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
9:04 a.m.

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

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

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

Secretary DeVos has challenged America to rethink education. Rethink means everyone
questioning everything to ensure nothing limits students from being prepared for what comes next.

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

More specifically, with respect to accreditation, the administration is interested in improving the recognition and oversight processes to ensure consistent and equal treatment of all agencies. In this work, we wish to recognize the autonomy and independence of agencies, support the
needs of today's students, and honor the missions of various institutions. We would like to hear your thoughts about how to simplify the Department's process for recognition of accrediting agencies and how to emphasize criteria that focus on educational quality rather than administrative minutia.

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

In addition to the accrediting regulations, we are exploring some specific regulatory provisions that are not directly part of the accreditation regulations but that impact the work of institutions and the way that work might be evaluated by accreditors. Those provisions include the development of a single job placement
definition and a single methodology for calculating job placement rates; the determination of reasonable program length for clock hour programs that result in certification or licensure; the elimination of barriers to innovation and competition in postsecondary education or to student completion, graduation, or employment, including barriers created by unnecessary credential inflation or practices that are unfair to students; the ability for an institution to contract with other entities to provide a percentage of an educational program, including to promote innovation and enable more rapid responses among career technical programs to meet employer and workforce needs; and the simplification and clarification of program requirements to minimize inadvertent grant-to-loan conversions for TEACH Grant recipients.

Additionally, in light of the recent Supreme Court ruling in Trinity Lutheran, the Department will review provisions in our
regulations relating to the eligibility of faith-based entities to participate in Title IV programs and the eligibility of students to obtain certain benefits under those programs. We welcome your perspectives as we work on updating our regulations in each of these areas.

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

Subcommittees would consist of experts in those areas, would not make decisions, but will report their recommendations back to the full committee for deliberation during public negotiations. In late fall, we will publish a notice in the Federal Register seeking nominations for negotiators and subcommittee members. We hope
that you and your colleagues will consider serving
in this capacity at that time.

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

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

Speakers will be asked to limit their
remarks to five minutes. If you get to the end of
your five minutes, Aaron will ask you to wrap up,
and we ask that you do so within 20 seconds.

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

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

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

When you're called to speak, please
provide your name and affiliation before speaking. We look forward to your comments. Thank you for your time and for sharing your expertise with us. We look forward to an interesting and productive day.

MR. WASHINGTON: Julie Murray.

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

Public Citizen supports the Department's plan to address in a negotiated rulemaking TEACH Grant program requirements, including to minimize what the Department has termed inadvertent grant-to-loan disclosures -- or grant-to-loan conversions. The Department's efforts in this regard are critically important at this point. The TEACH Grant program offers aspiring teachers grant aid in exchange for an agreement to serve for four of eight years after graduation in low-income schools or districts in
high-need fields. If a teacher doesn't fulfill her service requirement, the grant converts to a loan.

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

The Department, in its negotiated rulemaking, must develop rules that eliminate unnecessary steps in the certification process that create hurdles for teachers, and it should develop a more flexible approach. It should reassess, for example, its requirement that teachers annually recertify even in years for which they are not seeking service credit for their teaching.
It should also ensure that any consequences for non-compliance are proportionate to the mistakes that are made. When an individual pays her student loan bill a couple of days late, she doesn't expect that she would get a multi-thousand dollar late fee that would take more than a decade to pay off, and that is essentially what is happening to teachers under the TEACH Grant program.

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

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

In light of these extensive errors, the Department should immediately make public its policy that teachers can dispute conversions and explain what that policy is, which it has never done. But it should also include a dispute process as part of the negotiated rulemaking and set forth that process in its regulations. The process should offer robust protections to affected teachers including, among other things, a mandatory deadline for the Department to respond to disputes and a commitment to cease all involuntary collections against teachers whose
converted loans are currently subject to dispute. The committee should also consider how to make previously-injured recipients whole because there are many thousands of them who still have loans.

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

MR. WASHINGTON: Twenty seconds left.

