

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

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PUBLIC HEARING

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THURSDAY,
SEPTEMBER 6, 2018

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The Hearing convened in the Barnard Auditorium, 400 Maryland Avenue SW, Washington, D.C. at 9:00 a.m., Aaron Washington, Facilitator, presiding.

PRESENT

AARON WASHINGTON, Office of Postsecondary Education

MICHAEL BRICKMAN, Office of the Undersecretary

VANESSA BURTON, Office of General Counsel

DIANE AUER JONES, Office of the Undersecretary

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

2 9:04 a.m.

3 MR. BRICKMAN: Good morning, everyone.
4 Thank you for being here. My name is Michael
5 Brickman. I am Senior Advisor in the Office of the
6 Undersecretary, and on behalf of Secretary Betsy
7 DeVos, I'm pleased to welcome you to this public
8 hearing.

9 I'm joined at this table by three other
10 department officials. We have Aaron Washington
11 from the Office of Postsecondary Education,
12 Vanessa Burton from the Office of General Counsel,
13 and Diane Jones from the Office of the
14 Undersecretary.

15 This is the first of three public
16 hearings that we are convening to gather input
17 regarding regulations that govern programs
18 authorized under Title IV of the Higher Education
19 Act of 1965, as amended. Next week, we will hold
20 similar hearings in Louisiana and Wisconsin.

21 Secretary DeVos has challenged America
22 to rethink education. Rethink means everyone

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1 questioning everything to ensure nothing limits
2 students from being prepared for what comes next.

3 In postsecondary education, we focus
4 largely on breaking down barriers to innovation and
5 reducing regulatory burden while protecting
6 students and taxpayers from unreasonable risk. To
7 this end, we are seeking input regarding a number
8 of regulatory provisions, including issues
9 relating to the recognition of accreditors;
10 distance learning and competency-based education,
11 including the definition of regular and
12 substantive interaction; direct assessment and
13 prior learning assessment; state authorization;
14 the definition of credit hour; and roles and
15 responsibilities of institutions and accrediting
16 agencies in the teach-out process.

17 More specifically, with respect to
18 accreditation, the administration is interested in
19 improving the recognition and oversight processes
20 to ensure consistent and equal treatment of all
21 agencies. In this work, we wish to recognize the
22 autonomy and independence of agencies, support the

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1 needs of today's students, and honor the missions
2 of various institutions. We would like to hear
3 your thoughts about how to simplify the
4 Department's process for recognition of
5 accrediting agencies and how to emphasize criteria
6 that focus on educational quality rather than
7 administrative minutia.

8 We're also interested in revising any
9 accreditation regulations that are ambiguous,
10 repetitious, or unnecessarily burdensome, as well
11 as reducing duplication of oversight
12 responsibilities between the Department of
13 Education, states, and accrediting agencies, and
14 ensuring the Department is more accountable and
15 responsive to those it serves.

16 In addition to the accrediting
17 regulations, we are exploring some specific
18 regulatory provisions that are not directly part
19 of the accreditation regulations but that impact
20 the work of institutions and the way that work might
21 be evaluated by accreditors. Those provisions
22 include the development of a single job placement

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1 definition and a single methodology for
2 calculating job placement rates; the determination
3 of reasonable program length for clock hour
4 programs that result in certification or
5 licensure; the elimination of barriers to
6 innovation and competition in postsecondary
7 education or to student completion, graduation, or
8 employment, including barriers created by
9 unnecessary credential inflation or practices that
10 are unfair to students; the ability for an
11 institution to contract with other entities to
12 provide a percentage of an educational program,
13 including to promote innovation and enable more
14 rapid responses among career technical programs to
15 meet employer and workforce needs; and the
16 simplification and clarification of program
17 requirements to minimize inadvertent
18 grant-to-loan conversions for TEACH Grant
19 recipients.

20 Additionally, in light of the recent
21 Supreme Court ruling in Trinity Lutheran, the
22 Department will review provisions in our

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1 regulations relating to the eligibility of
2 faith-based entities to participate in Title IV
3 programs and the eligibility of students to obtain
4 certain benefits under those programs. We welcome
5 your perspectives as we work on updating our
6 regulations in each of these areas.

7 We anticipate bringing these issues and
8 any others that might be added, including at the
9 public's suggestion, before a negotiated
10 rulemaking committee that will begin its
11 negotiations in January of 2019. We also plan to
12 create two subcommittees with one focused on
13 competency-based education and the other on the
14 eligibility of faith-based entities to participate
15 in Title IV programs.

16 Subcommittees would consist of experts
17 in those areas, would not make decisions, but will
18 report their recommendations back to the full
19 committee for deliberation during public
20 negotiations. In late fall, we will publish a
21 notice in the Federal Register seeking nominations
22 for negotiators and subcommittee members. We hope

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1 that you and your colleagues will consider serving
2 in this capacity at that time.

3 In order to best use the time of the
4 committee, prior to the first meeting we plan to
5 provide draft proposed regulatory language for
6 discussion by the negotiating committee and the
7 subcommittees, rather than issue issue papers as
8 we have done in the past. This will enable the
9 committee to consider concrete proposals before
10 the negotiations and to begin more of the essential
11 work during the first session.

12 With respect to the logistics for
13 today's hearing, many of you have already signed
14 up for times to speak, and Aaron will call you up
15 to the microphone accordingly. We still have some
16 time slots available for today, so if you have not
17 signed up and would like to speak, please see our
18 Education staff at the front desk to sign up for
19 a time.

20 Speakers will be asked to limit their
21 remarks to five minutes. If you get to the end of
22 your five minutes, Aaron will ask you to wrap up,

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1 and we ask that you do so within 20 seconds.

2 Please note this hearing is being
3 transcribed and the transcription will be posted
4 on our website in the next few weeks. Although the
5 Department is not preparing a video or audio
6 recording of the hearing, this is a public hearing,
7 and it's possible that a member of the public may
8 record your remarks.

9 If you have written comments that you
10 would like to submit here today, you can give them
11 to me or any of us at the table or to the Ed staff
12 at the front desk. We have three scheduled breaks
13 today, one in the morning from 10:30 to 10:40, one
14 at lunchtime from 12:00 to 1:00, and one this
15 afternoon from 2:30 until 2:40. Those breaks may
16 be extended if we do not have people scheduled to
17 speak.

18 In consideration of others, please
19 silence your cell phones and any other devices that
20 you have while you're in this room. You are
21 welcome to make calls out in the lobby.

22 When you're called to speak, please

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1 provide your name and affiliation before speaking.
2 We look forward to your comments. Thank you for
3 your time and for sharing your expertise with us.
4 We look forward to an interesting and productive
5 day.

6 MR. WASHINGTON: Julie Murray.

7 MS. MURRAY: Good morning. My name is
8 Julie Murray, and I'm an attorney with Public
9 Citizen, a national consumer advocacy organization
10 that is working on the issue of grant-to-loan
11 conversions under the TEACH Grant program.

12 Public Citizen supports the
13 Department's plan to address in a negotiated
14 rulemaking TEACH Grant program requirements,
15 including to minimize what the Department has
16 termed inadvertent grant-to-loan disclosures -- or
17 grant-to-loan conversions. The Department's
18 efforts in this regard are critically important at
19 this point. The TEACH Grant program offers
20 aspiring teachers grant aid in exchange for an
21 agreement to serve for four of eight years after
22 graduation in low-income schools or districts in

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1 high-need fields. If a teacher doesn't fulfill
2 her service requirement, the grant converts to a
3 loan.

4 There's abundant evidence at this
5 point, however, that many TEACH Grant recipients
6 are working in covered positions. That is, they
7 are fulfilling their service requirements and
8 their grants are, nevertheless, being converted to
9 loans by Ed and its servicers for what are, at most,
10 minor mistakes in the recertification process
11 under that program. We shouldn't decide teachers'
12 financial futures this way, and there's nothing in
13 the TEACH Grant statute that requires this.

14 The Department, in its negotiated
15 rulemaking, must develop rules that eliminate
16 unnecessary steps in the certification process
17 that create hurdles for teachers, and it should
18 develop a more flexible approach. It should
19 reassess, for example, its requirement that
20 teachers annually recertify even in years for which
21 they are not seeking service credit for their
22 teaching.

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1 It should also ensure that any
2 consequences for non-compliance are proportionate
3 to the mistakes that are made. When an individual
4 pays her student loan bill a couple of days late,
5 she doesn't expect that she would get a
6 multi-thousand dollar late fee that would take more
7 than a decade to pay off, and that is essentially
8 what is happening to teachers under the TEACH Grant
9 program.

10 In addition to taking these steps, the
11 Department should acknowledge as part of the
12 rulemaking that many thousands of conversions have
13 occurred due to the errors of the Department and
14 its own servicers, not teachers. Through a
15 Freedom of Information Act request that my
16 organization obtained, we discovered that FedLoan,
17 the servicer of the TEACH Grant at this point, had
18 identified more than 15,000 TEACH Grants for more
19 than 10,000 teachers that it suspected were
20 converted in error by a previous servicer. It
21 concluded that at least 38 percent of all TEACH
22 Grants converted to loans by this earlier servicer

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1 may have been converted in error. Think about
2 that.

3 That means there is evidence suggesting
4 that this earlier servicer, that teachers who had
5 their loans converted by this earlier servicer were
6 nearly as likely to have had them converted in error
7 than to have had them converted appropriately under
8 the existing rules. Subsequent reporting by NPR
9 found that just 15 percent of these teachers ever
10 had their grants converted back.

11 In light of these extensive errors, the
12 Department should immediately make public its
13 policy that teachers can dispute conversions and
14 explain what that policy is, which it has never
15 done. But it should also include a dispute process
16 as part of the negotiated rulemaking and set forth
17 that process in its regulations. The process
18 should offer robust protections to affected
19 teachers including, among other things, a
20 mandatory deadline for the Department to respond
21 to disputes and a commitment to cease all
22 involuntary collections against teachers whose

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1 converted loans are currently subject to dispute.
2 The committee should also consider how to make
3 previously-injured recipients whole because there
4 are many thousands of them who still have loans.

5 I'd also like to comment briefly about
6 the process. It's imperative that the Department
7 ensure any negotiated rulemaking committee
8 addressing this issue have the time and expertise
9 that the issue so desperately needs. Yet, the
10 proposed negotiated rulemaking will cover a dozen
11 topics, all of which are substantively distinct
12 from the grant-to-loan conversion issue. We urge
13 the Department to break the TEACH Grant issue off
14 into a separate but parallel negotiated rulemaking
15 committee to meet during this school year. That
16 committee should include negotiators with
17 expertise in the TEACH Grant program, the options
18 available to teachers with respect to federal aid
19 and servicing issues, particularly in the context
20 of a federal grant program.

21 MR. WASHINGTON: Twenty seconds left.

22 MS. MURRAY: Most importantly, the

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1 committee should include teachers who have been
2 harmed by previous conversions and those who
3 currently have grants. Their voices must be at the
4 table. Thank you.

5 MR. WASHINGTON: Thank you.
6 Christopher J. Madaio.

7 MR. MADAIO: Good morning. My name is
8 Chris Madaio. I am an assistant attorney general
9 in the Office of the Attorney General of Maryland
10 in the Consumer Protection Division.

11 State attorneys general are finding and
12 prosecuting fraud in the higher education space.
13 We've done it for years, and we are still fighting
14 these fights today. For instance, relatively
15 recently, the California attorney general brought
16 a consumer fraud case against Ashford University,
17 and various states have ongoing investigations
18 that are currently non-public.

19 In many cases, however, all our offices
20 can do is try to stop the conduct in the future
21 because we don't have the power to help students
22 with the federal loans that they incur as a result

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1 of the conduct, the past conduct of the schools.
2 For instance, the student who took out \$50,000 in
3 loans for a distance education nursing program but
4 was never told that they couldn't get a license in
5 the state that they lived in, we can't -- we can't
6 help that student erase their loans. The student
7 who went to a school whose accreditor did no real
8 oversight when the school was using high pressure
9 boiler room sales tactics and inaccurate job
10 placement rates, we can't erase that student's
11 loans. All we can do is try to stop conduct in the
12 future and try to attempt to prosecute the school
13 individually.

14 In order to help students, we need
15 stronger oversight, for instance, of distance
16 education. States which people always say are the
17 laboratories of democracy and are a clear leg of
18 the higher education triad should be permitted to
19 be those laboratories. Some states may want to act
20 as a more stringent gatekeeper for schools to be
21 authorized in their state than other states.
22 Those states that want to regulate schools who

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1 enroll their residents, despite those schools not
2 having a ground presence in their state, should be
3 able to do so and should not be limited by the rules
4 of SARA. Instead, SARA should have to change to
5 allow states to apply the regulations and statutes
6 that those states deem necessary upon schools that
7 enroll their residents, even if those schools do
8 not have a physical presence in their state.

9 So instead of rewriting the distance
10 education rule at this time that was set to go into
11 effect in July, I think I would encourage, my office
12 would encourage the Department to let the rule take
13 effect, study it, and consider rulemaking in the
14 future. As the prior commenter mentioned, there
15 is too much in this rule. That is something that
16 should be broken out and done individually at a
17 future date after it's been studied.

18 If the Department really wants to
19 regulate accreditor standards, the negotiators
20 should consider whether additional clear
21 requirements could be added, not just whether
22 standards for accreditors should be eliminated.

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1 Accreditors should ensure that schools are not
2 committing fraud by monitoring the job placement
3 rates that schools are publishing more deeply than
4 they're currently doing and monitoring recruitment
5 methods at all of their accredited schools, not
6 just some, certainly not just a sliver, instead of
7 accepting what schools tell them.

8 Accreditors should consider
9 governmental actions, like state attorneys
10 general, in their oversight of schools and be
11 proactive about finding out about investigations
12 or cases that are pending and complaints that
13 states are receiving. But, instead, accreditors
14 have certainly, in certain sectors, have a history
15 of not checking what schools promise to students
16 and essentially functioning as a rubber stamp,
17 which does not allow students to make an informed
18 decision on where to obtain their education and
19 take out a significant amount of loans to do so.

20 The Department should not reduce its
21 oversight of accreditors but, instead, should
22 enhance and clarify the standards that accreditors

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1 need to live up to.

2 I served as a negotiator on the Gainful
3 Employment Negotiating Committee and saw firsthand
4 how hard it can be to reach consensus, especially
5 on a contentious issue. Cramming all of these
6 topics into one negotiating rulemaking session
7 doesn't even give it a chance. There will be no
8 real usefulness to a negotiating committee with
9 this many issues when nothing can really be
10 discussed in the detail that these issues really
11 need. Gainful was complicated enough by itself.
12 I couldn't have imagined doing gainful and borrower
13 defense, for instance, at the same time.

14 And all it appears is that --

15 MR. WASHINGTON: Twenty seconds left.

16 MR. MADAIIO: Thank you. The
17 Department has no intention of actually seeking
18 consensus and instead is treating the negotiated
19 rulemaking as something it simply must get through.

20 A lot of schools say they provide access
21 to an education for students who otherwise wouldn't
22 get one. Student loan debt that can never be

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1 repaid is access to nothing but a more difficult
2 life for people who already --

3 MR. WASHINGTON: Time.

4 MR. MADAIIO: -- did not have the
5 privilege that many of us in this room were born
6 with. Please think of those students when
7 negotiating this rule.

8 MR. WASHINGTON: Thank you. Clare
9 McCann.

10 MS. MCCANN: Good morning. Thank you
11 for the opportunity to comment on the Department's
12 rulemaking agenda. I'm Clare McCann. I work at
13 New America, which is a non-partisan think tank,
14 and we have also submitted more detailed written
15 comments, and I urge you to consider those
16 carefully, as well.

17 The Department's agenda is overly
18 ambitious. A single rulemaking panel cannot
19 adequately cover each of these issues in a manner
20 that each topic deserves and in the manner that the
21 students and taxpayers the rules are meant to
22 protect deserve.

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1 Those who would be best suited to
2 negotiate on the topic of accreditation, for
3 example, are not the same negotiators with
4 expertise on the TEACH Grant program. Such a large
5 and disparate set of issues precludes any
6 possibility for thoughtful consideration of these
7 rules, and we urge the Department to reconsider its
8 regulatory scope.

9 I'm going to address just a few of our
10 biggest areas of concerns today. New America has
11 long championed innovations in higher education,
12 particularly for promising practices aimed at
13 serving students whom traditional higher education
14 has not served well. But we do not believe that
15 any and every innovation will serve students well,
16 and we know that opening the federal spigot to
17 innovations that don't include robust
18 accountability for outcomes will inevitably harm
19 the very students who most need the benefits of a
20 quality higher education. Abdicating the federal
21 role and deferring to accreditors and the states
22 to protect students and taxpayers hasn't worked,

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1 and it won't work this time either.

2 The accreditation system has seen
3 massive failures in recent years, yet many agencies
4 continue to fail to seriously consider students'
5 outcomes. Any overhaul of the accreditation
6 regulation should encourage agencies to take
7 serious action on poor-performing institutions,
8 require greater transparency from accreditors, and
9 hold agencies to high standards in the Department's
10 own recognition proceedings.

11 States are another vital but
12 underutilized part of the program integrity triad.
13 Baseline expectations for institutions to
14 demonstrate they have met the requirements of the
15 states in which they operate and enroll students,
16 like those in the state authorization rule the
17 Department delayed earlier this year, are critical
18 to guarantee that no student falls through the
19 cracks of these consumer protections.

20 The Department shouldn't waste government
21 resources reopening these common sense rules.

22 We're also concerned the Department

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1 will step into Congress's jurisdiction to redefine
2 regular and substantive interaction requirements.
3 These regulations governing distance education
4 programs are the sole statutory distinction,
5 created at the recommendation of the Bush
6 administration, between distance ed programs and
7 correspondence programs. They have effectively
8 helped to prevent many of the abuses spotted in
9 correspondence education in conjunction with the
10 credit hour and other rules, and we urge against
11 weakening these rules for distance education
12 programs.

13 The federal credit hour rule helps
14 create a common currency through which the
15 Department disperses federal student aid dollars.
16 Following an inspector general review that
17 identified credit hour abuses by schools and
18 insufficient oversight by accreditors, the
19 Department developed a definition of a credit hour
20 that ensures consideration for both time and
21 learning-based measures and has allowed innovative
22 competency-based education programs to flourish in

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1 recent years. Eliminating the credit hour rule in
2 an environment without strong accountability on
3 outcomes presents a clear and unacceptable risk to
4 students and taxpayers.

5 We also strongly oppose the
6 Department's plans to apparently increase the
7 amount of an educational program that an
8 institution can outsource. While students and
9 taxpayers are assured today that their hard-earned
10 dollars are paying for a program that has at least
11 met the requirements of their state accreditor and
12 the Department, that is not the case if
13 institutions are permitted to outsource most of
14 their education to untested and unaccountable
15 providers. Lifting that cap would open the
16 floodgates to every bad actor that knows it can't
17 get or keep accreditation.

18 And, finally, while we agree that the
19 TEACH Grant program must be improved to minimize
20 inadvertent grant-to-loan conversions and improve
21 outcomes for grant recipients, this issue should
22 not be considered as simply an add-on to the already

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1 overwhelming portfolio of issues that the
2 Department intends to rewrite.

3 In short, the Department's proposed
4 rulemaking agenda hides behind the rhetoric of
5 innovation without recognizing the importance of
6 these rules in protecting students and taxpayers.
7 And, again, we urge the Department to reconsider
8 its regulatory scope and maintain these important
9 rules.

10 MR. WASHINGTON: Thank you. Michael
11 Poliakoff.

12 MR. POLIAKOFF: Good morning. I'm
13 Michael Poliakoff, the President of the American
14 Council of Trustees and Alumni. And I first want
15 to thank you for convening this rulemaking session
16 on the issue of accreditation. It is, without
17 question, among the most important challenges to
18 improving the American higher education system.

19 The concerns with the current system of
20 accreditation are numerous and transcend partisan
21 and ideological lines. In a moment when public
22 confidence in higher education seems to be

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1 slipping, it has rarely been more important that
2 quality assurance mechanisms function as they
3 should.

4 At the same time, it is crucial, and
5 this is what I will emphasize today, that
6 institutional autonomy be protected and that
7 institutions are allowed to perform their missions
8 as defined by their charters and their boards of
9 trustees.

10 It has been said that the genius of the
11 American higher education system is that it is not
12 a system. The diversity and decentralized nature
13 of American higher education has historically been
14 one of its greatest strengths. Though the
15 regional accreditation system has historically
16 been the means to balance these considerations, it
17 has become clear that the current system falls very
18 short on both counts. On the one hand, several
19 recent studies have shown that despite the massive
20 increase in the cost of higher education, many
21 students are failing actually to learn much from
22 the college experience, yet the institutions that

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1 have ostensibly taught them remain accredited and
2 in good standing. On the other hand, the
3 accreditation process often proves onerous and
4 wildly expensive for institutions while failing to
5 guarantee quality.

