changed because this is a study. We

21 don't want to reveal their anonymity. "You wanted to

22 say something." Hanna -- and the student attended

23 Florida technical college. "I mean, if I'm being very

24 honest, it's the same thing. You hear the commercial,

25 Be a medical biller. I didn't even know what a medical

1 biller coder was when I walked in, literally," and there

2 was laughter in the room.

3 The moderator says, "It was not your life's

4 passion?" "No, not my passion to be an encoder, no, but

5 when I walked in, it was like, it's 11 months, I can do

6 it, get a job making decent money, great, and the lady

7 sold me with her jazz hands." Moderator asks, "What did

8 she sell you?" "The dream." "And what was the dream

9 she sold you?" That you're going to go and you're going

10 to have this amazing job, and you're going to graduate,

11 and all of your professors are going to give you all

12 these tools to have this job and to have this future.

13 Thankfully, I am not going to wait for anyone else to do

14 it for me. I'm going to do it for me, but I can see how

15 people get sucked into that, and it's not what they tell

16 you it's going to be, but for me, I thought it was going

17 to be an easy, quick little 11 months and get a good

18 job, but it's not an easy job. It's so hard."

19 This is a second -- we did three focus

20 groups, this is not necessarily the same focus group.

21 The moderator asks, "And I don't want the same answer.

22 I want everyone's actual answer. Did the for-profit

23 school help you move up in the world? And you, you're

24 shaking your head." This is Andy. He went to Fordis.

25 "No, they're basically like high-pressure salesmen.

1 They sell you this big story, this dream, and when you

2 go to the school and you're part of the program because

3 you've already paid. In my situation, they'd told me

4 I'd gotten a scholarship for a certain amount. I had

5 went for half the time, and then they told me I didn't

6 qualify for that scholarship anymore, and I had to come

7 up with the rest of the money to finish my program."

8 "So you went in with under one understanding, you" --

9 "Yes, halfway through. It was kind of like bait and

10 switch. I wouldn't have gone if I had known it was

11 going to cost me $15,000. Even if I had -- everything

12 had to be paid. And then I was going there, and you

13 start to learn there's no way no one would not pass the

14 class. They basically said, we're going to have a test

15 tomorrow. Take out a pencil. This is what's going to

16 be on your test. Just make sure you memorize what I'm

17 telling, and you word-for-word, it was your test." And

18 then the moderator asked, "So it moved from how they

19 treated you as a student into what happened to you in

20 the classroom?" And Andy answered, "Yeah, and then you

21 look at these things and they tell you, you're going to

22 make this amount of money. You don't make anywhere near

23 the amount of money they tell you you're going to be

24 making. We're going to do the job placement. They

25 don't do the job placement. They do not find you a job.

1 And then you do, like, an externship with these certain

2 doctors that they have in with for free, and that's

3 the only way you can graduate from the program."

4 And there's one more. Let me scroll down.

5 This is Kelly. She went to Everest. The moderator

6 asked, "What's happening to you, Kelly? You're in

7 deferment. Oh, your income shows -- you show no income,

8 so there's no -- how are you going to get out of that?

9 What's the plan?" Kelly. "I actually have been

10 thinking about going back to school to get my bachelor's

11 and, hopefully, I'll be making more than what they told

12 me I would be making as a pharmacy technician, because I

13 know I've got to pay it off eventually. I can't just

14 sit there. I don't want them to one day come say, Oh,

15 we're going to take your -- when she does get a job --

16 we're going to garnish your wages. I can't do that.

17 I've got a daughter. I've got another child on the way.

18 I can't afford that. So it was scary to me for a little

19 bit." The moderator asks, "So your pregnancy made you

20 think about what I'm going to do, I've got to think long

21 term, so now you're thinking, I'll go back to school,

22 I'll get a BA, a BA in what? What's your plan of

23 action? I know you're thinking about it, but what's

24 your --" Kelly says, "I'm not sure yet, but I know I

25 need to get a higher degree to get a higher rate of pay.

1 That's what I'm thinking now. An Associate's Degree is

2 not enough money. You might as well work at McDonald's.

3 My cousin works at McDonald's. She gets $10 an hour.

4 I'm like, Are you serious? She lives up north, but

5 still."

6 "Let me play devil's advocate with you.

7 You went for a two years associate degree or whatever,

8 and it's only set you back. It's like you're doubling

9 down, isn't it? I'm just playing with this idea."

10 That's the moderator. "Yeah, yeah. I'm going to owe --

11 that's the other thing, I'm going to owe even more

12 money, right, so I don't know. I don't know. But the

13 promise is there still in your mind, right. I'm not

14 trying to depress you. I mean, even at the end of the

15 day, the way I soothe my brain is, once I do get this

16 bachelor's, I'm going to work on -- I'm going to have a

17 high rate of pay and some way, somehow, they're going to

18 have to work with whatever I'm making to make these

19 little payments, even if it's going to take me the rest

20 of my life to pay it off, because that's how I look at

21 it now. No matter what, it's going to take me the rest

22 of my life to pay this money back."

23 That's all. Thank you.

24 MR. MARTIN: Thank you.

25 Okay. Do we have anybody else who would

1 like to speak again? Okay. Right now, we have no

2 further speakers scheduled for the balance of the

3 afternoon. However, we will be here until 4:00 p.m.,

4 which is the scheduled end of the session. So I'll just

5 turn it over to Mr. Manning for some remarks.

6 MR. MANNING: Well, I want to thank you all

7 for being here today and participating. It's very

8 useful for us to have heard from all of you, and thank

9 you, again, for your participation and please stay

10 engaged.

11 (Recess from 2:53 p.m. to 3:59 p.m.)

12 MR. MARTIN: It is now 4:00, and the

13 proceedings are closed. Want to thank you for coming,

14 and we want to thank Southern Methodist University for

15 being our host today.

16 (Proceedings concluded at 4:00 p.m.)

17

18

19

20

21

22

23

24

25

1 STATE OF TEXAS )

2 I, Terralyn J. Gentry, Certified

3 Shorthand Reporter in and for the State of Texas, do

4 hereby certify that the above and foregoing contains a

5 true and correct transcription of the public hearing

6 that was held by the Department of Education at Southern

7 Methodist University, Underwood Law Library, on July 12,

8 2017.

9

10

11 Certified to by me this 21st day of July,

12 2017.



13

14

15 TERRALYN J. GENTRY, TEXAS CSR 7765

Expiration Date: 12/31/16

16 Collins Realtime Reporting

Firm Registration No. 59

17 325 N. St. Paul Street, Suite 2575

Dallas, TX 75201

18 (214) 220-2449

19

20

21

22

23

24

25