MS. MURRAY: Most importantly, the
committee should include teachers who have been harmed by previous conversions and those who currently have grants. Their voices must be at the table. Thank you.

MR. WASHINGTON: Thank you.

Christopher J. Madaio.

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

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

In many cases, however, all our offices can do is try to stop the conduct in the future because we don't have the power to help students with the federal loans that they incur as a result.
of the conduct, the past conduct of the schools. For instance, the student who took out $50,000 in loans for a distance education nursing program but was never told that they couldn't get a license in the state that they lived in, we can't -- we can't help that student erase their loans. The student who went to a school whose accreditor did no real oversight when the school was using high pressure boiler room sales tactics and inaccurate job placement rates, we can't erase that student's loans. All we can do is try to stop conduct in the future and try to attempt to prosecute the school individually.

In order to help students, we need stronger oversight, for instance, of distance education. States which people always say are the laboratories of democracy and are a clear leg of the higher education triad should be permitted to be those laboratories. Some states may want to act as a more stringent gatekeeper for schools to be authorized in their state than other states. Those states that want to regulate schools who
enroll their residents, despite those schools not having a ground presence in their state, should be able to do so and should not be limited by the rules of SARA. Instead, SARA should have to change to allow states to apply the regulations and statutes that those states deem necessary upon schools that enroll their residents, even if those schools do not have a physical presence in their state.

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

If the Department really wants to regulate accreditor standards, the negotiators should consider whether additional clear requirements could be added, not just whether standards for accreditors should be eliminated.
Accreditors should ensure that schools are not committing fraud by monitoring the job placement rates that schools are publishing more deeply than they're currently doing and monitoring recruitment methods at all of their accredited schools, not just some, certainly not just a sliver, instead of accepting what schools tell them.

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

The Department should not reduce its oversight of accreditors but, instead, should enhance and clarify the standards that accreditors
need to live up to.

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

And all it appears is that --

MR. WASHINGTON: Twenty seconds left.

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

A lot of schools say they provide access to an education for students who otherwise wouldn't get one. Student loan debt that can never be
repaid is access to nothing but a more difficult life for people who already --

MR. WASHINGTON: Time.

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

MR. WASHINGTON: Thank you. Clare McCann.

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

The Department's agenda is overly ambitious. A single rulemaking panel cannot adequately cover each of these issues in a manner that each topic deserves and in the manner that the students and taxpayers the rules are meant to protect deserve.
Those who would be best suited to negotiate on the topic of accreditation, for example, are not the same negotiators with expertise on the TEACH Grant program. Such a large and disparate set of issues precludes any possibility for thoughtful consideration of these rules, and we urge the Department to reconsider its regulatory scope.

I'm going to address just a few of our biggest areas of concerns today. New America has long championed innovations in higher education, particularly for promising practices aimed at serving students whom traditional higher education has not served well. But we do not believe that any and every innovation will serve students well, and we know that opening the federal spigot to innovations that don't include robust accountability for outcomes will inevitably harm the very students who most need the benefits of a quality higher education. Abdicating the federal role and deferring to accreditors and the states to protect students and taxpayers hasn't worked,
and it won't work this time either.

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

States are another vital but underutilized part of the program integrity triad. Baseline expectations for institutions to demonstrate they have met the requirements of the states in which they operate and enroll students, like those in the state authorization rule the Department delayed earlier this year, are critical to guarantee that no student falls through the cracks of these consumer protections. The Department shouldn't waste government resources reopening these common sense rules.

We're also concerned the Department
will step into Congress's jurisdiction to redefine regular and substantive interaction requirements. These regulations governing distance education programs are the sole statutory distinction, created at the recommendation of the Bush administration, between distance ed programs and correspondence programs. They have effectively helped to prevent many of the abuses spotted in correspondence education in conjunction with the credit hour and other rules, and we urge against weakening these rules for distance education programs.

The federal credit hour rule helps create a common currency through which the Department disperses federal student aid dollars. Following an inspector general review that identified credit hour abuses by schools and insufficient oversight by accreditors, the Department developed a definition of a credit hour that ensures consideration for both time and learning-based measures and has allowed innovative competency-based education programs to flourish in
recent years. Eliminating the credit hour rule in an environment without strong accountability on outcomes presents a clear and unacceptable risk to students and taxpayers.