6 But even of greater concern, which is
7 my primary topic for today, is the threat that
8 accreditors often represent to institutional
9 autonomy and mission. Though the Higher Education
10 Act specifies ten standards by which institutions
11 are to be assessed for the purpose of receiving
12 Title IV funding, a loophole in the law allows
13 accreditors to impose standards beyond those ten.
14 A, so to speak, elastic clause, 20 USC 1099b,
15 subsection (g), allows for overreach way beyond the
16 statutory mission of guaranteeing an education of
17 quality.

18 Many institutions have found
19 themselves on notice from their accreditor because
20 of internal governance issues, which are not among
21 the specified standards. Historically, Thomas
22 Aquinas College, with its fabled, storied Great

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1 Books Program; Westminster Theological; more
2 recently Gordon College; and, even as we speak, the
3 Higher Learning Commission, which accredits higher
4 education institutions in 19 states, is
5 considering a proposed change in its standards that
6 could threaten religious institutions' ability to
7 carry out their mission.

8 Ideally, this elastic clause, as I'm
9 calling it, would be fixed legislatively. But
10 there are measures that can be taken in regulation,
11 which is the purpose of speaking today.
12 Specifically, the Department should clarify that
13 accreditation for the purpose of access to Title
14 IV funds may only be connected to the ten standards
15 enumerated in the law. Accreditors, as private
16 and voluntary membership organizations, are, of
17 course, free to impose any standards they would
18 like, but these arbitrary standards should not
19 threaten the ability of institutions to exist or
20 function due to a loss of their Title IV funding.
21 Anything we do must respect institutional autonomy
22 and mission.

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1 Our storied colleges and universities
2 need a system of quality control that is focused
3 on outcomes, not intrusion into the prerogatives,
4 mission, and, indeed, liberty of America's diverse
5 institutions. Thank you.

6 MR. WASHINGTON: Thank you. Stacey
7 Borasky.

8 MS. BORASKY: Good morning. I'm
9 Stacey Borasky, the Director of Accreditation with
10 the Council on Social Work Education. Thank you
11 for the opportunity to speak today. CSWE is a
12 national association representing social work
13 education in the United States. CSWE's membership
14 consists of more than 2500 individual members and
15 more than 700 accredited masters and baccalaureate
16 programs of professional social work education.

17 CSWE supports quality social work
18 education and understands the role that social
19 workers play in achieving the profession's goal of
20 social and economic justice. As the sole
21 accrediting body for social work programs in the
22 United States and its territories, CSWE's

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1 Commission on Accreditation establishes
2 expectations for academic quality through its
3 educational policy and accreditation standards.
4 All of the commission's accreditation decisions
5 are accompanied by reasoned opinions that promote
6 the preparation of social work graduates who can
7 practice effectively in an increasingly diverse
8 and global society.

9 CSWE appreciates this opportunity to
10 provide comments that will inform the work of the
11 rulemaking committee. An issue that the
12 rulemaking committee should consider is the role
13 of programmatic or specialized accreditors in
14 ensuring high-quality academic programs.
15 Programmatic accreditation serves an important
16 function by ensuring the preparation of competent
17 professionals in the field or discipline of choice.

18 By drawing upon professional judgments
19 and implementing a systematic examination of
20 compliance with established standards,
21 programmatic accreditors have the unique ability
22 to set and assess quality measures within diverse

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1 institutions and regional environments.
2 Programmatic accreditors are equipped with the
3 expertise and knowledge necessary for improving
4 programs, ensuring quality, and promoting
5 competence in professional practice.

6 CSWE also supports the relationship
7 programmatic accreditors have with sponsoring
8 stakeholder organizations and the exercise of
9 extreme vigilance in implementation of robust
10 safeguards that these organizations exert to avoid
11 undue influence on the vital accreditation
12 process.

13 CSWE believes the federal government's
14 primary responsibility in accreditation is the
15 enforcement of law or regulations governing the use
16 of Title IV federal student aid funds, not
17 determining educational quality. Accreditors
18 hold the primary responsibility regarding
19 educational quality and institutional
20 performance.

21 CSWE supports the current
22 accreditation system and the role each of the

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1 important players of the triad in the traditional
2 accreditation process plays, including the U.S.
3 Department of Education, the state authorizing
4 agencies, and the regional accreditors. CSWE
5 supports the elimination of regulations that
6 undermine the strength and independence of the
7 accreditation process. We also support the
8 streamlining of current regulations and oppose the
9 creation of new regulations that would undermine
10 the independence of the accreditation process.

11 CSWE firmly believes that outcomes are
12 best determined by the academic accrediting
13 community and that outcome measurements should not
14 be mandated by the federal government. CSWE
15 believes that with input from the public and the
16 professional workforce, specialized accreditors
17 have the unique ability to set and assess quality
18 measures within diverse institutions and regional
19 environments, taking into account market and
20 resource needs.

21 Ed should support policies that
22 recognize the important role of professional

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1 specialized accreditors, especially in improving
2 programs, demonstrating outcomes, ensuring
3 quality, and providing professional expertise.

4 CSWE has concerns about the committee's
5 interest in addressing regulations regarding the
6 eligibility of faith-based entities to participate
7 in Title IV. Institutional diversity is an
8 important strength of the U.S. higher education
9 system. Institutional mission, however, should
10 not interfere with the standards that are required
11 for professional practice in specific disciplines.

12 The educational policy and
13 accreditation standards approved by our commission
14 state the purpose of the social work profession is
15 to promote human and community well-being. CSWE
16 is committed to an accreditation practice that
17 makes possible the development of a social work
18 profession, which is able to, quote, promote human
19 and community well-being.

20 Programmatic accreditors recognize the
21 solemn duty and responsibility they have to
22 ensuring fairness, quality, objectivity, and rigor

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1 in the accreditation process. Thank you.

2 MR. WASHINGTON: Thank you. Bob
3 Shireman.

4 MR. SHIREMAN: Good morning. Thank
5 you for the opportunity to testify. My name is
6 Robert Shireman. I am a senior fellow at The
7 Century Foundation.

8 The first thing I think is important to
9 emphasize is that the Department of Education does
10 not, as a general matter, oversee higher education.
11 Instead, the Title IV regulations are like a
12 purchase order from taxpayers setting guidelines
13 for whether an education is worth buying with Pell
14 Grants and student loans.

15 Weakening rules, like the already weak
16 regular and substantive interaction requirement,
17 will absolutely lead to diploma mills financed by
18 taxpayers. We will have so-called colleges and
19 universities that are -- sorry, excuse me. We will
20 have so-called colleges and universities that
21 essentially put a textbook online with a few
22 self-administered questions, and they will call it

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1 a course. Rather than textbooks outrageously
2 priced at a couple of hundred dollars, these will
3 be textbooks that the U.S. government is shelling
4 out thousands of dollars for with no real gains for
5 students.

6 That said, it is true that having a
7 brick and mortar campus does not necessarily
8 prevent situations where very little is expected
9 of students, schools where students do not get the
10 type and amount of academic exercises, the writing,
11 reading, listening, presenting, producing, and
12 responding to expert feedback that constitute
13 quality learning. The problem is that the
14 quantity measure that we have long used for
15 accountability purposes in higher education is
16 scheduled classroom hours.

17 Eight years ago, when I was at the
18 Department of Education, I thought that we fixed
19 that problem. Rather than federal aid purchasing
20 seat time, we clarified by regulation that for
21 federal aid purposes a credit hour is, quote, an
22 amount of work verified by evidence of student

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1 achievement.

2 It was not my imagination that we made
3 this change. The Department's own inspector
4 general has said very clearly the federal
5 government regulation defining a credit hour does
6 not mandate the classroom hours or seat time
7 required for a course or program, yet we still hear
8 complaints that the federal government is
9 requiring seat time.

10 The complaints are valid, but they are
11 not valid about the federal government. It is
12 about the practices of accreditors. For example,
13 the Higher Learning Commission tells its visiting
14 teams to count the lecture hours in the course
15 catalog or syllabus as, quote, the easiest approach
16 to documenting compliance with the credit hour
17 rule. Middle States also allows the mere use of
18 course schedules, time scheduled in the classroom,
19 as the credit hour measure. WASC Senior is the
20 same. Reviewers are supposed to check that the
21 number of credit hours matches the classroom hours
22 and nothing more.

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1 There is no need to change the
2 regulation. Instead, the Department should take
3 that issue off the agenda and instead notify
4 accreditors that they will be asked for evidence
5 that their reviews of schools examine credit hour
6 allocations on the basis of student work, not seat
7 time. Enforcing the work-based credit hour could
8 be one of the most effective accountability tools
9 available to the Department, perhaps making many
10 other regulations less important.

11 The other rule, by the way, that I would
12 put into that category of potentially
13 game-changing is a 90/10 rule without the
14 loopholes. There is nothing more powerful than a
15 discerning customer holding a school accountable.
16 The University of Phoenix was a quality school for
17 many years when part of its strategy was catering
18 to employers who paid for their employees to
19 attend. The school became predatory when it no
20 longer had that customer accountability but
21 instead was just using federal aid as a hook to
22 expand enrollment rapidly.

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1 I don't think there's a way of closing
2 those loopholes by regulation, but it is useful to
3 keep in mind how many of the regulations we have
4 would not be necessary if we had a 90/10 type rule
5 where the loopholes were closed.

6 Thank you very much. I will submit
7 some further information about the credit hour now
8 and additional written comments by next week.

9 MR. WASHINGTON: Thank you. Dr. Merodie
10 Hancock. Oh, I'm sorry. Alyssa Picard is next.
11 I apologize.

12 MS. PICARD: My name is Alyssa Picard.
13 I'm the Director of the Higher Education Division
14 of the American Federation of Teachers, a union of
15 1.7 million members, of whom 230,000 are college
16 and university faculty and professional staff.

17 As I begin, I would like to emphasize
18 that each of us here today has five minutes to
19 address 15 topics. All of them are significant to
20 the shape of American higher education and the
21 federal student aid program. Five of them are
22 related to accreditation, and ten others, numbered

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1 in the initial notice, vary from the separation of
2 church and state to the definition of the credit
3 hour. I will not be able to address all of these
4 topics in five minutes, and I don't think a
5 negotiated rulemaking panel will be able to reach
6 consensus on all these topics over the estimated
7 nine days. This will allow the Department to write
8 these rules any way it chooses, which I suspect is
9 the intent of this Potemkin process.

10 If I'm wrong and the Department's
11 intent here is sincere, we ask that you place on
12 this panel a meaningful number of higher education
13 faculty because their experiences should shape
14 rulemaking in these areas, particularly on
15 accreditation, regular and substantive
16 interaction, and credit hour definitions. Most
17 specifically, I urge you to include faculty members
18 of various statuses on and off the tenure track who
19 teach at multiple types of institutions both in
20 person and online. Having faculty with a variety
21 of experiences will be especially important when
22 considering the definition of regular and

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1 substantive interaction.

2 The fact that faculty teach students
3 and that regular and substantive interaction by
4 faculty and students is essential to the
5 educational process is such a cornerstone of higher
6 education that some may wonder why it even needs
7 to be mentioned. I will provide some background
8 for the record.

9 After widespread abuse of the student
10 aid program by purveyors of correspondence courses
11 in the 1980s and '90s whose students would receive
12 a packet of materials by mail and never interact
13 with an educator in any venue, Congress limited the
14 amount of aid a student could receive for
15 correspondence courses in the 1992 HEA.

16 By the early 2000s, when establishing
17 access to full student aid funding for new and
18 legitimately educational online classes, Congress
19 zeroed in on the thing that makes those classes
20 meaningful, regular and substantive interaction
21 with the instructor, and that language was included
22 in the 2008 Higher Education Act. Any revision of

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1 this definition that takes faculty out of the
2 educational process is defying Congress's
3 instruction, not to mention common sense, and it's
4 not worthy of taxpayer investment.

5 I would like to use my remaining time
6 to address accreditation's oversight of
7 institutions of higher education and its
8 relationship to educational quality. The
9 American system of independent, peer-driven
10 accreditation engages a triad of accreditors,
11 government entities, and the institutions
12 themselves working to ensure quality higher
13 education. The point of such a review is a
14 collaborative dialogue concerning these matters
15 and cooperative, rather than punitive, assistance.

16 This system may read as unfamiliar and,
17 thus, undesirable to free marketeers because
18 higher education is not a product. But because
19 higher education is not a product, attempts to
20 inject market forces or import practices from
21 profit-driven institutions into accreditation
22 don't make sense, and they won't improve

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1 educational quality.

2 Most critically, accreditation reforms
3 that shift the burden to students and families to
4 discern wisely among competing options that have
5 received the imprimatur of federal Title IV funding
6 too freely granted are bound to fail. The
7 overwhelming majority of students are
8 geographically limited in their choice of
9 institutions of higher education. They,
10 therefore, are not and will never be shopping in
11 a free market. It is facile, at best, to hatch a
12 plan to lower barriers to accreditation with the
13 stated intent that the free market will weed out
14 bad actors. It won't. Accreditors should not be
15 placing their seals of approval and the attendant
16 access to taxpayer funds on every assortment of
17 badges that can be pushed out a door, whether
18 physical or electronic.

19 If the Department sincerely wants to
20 make accreditors more responsive to stakeholder
21 concerns, that could happen in a variety of ways
22 via increased transparency in the accreditation

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1 process. For instance, site visit reports and
2 institutional self-analyses could be made
3 available to the public and to researchers. This
4 would go a long way toward preventing such national
5 embarrassments as continued accreditation of
6 institutions that hire people to pretend to be
7 faculty and students when they actually have no
8 faculty or students and accreditors who cannot
9 detect this fraud as it is perpetrated.

10 Accreditors could be required to
11 disclose the paperwork burden of compliance with
12 their directives, disclose the fees associated
13 with their services, retain their documentation,
14 and observe open meeting laws. Anonymous feedback
15 about accreditation bodies could be solicited, and
16 whistleblower protection strengthened to give
17 institutions a voice beyond NACIQI to share
18 concerns about accreditation processes.

19 Again, this negotiated rulemaking
20 appears to be taking on more --

21 MR. WASHINGTON: Twenty seconds left.

22 MS. PICKARD: -- than is reasonable for

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1 three three-day negotiator meetings, even on the
2 two subcommittees described. But given the
3 Department's action on borrower defense and
4 gainful employment, this is hardly surprising.
5 Nevertheless, hope springs eternal in the hearts
6 of Beltway policy wonks. We urge you to
7 demonstrate seriousness about this process and
8 include faculty in it.

9 MR. WASHINGTON: Thank you. Dr.
10 Merodie Hancock.

11 DR. HANCOCK: Good morning. My name
12 is Merodie Hancock, and I'm the President of Thomas
13 Edison State University. Thomas Edison was
14 created by the state of New Jersey in 1972 to
15 provide flexible, high-quality collegiate
16 learning opportunities for self-directed adults.
17 We are among the first institutions to create what
18 is now known as prior learning assessment. We are
19 also one of the first regionally accredited
20 universities to offer complete degree programs
21 online. We are noted for our innovation in serving
22 adult learners and proud of the recognition we

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1 receive for the quality and integrity of our
2 academic work.

3 Our success is measured, in part, by low
4 student default rates, high adult learner
5 graduation outcomes, and outstanding pass rates on
6 professional exams. It is a testimony to the
7 strength of our model.

8 Since its founding, Thomas Edison has
9 emphasized the direct assessment of student
10 learning and has disassociated seat time from
11 academic recognition. As a public university
12 committed to access, we focus on and measure
13 outcomes, rather than inputs. We develop our
14 programs with the needs of non-traditional
15 students in mind and emphasize fostering success
16 through learning diagnostics, curricular
17 flexibility, 24/7 student support, and real-time
18 professionally-aligned academic programs.

19 As a national leader in the assessment
20 of learning, Thomas Edison values whether a student
21 possesses college-level knowledge, not how they
22 acquired that knowledge. Perhaps Thomas Edison is

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1 the most appropriate name because, as a side note,
2 Thomas Edison the man certainly had college-level
3 learning while not college-level credits.

4 In alignment with our mission, our goal
5 now is to leverage our expertise to the new CBE
6 programs that draw upon a student's knowledge and
7 experience to help them earn meaningful
8 credentials that employers value. Congress
9 established the initial framework to implement and
10 disperse Title IV aid to direct assessment programs
11 in 2005, but reforms are long overdue.

12 We continue to support the most
13 accessible, timely, and affordable pathways to a
14 college education and encourage the Department to
15 immediately address ways to provide more
16 flexibility to reputable institutions that seek to
17 establish and expand their competency-based
18 education programs. Specifically, the following
19 actions are needed: address current definitions
20 for regular and substantive interaction between
21 students and instructors; support options for
22 modification, including broadening the definition

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1 of what constitutes instructors to include other
2 academic staff and allowance of the use of
3 asynchronous exchange and feedback between
4 instructors, learning technologies, and students
5 and, second, improve current restrictive
6 requirements for mapping competencies to credit
7 hours to focus more on meaningful and measurable
8 outcomes, rather than seat time.

9 Further, regarding the Department's
10 EQUIP program, we recommend stabilizing the roles
11 and increasing partner consultation. Midstream
12 changes add time and cost to the project while
13 jeopardizing integrity. EQUIP was launched two
14 years ago, yet only one of eight projects has begun.

15 As examples of distracting changes, a
16 non-traditional provider was required to convert
17 from self-paced subscription approach to one bound
18 by three-month terms. This appears to be in
19 conflict with an experiment to evaluate the
20 effectiveness of alternative and self-paced
21 models.

22 Excessive regulation restricts the

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1 ability of institutions to innovate in ways that
2 benefit consumers. While there's no implicit seat
3 time requirement, an institution that is offering
4 asynchronous online courses, we need to determine
5 the amount of student work expected in each course
6 in order to achieve the course objectives and then
7 assign a credit hour based on the equivalent amount
8 of work.

9 Universities should be allowed to
10 assign credit based on the quality of academic
11 content and student outcomes. To move in this
12 direction, a demonstration project that pilots
13 alternatives to the current definition of the
14 credit hour would allow controlled innovation
15 within a group of trusted institutions. Further,
16 an EQUIP partner advisory council could vet program
17 changes and evaluate potential consequences on the
18 spirit of the program prior to implementation.

19 In closing, in a time when over 60
20 percent of adults have little to no college
21 education, we must support innovation and create
22 new Title IV options to fuel our knowledge economy

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1 and fulfill academic goals for access, equity, and
2 transfer of education. Current regulations
3 restrict academic innovation and drive up
4 instructional costs and time to degree.

5 We strongly encourage the Department to
6 replace these regulations with a regulatory
7 framework that more appropriately drives
8 accountability and innovation and recognizes the
9 efforts of institutions like Thomas Edison to
10 support non-traditional learners through
11 progressive, yet objectively measurable, methods.
12 Thank you.

13 MR. WASHINGTON: Thank you. Ashley
14 Reich.

15 MS. REICH: Good morning. My name is
16 Ashley Reich. I'm the Vice President of Student
17 Financial Services at Liberty University. I've
18 been working in higher education for a little over
19 11 years and, most recently, was a primary
20 non-federal negotiator on the borrower defense to
21 repayment rulemaking panel representing
22 not-for-profit institutions.

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1 I'd like to thank the Department for
2 another opportunity to voice our desires with this
3 upcoming regulatory package, and I hope that we are
4 able to have another seat at the table later this
5 year or early in the spring.

6 I would like to first acknowledge the
7 Department for taking on such a substantial
8 regulatory package through the process of
9 negotiated rulemaking, and I would have to concur
10 that this is going to be very difficult to get
11 through with this many issues, and I'm only able
12 to comment on a few of them as a result.

13 There are many crucial issues that will
14 be discussed between the panels, and selecting the
15 right individuals to sit at the table will be key.
16 In addition, it is important to note that the
17 Department has decided to review several items that
18 seem to be an overreach that would include the
19 definition of a credit hour, state authorization,
20 accreditation issues, and other
21 academically-related items. We would advise the
22 Department to utilize established mechanisms to

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1 reduce unnecessary interference in educational
2 standards and definitions that have worked for
3 decades.

4 The first item that I would like to
5 focus on today would be state authorization. Our
6 institution has been impacted by the state
7 authorization process due to a very large online
8 population, as well as various arrangements that
9 trigger a physical presence within certain states.
10 With our experience, federal oversight of this
11 process is not needed because we work heavily with
12 the states throughout the approval process.

13 The approved reciprocity agreement
14 process largely works for institutions of higher
15 education, and maintaining the process as-is would
16 reduce the administrative burden to the
17 institution and would promote the availability of
18 affordable and accessible education for students.

19 In addition, as part of the reciprocity
20 agreement, we are required to provide various
21 disclosures surrounding the complaint process and
22 licensure programs, and other states require

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1 certain disclosure verbiage to be placed on our
2 website once an approval has been given. Another
3 disclosure requirement by the Department is
4 unnecessary and creates additional man hours that
5 should be spent counseling students and working
6 through other unduplicated federal requirements.
7 We would welcome collaboration with the Department
8 on the impact of additional requirements for state
9 authorization.

10 In regards to accreditation, the
11 established accreditation process exists for the
12 dual purpose of evaluating the quality of higher
13 education for improvement and to determine
14 institutional eligibility for federal funding from
15 the Department of Education. Additionally,
16 recent concern regarding the strength and rigor of
17 the accreditation process has been voiced.
18 Important changes must be made in the areas of
19 enhancing accreditation evaluation teams,
20 integrating a business process review component,
21 moving authority over standards from Ed to the
22 accreditation bodies, standardizing definitions

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1 and metrics, encouraging innovation to lower
2 costs, and eliminating regulatory burden. The
3 Department has the authority to revoke accreditor
4 recognition if a particular agency is determined
5 to be ineffective. We would support a scale back
6 of regulatory oversight in this area.

7 For eliminating barriers to innovation
8 and competition, in the world of higher education
9 today, eliminating barriers is needed. Many
10 schools are working on creating programs that
11 promote a more unique way of approaching
12 educational options for students. Our
13 institution has a substantial adult learner
14 population that are looking to gain another
15 credential to either add to their already completed
16 degree program or to complete for the first time
17 in order to increase their marketability and job
18 readiness skills in the workforce. Many students
19 are having to juggle a career and raising a family
20 while attempting to pursue an education, and
21 allowing flexibility and self-pace options are
22 exactly what many students are requesting.

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1 It is crucial that institutions
2 continue to think outside of the box when it comes
3 to learning opportunities. With trades on the
4 rise and many jobs left vacant, I would like to
5 encourage the Department to allow creative
6 solutions to gaining an education, whether that
7 means a credential or another degree program.

8 And then, lastly, I'll focus on the
9 TEACH Grant conversions. When I actually started
10 at Liberty, I started the TEACH Grant program. And
11 I believe the initial onset of this program was met
12 with good intentions by the Department. However,
13 it's unfortunate to see that the program has had
14 many issues when it comes to the grant-to-loan
15 improper conversions. In a recent article by NPR,
16 it was reported that over 10,000 incorrect
17 conversions took place by fed loan servicing.
18 It's apparent that there needs to be a better system
19 in place to review eligible candidates instead of
20 unnecessarily strapping these students with
21 inaccurate student loan debt.

22 MR. WASHINGTON: Twenty seconds left.

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1 MS. REICH: If left unfixed, students
2 are going to see capitalized interest, as well as
3 required payments that, if not made, will damage
4 their credit.

5 In closing, this has been a short
6 summary of the issues most important to our
7 institution. We will also be uploading an
8 expanded version of these comments.

9 Thank you again for the opportunity to
10 testify, and we stand ready to assist the
11 Department in any way throughout these
12 negotiations.

13 MR. WASHINGTON: Thank you. W. Brett
14 Robertson.

15 MR. ROBERTSON: Good morning. Thank
16 you for the opportunity to present this testimony
17 on behalf of The Institute for College Access and
18 Success, or TICAS, on the Education Department's
19 2019 regulatory agenda.

20 TICAS is an independent non-profit
21 organization that works to make higher education
22 more available and affordable for people of all

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1 backgrounds. Each year, the federal government
2 invests over \$150 billion in student loans,
3 scholarships, and tax credits in higher and career
4 education. The federal government can play a role
5 in supporting high-quality innovation, but we
6 recognize that the students most in need of higher
7 education benefits are often harmed when federal
8 money flows to innovation with too little
9 accountability attached.

10 We are concerned that the Department's
11 regulatory agenda for 2019 will lead to weakening
12 of rules critical to defining higher education and
13 guidelines designed to protect students and
14 taxpayer investments. First, weakening rules
15 that outline some minimal expectation of
16 teacher-student interaction could mean that
17 students and taxpayers would end up paying high
18 costs for programs that are essentially online
19 textbooks. The current regular and substantive
20 requirement was created in response to a long
21 history of fraud and abuse in correspondence
22 education. It was enacted with bipartisan

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1 agreement in Congress.

2 Second, weakening the definition of
3 what constitutes a credit hour would undermine the
4 method of ensuring students are getting the
5 education they pay for. The Department created
6 the current credit hour definition in 2010 in
7 response to findings from its independent
8 inspector general that institutions were inflating
9 the value of college courses with little or no
10 oversight from accreditors. The rule clarified
11 that the credit hour signified a set amount of
12 academic work by students while still allowing for
13 flexible innovative approaches.

14 Third, weakening the limitations on
15 schools' ability to outsource educational
16 programming would undermine the oversight system
17 tasked with ensuring sufficient educational
18 quality and leave students confused over who was
19 providing the education they are buying. Fourth,
20 weakening protection for students and safeguards
21 for taxpayer dollars through changes to state
22 authorization or accreditation rules risks opening

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1 the floodgates to unscrupulous schools,
2 undermining the quality of higher education, and
3 the integrity of federal spending.

4 There is room to improve federal law in
5 some of these areas. For example, TICAS just last
6 week released a report outlining how the distance
7 education state authorization rule must be
8 strengthened by prohibiting institutions from
9 enrolling students in programs that do not satisfy
10 state professional licensing requirements,
11 requiring states to maintain tuition recovery
12 funds, providing guidelines for improved student
13 complaint systems with increased collaboration
14 among states, and specifying that states must
15 retain decision-making authority over public
16 policy within any state authorization reciprocity
17 agreement.

18 In order to craft thoughtful
19 improvements in these areas, it is imperative that
20 the problems be defined carefully and precisely
21 beyond unsubstantiated claims about stifled
22 innovation. Furthermore, the Department's recent

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1 actions provide little assurance that it will
2 regulate responsibly. With a basic understanding
3 of historical abuses and the risks of recreating
4 them, already under the current administration the
5 Department has delayed a rule respecting state
6 sovereignty and oversight of distance education,
7 undermined state's ability to protect student loan
8 borrowers, ceased processing loan discharge
9 applications of borrowers lied to by their
10 institutions, and proposed weakening rules for
11 future cheated students, as well as proposed
12 gutting both disclosures and minimum required
13 standards to prevent gainful employment programs,
14 leaving students with debts they cannot afford.

15 We are deeply concerned that the
16 Department's forthcoming rulemaking will weaken
17 access to high quality higher education and key
18 consumer protections for today's students,
19 undermining the federal aid system through a new
20 wave of abuses. The Department's proposed 2019
21 regulatory proposals must not serve to line the
22 pockets of for-profit institutions, private

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1 companies, and unscrupulous providers with
2 students' and taxpayers' hard-earned dollars.
3 Thank you.

4 MR. WASHINGTON: Thank you. Deborah
5 Adair.

6 MS. ADAIR: Good morning. My name is
7 Deb Adair. I'm the Executive Director of Quality
8 Matters, which is a non-profit organization with
9 the mission to improve the quality of online
10 education by providing and applying
11 research-centered standards for online courses and
12 programs. And thank you for the opportunity to
13 provide my comment to the public record.

14 I'd like to address first the HEA
15 changes related to arrangements between an
16 institution and organization to provide a portion
17 of an educational program, and then, second, I have
18 some brief comments about the definition of a
19 distance education program.

20 The EQUIP Experimental Sites program
21 has demonstrated to me a significant challenge in
22 balancing student protection with the potential

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1 benefits of innovative approaches to education.
2 To get this right, and it's worth doing if we can
3 do it well, we need to better understand where the
4 risks for students really reside in an alternative
5 innovative model and appropriately mitigate that
6 risk. But we also need to understand where and how
7 our traditional approaches to oversight,
8 regulation, and compliance in the entire triad
9 actually co-opt a non-traditional model and rob it
10 of its potential impact.

11 Under our current system, even with
12 some policy waivers, higher education institutions
13 could be required to fit the round peg of the
14 innovation into the square hole of their compliance
15 obligations. They may have to reshape the
16 innovative model to address other elements -- to
17 meet their oversight requirements and, yet, may not
18 be prepared to address other elements of different
19 market-driven laissez-faire models that could
20 generate risk and inequities for students.

21 If we are serious about this change in
22 the HEA, we have to do more than make such

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1 arrangements possible through work-arounds. We
2 have to be serious about providing pathways and
3 providing tailored oversight that can reasonably
4 encourage the kinds of partnerships that will
5 actually serve students.

6 And on the second topic, I'd like to
7 suggest that quality distance education can be
8 delivered through regular and substantive
9 instructional interaction with both proactive and
10 reactive or just-in-time academic and student
11 support. It's important to recognize that active,
12 purposeful, and comprehensive instruction can be
13 entirely pre-planned by a qualified instructor, a
14 plan that can be regularly and substantively
15 enacted through the design and development of the
16 learning environment.

17 Rigorous instruction does not require
18 regular interaction with an instructor as long as
19 that instructor has appropriately planned and
20 designed an experience that delivers regular and
21 substantive instruction.

22 A student taking courses at a distance,

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1 or in-person for that matter, will also need
2 appropriate support. This can be proactive based
3 on data about student success, but a differentiator
4 between a correspondence course and distance
5 education would be that such academic and student
6 support should also be provided reactively or just
7 in time to support the student as unanticipated
8 needs arise.

9 The ability to spot a struggling
10 student and to offer appropriate support is a
11 necessary part of a quality learning experience at
12 a distance in a way that is not achieved in a
13 correspondence course. An instructor can use
14 technology to provide this support in more
15 meaningful and timely ways than is described in the
16 limited and dated language of regular and
17 substantive interaction with the instructor.

18 Thank you.

19 MR. WASHINGTON: Thank you. David
20 Baime.

21 MR. BAIME: Good morning. My name is
22 David Baime, and I'm the Senior Vice President for

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1 Government Relations at the American Association
2 of Community Colleges. The AACC represents the
3 nation's more than 1100 community colleges across
4 the country. My comments this morning will be
5 somewhat brief, and then we will be submitting
6 longer comments for the record.

7 The first thing we'd like to do is
8 commend the Department for undertaking this
9 review. It's long overdue. The regulatory
10 structure, along with the statutory basis for that,
11 is out of pace and behind where higher education
12 is at present. We recognize the challenge in
13 undertaking a review of all the issues the
14 Department has proposed in just three negotiated
15 rulemaking sessions, but we do think that the
16 opportunity for dialogue is important, and
17 certainly community colleges hope and expect to be
18 represented in that process.

19 I'm going to talk about four issues
20 today very briefly. First off, accreditation.
21 Of all the issues that are scheduled for review
22 under this negotiated rulemaking, accreditation

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1 is, without question, the most important topic
2 because, to a large degree, it is the overarching
3 guidance that is used and will provide and provides
4 the structures under which institutions operate.

5 As higher education innovates more and
6 as we diverge more from the traditional
7 classroom-based instruction done in credit hours
8 over a certain number of weeks, the role of
9 accreditation becomes ever more important, both
10 for its traditional quality assurance role which
11 needs to continue but also even more so for ensuring
12 that, as we move to new modes of delivery in
13 assessing students, that students are receiving
14 value for money, as it were. This applies to the
15 for-profit sector, the non-for-profit sector, and
16 across all of higher education because the
17 traditional metrics and yardsticks that we've used
18 to evaluate how much higher education we're buying,
19 in a very real respect that's what's at stake here.
20 We are in new territory, and, ultimately,
21 accreditors should be the primary agent
22 responsible for both, again, assuring quality as

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1 well as good value for money for all students in
2 all sectors of higher education.

3 To that extent, the emphasis and
4 requirements placed on accreditors for compliance,
5 both with Title IV regulations themselves but, more
6 broadly, with the approval process, needs to get
7 a thorough scouring in this Neg Reg. There is, we
8 hear from accreditors and our presidents or members
9 of those bodies constantly that the -- too much of
10 the focus of accreditors is on assuring continued
11 recognition.

12 More specifically, the whole issue of
13 substantive change. Of course, there's the
14 statutory definition, but it also, of course, is
15 implemented through regulations. That has proved
16 to be a big bottleneck for many community colleges
17 wanting to innovate in their programs. The
18 current guidance in this area is somewhat vague for
19 institutions, and we urge that that get a close look
20 in this negotiated rulemaking.

21 Also, the rule of construction to
22 safeguard the traditional role between

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1 institutions and accreditors from over federal
2 involvement is important to keep mindful of. And
3 then, finally, we've heard that the
4 standardization of terms and definitions that have
5 been required through the last administration has
6 required a certain amount of rigidity for
7 accreditors that they don't think is desirable.

8 A number of the commenters this morning
9 have talked about distance education and the
10 regular and substantive interaction statutory
11 requirement. We do hear that this has created some
12 problems for institutions in terms of compliance,
13 and, certainly, we think that better guidance from
14 the Department of Education is needed in this
15 regard.

16 Also, that statutory requirement
17 should be provided to online education only, not
18 other types of education and formats as has been
19 done.

20 Thirdly, very briefly,
21 competency-based education, this is an area that
22 community colleges have gotten deeply involved in

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1 very quickly. It's a great form of allowing
2 non-traditional learners and other learners to
3 work outside a traditional academic setting at
4 their own pace with guidance from institutions.

5 MR. WASHINGTON: Twenty seconds left.

6 MR. BAIME: We do emphasize that there
7 is a need for accreditors to regulate this very
8 carefully, and the Department needs to enable
9 accreditors to do that.

10 Thanks very much for giving me an
11 opportunity to present our views this morning.

12 MR. WASHINGTON: Thank you.
13 Josephine A. Welsh.

14 MS. WELSH: Good morning. I'm Josie
15 Welsh, Director of Institutional Effectiveness at
16 Missouri Southern State University. I also serve
17 as a peer reviewer for the Higher Learning
18 Commission. Thank you for hosting this session.

19 Regardless of the outcome of these
20 negotiations, a focus on the quality of teaching
21 and learning at our institutions remains central.
22 Unfortunately, the current system of quality

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1 assurance has created the 800-pound gorilla of
2 accreditation, assessment of student learning.

3 Passionate site visitors and peer
4 reviewers from regional accrediting agencies have,
5 I believe, unintentionally created a cult-like set
6 of expectations for prescriptive evidence of
7 student learning. You might recognize phrases
8 like closing the loop, making data-informed
9 decisions, and scoring student artifacts with
10 rubrics. It sounds impressive, doesn't it? Yet,
11 after 30 years of implementation, this approach to
12 assessment has failed to produce evidence of
13 increased student learning. Why?

14 Current accreditation standards make
15 no mention of data quality. Data garnered through
16 informal pedagogical tools, such as curriculum
17 maps, alignment of student learning outcomes,
18 rubric scores of small samples of student work, and
19 focus on verbs used in the articulation of student
20 learning outcomes are not the same as scientific
21 research findings that adhere to standard wisdom
22 of statistics, research design, and psychometrics.

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1 Obviously, not every degree program can produce
2 this sort of research.

3 The current accepted focus on the
4 dogmatic process of mapping, aligning, collecting,
5 and reporting countless program-level reports has
6 resulted in an assessment citation rate up to 50
7 percent by some accreditors for institutions
8 failing standards related to the assessment of
9 student learning. If a faculty members tells an
10 assessment director 50 percent of my students are
11 failing my course, that person will be directed to
12 do a better job teaching, yet the accreditors,
13 instead of changing these expectations by their
14 peer review teams, cite institutions and require
15 that they get on board and produce the maps, the
16 report, and the evidence.

17 Speaking with peer reviewers, I'm often
18 shocked that they think it's the federal
19 government, the Department, that's requiring these
20 reports. If you'll check Section 496 of the Higher
21 Education Act, it's not at all what it says. The
22 Department does not prescribe a formula for student

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1 learning assessment and, interestingly, neither do
2 the regional accreditors. The expectations
3 imposed on institutions appear to have emerged from
4 site visitors themselves. As a social
5 psychologist, I would call these expectations a
6 socially-constructed reality.

7 Unfortunately, the bureaucracy
8 resulting from this essentially crowd-sourced
9 expectation for student learning assessment is
10 creating barriers for institutions to fulfill
11 their missions and to evaluate teaching and
12 learning through reasonable means. They are
13 paying fines, they are having to do monitoring
14 reports, they are bringing in consultants, paying
15 for expensive software, all to be able to produce
16 these maps and reports in alignment of student
17 learning outcomes.

18 The current system for ensuring
19 students are learning is intellectually dishonest
20 and it's ethically corrosive. If the Department
21 can, in any way, encourage accrediting agencies to
22 promote real longitudinal, scientifically-sound

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1 evaluation research on student learning, to grant
2 institutions the time it takes to produce such
3 findings, to modify their training of peer
4 reviewers, and to recognize the myriad ways
5 institutions might be able to demonstrate student
6 achievement consistent with their missions, many
7 of us in the world of institutional effectiveness
8 would be most grateful.

9 Anecdotally, I'll give you examples
10 like grades don't count as assessment, counts of
11 people getting into graduate school don't count as
12 evidence of student learning. Where did we get
13 these ideas? If anybody at the Department can help
14 us undo those urban legends, I would be very
15 grateful.

16 MR. WASHINGTON: Thank you. Sara
17 Garcia.

18 MS. GARCIA: Thank you for the
19 opportunity to comment on the Department's intent
20 to establish a negotiated rulemaking committee.
21 My name is Sara Garcia, and today I speak on behalf
22 of the Center for American Progress's

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1 postsecondary education team. We are deeply
2 concerned that the proposed agenda would severely
3 weaken at least one leg of the three-legged stool
4 we call the federal triad intended to protect
5 students and taxpayers.

6 It is particularly concerning that the
7 Department would gut needed consumer protections
8 at a time we should be strengthening them and that
9 it would allow for the proliferation of poor
10 quality schools in the name of innovation,
11 resulting in more dead ends and broken promises for
12 today's students.

13 The Department's notice of intent to
14 establish a negotiated rulemaking committee is
15 concerning for several reasons. First, many of
16 these regulations fall under the purview of the
17 Higher Education Act, the governing legislation
18 covering all of higher education, legislation that
19 is long overdue for an update. Getting these rules
20 right requires careful consideration and the right
21 balance of consumer protection and innovation, not
22 a hastily-crafted ill-advised attempt at gutting

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1 regulations with just one goal in mind. It is not
2 clear why the Department would rush through a
3 rulemaking session that will likely lead to rules
4 that are outdated and need to be renegotiated at
5 the passing of a new HEA.

6 Second, the sheer breadth and depth of
7 the rules being targeted all at once raises deep
8 concerns that any one of these issues would be
9 thought through carefully in this process. The
10 Department's notice lists at least 30 different
11 regulations or regulatory subparts falling under
12 12 different topics to be addressed under a single
13 committee. A majority of these regulations were
14 written to correct for past abuses by poor-quality
15 institutions that scammed students. These issues
16 get at the very heart of what an institution of
17 higher education is, from how long a program should
18 be to how much interaction with students and
19 expertise the professors should have to how
20 learning should be measured. The Department has
21 already had trouble producing necessary analyses
22 from when it was working on just one issue at a

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1 time, such as we saw during the borrower defense
2 and gainful employment negotiated rulemakings, so
3 how could it be possible to do the necessary due
4 diligence on all of these items at once?

5 Third, changing fundamental roles
6 without experimentation and ignoring evidence, is
7 quite simply, irresponsible. For example, one
8 issue on the agenda, addressing arrangements
9 between institutions to provide a portion of an
10 education program is a topic currently being
11 engaged under the EQUIP experiment. EQUIP
12 partners traditional institutions of higher
13 education with new innovative program providers
14 under the oversight of a quality assurance entity.
15 The experiment is in a very early stage.

16 Among the eight projects approved, four
17 have since shuttered before ever getting off the
18 ground and only one applicant was recently approved
19 to begin enrolling students. In analysis from the
20 Education Council cautions that EQUIP has raised
21 more questions and concerns than it has found
22 answers and urges policymakers not to assume these

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1 approaches are anywhere near ready to expand beyond
2 an experimental stage. Yet, in an interview, a
3 Department of Education official says that the
4 negotiators should build on lessons learned under
5 the EQUIP program, to which there have been none.
6 These changes should not proceed unless they are
7 based on robust experimentation and evidence.

8 Fourth, pursuing so-called innovation
9 and reducing burden for the sake of itself without
10 a clear goal in mind and without careful attention
11 to consumer protection risks opening up the spigot
12 of the federal aid to unscrupulous providers.
13 This reasoning is based on a simplistic assessment
14 that all burden is inherently bad, all innovation
15 is inherently good, and that eliminating one
16 automatically leads to an increase in the other.
17 This is counterproductive and potentially
18 dangerous.

19 Efforts to address burden and
20 innovation should take into consideration the
21 intended purpose of each regulation it hopes to
22 change and what it seeks to accomplish to ensure

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1 the Department is not creating regulatory
2 loopholes.

3 For all these reasons and more, we
4 believe the questions raised in this proposed
5 rulemaking are a job for Congress under the Higher
6 Education Act. We urge the Department to rescind
7 its proposed rulemaking and, instead, work with
8 Congress to reauthorize the Higher Education Act
9 through a bipartisan process. Thank you.

10 MR. WASHINGTON: Thank you. Tanya
11 Ang.

12 MS. ANG: Good morning. My name is
13 Tanya Ang, and I'm Vice President of Veterans
14 Education Success. We appreciate the opportunity
15 to share our thoughts and concerns with you
16 regarding the Department's proposed regulatory
17 changes.

18 VES understands the desire to encourage
19 and improve innovation in higher education but
20 takes issue with several of the regulatory
21 rollbacks that consequently undermine critical
22 protections for students while permitting low

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1 quality education providers to waste taxpayer
2 dollars. These regulations were put in place
3 after bad actor schools bilked the Department and
4 cheated taxpayers of hundreds of thousands of
5 dollars.

6 Of these numerous proposed changes,
7 today I want to focus on the following two key
8 issues: regular and substantive interaction for
9 online education programs and state authorization.

10 Online education has the potential to
11 provide education to students who otherwise might
12 not be able to participate in person. This is the
13 case for service members serving overseas who want
14 to continue their education without interruption.
15 For them to get the quality education they expect,
16 deserve, and pay for, regular and substantive
17 interaction between professors and students is of
18 necessity. Without this interaction, students
19 and taxpayers end up paying astronomical prices for
20 something that amounts to a computerized textbook.

21 In 1992, in the wake of the U.S.
22 Government Accountability Office report that found

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1 modern correspondence schools had twice the
2 student loan default rates of their colleges and
3 universities, Congress resolved to act. They
4 decided that the institutions had to show that they
5 offered students regular and substantive
6 interaction with faculty members at least half of
7 the time or for at least half of the students to
8 receive federal aid.

9 The regular and substantive
10 interaction requirement prevents institutions
11 from handing out worthless diplomas that waste an
12 immense amount of federal funds. It is imperative
13 that changes do not condone worthless online
14 degrees void of any human interaction at the
15 expense of taxpayers.

16 States have a long history of
17 protecting students from predatory and low quality
18 colleges. They are a crucial member of the program
19 integrity triad with the accrediting agencies and
20 the Department, providing vital oversight and
21 ensuring colleges are complying with both federal
22 and state law.

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1 The current state authorization
2 regulations require colleges to obtain each
3 state's authorization to offer their programs to
4 students in that state and receive federal
5 financial aid. The Department should ensure that
6 states maintain their ability to authorize schools
7 that meet their standards and protect their
8 citizens from fraud and other abuses.

9 Narrowing oversight of the states would
10 not only allow for more predatory schools to enter
11 the marketplace but would strip individual states
12 of their long-held ability to protect their
13 citizens' right to receive quality education.
14 Curtailing their ability to authorize colleges and
15 enforce applicable state laws against predatory
16 institutions infringes upon state autonomy and
17 moves the responsibility onto federal regulators
18 and the cost onto federal taxpayers.

19 Additionally, we need robust
20 disclosure regarding all college programs,
21 specifically distance education or correspondence
22 courses, to protect prospective students and make

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1 certain they can make fully informed decisions in
2 the market when considering enrollment.
3 Eliminating these disclosure requirements would
4 put students at a disadvantage as it would open the
5 door for aggressive and deceptive practices by
6 recruiters and schools.

7 The Department must be a good steward
8 of taxpayer dollars and, therefore, keep quality
9 standards that protect both students and
10 taxpayers. This is evidenced by the recent
11 fraudulent practices enclosure of institutions,
12 such as ITT Tech and Corinthian Colleges. These
13 schools show that there are bad actors attempting
14 to defraud students and the government. The
15 weakening of these proposed regulations would pave
16 the way for similar bad actors to offer low quality
17 education and hurt those we represent, service
18 members, veterans, and their families who use their
19 hard-earned military education benefits to go to
20 school and are often the targets of predatory
21 schools looking to capitalize on these benefits.
22 Many are first generation and other under-served

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1 student populations who believe the federal
2 government's stamp of approval for the school to
3 offer Title IV funds means the school is a high
4 quality school. Unfortunately, we know all too
5 well this is not always the case. Unfortunately,
6 students find out too late that this is not always
7 the case.

8 The Education Department's mission is
9 to promote student achievement and quality
10 education. Weakening or removing current
11 protections would directly contradict that
12 mission.

13 MR. WASHINGTON: Thank you. Wesley
14 Whistle.

15 MR. WHISTLE: Good morning. My name
16 is Wesley Whistle, and I'm an education policy
17 advisor at Third Way. We know college has become
18 a necessity in our changing economy. A majority
19 of jobs require some sort of postsecondary
20 credential, yet the continued actions of this
21 department to repeal and modify necessary
22 regulations puts in jeopardy the ability of

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1 students and taxpayers to see a return on the
2 investment they make in higher education each year.

3 While regulations alone would not solve
4 the challenges we face, I'm here today to strongly
5 advocate for the need to strengthen, not weaken,
6 federal oversight of our higher education system.
7 The Department is obligated to uphold two basic
8 promises to its constituents. One, ensure
9 students have a baseline quality of education no
10 matter what type of program or institution they
11 attend, what state it's based in, or if it's
12 delivered online or in person. Two, safeguard
13 taxpayer dollars so they aren't sent to programs
14 and institutions offering a low quality education
15 and wasting federal financial aid dollars.

16 First, let's look at state
17 authorization. States play a vital role in
18 institutional oversight and consumer protection
19 for students. We're concerned delaying this rule
20 will make it difficult for online students to
21 obtain licensure in their state but only the state
22 where their online institution is physically

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1 located. Imagine an online nursing student who
2 played by the rules, worked hard, and graduated,
3 only to be ineligible for their nursing license
4 unless they move states. This effectively renders
5 their degree worthless, leaving them in debt and
6 unable to get the job they wanted.

7 Rolling back this protection removes
8 states' ability to oversee programs and protect
9 their citizens. The Department should allow
10 states to do their job to protect their
11 constituents and regulate entities within their
12 borders by keeping this established rule.

13 There are also grave concerns with
14 altering the regular and substantive interaction
15 rule. Online education is meant to provide
16 flexibility for those that want or need it, but not
17 at the expense of losing access to the experts who
18 are supposed to teach them. Yet, loosening this
19 regulation for online programs to provide regular
20 and substantive interaction will open the door to
21 bad actors who won't require instructors to spend
22 the needed time with students. We know this is

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1 true. Before the Department put this rule in
2 place, institutions outsourced over 50 percent of
3 instruction to non-experts, some of them call
4 centers, when students needed assistance.
5 Imagine that same nursing student needing to
6 understand an issue but having been directed to a
7 call center instead. The Department shouldn't
8 ignore the risks of outsourcing instruction and,
9 instead, should require a minimum level of teaching
10 and learning by trained and qualified instructors
11 at all programs.

12 Next, I want to address the definition
13 of the credit hour. The credit hour provides a
14 baseline of the time and learning a student does.
15 Before this definition was established, some
16 institutions received more federal aid dollars for
17 less instruction time than at other institutions,
18 such as one awarding up to 27 credit hours for a
19 semester and receiving a comparable amount of Pell
20 Grants and student loans, yet similar institutions
21 evaluated that same workload as only 18 credit
22 hours.

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1 This also opens the door to problems
2 with the nearly 10 percent of students who transfer
3 each year because institutions may be less likely
4 to accept credits if they have no guarantee a
5 sufficient amount of learning was completed. The
6 Department must keep this rule to guarantee a floor
7 for work and learning and prevent bad actors from
8 receiving more federal aid dollars for less time
9 educating students, leaving students up Pell
10 eligibility, taking out more loans, all the while
11 getting less in return.

12 Let's turn our attention to the
13 outsourcing of educational programs. Consumers
14 need a guarantee that programs they attend are
15 state approved, accredited, and subject to
16 requirements from the Department, such as a
17 financial viability test. Allowing schools to
18 outsource offerings to untested and unproven
19 entities makes it hard to understand who actually
20 teaches students and how well they do so. The
21 Department should consider the risk in removing
22 protections that gives students and taxpayers the

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1 quality assurances they need.

2 Lastly, let's talk about
3 accreditation. After personally working on
4 accreditation at institutions, I know firsthand
5 accreditation is ripe for reform. It's supposed
6 to be a stamp of approval guaranteeing a basic level
7 of quality for students and taxpayer dollars that
8 follow them to schools. However, we know it isn't
9 always the case. Today, over 680 institutions
10 leave more than half of their students degree-less,
11 unlikely to earn more than a high school grad, and
12 unable to pay down their loans. This puts students
13 at risk and is a raw deal for taxpayers.

14 The Higher Education Act directs
15 accreditors to look at many metrics but includes
16 little on how or what they should measure for
17 student outcomes. The Department has a
18 responsibility to work with NACIQI to ensure
19 accreditors don't approve low-performing schools
20 and require accreditors to account for student
21 outcomes rather than a compliance-based approach
22 doing little to improve student outcomes.

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1 Thank you.

2 MR. WASHINGTON: Thank you. We've
3 reached the time for our first break, so we'll be
4 taking a ten-minute scheduled break until 10:40.

5 (Whereupon, the above-entitled matter
6 went off the record at 10:29 a.m. and resumed at
7 10:40 a.m.)

8 MR. WASHINGTON: Hello, everyone. If
9 you could please take your seats, we are going to
10 start back up. Our first speaker is Cheryl Dowd.

11 MS. DOWD: Good morning. I'm Cheryl
12 Dowd. I'm the Director for the State
13 Authorization Network. It's an operational unit
14 with WCET, which is the WICHE Cooperative for
15 Educational Technologies. I want to thank the
16 Department for the opportunity to speak today.
17 Thank you very much.

18 I'm here in response to the
19 Department's recent announcement regarding the
20 negotiated rulemaking topics and subcommittees.
21 I have three rather brief points as to the process
22 that will be taken in regard to the proposal that

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1 was provided.

2 First, as many have expressed today, we
3 maintain that the Department's inclusion of so many
4 topics, more than ten, for a single negotiated
5 rulemaking committee that are of such a varied and
6 complicated nature will stand little chance of
7 single rulemaking committee producing proposed
8 regulations that can meet consensus. So that the
9 issues can be accorded the attention and analysis
10 required, we suggest multiple rulemaking
11 committees to manage these wide-ranging topics.

12 In support of this point, we wish to
13 share that the Department previously expressed
14 that some of these topics are very complex. We
15 wonder how the Department can find negotiators well
16 versed on all of these topics within one single
17 committee. And also we see the previous
18 experience underscores this concern, as the 2014
19 negotiated rulemaking committee that included
20 state authorization did not meet consensus with
21 only six topic areas.

22 Second, we believe the Department's

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1 proposal to create subcommittees to engage content
2 experts to guide language and process is a good
3 idea. However, the Department only identified two
4 topics to be assisted by subcommittees. Given the
5 breadth of scope and complexity of the issues on
6 this list, more than two topics named in the
7 Department's announcement would benefit from a
8 subcommittee. Several other topics should be
9 subject to a subcommittee, an example of which a
10 state authorization subcommittee that would
11 include state regulators, institutional
12 compliance personnel, state authorization policy
13 experts, and representatives from NC-SARA would
14 provide the best opportunity to reach an
15 enforceable and effective final regulation. The
16 previous versions of the regulation have
17 encountered delays due to process errors and
18 language that conflicted with state compliance
19 requirements. A subcommittee for those core
20 functions for accreditation requires experts to
21 understand how implementation of a new regulation
22 would be managed by institutions and overseen by

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1 these accreditation agencies.

2 And, finally, the Department should
3 continue its historical objective to include
4 representation of affected parties on a negotiated
5 rulemaking committee. There are very few people
6 who understand the complexity of the language and
7 processes necessary to carry out regulations,
8 including the intended and unintended consequences
9 of a developed regulation. For example, the state
10 authorization complexities can be best viewed
11 through the lens of a state regulator who enforces
12 regulations and compliance staff members who must
13 implement state authorization regulations at the
14 institution.

15 What I'm indicating here is if the
16 negotiated rulemaking committee could include at
17 least two people to represent affected parties, it
18 would support being able to understand the
19 different aspects of the possible regulation, but
20 it stresses the point that affected parties
21 representing all of the Department's proposed
22 topics on one committee would be too unwieldy to

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1 be efficient and effective.

2 I appreciate your time today. Thank
3 you very much.

4 MR. WASHINGTON: Thank you. Jarrod
5 Thoma.

6 MR. THOMA: Good morning. My name is
7 Jarrod Thoma. I'm a veteran of the United States
8 Army from Colorado Springs, Colorado. Thank you
9 for the opportunity to offer my testimony today,
10 and I'm here to tell you why, from my own
11 experience, the United States government needs to
12 regulate bad schools that take federal taxpayer
13 dollars, like the GI Bill.

14 I earned my education through years of
15 service and sacrifice during enlistment. After my
16 discharge from the Army, I was eager to pursue a
17 lifelong passion for electronics by earning my
18 engineering degree. I enrolled in DeVry
19 University, but it didn't take long for me to
20 realize that this for-profit college was failing
21 to deliver on many of the promises recruiters had
22 made to me.

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1 In particular, after transferring from
2 DeVry campus to another, it became clear to me that
3 the school was making cost-saving cuts that
4 negatively impacted the quality of our education.
5 I saw that the quality of course materials and
6 equipment used for instruction were subpar and not
7 as advertised and that the standards of the same
8 institution were completely different at the two
9 different branch locations.

10 When I realized the dramatic reduction
11 in quality, I alerted my professors and the staff
12 members. Although DeVry was more than happy to
13 cash in on all of my GI benefits, my complaints
14 about the quality of materials and instruction fell
15 on deaf ears. When I tried to transfer, I was told
16 by both public universities and community colleges
17 that they would accept only my general education
18 credits, even though DeVry had stated that their
19 credits would transfer.

20 As I was starting to accumulate debt,
21 including \$52,000 in additional student loans, I
22 made the decision to complete my engineering degree

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1 at DeVry. However, upon entering the job market,
2 I quickly found a degree from a for-profit college
3 was not worth the paper it's printed on, and it
4 actually hurt my job prospectives. Through hard
5 work and a little luck, I was finally able to secure
6 an engineering position after over two and a half
7 years.

8 Given these challenges, along with many
9 of the other hurdles that veterans already face,
10 I cannot stress enough the need for regulatory
11 protections for not just military-connected
12 students but all students from predatory practices
13 by these terrible education corporations posing as
14 colleges and universities.

15 Not long after I graduated from DeVry
16 with what turned out to be a worthless degree and
17 subpar training, other bad schools went bankrupt
18 and left other students and veterans in even worse
19 spots. Education companies, like ITT Technical
20 Institute and Corinthian were run into the ground,
21 despite having taken millions of taxpayer dollars
22 which shows the need for regulations to protect

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1 students like myself from lies, fraud, predatory
2 recruiting, and marketing tactics.

3 After graduating from DeVry in 2015, I
4 filed a borrower defense claim on my \$52,000 in
5 debt, and I'm still waiting for resolution from the
6 Department of Education. While our loans have
7 been placed in forbearance, they still have become
8 a financial burden. This is not the position I
9 envisioned for myself or my family after serving
10 this country and sacrificing to earn my benefits.

11 If you want to support the men and women
12 in uniform, I would say you take a hard look at the
13 schools like DeVry that take taxpayer money,
14 including veterans benefits, but don't deliver on
15 the quality of education that is promised. Thank
16 you.

17 MR. WASHINGTON: Thank you. Melinda
18 Thoma.

19 MS. THOMA: Hello and good morning.
20 My name is Melinda Thoma. I am a mother and proud
21 wife of U.S. Army veteran Jarrod Thoma, who just
22 spoke. We have traveled here today with our two

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1 young children to testify about how a lack of good
2 regulations allowed a terrible school to defraud
3 my husband and take his GI Bill, only to leave him
4 and our family with mountains of debt that we
5 shouldn't have to begin with and now cannot afford
6 to repay.

7 My husband was proud to enlist in the
8 U.S. Army and he served his country for years. In
9 addition to fulfilling his patriotic duties, he was
10 rewarded for his service with the GI Bill
11 educational benefit, which should have allowed him
12 to go to school, earn a degree, and transition into
13 a successful career without any debt.

14 Jarrod wanted to be an electronics
15 engineer so, like many service members leaving the
16 military, saw a DeVry advertisement and, after
17 talking to a school recruiter, decided to enroll.
18 My husband and I met during his senior year at
19 DeVry, and I can tell you how determined my husband
20 was and still is to succeed and how disappointed
21 he felt when he realized DeVry was not investing
22 in his education the way that they had advertised.

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1 During those years, it was a struggle
2 to not only go to school but battle the issues he
3 faced at DeVry; and, unfortunately, since his
4 graduation, it hasn't gotten any easier. I have
5 watched him apply to so many jobs and, even as a
6 military veteran, employers simply won't hire
7 someone with a degree from a for-profit school like
8 DeVry.

9 It took almost three years for Jarrod
10 to find gainful employment, only then from his own
11 hard work and determination. Because DeVry lied
12 to my husband about the quality and education,
13 post-graduation job assistance, and many other
14 things, he applied for borrowers defense to have
15 our loans discharged. Amazingly, it has been
16 almost three years since he submitted the
17 application to the Education Department and we have
18 yet to receive any kind of decision. We hope to
19 hear something, hopefully positive, soon.

20 I cannot begin to describe the toll this
21 mountain of unfair and unnecessary debt has caused
22 our family. My husband and I are raising two

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1 children and working our tails off just to afford
2 the bills and put food on our table. The lingering
3 impact has negatively impacted our credit rating,
4 which, in turn, hampered our ability to find a
5 mortgage for our family home.

6 To add to the burden, to add the burden
7 of student loan debt from a school that ripped off
8 my husband after he served his country is
9 inexcusable, and that's why we brought our family
10 all the way from Colorado Springs, Colorado to
11 share our story.

12 I ask that this Education Department do
13 everything possible to protect students like my
14 husband from education companies and colleges who
15 take taxpayer dollars only to turn around and
16 defraud those students who are supposed to benefit
17 and leave them in a terrible position. Thank you
18 for the opportunity to address this body.

19 MR. WASHINGTON: Thank you. Karen
20 McCarthy.

21 MS. MCCARTHY: Thank you for this
22 opportunity to contribute considerations for the

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1 upcoming negotiations on behalf of the National
2 Association of Student Financial Aid
3 Administrators and our nearly 3,000-member
4 postsecondary institutions. Several of ED's
5 proposed topics for negotiations are related to
6 innovative learning models, so I'll begin my
7 comments there.

8 Much of the federal financial aid
9 system was designed years before many of these
10 learning models were developed. Attempting to
11 cultivate and implement innovative learning models
12 within the confines of the existing federal student
13 aid system has led to regulatory legislative
14 challenges, not to mention concerns over
15 opportunities for fraud and abuse.

16 The Higher Education Act and Title IV
17 regulations look at seat time, students completing
18 a certain number of courses and hours within a
19 defined academic period with requirement on
20 instructional time, rather than evidence of
21 student learning. Ultimately, the federal
22 student aid system must be updated to allow for

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1 greater access to programs that are not based on
2 traditional credit or clock hour models. While we
3 applaud ED's efforts to modify regulations with
4 this goal in mind, this is fundamentally an issue
5 that must be tackled by Congress in the pending
6 reauthorization of the Higher Education Act.

7 While legislative restrictions prevent
8 ED from making broad-scale changes to regulations
9 to eliminate barriers to innovation, we encourage
10 ED to consider regulatory flexibilities in other
11 areas of Title IV administration that present
12 challenges for non-traditional program
13 structures. For example, both the return of Title
14 IV funds and satisfactory academic progress
15 requirements have time-based constraints that
16 could be modified through regulation.

17 NASFAA appreciates ED's efforts to
18 clarify state authorization rules for distance
19 education. While it is imperative to ensure that
20 these distance education programs provide the same
21 level of quality as brick-and-mortar institutions,
22 regulations intended to guarantee quality should

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1 not be so onerous as to jeopardize the existence
2 of high-performing programs.

3 The higher education community has
4 undertaken its own very successful self-regulating
5 initiative on this topic with the creation and
6 rapid expansion of the National Council for State
7 Authorization Reciprocity Agreements, or SARA.
8 NAFSAA believes strongly that ED should continue
9 its recognition of this well-designed project and
10 should defer wholly to SARA for member states and
11 participating institutions.

12 For institutions that do not
13 participate, ED should use SARA as a model for
14 reasonable and effective regulation of distance ED
15 with regard to state authorization.

16 On the general topic of state
17 authorization, we urge ED to tread lightly in
18 matters that are related to state purview and to
19 find reasonable alternatives that do not price a
20 program out of existence or at unreasonable
21 administrative burden.

22 A 2015 report from the Government

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1 Accountability Office found that 63 percent of
2 TEACH Grant recipients had grants converted to
3 loans in the year they studied, 86 percent of which
4 were involuntary conversions.
5 Conversion-to-loan occurs when the recipient does
6 not complete the teaching requirement or fails to
7 provide the required documentation.

8 Another report found that the time they
9 first received their grant, 89 percent of
10 recipients indicated that they were likely or very
11 likely to fulfill the service requirements,
12 leading us to believe that failure to complete the
13 service requirement is not the primary driver of
14 the shockingly high loan conversion rate.
15 Instead, we should be looking to improve the
16 administrative processes involved in
17 documentation of the service requirements. Our
18 written comments will outline specific areas for
19 regulatory change on this topic.

20 Broadly speaking, we are concerned that
21 the number and complexity of the topics that the
22 single negotiating team will be expected to address

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1 is unrealistic. ED proposes 11 topics for
2 negotiation. Several of these, such as
3 accreditation issues, are expansive enough to
4 support their own dedicated team of negotiators.
5 Concentrating many diverse issues into one
6 negotiating committee renders the consensus
7 approach near impossible and creates time
8 management issues.

9 ED appears to acknowledge these
10 challenges by stating its intentions to provide
11 draft proposed regulatory language prior to the
12 first meeting of the committee. This is a
13 departure from previous Neg Reg procedures where
14 the first meeting is generally structured as a
15 brainstorming session where participants finalize
16 the agenda and discuss the issues in-depth. ED
17 considered all feedback from the first meeting and
18 distributed draft language prior to the second
19 meeting.

20 ED's new approach --

21 MR. WASHINGTON: Twenty seconds left.

22 MS. MCCARTHY: -- deprives all

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1 negotiators and ED staff of a thorough, thoughtful
2 discussion of the issues and undermines the goals
3 of the negotiated rulemaking process. We strongly
4 urge ED to establish multiple committees so that
5 each team may focus on issues in-depth.

6 Thank you for your time and your
7 consideration of our comments. We look forward to
8 participating in the process.

9 MR. WASHINGTON: Thank you. Jody
10 Feder.

11 MS. FEDER: My name is Jody Feder, and
12 I'm here today to speak on behalf of the National
13 Association of Independent Colleges and
14 Universities, NAICU advocates on behalf of the
15 nation's private non-profit colleges and
16 universities.

17 I'd like to begin by offering a few
18 thoughts on some of the items set forth in the
19 Department's very ambitious negotiated rulemaking
20 announcement. In general, NAICU supports the
21 maintenance of an accreditation process built upon
22 independent peer review. The existence of an

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1 effective non-governmental means for assessing
2 academic quality makes possible the diversity and
3 independence of U.S. institutions of higher
4 education. As such, any changes made to
5 accreditation must take into account individual
6 institutions and their missions and must respect
7 institutional autonomy.

8 We also encourage the Department to
9 carefully consider the balance of the three actors
10 in the accountability triad. The Department must
11 be mindful of the unique nature of higher education
12 accreditation and resist the temptation to turn
13 accreditors into surrogate government enforcement
14 agencies. Not only will that approach run counter
15 to the spirit of the HEA, but it will also pose a
16 threat to institutional quality improvement and
17 diversity.

18 Regarding state authorization of
19 distance education programs, NAICU urges the
20 Department to thoroughly consider the challenges
21 associated with colleges receiving authorization
22 from every state in which it enrolls students in

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1 its programs. We recommend an approach that will
2 protect students and that recognizes the
3 significant burden placed on institutions that
4 enroll transient populations of students.

5 Similarly, NAICU recommends that the
6 Department consider revisions to other aspects of
7 the state authorization regulations. While the
8 intent to crack down on unscrupulous higher
9 education providers is a laudable goal, the
10 regulations have not functioned as intended.
11 Instead, these provisions have created confusion
12 about the legal status of many private non-profit
13 colleges, some of which have been needlessly
14 threatened with the loss of eligibility for federal
15 student aid dollars despite the fact that they are
16 well-known legitimate postsecondary institutions
17 with all the valid documentation of their
18 establishment.

19 NAICU also advocates for repeal of the
20 credit hour definition. Having a federal
21 definition of credit hour is inappropriate because
22 it leads to government interference in the academic

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1 decision-making process and limits the flexibility
2 of institutions to develop new models of higher
3 education to meet the needs of current and future
4 students.

5 Likewise, NAICU urges the Department to
6 rethink the restructuring of convertible
7 grant-to-loan programs, such as the TEACH Grant
8 program, to ensure that borrowers are not held to
9 unrealistic eligibility standards. In addition,
10 as the Department considers barriers to
11 innovation, competition, and student success,
12 including issues related to direct assessment
13 programs, competency-based education, regular and
14 substantive interaction, program length,
15 relationship with other institutions, the
16 teach-out process, and the definition of foreign
17 schools which needs to be re-examined, the
18 Department must be mindful of the balance between
19 encouraging innovation and preventing fraud and
20 abuse. One way to do so is to test ideas first to
21 ensure that they do not provide opportunities for
22 unscrupulous school operators to take advantage of

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1 students and taxpayers. In the past, tools, such
2 as demonstration programs or experimental sites,
3 have provided an avenue for controlled
4 experimentation and innovative approaches before
5 a full-scale federal investment is made.

6 Additionally, special consideration
7 should be given to the circumstances under which
8 partnerships between institutions to deliver high
9 quality instruction are to be encouraged. For
10 example, the Department must prevent the excessive
11 outsourcing of an academic program from a Title IV
12 eligible institution to a non-Title IV outside
13 provider. Such institutional behavior could be to
14 the detriment of students and effectively make the
15 outside entity eligible for Title IV aid without
16 meeting Title IV requirements. It is essential
17 that the Department maintain its role as the
18 guardian of the integrity of federal student aid
19 programs by preventing fraud and abuse by bad
20 actors seeking to take advantage of overly-broad
21 partnership criteria.

22 Finally, NAICU is encouraged that the

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1 Department has publicly committed to holding a
2 negotiated rulemaking committee dedicated to the
3 financial responsibility standards in its proposed
4 borrower defense as to repayment regulations. We
5 urge the Department to maintain consistency with
6 its recent stance on financial responsibility by
7 devoting a negotiated rulemaking committee
8 dedicated to reforming the methodology and
9 implementation of the financial composite scores.

10 Thank you for the opportunity to
11 provide comments on and participate in this
12 important regulatory process.

13 MR. WASHINGTON: Thank you. Alison
14 Gill.

15 MS. GILL: Thank you for allowing me to
16 speak today on the proposed rulemaking. My name
17 is Alison Gill, and I'm the Legal and Policy
18 Director for American Atheists. American
19 Atheists is a national civil rights organization
20 that works to achieve religious equality for all
21 Americans by protecting what Thomas Jefferson
22 called the wall of separation between religion and

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1 government created by the First Amendment. As
2 advocates for religious liberty and equality,
3 American Atheists opposes laws and policies that
4 would favor religion over non-religion or provide
5 special privileges to religious organizations.

6 The Department proposes to create a
7 committee for negotiated rulemaking to revise
8 regulations pertaining to accrediting agencies, as
9 well as a subcommittee to make recommendations
10 regarding the eligibility of faith-based entities
11 to participate in Title IV Higher Education Act
12 programs. We believe that the current regulations
13 pertaining to faith-based entities participating
14 in such programs are sufficient, and we caution
15 that any changes made to such regulations that are
16 likely to conflict with constitutional
17 requirements. We, therefore, urge you to remove
18 consideration of regulations affecting
19 faith-based entities from the proposed negotiated
20 rulemaking.

21 Our nation has a long history of
22 fostering diverse educational institutions,

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1 including both religious and secular institutions
2 of higher education. Recognizing that the
3 separation of religion and government is the
4 bedrock of religious liberty, the Supreme Court has
5 stepped in to ensure that states and the federal
6 government refrain from unconstitutionally
7 favoring religious educational institutions or
8 impeding their ability to operate.

9 Through such decisions, the Court has
10 established guidelines in how the government may
11 choose to involve itself in religious education
12 between what the establishment clause permits and
13 the free exercise clause compels. We assert that
14 the existing regulations regarding Title IV
15 programs push a level of allowable involvement to
16 its very limit and that any effort made to loosen
17 regulations to fund religious education or to favor
18 religious institutions will implicate the
19 establishment clause.

20 Through this rulemaking, the
21 Department seeks to revise regulations in light of
22 the *Trinity Lutheran Church of Columbia v. Comer*,

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1 a 2017 Supreme Court decision which was expressly
2 limited to discrimination based on the religious
3 identity with respect to playground resurfacing.
4 Legally, this case has precisely zero effect on
5 federal regulations pertaining to the Higher
6 Education Act. However, the case has been
7 repeatedly misapplied to justify special
8 dispensation and regulatory exemptions for
9 religious organizations.

10 Even if we take this case at its
11 broadest possible interpretation, which is "the
12 religious organizations should not be denied
13 funding simply because they are religious
14 organizations," the fundamental protections for
15 religious liberty guaranteed by the establishment
16 clause and the free exercise clause, as well as
17 statutory requirements, still apply.

18 Although the current Title IV HEA
19 regulations interact with religious institutions
20 in numerous ways, none of them single out religious
21 people or groups for unfavorable treatment based
22 on their religious nature, and so Trinity Lutheran

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1 is not applicable to these regulations. Instead,
2 the current regulations service to effectuate
3 programmatic goals, such as protecting students
4 and borrowers, within the boundaries established
5 by the establishment clause.

6 Existing limitations on funding and
7 program eligibility may be categorized in three
8 broad categories:

9 Limitations on student financial aid. If a
10 student is a member of a religious order whose
11 primary purpose is promotion of religion and the
12 order directs the education or provides funding,
13 the student will not be eligible for federal
14 financial aid. To do otherwise would basically
15 have the federal government funding education and
16 proselytization efforts for religious orders.

17 Limitations on funding for religious
18 purposes. Money that is given directly to
19 educational institutions may not be used for
20 inherently religious or sectarian purposes and
21 limitations on subsidies for religious activities.
22 Students and organizations are ineligible for

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1 certain types of subsidies and loan forgiveness
2 programs if the student would work on inherently
3 religious activities through the program, such as
4 support for religious worship or sectarian
5 instruction. Without this limitation in place,
6 the government would be directly subsidizing
7 individuals to engage in religious activities.
8 Each of these limitations is clearly required by
9 the establishment clause.

10 The existing rules pertaining to
11 accrediting educational institutions already make
12 various special exceptions for religious
13 organizations. For example, religious
14 institutions are given special consideration for
15 accreditation --

16 MR. WASHINGTON: Twenty seconds left.

17 MS. GILL: -- purposes in case
18 accreditation is lost or is a result of religious
19 beliefs and institutions are considered or
20 authorized as educational institutions if they are
21 exempt from state authorization as religious
22 institutions under state law.

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1 Finally, we will note that the
2 government may implicate the establishment clause
3 for going too far to accommodate religious
4 institutions. Thank you so much for allowing me
5 to speak. We'll submit more detailed comments for
6 the record.

7 MR. WASHINGTON: Thank you. William
8 Pena.

9 MR. PENA: Good morning. Thank you
10 for the opportunity to speak with you today. My
11 name is William Pena, and I am the Associate Vice
12 President of Student Financial Services at
13 Southern New Hampshire University.

14 SNHU is a private non-profit university
15 founded in 1932 serving over 135,000 students
16 around the world. At SNHU, we seek to expand
17 access to education by removing barriers and
18 creating high quality, affordable, and innovative
19 pathways to meet the unique needs of each and every
20 student. I lead the university's financial aid
21 interests relating to emerging and alternative
22 learning models, including competency-based

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1 education, direct assessment programs, and the
2 Department's experimental sites initiatives. I
3 also oversee the student financial services office
4 serving the students and business partners of
5 SNHU's College for America Program, which was the
6 first direct assessment program in the nation to
7 receive approval for Title IV eligibility.

8 I'm here this morning to discuss
9 opportunities for advancing the Department's
10 regulatory reform agenda for flexible and quality
11 innovation in higher education through
12 competency-based education. My focus will be on
13 removing barriers by reinventing the federal
14 financial aid rules to support the implementation
15 of such programs.

16 The hallmark of CBE lies within the name
17 and focus: an individual's competency, a
18 demonstration and validation of what they know and
19 can do. In the CBE field, we say that learning is
20 constant and that time is variable. And in many
21 CBE models, this is in direct conflict with the
22 current Title IV rules and regulations which are

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1 still entrenched in the notion that the amount of
2 time spent acquiring learning is more important
3 than whether a student can apply knowledge, skills,
4 or abilities.

5 One barrier for innovative programs is
6 the minimum academic year definition, which
7 conflicts with an employment program that isn't
8 offered in the traditional two 15-week semesters
9 and 15 credits. Flexibility within Title IV
10 requirements would promote the advancement of
11 innovative programs, placing the focus, again, on
12 student outcomes rather than calendar time.
13 However, to protect students and taxpayers,
14 safeguards must be employed to prevent abuses from
15 those who might solely seek to capitalize on a
16 student's ability to secure multiple loans and Pell
17 Grants within a single year.

18 Additionally, current rules define
19 either term-based or non-term calendars for Title
20 IV programs. Non-term calendars are better suited
21 to student-directed pacing but are
22 administratively problematic with no economies of

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1 scale. Bridging the gap between these calendar
2 types requires flexibility. Schools rely on
3 defined periods of registration, billing, and
4 other functions to leverage automation and to
5 manage operational costs, but students must also
6 be enabled to begin and end academic work suited
7 to their needs and abilities.

8 The return to Title IV requirements are
9 ripe for reform. They effectively only consider
10 the amount of calendar time for which funds are
11 dispersed without regard to actual student
12 progress towards degree completion. A student who
13 successfully completes all course work prior to a
14 term's end date is subject to a potential loss of
15 financial aid simply because they accelerated.
16 This holds true when a student graduates from the
17 program before a term ends. In short, R2T4
18 requirements should be revised so that students who
19 successfully complete all course work are not
20 penalized for their achievement.

21 Rules for satisfactory progress, or
22 SAP, in Title IV eligibility are not always

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1 appropriate measures for innovative learning
2 models. The traditional grade point average is
3 not relevant when a minimum level of performance
4 is required to progress through a program. The
5 quantitative measurement for SAP penalizes
6 students who elect to enroll in many courses with
7 the ultimate goal of acceleration. Under current
8 rules, a student really should only enroll in as
9 many courses or competencies that they are
10 guaranteed to complete within a given period,
11 thereby reducing the potential for acceleration.
12 An alternative approach could be to codify a
13 minimum completion threshold per specified period
14 that ultimately leads to timely program
15 completion.

16 Finally, a critical issue facing
17 innovative models is regular and substantive
18 interaction. The lack of clear and consistent
19 federal guidance in this area has thwarted
20 understanding in the field around program design
21 and practice. However, we urge exercising caution
22 when establishing definitions for regular or

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1 substantive in order to afford flexibility and
2 efficacy.

3 Separate but related to this, we also
4 encourage review of definitions as to what
5 constitutes educational activity. This directly
6 determines the number of weeks of instruction in
7 a program. The expansion of the definition could
8 better align incentives to ensure that activities
9 that count are adding value to the educational
10 program.

11 These changes are necessary because the
12 needs of our workforce are changing and so are
13 students. We need--

14 MR. WASHINGTON: Twenty seconds left.

15 MR. PENA:--innovative pathways to degrees
16 and skills to meet employer needs and to help
17 students succeed. We are pleased to see the
18 Department playing a key role in creating a more
19 effective framework for institutions to strengthen
20 in this innovative area and SNHU looks forward to
21 engaging further on these and related matters as
22 the process moves along.

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1 Thank you for your time today and your
2 consideration of these comments.

3 MR. WASHINGTON: Thank you. Don
4 Sweeting.

5 MR. SWEETING: My name is Donald
6 Sweeting, the President of Colorado Christian
7 University. CCU is located in Lakewood, Colorado,
8 just outside of Denver. It enrolls over 8,000
9 students and employs 350 faculty and staff. Our
10 mission since 1914 has been to provide a
11 Christ-centered higher education, transforming
12 students to impact the world with grace and truth.
13 We have over 100 bachelors and master's degree
14 programs and are ranked in the top two percent of
15 colleges nationwide for our core curriculum by
16 ACTA.

17 Today I wish to speak about the
18 importance of accrediting agencies honoring an
19 institution's specific mission in the
20 accreditation process. But before speaking to
21 this issue, I would like to thank the Department
22 for the opportunity to speak about issues facing

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1 colleges and universities, and I want it known that
2 we do value accreditation and believe it sharpens
3 schools like ours as we seek to train students. We
4 are accredited by the Higher Learning Commission.
5 Their assessment guidelines and information about
6 best practices have helped us strengthen our
7 university's effectiveness. The HLC Academy, of
8 which we are part, has been very supportive and has
9 given us both a framework for what a healthy
10 university looks like and an opportunity to network
11 with other universities.

12 However, I do come today with a deep
13 concern about a recent HLC alpha document which
14 proposes changes to HLC standards of
15 accreditation. The new suggested changes would
16 remove language that requires the accreditor to
17 take into account each institution's specific and
18 diverse mission, religious or otherwise, when
19 assessing the institution's commitment to
20 diversity. Previously, the Higher Learning
21 Commission clearly acknowledged that schools
22 necessarily differ in their diversity policies and

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1 procedures. The original guidelines stated that
2 each school should act as appropriate within its
3 mission and for the constituencies that it serves.

4 But now the crucial provision, this
5 crucial provision is targeted for deletion. By
6 striking this language, certain institutions could
7 face negative repercussions with regard to their
8 accreditation simply for being true to their
9 religious mission.

10 This federally empowered agency's new
11 draft protocol gives itself the prerogative to
12 decide whether a school sufficiently ensures
13 inclusive and equitable treatment of diverse
14 populations. By law, this agency can cut off
15 federal student loans and grants at any
16 non-compliant school by withdrawing
17 accreditation. We view these proposed changes as
18 not only a powerful threat to religious liberty but
19 also a breaking of trust with the Higher Education
20 Act, which guarantees respect for the religious
21 mission of schools.

22 What would make this agency believe

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1 that it is appropriate to tamper with the religious
2 principle of Christian institutions that long ago
3 proved their academic merit? The nature of HLC's
4 proposed changes threatens not only religious
5 institutions but also the autonomy of all colleges
6 and universities within its jurisdiction.

7 One of the strengths of the American
8 higher education and a big reason it has long been
9 the envy of the world is that it has not been
10 shoehorned into a uniform system. American higher
11 education has grown organically from communities
12 and visionaries, reflecting our country's
13 independence of thought. Yet, nowadays, once
14 again, precisely this independence of thought that
15 is at risk.

16 We are asking HLC that the original
17 enabling language in the accreditation standards
18 be restored before these proposed changes are
19 adopted. We are encouraged that the Department of
20 Education is considering making respect for
21 institutional mission and reducing barriers for
22 faith-based institutions a priority so that

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1 standards don't interfere with the faith base of
2 institutions. We ask the Department to
3 communicate the importance of this to all
4 accrediting agencies. We also ask the Department
5 to clarify what it means for accrediting agencies
6 to respect religious mission because there is no
7 precise definition of religious mission of what it
8 means to respect to religious mission. This lack
9 of definition leaves accreditors open to reach a
10 different understanding of what this means,
11 interpreting it so narrowly that it threatens
12 religious schools.

13 So we believe the Department should
14 provide a definition like that in the PROSPER Act
15 where the term religious mission includes an
16 institution of higher education religious tenets,
17 beliefs, and teachings and any policies or
18 decisions related to them in housing, employment,
19 curriculum, self-governance, admissions,
20 enrollment, and graduation.

21 Furthermore, we ask the Department to
22 clarify how it will enforce the requirement for

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1 accrediting agencies to respect religious mission.

2 Surely, we do not wish to threaten the
3 existence of the many colleges and universities in
4 our country that are convictionally faith based.
5 Their contribution to our nation is immense. They
6 have a long record to prove it. They, in fact, laid
7 the foundation for all higher education in America.
8 Thank you.

9 MR. WASHINGTON: Thank you. Spiros
10 Protopsaltis.

11 MR. PROTOPSALTIS: Thank you for the
12 opportunity to present comments. My name is
13 Spiros Protopsaltis, and I'm an associate
14 professor and director of the Center for Education
15 Policy and Evaluation at George Mason University.

16 Before joining the university, I worked
17 for three and a half years in the Department of
18 Education's Office of Planning, Evaluation, and
19 Policy Development, first as a senior policy
20 advisor and then as deputy assistant secretary for
21 higher education and student financial aid.
22 Please note that the following comments are my own

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1 and do not reflect the views and official positions
2 of my employer, George Mason University.

3 The scope of this negotiated rulemaking
4 is quite broad and covers numerous important areas.
5 But given the limited amount of time available, I
6 would like to focus on certain key issues that I
7 believe are very critical for safeguarding the
8 integrity of our federal student aid programs and
9 protecting students and taxpayers.

10 First, while the statutory language on
11 accreditation is rather prescriptive, the
12 Department has the opportunity to promote quality
13 improvement and advance student outcomes by
14 expanding upon and codifying in regulation the
15 executive actions announced in December 2015 that
16 promoted transparency in the recognition and
17 review of accrediting agencies, as well as the
18 accreditation process overall.

19 Second, it is important not to weaken
20 but instead strengthen the regulations governing
21 the requirements that high-risk and low-performing
22 accrediting agencies must meet to the extent

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1 allowed under statute. As has become evident,
2 current regulations have proven ineffective in
3 adequately scrutinizing accreditors for
4 fulfilling their key responsibilities of ensuring
5 baseline levels of acceptable quality and
6 performance, as well as engaging in continuous
7 improvement in quality and practice.

8 Third, it is important to remember that
9 the statutory prohibition on setting and enforcing
10 expectations regarding student achievement
11 standards and accreditor recognition does not mean
12 that student outcomes and other information
13 regarding performance and risk should not be an
14 important component within current accreditor
15 review processes, as the GAO made clear in its 2015
16 report. Among its recommendations, GAO urged the
17 Department to "to ensure that accreditors are
18 reliable authorities on educational quality, we
19 recommend that the Secretary of Education consider
20 further evaluating existing accreditor standards
21 to determine if they effectively address
22 educational quality in key areas, such as student

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1 achievement."

2 GAO also suggested that "education
3 could systematically use available information
4 related to the frequency of accreditor sanctions
5 or could do additional analyses, such as compelling
6 accreditor data with education information on
7 student outcomes, to inform its recognition
8 reviews."

9 Turning to state authorization, it is
10 important to remember the doom and gloom
11 predictions in the past. Critics argue that
12 colleges would be shut down; implementation,
13 burden, and cost would be too large; states would
14 be unable to meet the new minimum requirements,
15 etcetera. In reality, none of that happened and,
16 as far as I know, there's not a single institution
17 that has closed as a result of the implementation
18 of the rule in 2015.

19 Given this move, implementation of the
20 brick-and-mortar rule in late 2016, the Department
21 ensured that six million students taking classes
22 online were also attending institutions that are

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1 legally authorized and monitored by states, as
2 required by law. By doing this and closing the
3 loophole, the Department leveled the playing
4 field.

5 Again, various sky is falling scenarios
6 have since been circulating, but there is no
7 evidence whatsoever that I'm aware of to support
8 these claims. The bottom line is that, especially
9 given the rapid growth of distance education, we
10 cannot have a statutory requirement that only
11 applies to some institutions but not to others,
12 thus leaving six million students and taxpayers
13 unprotected.

14 In regards to the credit hour, we again
15 have another instance where there's a mismatch
16 between rhetoric and reality. Clearly, the
17 government needs a unit of measurement to know what
18 it is paying for. While imperfect, it is the only
19 consistently used metric of academic workload that
20 can be applied readily and universally.

21 By criticizing the current definition
22 as a measure of seat time that stifles innovation,

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1 it is apparent that either critics have not read
2 carefully the definition --

3 MR. WASHINGTON: Twenty seconds left.

4 MR. PROTOPSALTIS: I'm sorry?

5 MR. WASHINGTON: Twenty seconds left.

6 MR. PROTOPSALTIS: Got it. Or they're
7 purposely mischaracterizing in order to discredit
8 it. Finally, I would like to urge the Department
9 to be very, very careful. Very small early-stage
10 policy experiments, especially those with low
11 participation and no rigorous evaluation, should
12 not serve as the basis for policy formulation with
13 far-reaching implications --

14 MR. WASHINGTON: Time.

15 MR. PROTOPSALTIS: -- for federal
16 student aid programs. Thank you very much for your
17 time.

18 MR. WASHINGTON: Emmanuel Guillory.

19 MR. GUILLORY: Hi, my name is Emmanuel
20 Guillory. I'm the Director of Public Policy and
21 Government Affairs at the United Negro College
22 Fund. Thank you for the opportunity to provide

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1 input to the Department of Education regarding the
2 efforts to establish a negotiated rulemaking
3 committee to prepare proposed regulations for the
4 federal student aid programs authorized under
5 Title IV of the Higher Education Act of 1965.
6 These regulations are of great importance to the
7 United Negro College Fund, as they impact our
8 nation's historically black colleges and
9 universities and the students they serve.

10 UNCF is America's largest and most
11 successful minority higher education assistance
12 organization. Founded in 1944, UNCF represents 37
13 private HBCUs and invests in better futures not
14 only for African-American students but for all
15 low-income first-generation college students.

16 While HBCUs represent three percent of
17 all institutions of higher education, they have a
18 large impact by enrolling ten percent of all
19 African-American students, awarding 17 percent of
20 African-American bachelor's degrees, awarding 24
21 percent of African-American STEM bachelor's
22 degrees, and having a total economic impact of

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1 \$14.8 billion.

2 UNCF appreciates the Department's
3 interest in taking a closer look at regulations
4 that have the potential to improve the quality of
5 postsecondary education for our students. Of
6 importance to UNCF is the accreditation process.
7 There are 101 accredited HBCUs in our country
8 today, and we strongly believe that the current
9 program integrity triad system consisting of
10 accreditation, state authorization, and
11 certification from the Department is vitally
12 important and should remain balanced.

13 While we believe in a well-balanced
14 approach, we also champion policy proposals that
15 will strengthen the current system. When
16 examining the decision-making bodies that conduct
17 the peer review process, we find that better
18 representation of experts with knowledge and
19 experience working in and with HBCUs should be
20 present. Due to the mission and history of HBCUs,
21 these institutions face unique challenges and
22 having someone with a deep understanding of our

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1 institutions could enhance the quality of both
2 accrediting agencies and the nation's HBCUs.

3 Furthermore, we strongly believe that
4 neither accrediting agencies, nor the federal
5 government, should infringe on the academic
6 freedom of an institution, and we believe that
7 accrediting bodies should continue to determine
8 the success of student achievement in relation to
9 the institution's mission.

10 Institutions should be able to provide
11 a quality education that is tailored to the
12 students they serve and the unique approach of
13 HBCUs has proven to be effective. Our
14 institutions serve a majority of low-income
15 first-generation college students. In fact, over
16 70 percent of students at HBCUs receive a Pell
17 Grant, and tend to borrow at higher loan amounts
18 to finance their education.

19 With this said, the ability of HBCUs to
20 provide innovative models of education is vitally
21 important. When institutions are able to be
22 innovative, a positive outcome is that students can

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1 experience an enhanced quality of education that
2 allows them to obtain their desired knowledge,
3 graduate faster, and have less student loan debt.
4 The key to this approach is not sacrificing quality
5 in the name of innovation.

6 Current laws state that distance
7 education is education that uses certain
8 technologies to support regular and substantive
9 interaction between the students and the
10 instructor. While we agree that this definition
11 can be a barrier to innovation and support the
12 Department looking further into ways to better
13 define distance education and correspondence
14 education, we stand firm that students should not
15 be forced into an experience that prevents them
16 from receiving the needed time and attention from
17 faculty and staff. Because the majority of our
18 students are first generation and from lower means,
19 there is a strong likelihood that these students
20 will need and greatly benefit from human
21 interaction.

22 Lastly, while we can appreciate

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1 attempts from the prior administration to prevent
2 abuse and bring greater integrity to the federal
3 student aid programs, we are supportive of the
4 Department's deeper analysis of both a state
5 authorization to address requirements related to
6 programs offered through distance education and
7 the definition of credit hour. There are
8 approximately 47 HBCUs with distance education
9 programs. While most of these programs are small,
10 the ability to increase the enrollment of these
11 programs can be challenging due to the requirement
12 in regulations that each institution must meet any
13 and all state requirements to legally offer
14 postsecondary distance or correspondence
15 education in that state.

16 Given our aforementioned statements,
17 the ability of institutions to operate in an
18 effective manner with as little federal government
19 intrusion --

20 MR. WASHINGTON: Twenty seconds left.

21 MR. GUILLORY: -- to the planning,
22 preparation, and implementation of academic

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1 programs remains a priority. However, we do not
2 support the behaviors of any institution to
3 intentionally commit fraud in the student aid
4 programs, especially as it relates to credits given
5 in academic programs. We believe in the utmost
6 importance of institutional accountability to
7 federal dollars and look forward to reviewing
8 upcoming proposals to alter the Department's
9 current approach.

10 MR. WASHINGTON: Time.

11 MR. GUILLORY: --Thank you for your
12 consideration, and we plan to submit comments, as
13 well.

14 MR. WASHINGTON: Dr. J. Bradley Creed.

15 DR. CREED: Good morning and thank you
16 for this opportunity to address these important
17 topics related to accreditation and proposed
18 negotiated rulemaking. I am J. Bradley Creed,
19 President of Campbell University in North
20 Carolina, located 30 miles south of Raleigh, the
21 state capital in the research triangle. Campbell
22 University is a faith-based institution with an

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1 enrollment of 6500 students and 325 full-time
2 faculty with several schools, including not only
3 a college of arts and sciences but a college of
4 pharmacy and health sciences, divinity law,
5 education, business, and a new college of
6 osteopathic medicine. I am only the fifth
7 president in its 131-year history, and I'm charged
8 with a special stewardship for its mission.

9 A strength of American higher education
10 is its variety. Different kinds of institutions
11 preparing students for careers and to contribute
12 to the common good, human flourishing, and a more
13 perfect union as envisioned by our nation's
14 founders. Colleges and universities with a
15 religious mission are an essential component of
16 this varied tapestry of American higher education.

17 Like other religious-affiliated
18 schools, Campbell accepts students from different
19 backgrounds and religious faiths and no faith at
20 all. Campbell is informed and inspired by its
21 Christian mission and pursues a vision of
22 graduating students with exemplary academic and

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1 professional skills and who are prepared for
2 purposeful lives and meaningful service.

3 Faith-based schools provide the
4 opportunity for students to make a life, make a
5 living, and make a difference. Our religious
6 mission at Campbell, the heart of which is service
7 to others, animates all aspects of our academic
8 community.

9 My appeal to the Department of
10 Education is to ensure that colleges and
11 universities with a religious mission maintain the
12 freedom to define and develop their innovative
13 programs of study and preserve the institutional
14 autonomy that is essential to their effectiveness.
15 Institutional autonomy unencumbered by excessive
16 regulation has been the key to my university's
17 growth and development throughout its history.

18 Campbell opened its law school 42 years
19 ago. It was the first law school in North Carolina
20 in 30 years. When it opened a school of pharmacy
21 in the mid-1980s, it was the first time in 40 years
22 a new school of pharmacy had opened in the nation.

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1 And in the last five years at Campbell, we have
2 graduated our first class of students in the
3 physician's assistance program, physical therapy,
4 masters of public health, nursing, and osteopathic
5 medicine.

6 Over 30 percent of our students are
7 first generation college students, 35 percent are
8 from minority and under-represented groups.
9 Ninety-three percent of our undergraduates receive
10 financial aid, much of which is institutional aid
11 and scholarships provided by the university.

12 Autonomy in our distinctive religious
13 mission have driven this innovation and enabled the
14 university to direct its resources to serving
15 students. This can and should be done without
16 eroding educational quality and diminishing
17 academic standards.

18 The process for accreditation with
19 clear measurements in baseline effectiveness
20 indicators are essential. I'm a strong supporter
21 of regional and program accreditation and
22 currently serve one the board of our regional

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1 accrediting agency. In addition to regional
2 accreditation with SACSCOC, Campbell has 16 other
3 programs with specific accreditations.

4 So I encourage the Department to put
5 processes into place that will bring clarity and
6 certainty to the definition of religious mission.
7 This will give accrediting agencies the authority
8 to ensure academic quality is there and faith-based
9 institutions the freedom and flexibility to offer
10 innovative programs and, thereby, more effectively
11 serve their students.

12 One size does not fit all in American
13 higher education, so a wide range of institutions
14 is needed, including religious institutions like
15 Campbell and others, who open their doors and
16 provide opportunities for students to make a
17 living, to make a life, and to make a difference
18 in our world.

19 Thank you for the time to give these
20 remarks.

21 MR. WASHINGTON: Thank you. Harrison
22 Wadsworth.

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1 MR. WADSWORTH: Thank you for the
2 opportunity to speak. My name is Harrison
3 Wadsworth. I'm a principal at Bose Washington
4 Partners and Executive Director of the
5 International Education Council. I'm speaking on
6 their behalf today, the IEC who is my client,
7 regarding issues that impact foreign school
8 eligibility for Title IV aid, particularly with
9 regard to distance education and written
10 arrangements, as well as barriers to innovation and
11 completion contained in institution eligibility
12 regulations and student assistance general
13 provisions.

14 The IEC is an association of foreign
15 institutions of higher education that participate
16 in the Higher Education Act's direct loan program
17 for the benefit of degree-seeking American
18 students. The members of IEC include public and
19 non-profit colleges and universities located in
20 some 14 countries on five continents and represent
21 some of the world's highest quality, most
22 prestigious institutions.

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1 IEC members are necessarily governed by
2 the laws and regulations of their home countries.
3 IEC supports measures that protect the integrity
4 of the federal student loan programs but seeks
5 changes to regulations that make compliance
6 extraordinarily difficult or impossible for
7 foreign institutions or that cause great expense
8 for institutions with a small percentage of
9 enrolled American students.

10 Some consequences of some of the
11 current policies include foreign institutions are
12 turning away qualified American students who want
13 to study on their campuses if they need U.S. student
14 loans, which means fewer American students have the
15 opportunity to study abroad. An option to enroll
16 at foreign institutions expands the range of study
17 programs available to American students and often
18 enables a closer match with the student's academic
19 interests.

20 Laws meant for U.S. institutions don't
21 make sense for foreign universities with small
22 numbers of American students relative to their

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1 total enrollment. And IEC will submit detailed
2 comments to the-- at the appropriate time next
3 week.

4 A couple of specific things I want to
5 comment on. Item five in the list of topics under
6 consideration for revision that was published in
7 the Federal Register discusses the arrangements
8 between an institution and another institution or
9 organization to provide a portion of an educational
10 program. In other words, study abroad for
11 students who are already abroad in the case of the
12 IEC.

13 This has become a serious issue because
14 of the change in the way that students wish to study
15 today. The Higher Ed Act gives the Department
16 broad authority to determine by regulations
17 whether a foreign institution is comparable to a
18 U.S. institution of higher education, but the
19 authority needs to be clarified. The Department
20 regulations currently prohibit U.S. students that
21 received direct loans from taking any courses at
22 another institution unless that institution is

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1 itself an eligible institution. They also prevent
2 the student from taking any courses in the United
3 States with a limited exception for doctoral
4 students.

5 An American student who actually does
6 take a course, make the mistake of taking a course
7 at an ineligible institution abroad loses their
8 access to Title IV loans throughout their program
9 of study. This is tremendously unfair and does not
10 reflect the way American students or any student
11 wishes to study today.

12 This policy prohibiting written
13 arrangements involving any study in the U.S. or the
14 vast majority of the world's universities with the
15 exception of about 400 that are eligible
16 institutions causes tremendous hardship. Such a
17 policy should be modified to permit such study but
18 only in cases where no more than 50 percent or a
19 smaller percentage, such as 25 percent, of the
20 program of study is at the institution in the United
21 States or at an ineligible foreign school.

22 In the case of institutions in the

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1 United States, it makes no sense for a student
2 getting direct loans to not have the opportunity
3 to come to the United States for a small portion
4 of their program of study since that does provide
5 the opportunity to network and hopefully prepare
6 for employment upon graduation so that they can
7 repay their federal student loans.

8 Another issue I want to highlight is
9 with regard to barriers to innovation and
10 competition postsecondary education or student
11 completion, graduation, and employment, including
12 institution eligibility regulations --

13 MR. WASHINGTON: Twenty seconds left.

14 MR. WADSWORTH: -- assistance general
15 provisions. In particular, there is a requirement
16 that foreign institutions that have a substantial
17 amount of U.S. loan dollars file annual financial
18 statements according to U.S. GAAP requirements.
19 There's also a tremendous problem with the way the
20 requirement that foreign medical graduates for a
21 medical school --

22 MR. WASHINGTON: Time.

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1 MR. WADSWORTH: -- take the U.S.
2 medical licensing examination. Again, we're
3 going to comment in more detail on these topics
4 later, and thank you for the opportunity.

5 MR. WASHINGTON: Thank you. Our next
6 speaker, Congressman Mark Takano, is not scheduled
7 to speak until 11:55. Is the Congressman with us
8 today and would he like to speak now? --Okay. We
9 see that he's not here yet, and so we will be waiting
10 until 11:55 for the Congressman to arrive to
11 testify.

12 (Whereupon, the above-entitled matter
13 went off the record at 11:40 a.m. and resumed at
14 11:46 a.m.)

15 MR. WASHINGTON: Our next speaker is
16 Congressman Mark Takano. Please take your seats.

17 CONGRESSMAN TAKANO: Well, good
18 morning. I guess its still morning. My name is
19 Mark Takano and I represent California's 41st
20 congressional district and I'm here because I am
21 growing increasingly concerned about the
22 Department's agenda of deregulation in favor of

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1 predatory for-profit institutions.

2 Before being elected to Congress I was
3 a public school teacher for 24 years and a community
4 college trustee for more than two decades, and
5 during this time I worked directly with students
6 as they navigated our country's education system.
7 My students were eager to pursue higher education,
8 dreaming of the opportunities a degree could
9 provide them, of the doors it could open for them.
10 But as I witnessed the eagerness of my students to
11 pursue a college education, I also saw the rise of
12 for-profit institutions and the threat they
13 presented to my students' futures.

14 Promising the idea of an accessible and
15 flexible education experience for-profits
16 targeted vulnerable students: women of color,
17 veterans and low-income students working to make
18 their American dream a reality. While students
19 saw attainable opportunities in the intentionally
20 misleading multi-million dollar advertisements by
21 for-profit institutions these institutions saw an
22 increased enrollment as a benefit to their bottom

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1 line.

2 Because of the predisposition of
3 for-profits to put their financial interests above
4 student success and financial well-being, the
5 announcement of a negotiated rulemaking process by
6 the Department that seeks to deregulate
7 protections of federal student aid programs is a
8 cause for grave concern. Time and time again we
9 have heard the stories of students who were
10 defrauded by for-profit colleges. We've heard
11 stories of student veterans who wanted to expand
12 their opportunities as they transitioned back to
13 civilian life but were instead cheated, cheated out
14 of their educational benefits by for-profits that
15 didn't live up to their promises.

16 Through the reauthorization of their
17 Higher Education Act Congress has taken concrete
18 steps to protect students and their federal student
19 aid. For example, after student veterans were
20 exploited by home study programs with limited
21 faculty interaction Congress required regular and
22 substantive interaction between students and

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1 instructors in order for online programs to qualify
2 for federal student aid. This was an important
3 step in promoting access to quality online programs
4 for students and helped uphold the integrity of the
5 student aid system.

6 However, these types of regulations
7 such as the one I just mentioned that ensures
8 student access to proper interactions with their
9 online instructors are under threat of being rolled
10 back by the Department. This proposal by the
11 Department to initiate a new rulemaking process is
12 a complete abdication of its responsibility to put
13 the interests of students first and be good
14 stewards of federal aid and taxpayer dollars.

15 Furthermore, revising the regulatory
16 framework of the Higher Education Act is a massive
17 overstep of the Department's role. These
18 regulatory rollbacks would present a rewriting of
19 the law and undermine the intent of Congress to
20 protect students.

21 I want to close with this reminder:
22 The Department of Education is responsible for

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1 protecting students. It is not responsible for
2 helping the bottom line of predatory for-profit
3 institutions. Since Secretary DeVos has presided
4 over this department the Department has completely
5 abandoned that responsibility. Too many student
6 veterans have been cheated out of their benefits
7 by for-profits. Too many working women have been
8 deceived by the false promises of opportunity from
9 for-profits. Too many low-income workers hoping
10 to rise up to the middle class are now stuck with
11 a degree that does not provide them with gainful
12 employment to repay the massive debt they accrued.

13 The Department of Education must put
14 students first --

15 MR. WASHINGTON: Twenty seconds left.

16 CONGRESSMAN TAKANO: -- once again and
17 uphold its responsibility to hold for-profit
18 colleges accountable. I along with my colleagues
19 in the House and the Senate will be submitting
20 comments for the record. Thank you for your time.

21 MR. WASHINGTON: Thank you.

22 CONGRESSMAN TAKANO: Thank you.

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1 MR. WASHINGTON: We do have 10 minutes
2 left. If anyone from the afternoon that is
3 scheduled to speak would like to speak now, you may
4 come forward. If anybody who is not scheduled to
5 speak, you also may come forward.

6 (No audible response.)

7 MR. WASHINGTON: Seeing no one, we will
8 adjourn now for lunch and we will reconvene at 1:00
9 p.m. and our first speaker will be Emily Bouck.

10 (Whereupon, the above-entitled matter
11 went off the record at 11:52 a.m. and resumed at
12 1:02 p.m.)

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

14 1:02 p.m.

15 MR. WASHINGTON: Hello, everyone. We
16 are going to resume with the hearing.

17 Would Emily Bouck come forward to
18 testify?

19 MS. BOUCK: All right. Thank you for
20 the opportunity to comment on the Department's
21 intent to establish negotiated rulemaking. My
22 name is Emily Bouck and I'm the Policy and Advocacy

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1 Director at Higher Learning Advocates, a
2 non-profit advocacy organization working toward
3 bipartisan federal policies to better serve
4 today's students.

5 Today's students are more likely to be
6 returning students, part-time, parents, working
7 adults or veterans. They access postsecondary
8 education online and in the classroom. They study
9 throughout the full calendar year and they weave
10 together skills and competencies gathered not only
11 from their educational experience, but also from
12 their work and life experience. We urge the
13 Department to keep today's students at the center
14 of any regulatory conversations.

15 Higher Learning Advocates is a
16 proponent of smart regulations that fit together
17 to improve student outcomes. We believe any
18 negotiated rulemaking should consider how our
19 array of federal regulations drive better student
20 outcomes or don't.

21 The sheer number of topics proposed by
22 the Department in their notice is far too many

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1 topics to be considered by a single negotiated
2 rulemaking panel. Even with the intent to hold two
3 subcommittees the diversity and complexity of
4 these topics could only be earnestly debated
5 through multiple panels, not one. We urge the
6 Department to limit the number and breadth of
7 topics considered at this time to ensure
8 negotiators have the expertise to debate these
9 issues and increase the likelihood of consensus
10 aimed at improving student outcomes.

11 We ask the Department to at a minimum
12 consider two separate negotiated rulemaking
13 panels: one for accreditation issues and a second
14 for issues related to the types of educational
15 programs that can be eligible for federal student
16 aid including competency-based education.

17 If the Department moves forward with
18 the negotiated rulemaking effort on accreditation,
19 it's important to acknowledge that what existing
20 federal policy asks of accreditors is too focused
21 on inputs instead of outcomes. In any regulatory
22 effort this must be flipped and student outcomes

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1 must be prioritized. We urge the Department to
2 select negotiators and offer any changes through
3 the lens of putting student outcomes first.

4 Further, such a panel must prioritize
5 transparency and consistency in regulations
6 governing accreditors and their actions in order
7 to ensure students receive the same guarantee of
8 quality no matter where they choose to go to school.
9 Transparency and consistency do not need to consist
10 of bright lines that exist regardless of
11 institutional missions and student profiles;
12 however, these challenges can no longer be barriers
13 to implementing concrete measures to better convey
14 how institutions serve their students.

15 In addition, we believe the Department
16 should establish another separate panel if they
17 wish to move forward in considering the types of
18 educational programs that can be eligible for
19 federal student aid. Related topics such as
20 competency-based education, direct assessment
21 programs, regular and substantive interaction and
22 the credit hour should also be considered in this

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1 panel. The goal of such a panel should be to break
2 down barriers for today's students while ensuring
3 all programs provide the highest level of quality.
4 It would be detrimental to simply remove existing
5 guardrails without replacing them with updated
6 protections.

7 As we consider innovative delivery
8 models and providers that meet today's students
9 where they learn and provide critical skills and
10 credentials we must also ensure the quality of
11 programs and demand accountability for students
12 and taxpayers. The Federal Government spends \$120
13 billion annually in federal student aid and it has
14 the right and the responsibility to ensure students
15 use their aid at high-quality programs. We urge
16 the Department to keep this balance of quality and
17 outcomes versus deregulation in mind as it moves
18 forward with its efforts. Thank you for your time
19 and consideration.

20 MR. WASHINGTON: Thank you.

21 Justin Elliott?

22 MR. ELLIOTT: Good afternoon. My name

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1 is Justin Elliott and I'm the Vice President of
2 Government Affairs for the American Physical
3 Therapy Association, APTA.

4 APTA is a national professional
5 association representing more than 100,000 member
6 physical therapists, physical therapist
7 assistants and students of physical therapy in the
8 United States. APTA thanks the U.S. Department of
9 Education for the opportunity to provide public
10 comment here today regarding the Department's
11 intention to examine the federal rules related to
12 accrediting agencies and procedures.

13 I'm here to highlight APTA's concerns
14 related to potential changes to regulations
15 governing accreditation agencies and
16 accreditation procedures that APTA believes will
17 not promote improvements to educational program
18 accreditation and instead could actually pose harm
19 to the public, students and perspective students.

20 Physical therapy education programs
21 receive accreditation from the Commission on
22 Accreditation in Physical Therapy Education, also

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1 known as CAPTE, an agency that was recognized by
2 the United States Department of Education in 1977.
3 It is also recognized by the Council for Higher
4 Education Accreditation.

5 CAPTE grants specialized accreditation
6 status to qualified entry-level education programs
7 for physical therapists and physical therapist
8 assistants. It is the only recognized
9 accreditation agency in the country for physical
10 therapists and physical therapist assistant
11 education programs. CAPTE accredits only
12 educational programs. CAPTE does not accredit
13 institutions nor is it a Title IX gatekeeper.

14 CAPTE accredits programs if they
15 complete a rigorous peer review process that
16 focuses on the quality of education that students
17 receive. Accreditation by CAPTE illustrates to
18 perspective students as well as their families the
19 quality of an educational program that prepared for
20 entry into the physical therapy profession and
21 there are also benefits to the public, perspective
22 students, the profession and academic

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1 institutions.

2 For the public CAPTE accreditation
3 promotes the health, safety and welfare of society
4 by ensuring competent physical therapists and
5 physical therapist assistants. For perspective
6 employers it provides assurances that the
7 curriculum covers essential skills and knowledge
8 necessary to furnish high-quality care. For the
9 PT profession it advances the physical therapy
10 field by promoting standards of practice and
11 advocating rigorous preparation. And for
12 academic institution accreditation provides
13 enhanced credibility.

14 Finally, in order to sit for the
15 National Physical Therapy Exam, the NPTE,
16 individuals educated in the United States must have
17 graduated from a CAPTE-accredited program. And
18 moreover, to satisfy Medicare enrollment
19 requirements the Centers for Medicare and Medicaid
20 Services, CMS, requires physical therapists to
21 have graduated from a CAPTE-accredited program.

22 APTA has concerns that modifications to

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1 the regulations governing accreditation agencies
2 mandating that they be separate and legally
3 independent from professional associations will
4 create undue burdens and costs that could have a
5 negative impact on entities like CAPTE. Increased
6 costs and burdens could put the accreditation
7 process in jeopardy and CAPTE satisfies the
8 Department's education -- the Department's rules
9 that it have adequate and administrative staff and
10 financial resources to carry out its accrediting
11 responsibilities.

12 If CAPTE were to lose its recognition
13 because of a mandate to be separately incorporated,
14 that loss of recognition could lead to physical
15 therapist graduates becoming ineligible to sit for
16 the state licensure exam causing workforce
17 shortages and a decline to access to care.

18 Although APTA and CAPTE have a very
19 cooperative relationship, CAPTE enjoys full
20 autonomy in adopting the standards for
21 accreditation and the application of those
22 standards. APTA is prohibited from interfering

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1 with CAPTE decisions, however, APTA is committed
2 to supporting CAPTE, including financially,
3 because we believe it's important for them to meet
4 their mission.

5 Therefore, APTA strongly recommends
6 that the Department of Education not move forward
7 with amending federal rules related to accrediting
8 agencies and accreditation procedures.

9 I want to thank the Department of
10 Education for the opportunity to express the
11 important role that programmatic accreditors play
12 in the growing physical therapy field and why
13 changing the accreditation requirements process or
14 standards for purely programmatic accreditors
15 could have unintended negative consequences.
16 APTA is eager to engage in meaningful dialogue and
17 work with the Department of Education on this
18 issue. And thank you very much for your time.

19 MR. WASHINGTON: Thank you. Dr. Lynne
20 M. Gangone.

21 DR. GANGONE: Thank you for this
22 opportunity to speak with you today. My name is

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1 Dr. Lynne Gangone and I'm the President and CEO of
2 the American Association of Colleges for Teacher
3 Education. AACTE is a national alliance of
4 educator preparation programs dedicated to
5 high-quality, evidence-based preparation that
6 assures educators are profession-ready as they
7 enter the classroom. Our member institutions
8 include public and private colleges and
9 universities in every state, the District of
10 Columbia, the Virgin Islands and Guam. Through
11 advocacy and capacity building AACTE promotes
12 innovation and effective practices that strengthen
13 educator preparation.

14 The educator preparation profession
15 faces increasing challenges including critical
16 teacher shortages in high-field areas such as STEM
17 and special education, the recruitment and
18 preparation of the next generation of teachers in
19 the face of declining enrollment in teacher
20 preparation programs, the retention of teachers
21 instead of replacing those who depart early in
22 their careers, and the persistent

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1 under-representation of teachers of color in the
2 education profession.

3 As the Department prepares to enter
4 into negotiated rulemaking on a number of areas
5 including the TEACH Grants, I am here to advise
6 caution with the focused intention of do no harm.
7 The TEACH Grants are a critical piece for many
8 institutions to recruit high-achieving candidates
9 into teaching in high-need subjects and in
10 high-need schools.

11 Institutions of higher education must
12 apply to be eligible to offer TEACH Grants and
13 candidates studying to teach in high-needs fields
14 at the institutions of higher education must
15 maintain a 3.25 GPA in order to remain eligible for
16 this aid. In return the candidate commits to
17 teaching in his or her high-need field in a
18 high-need school for four years and they are given
19 a window of opportunity to do so.

20 The TEACH Grants do not circumvent
21 other key federal student financial aid programs
22 such as Pell Grants, but augments the federal

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1 support for these teacher candidates.

2 The Department cites the challenge of,
3 quote, "inadvertent grant-to-loan conversions,"
4 unquote, as a reason to include the TEACH Grants
5 in this pending negotiated rulemaking process. A
6 conversion is brought about if the candidate fails
7 to meet her or his teaching commitment which is
8 assessed by the servicer of the program via
9 paperwork submitted by the candidate.

10 Earlier this year through coverage by
11 *National Public Radio* as well as several lawsuits
12 it has come to light that erroneous conversions
13 have occurred and the source of these erroneous
14 conversions are in fact the servicer. Recipients,
15 teachers in some of our nation's most challenging
16 classrooms, suffering from such detrimental
17 conversions, report having no path of recourse from
18 the servicer and no support from federal student
19 aid or the Department in dealing with the servicer
20 and their errors. As with servicers of any similar
21 debt, the servicer makes more money when a TEACH
22 Grant converts to a loan. However, since

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1 this situation has come to light, there has yet to
2 be appropriate oversight and accountability of the
3 servicer fed loan. It should also be noted that
4 fed loan is contracted to handle the Public Service
5 Loan Forgiveness Program.

6 While AACTE applauds the intent of the
7 Department to support the TEACH Grant program and
8 its recipients, we advise that before examining the
9 programmatic regulations the Department and
10 federal student aid focus first on holding the
11 servicer accountable. Thank you.

12 MR. WASHINGTON: Thank you. Coni
13 Pasch?

14 MS. PASCH: Good afternoon. My name
15 is Coni Pasch and I'm a recent graduate of Capella
16 University with a bachelor's degree in leadership
17 and management and a master's degree in business
18 administration and a certificate in management. I
19 pursued my educational career through Capella's
20 FlexPath Program, a direct assessment program that
21 measures progression through the demonstration of
22 competencies instead of the accumulation of credit

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1 hours.

2 The direct assessment model provides an
3 innovative way for busy students to achieve their
4 educational goals on a timeline that works best for
5 them. Unfortunately, many schools are unwilling
6 or unable to provide direct assessment programs
7 because of existing regulatory challenges.

8 I applaud the Department for working to
9 explore changes through the upcoming negotiated
10 rulemaking that could make direct assessment more
11 available to students and urge you to consider
12 changes to the existing regulations that will
13 remove barriers within the innovative learning
14 world.

15 When I made the decision to go back to
16 school and obtain my degree I chose an online
17 university that only offered a structured program.
18 It locked me into a rhythm of discussion questions,
19 group assignments and individual assignments that
20 took place over the course of five weeks. There
21 was no opportunity to move faster than the class
22 was structured and often the class was a mix of age

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1 groups and professional backgrounds.

2 I was frustrated about the amount of
3 work I was doing to progress in the program that
4 didn't offer me the opportunity to leverage my
5 30-plus years in the IT industry. Then one day I
6 randomly caught a commercial about FlexPath. I
7 called the number immediately and spoke to an
8 enrollment counselor to determine what I needed to
9 do to transfer to the FlexPath program. Instantly
10 I knew FlexPath was the type of educational program
11 that would work for me. It allowed me to move
12 quickly through the course work I was more familiar
13 with and it afforded me the ability to take
14 additional time when I needed to.

15 The accomplishment of obtaining these
16 degrees and completing the assessments and do it
17 as a full-time professional changed who I was as
18 a person. It gave me confidence to step outside
19 my comfort zone, take risks and face challenges
20 head on. Programs like FlexPath empower today's
21 students to go where they potentially have never
22 thought they could go before.

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1 Because of the flexibility and
2 affordability of Capella's FlexPath program I
3 could move at my own pace, save on tuition costs
4 and obtain both degrees in half the time of a
5 traditional credit hour program. If more schools
6 took this approach to education, non-traditional
7 students like myself, would be able to pursue their
8 educational goals while juggling personal and
9 professional priorities.

10 Unfortunately, there are some
11 regulatory challenges that make it hard for more
12 schools to offer direct assessment programs.
13 Through the negotiated rulemaking process the
14 Department of Education should propose regulatory
15 changes that allow programs like FlexPath
16 utilizing subscription period pricing to operate
17 under standard term financial aid rules. The
18 Department should also modify the R2T4 rules for
19 modular programs to allow for the calculation to
20 consider the period of actual enrollment versus
21 requiring the calculation to include courses that
22 have not yet started.

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1 These two changes would remove many of
2 the operational hurdles schools face when they
3 consider offering direct assessment programs and
4 would allow greater access to flexible assessment
5 high-quality education for students like myself
6 who are interested in pursuing their degree while
7 juggling several priorities.

8 Finally, the Department should take
9 care to encourage innovation while protecting
10 students and safeguarding their role of the
11 faculty. Thank you.

12 MR. WASHINGTON: Thank you.

13 Bernard Fryshman?

14 MR. FRYSCHMAN: My name is Bernard
15 Fryshman. I'm the Executive Director of the
16 Association of Advanced Rabbinical and Talmudic
17 Schools Accrediting Commission. I've been doing
18 that since 1973, and so I've been involved in a
19 whole variety of issues and concerns and matters
20 that I want to touch upon. I'll have a more
21 complete presentation in writing. The five
22 minutes is not enough to touch on everything, but

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1 I do want to mention a few issues of concern.

2 My first area of concern is informed
3 consent. Far too many innovative, quote/unquote,
4 "experimental, unverified, unreliable programs"
5 are being offered to students and sometimes
6 students devote time, money, expense, expense in
7 the sense of their lives, and come out without a
8 good degree, without real knowledge. Sometimes
9 they get a degree and the degree is not worth very
10 much when they try to apply it, try to get
11 licensing, try to get onto conventional programs.

12 So that the Department, whenever it
13 considers innovative, experimental or new kinds of
14 approaches to education should always attach a
15 requirement of informed consent. A student should
16 be asked to sign an informed consent document
17 saying that he or she recognizes that the outcome
18 of this program hasn't been verified and hasn't
19 been tested. It's not the sort of thing that's had
20 hundreds of years of experience, a path, a
21 trajectory towards a degree, towards a degree that
22 means something, and there may be some failure.

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1 That informed consent should be an absolute
2 necessity for -- to protect every student in every
3 kind of program.

4 There should be a policy of experiment
5 first. The Secretary, in discussing gainful
6 employment, sent out a document which is really
7 quite exceptional where she described the helter-
8 skelter approach of the Department in its original
9 approach to gainful employment. The whole thing
10 didn't work. And the reason it didn't work is
11 because -- well, it was the same reason that many
12 other things don't work: there's no
13 experimentation. There's no proof of principle.
14 There's no pilot program. Somebody has a good
15 idea. It's a tantalizing one, and it's tried. At
16 this point lots and lots of new kinds of approaches
17 to quality assessment are being proposed. Not one
18 of them has actually been tried in the real world.

19 Nothing should be allowed to be put into
20 law without experimentation, rigid
21 experimentation, scientific experimentation, the
22 kind of experimentation that takes years to carry

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1 out in the medical profession. We don't -- we try
2 to make sure we don't hurt people's health with new
3 drugs. We shouldn't hurt students' intellectual
4 health with new programs without knowing for sure
5 that there's at least an experimental indication
6 that this might help.

7 In terms of accreditation the
8 Department should recognize there are many
9 different kinds of accrediting agencies: new and
10 old, large and small, occupational and
11 scholarship, different kinds of accrediting
12 bodies, yet one set of regulations. Sometimes
13 it's very, very difficult for an accrediting body
14 to fit regulations which really are intended to
15 describe the role and results of a different kind
16 of accreditation agency.

17 The Department and NSICI have been
18 handling this very wisely, but I wanted to suggest
19 that there's another approach. The Department
20 should have provision to put the onus on an
21 accrediting agency to demonstrate compliance
22 without using the guidance in the regulations of

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1 the Department itself. In other words, the
2 Department sometimes says there's guidance that
3 explains how the Department expects compliance to
4 be demonstrated. Sometimes it doesn't work.
5 Sometimes it will be much easier, much more
6 effective and much more accurate to allow an
7 accrediting agency to demonstrate on its own how
8 it complies with the Department's regulations. So
9 that's just a recommendation --

10 MR. WASHINGTON: Twenty seconds left.

11 MR. FRYSCHMAN: -- that I think should
12 work.

13 In terms of alternate measures of
14 quality I've seen all of them. I've read all of
15 the reports. Every one of them speaks about
16 student outcomes, yet nobody identifies these
17 student outcomes. Not one. There isn't one
18 identifiable student outcome that you can use to
19 establish the quality of an education. There is
20 of course peer review --

21 MR. WASHINGTON: Time.

22 MR. FRYSCHMAN: -- which is

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1 accreditation, but the glib mention of student
2 outcomes is if everybody knows what we're talking
3 about. It's just not there. And so before we go
4 ahead with any kind of --

5 MR. WASHINGTON: Your time has
6 expired.

7 MR. FRYSCHMAN: Pardon?

8 MR. WASHINGTON: Each commenter is
9 given five minutes to testify and your time has
10 expired.

11 MR. FRYSCHMAN: I'm done.

12 MR. WASHINGTON: Okay. Thank you.

13 MR. FRYSCHMAN: Okay. Thank you.
14 I'll have lots more to say in writing.

15 MR. WASHINGTON: Yes.

16 Jesse O'Connell, please?

17 MR. O'CONNELL: Thank you for the
18 opportunity to deliver public comment today as the
19 Department prepares to move forward with its
20 negotiated rulemaking process.

21 I'm Jesse O'Connell, Strategy Director
22 for Lumina Foundation. Lumina is the nation's

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1 largest private foundation focused specifically on
2 increasing student access and success in
3 postsecondary education. In fact, we're
4 committed to making success and opportunity in
5 postsecondary education available to everyone.
6 We're especially focused on those who've
7 historically faced barriers to success including
8 low-income students, students of color and working
9 adults.

10 At Lumina we envision a system of higher
11 education that's easy for these students, for all
12 students to navigate, a system that delivers fair
13 equitable results and meets the nation's need for
14 talent through a broad range of high-quality
15 credentials. I think all of us can agree that for
16 this vision to be realized American higher
17 education must embrace change. Institutions and
18 systems must be reoriented so that they're more
19 inclusive, more flexible and more responsive to the
20 needs of today's students and those in the nation
21 as a whole.

22 Without a doubt the work of this

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1 Negotiated Rulemaking Committee will have a
2 meaningful impact on this change effort. And so
3 if I may, I'd like to suggest some basic steps for
4 the Committee to consider as it approaches this
5 work. These suggestions will be shared in greater
6 detail in our written comments, but today I'd like
7 to offer three key pieces of feedback:

8 First, aim for quality not mere
9 simplification. It's wise to streamline
10 processes and reduce regulation, but only as a
11 means to an end. Deregulation shouldn't be your
12 default position. It should be applied not as a
13 trend, but as a tool and needs to be done wisely,
14 strategically and toward one overarching purpose,
15 and that's to ensure quality in programs and
16 institutions. In fact, as the Committee begins
17 its work quality assurance should be the guiding
18 principle, and that comes into play in my second
19 suggestion as well.

20 When it comes to accreditation focus on
21 outcomes, not inputs. We're pleased to see the
22 suggested discussion topics for improving

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1 accreditation include a specific reference to
2 emphasizing criteria that focused on educational
3 quality. We urge you to embrace this idea to
4 ensure that accreditors measure what matters. In
5 short, they should pay less attention to
6 institutional inputs and instead focus on specific
7 student-level results, things like learning
8 outcomes, employability outcomes, completion
9 rates and student loan repayment rates. It's
10 important to disaggregate data to understand how
11 will institutions are serving their students of
12 color and other key student populations.

13 My third and final suggestion is this:
14 Use this as an opportunity to innovate but with a
15 lens on outcomes and quality. And I know that
16 directive might seem overly broad, so let me apply
17 it to some specific ideas before the Committee.

18 First, members should approach
19 changing the requirement for regular and
20 substantive interaction between faculty and
21 students with the dual mindset of innovation and
22 quality. This requirement should be updated to

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1 reflect the current world we live in, but still
2 ensure that when a student uses their Pell Grant
3 or their student loans, they can expect a rigorous
4 learning experience.

5 To be clear, an argument for modifying
6 the standard is not an argument against the broader
7 intent of the standard itself. To abandon this
8 requirement wholesale would likely harm the
9 continued emergency of competency-based education
10 models as a complete lack of guardrails could
11 permit the sudden flourishing of opportunistic
12 actors masquerading as competency-based
13 education, but not built on the best current
14 research about how people learn.

15 In revisiting the standard perhaps
16 instead of focusing solely on interaction with
17 faculty defined in a narrow way we might be better
18 served to focus on what kind of faculty engagement
19 produces regular substantive learning.

20 Similarly, the Committee should take a
21 fresh approach when considering direct assessment
22 and competency-based learning. Both of these are

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1 powerful tools that can help students,
2 particularly adult students, earn degrees and
3 other high-quality credentials. Merely
4 simplifying the process for direct assessment and
5 competency-based education will fall flat if
6 quality is not at the forefront of this effort. I
7 would urge you to ensure that, as with
8 consideration of quality for the criteria of the
9 recognition of accrediting agencies, quality and
10 improved outcomes rather than simplification, be
11 the primary focus of negotiations on this topic.

12 I hope you consider these comments as
13 you develop the Committee and I thank you again for
14 your time.

15 MR. WASHINGTON: Thank you.

16 Michale McComis?

17 MR. McCOMIS: Good afternoon. My name
18 is Michale McComis. I'm the Executive Director
19 with the Accrediting Commission of Career Schools
20 and Colleges. I've been in that position for 24
21 years and have had the pleasure of putting together
22 four petitions for recognition with the

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1 Department. We're very pleased to be here this
2 afternoon to talk a little bit about the proposed
3 rulemaking and to give some suggestions as the
4 Committee thinks about how to move forward.

5 As an initial comment I would echo some
6 of the sentiments from the previous testifier Jesse
7 O'Connell around the issue of deregulation, and I
8 would caution the Department of Education from
9 looking at a process of deregulation solely for the
10 sake of deregulation. And so where we can find
11 ways to improve and to streamline and to strengthen
12 the process I think that will be exceedingly
13 important, but as someone that's engaged in the
14 accreditation process and has engaged in the
15 regulatory recognition process with the Department
16 on many occasions as an agency we find many benefits
17 to going through that third-party assessment
18 process very much the same way that our
19 institutions find benefit in going through our
20 accreditation process.

21 There are some more minute matters that
22 I would bring to the Committee's attention. The

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1 first is regarding the federal definition of a
2 credit hour. And I won't speak to whether it's
3 appropriate or not to have in the Federal
4 Regulations a definition of the credit hour, but
5 I will speak to the area in 602 that requires
6 accreditors to enforce the federal definition of
7 a credit hour. And so that becomes quite
8 problematic for accreditors that are then used as
9 a proxy to enforce the Department's own regulation.

10 It's also problematic insofar as our
11 agency is one that deals primarily with vocational
12 institutions and has a very different approach in
13 the use of the credit hour, and so it makes for a
14 more difficult evaluation process. So we would
15 view the federal requirement that accreditors
16 regulate or review in that area to be an example
17 of federal overreach.

18 I would encourage the Department to
19 think about ways to allow institutional and
20 programmatic accreditors to partner so that we can
21 reduce overlap and duplication in those two
22 processes and make it more palatable to

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1 institutions to engage in both institutional and
2 programmatic accreditation.

3 I would encourage the Department of
4 Education to reevaluate the appeals process. In
5 the 2009 federal negotiated rulemaking, which I was
6 a member on that committee that reached consensus,
7 there was an interpretation from the Department
8 that appeals panel members and appeal panel bodies
9 should be considered or could be considered as
10 decision making entities. And again, from a
11 practical consideration that causes quite a bit of
12 confusion amongst how appeal decisions are handed
13 down.

14 I would ask the Department to think
15 about its requirement that accreditors have only
16 30 days to produce probation actions. We find that
17 probation actions tend to be quite complex, tend
18 to be a very important action that an accreditor
19 takes and by requiring a 30-day turnaround on that
20 it can cause an accreditor to potentially make
21 mistakes in trying to rush that action out the door.

22 I would encourage the Department in its

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1 use of the regulations and also to some -- with some
2 degree the use of the sub-regulatory guidance to
3 in all instances be looking to apply a level playing
4 field across all recognized agencies and to fairly
5 look at the way in which all accreditors are held
6 accountable to the Federal Regulations and
7 particularly how they look at the process and
8 student outcomes.

9 Lastly I would encourage the Department
10 of Education to model the recognition process on
11 the accreditation process; that should come as no
12 great surprise to anyone, that there are elements
13 in the accreditation process that I think are
14 applicable here whereby working with the
15 Department and the staff agencies are able to, as
16 Bernie said, demonstrate how in their individual
17 circumstances and given their scope and their
18 institutions and their standards how they meet and
19 believe that they meet those Federal Regulations
20 and not be tied so strictly to just the
21 sub-regulatory guidance.

22 But at the end of the day have that

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1 requirement --

2 MR. WASHINGTON: Twenty seconds left.

3 MR. McCOMIS: -- thank you -- have that
4 requirement that accreditors in fact show how they
5 are valid and reliable evaluators of quality.
6 Thank you.

7 MR. WASHINGTON: Thank you.

8 Sekinah Hamlin?

9 REV. HAMLIN: Thank you so much. Good
10 afternoon. I'm the Reverend Sekinah Hamlin,
11 Director of the Faith and Credit Roundtable of the
12 Center for Responsible Lending. The Faith and
13 Credit Roundtable is comprised of faith traditions
14 and denominations, ministries and organizations
15 that represent over 118 million people.

16 They have colleges, universities and
17 theological schools that actively engage in
18 providing quality education and training of
19 persons starting out in adulthood as well as those
20 that are going back to be educated in a new field
21 or discipline based on new job markets in order to
22 better support their families, those that have been

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1 in the job market and coming back for added
2 certifications to qualify for positions that will
3 provide better salaries and benefits, and even
4 those that have retired from or left careers to
5 pursue their true vocation and calling, that of
6 ordained ministry or set apart, as we say,
7 religious and denominational leadership.

8 We are lovers of learning and believe
9 that the quest to gain knowledge and understanding
10 is one that will allow us to get the tools needed
11 to help equip all people to reach their fullest
12 God-given potential, yet we are very concerned
13 about the deregulation that the Department of
14 Education is now here considering, particularly as
15 it affects students of color and low-income
16 students.

17 Program integrity in our higher
18 education system relies on the triad consisting of
19 oversight by the Federal Government, state
20 governments and accrediting agencies. Each
21 component of the triad plays an essential part in
22 assuring that students have access to high-quality

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1 higher education opportunities and their
2 institutions operate with accountability. This
3 dynamic has been tested over the past few decades
4 as we have seen the rise of the for-profit college
5 sector coupled with widespread programmatic abuses
6 particularly within this rapidly growing sector.

7 Further, as this digital revolution
8 continues online, and distance education have also
9 increased simultaneously and as a direct feature
10 of many of these for-profit programs. Today
11 millions of students attend school online. The
12 2016 Distance Education Regulations attempted to
13 rectify the gap created by inconsistent state
14 authority and regulation on online providers while
15 students and taxpayers find themselves
16 inadequately protected should an issue arise with
17 online course work or programs.

18 The need for regulation was clear and
19 simple. There is no reason why online education
20 should be exempted from full oversight under the
21 triad especially when millions of American
22 students and borrowers attend school online and

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1 billions of dollars in federal funds flow through
2 these programs.

3 In 2014 more than 2,300 institutions
4 offered over 23,000 distance education programs.
5 As of fall 2015 more than 4.9 million undergraduate
6 students; 1 in 4 participated in distance education
7 including 2.1 million students, 12 percent, who
8 were enrolled exclusively online Of those 2.1
9 million entirely online students 1.3 enrolled at
10 institutions located within their states and
11 767,000 were enrolled in online institutions
12 located across state lines.

13 Recent data from the National Council
14 of the State Authorization Reciprocity Agreements
15 also gives us some insight into the scope of online
16 enrollment in the United States. Fourteen
17 ninety-five institutions are SARA members serving
18 1,166,560 students of this count. Only 2,171
19 students fall outside the SARA guidelines and
20 966,389 fall within them. These numbers indicate
21 that any delay in implementation of change of these
22 rules will have a far-reaching effect on our higher

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1 education system. Further, the extent of distance
2 education participation coupled with the fact that
3 the majority of these programs are for-profit lends
4 even more urgency to the need for swift un-delayed
5 implementation of the final rules, not a rewrite.

6 To further highlight our concerns about
7 failing to regulate the for-profit sector CRL
8 recently released a new report entitled, "Debt and
9 Disillusionment" based on focus groups and surveys
10 of former students. It demonstrates that
11 for-profit colleges target vulnerable communities
12 through intense advertising and personal lies
13 recruiting, enticing them to borrow large
14 amounts --

15 MR. WASHINGTON: Twenty seconds left.

16 REV. HAMLIN: -- of money to attend.
17 Very few participants, including those who left
18 school many years previously, were able to make any
19 progress in repaying their debts given by these
20 institutions. The impact of heavy student debt
21 burdens was both psychologically and material.
22 Participants had no --

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1 MR. WASHINGTON: Your time has
2 expired.

3 REV. HAMLIN: -- ability to pursue to
4 goals such as home ownership and even saving for
5 their children's education.

6 MR. WASHINGTON: Thank you.

7 While Jamienne Studley is not scheduled
8 to speak until 2:00, if she's -- okay.

9 MS. STUDLEY: Thank you. I'm Jamienne
10 Studley, President of the WASC Senior College and
11 University Commission, the recognized regional
12 accrediting agency for California, Hawaii and the
13 Pacific Islands at the bachelor's degree and above.
14 I am proud to have served in this Department as
15 Deputy Undersecretary, chair of NSICI, Deputy
16 General Counsel, Deregulatory Officer, and Acting
17 as General Counsel, Assistant Secretary for
18 Post-Secondary Education and Undersecretary.
19 It's good to be back. And thank you for this
20 opportunity.

21 WASC appreciates and supports the
22 Department's interest in considering regulatory

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1 improvements, and I have three main points about
2 scope, innovation and risk:

3 Accreditors need a wide field of vision
4 to be able to do our job. Education quality and
5 student success are indeed our special
6 responsibility and areas of expertise as
7 accreditors, but to make judgments expected of us
8 we also need to have and evaluate governance
9 responsibility and financial sustainability. The
10 board's independence, skill and ability to
11 exercise oversight are critical to an
12 institution's integrity and capacity to meet our
13 standards.

14 We need to understand each
15 institution's financial health and to assure that
16 there are resources and reasonable strategies to
17 sustain it so that our standards can be met and
18 students can be served into the future. The
19 complex decisions we make about structural
20 changes, institutional resilience and student
21 success require that we evaluate key finance and
22 governance factors. Every gatekeeping

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1 accrediting agency should have the responsibility
2 and expertise to do that.

3 Second, accrediting agencies have
4 demonstrated the capacity to lead, change and
5 support innovation. Accreditors pioneered the
6 focus on student learning that we now take for
7 granted moving beyond an input-based approach.
8 Some of you recall that I spent several years as
9 a public official urging accreditors, especially
10 regional accreditors, to use outcomes to identify
11 potential weaknesses and to target schools for more
12 intense scrutiny.

13 Now we agencies are doing an
14 increasingly good job of taking outcomes
15 information into account to support both our
16 quality assurance and improvement functions. No
17 bright lines, but sharpened questions and clearer
18 expectations. My own agency has developed new
19 metrics to expand our understanding of completion
20 rates and credit recovery. And finally across the
21 landscape I believe I am observing increased rigor
22 and willingness to make hard decisions that we have

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1 expected of our accreditors all along.

2 There is a rumor afoot in the land that
3 accreditation and innovation are incompatible.
4 Presidents in my region tell me that accreditation
5 doesn't hinder their ability to introduce new
6 programs and approaches. Some regulatory
7 improvements could help promote innovation such as
8 giving accreditors room to decide when a site visit
9 is necessary to judge a new program. And let's be
10 honest, we do have speed bumps to slow innovation
11 where there have been crashes and injuries. And
12 in those cases we are right to choose caution over
13 speed.

14 There's additional room to streamline
15 accreditation: some statutory, some regulatory.
16 I've described our current overlay of input plus
17 outcome expectation as a belt-and-suspenders
18 situation and encourage reducing input elements to
19 allow accreditation to concentrate on results and
20 on fundamental education, governance and financial
21 quality issues.

22 Third, to reduce risk this process

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1 should address rule changes to increase
2 interchange and collaboration across the triad,
3 strengthen teach-out and support effective
4 student-consumer protections. Cooperation and
5 exchange of information is a boring perennial
6 recommendation, but it is also important and
7 overdue. From my vantage point as a federal
8 regulator and now as an accreditor I've seen the
9 damage that happens when we cannot or do not share
10 warnings and concerns across agencies.

11 We should look at whether there are any
12 rule changes that could facilitate early exchange
13 of information or additional authority to help us
14 protect students. And this rulemaking should
15 address stronger tools for mandating earlier more
16 rigorous teach-out plans. Ms. Jones has made good
17 suggestions that we explore expanded options for
18 accreditors to manage effective dates for school
19 closure and teach-outs.

20 Let me close with my hopes for this
21 rulemaking: Starting in 1993 I helped the
22 Department implement the new Neg Reg requirement,

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1 and long ago I guided the financial responsibility
2 rulemaking to an unexpected consensus. In short,
3 I have a rare affection for this strange initially
4 unwelcome process because at its best it promotes
5 genuine negotiation and development of smarter
6 rules. I have seen people listen and learn from
7 each other --

8 MR. WASHINGTON: Twenty seconds left.

9 MS. STUDLEY: -- problem solve and
10 compromise. I have watched student groups develop
11 capacity to participate in complex discussions.
12 I'm concerned that it would not be feasible to fully
13 address the range and density of issues that have
14 initially been suggested be combined into a tightly
15 time-limited process. I encourage the Department
16 to narrow the issues, expand the time, or both. I
17 urge the Department to secure the most skillful
18 facilitators possible.

19 MR. WASHINGTON: Time.

20 MS. STUDLEY: That factor has made a
21 significant difference in whether negotiations are
22 effective, constructive and civil. The need to

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1 educate --

2 MR. WASHINGTON: Your time has
3 expired.

4 MS. STUDLEY: -- all our people is
5 urgent. Let me -- may I finish one sentence?

6 (No audible response.)

7 MS. STUDLEY: Neg Reg gives us a chance
8 to understand different perspectives and policy
9 options and to develop rules that successfully
10 balance rigorous quality assurance, valuable
11 innovation and careful burden reduction.
12 Students and taxpayers deserve nothing less.
13 Thank you very much.

14 MR. WASHINGTON: Thank you.

15 Shirley V. Hoogstra?

16 Yes, she's not scheduled to speak until
17 3:40. I was calling to see if she was in attendance
18 and if she would like to speak early.

19 Okay. What we are going to do now --
20 well, I should say is there anyone else who has not
21 spoken who would like to testify?

22 (No audible response.)

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1 MR. WASHINGTON: Okay. Seeing none,
2 we are going to break until 3:00 p.m. and reconvene
3 allowing us time for any walk-in testimony and also
4 time for Shirley V. Hoogstra to present at 3:40.
5 So we will reconvene at 3:00 p.m.

6 And I will say in addition if anybody
7 exceeded their five-minute time limit, there's
8 still the option to present written comments online
9 at regulations.gov. You could just type in
10 ed-2018-ope-0076 and that will pull up the docket
11 for this public hearing and you can submit your
12 written comments to the Department of Education.
13 Thank you.

14 (Whereupon, the above-entitled matter
15 went off the record at 1:48 p.m. and resumed at 3:00
16 p.m.)

17 MR. WASHINGTON: Hello, ladies and
18 gentlemen, and welcome back. We are reconvening
19 at 3:00 p.m. If anybody in the audience would like
20 to make a public statement, please just approach
21 the podium. We do have a speaker scheduled at 3:40
22 to make public testimony. Thank you.

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1 (Whereupon, the above-entitled matter
2 went off the record at 3:01 p.m. and resumed at 3:33
3 p.m.)

4 MR. WASHINGTON: Hello, ladies and
5 gentlemen. We're going to resume with the public
6 hearing. We have Shirley V. Hoogstra.

7 MS. HOOGSTRA: Thank you. Thank you
8 for the opportunity to present today on the
9 important topic of accreditation. I'm Shirley
10 Hoogstra and I represent the Council for Christian
11 Colleges and Universities. We have 157
12 institutions in North America and 154 in the United
13 States. We represent 450,000 students, 72,000
14 faculty and staff, and over 3.1 million alumni.

15 We seek as our mission to help
16 institutions transform the lives by faithfully
17 relating scholarship and service to Biblical truth
18 and our schools shape students so that they act for
19 the public good at a cost to themselves out of a
20 love for Jesus Christ so that they can affect the
21 world around them.

22 We will be submitting detailed comments

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1 in writing next week, but I wanted to highlight a
2 few specific areas today.

3 First, the Department should clarify
4 what it means for an accrediting agency to respect
5 religious mission. Currently accrediting
6 agencies are required to respect institutions'
7 religious missions, yet the term is undefined and
8 that causes a problem. This lack of definition
9 risks accreditors interpreting inconsistently
10 across accrediting bodies.

11 Religious mission permeates our
12 institution's policies and practices so we believe
13 that the Department should provide clarity and a
14 definition like that in the PROSPER Act, which says
15 the term "religious mission" includes an
16 institution of higher education's religious
17 tenets, beliefs, teachings, policies or decisions
18 related to those tenets and beliefs or teachings
19 including policies, decisions concerning housing,
20 employment, curriculum, self-governance or
21 student admission, continuing education or
22 graduation. So it just expands so that it's a

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1 comprehensive definition and does not get
2 confusing.

3 Second, the Department should clarify
4 how it will enforce the requirement for accrediting
5 agencies to respect religious mission. So
6 currently should an accreditor not respect an
7 institution's religious mission, the only remedy
8 right now for the Secretary is a Draconian option
9 of de-recognizing the accreditor. This leaves the
10 institution harmed and harms hundreds of other
11 institutions at the same time. Institutions
12 suffer even though it was the accreditor who
13 violated the law. So we've got four options to
14 address the deficiency.

15 First, clarity. The process must be
16 clear and understandable to both the institution
17 and the accrediting agency.

18 Second, timeliness. There are real
19 harms that begin immediately as soon as
20 accreditation is called into question, much less
21 revoked so resolution must be timely.

22 Third, certainty. To ensure

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1 institutions have recourse the process should
2 require the Department to act not simply allow it
3 to act.

4 And then lastly, restitution.
5 Different types of accreditation are not
6 necessarily equal or interchangeable, therefore at
7 the end of the process the institution should be
8 able to have its original accreditation status
9 restored if that is determined to be appropriate.

10 The third and final issue I want to
11 raise today is that the Department should give
12 accrediting agencies and institutions the
13 flexibility they need to innovate, reduce costs and
14 serve students in line with their unique missions.

15 We are pleased that the Department will
16 propose regulations that promote innovation. In
17 doing so however we urge the Department retain as
18 its goal protecting the integrity and efficacy of
19 the student financial aid programs as well as to
20 strongly consider the value of institutional
21 autonomy in those decisions.

22 Let me conclude. The diversity of

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1 higher education institutions has contributed to
2 the United States being the best in the world.
3 Christian higher education and faith-based higher
4 education generally is an important part of this
5 diversity. Just today in the *Wall Street Journal*
6 they published an article noting that 11
7 institutions that rank the highest in student
8 engagement, 8 of them were faith-based.

9 Christian higher education produces
10 committed, compassionate, convicted citizens who
11 want to engage deeply in the world not in spite of
12 their faith, but because of their faith. And
13 therefore, we are grateful to the Department today
14 for embarking on this process of ensuring that the
15 mission of faith-based higher education is
16 protected.

17 Per the establishment cause the
18 Government should neither favor nor prevent the
19 inclusion of religion in higher education, rather
20 in our marketplace of ideas religious institutions
21 of higher education should be allowed to compete
22 on an equal footing with their peers. And we

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1 believe the measures outlined above achieve this
2 by ensuring all institutions, including religious
3 institutions, can have their missions and autonomy
4 respected so they can best serve their students.

5 Thank you for this opportunity to
6 comment. We look forward to bringing dialogue
7 about these issues throughout the rulemaking
8 process. Thank you.

9 MR. WASHINGTON: So that concludes our
10 registered speakers for today's public hearing.
11 Again, if anyone in attendance would like to speak,
12 please come to the podium and we will remain here
13 until 4:00 p.m. as noted in the *Federal Register*
14 notice if anybody so chooses to testify. Thank
15 you.

16 (Pause.)

17 MR. WASHINGTON: This concludes our
18 public hearing. Thank you all for coming and have
19 a nice day.

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