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

And, finally, while we agree that the TEACH Grant program must be improved to minimize inadvertent grant-to-loan conversions and improve outcomes for grant recipients, this issue should not be considered as simply an add-on to the already
overwhelming portfolio of issues that the Department intends to rewrite.

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

MR. WASHINGTON: Thank you. Michael Poliakoff.

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

The concerns with the current system of accreditation are numerous and transcend partisan and ideological lines. In a moment when public confidence in higher education seems to be
slipping, it has rarely been more important that quality assurance mechanisms function as they should.

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

It has been said that the genius of the American higher education system is that it is not a system. The diversity and decentralized nature of American higher education has historically been one of its greatest strengths. Though the regional accreditation system has historically been the means to balance these considerations, it has become clear that the current system falls very short on both counts. On the one hand, several recent studies have shown that despite the massive increase in the cost of higher education, many students are failing actually to learn much from the college experience, yet the institutions that
have ostensibly taught them remain accredited and in good standing. On the other hand, the accreditation process often proves onerous and wildly expensive for institutions while failing to guarantee quality.

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

Many institutions have found themselves on notice from their accreditor because of internal governance issues, which are not among the specified standards. Historically, Thomas Aquinas College, with its fabled, storied Great
Books Program; Westminster Theological; more recently Gordon College; and, even as we speak, the Higher Learning Commission, which accredits higher education institutions in 19 states, is considering a proposed change in its standards that could threaten religious institutions' ability to carry out their mission.

Ideally, this elastic clause, as I'm calling it, would be fixed legislatively. But there are measures that can be taken in regulation, which is the purpose of speaking today. Specifically, the Department should clarify that accreditation for the purpose of access to Title IV funds may only be connected to the ten standards enumerated in the law. Accreditors, as private and voluntary membership organizations, are, of course, free to impose any standards they would like, but these arbitrary standards should not threaten the ability of institutions to exist or function due to a loss of their Title IV funding. Anything we do must respect institutional autonomy and mission.
Our storied colleges and universities need a system of quality control that is focused on outcomes, not intrusion into the prerogatives, mission, and, indeed, liberty of America's diverse institutions. Thank you.

MR. WASHINGTON: Thank you. Stacey Borasky.

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

CSWE supports quality social work education and understands the role that social workers play in achieving the profession's goal of social and economic justice. As the sole accrediting body for social work programs in the United States and its territories, CSWE's
Commission on Accreditation establishes expectations for academic quality through its educational policy and accreditation standards. All of the commission's accreditation decisions are accompanied by reasoned opinions that promote the preparation of social work graduates who can practice effectively in an increasingly diverse and global society.

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

By drawing upon professional judgments and implementing a systematic examination of compliance with established standards, programmatic accreditors have the unique ability to set and assess quality measures within diverse
institutions and regional environments. Programmatic accreditors are equipped with the expertise and knowledge necessary for improving programs, ensuring quality, and promoting competence in professional practice.

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

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

CSWE supports the current accreditation system and the role each of the
important players of the triad in the traditional accreditation process plays, including the U.S. Department of Education, the state authorizing agencies, and the regional accreditors. CSWE supports the elimination of regulations that undermine the strength and independence of the accreditation process. We also support the streamlining of current regulations and oppose the creation of new regulations that would undermine the independence of the accreditation process.

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

Ed should support policies that recognize the important role of professional
specialized accreditors, especially in improving programs, demonstrating outcomes, ensuring quality, and providing professional expertise.

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

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

Programmatic accreditors recognize the solemn duty and responsibility they have to ensuring fairness, quality, objectivity, and rigor
in the accreditation process. Thank you.

MR. WASHINGTON: Thank you. Bob Shireman.

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

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

Weakening rules, like the already weak regular and substantive interaction requirement, will absolutely lead to diploma mills financed by taxpayers. We will have so-called colleges and universities that -- sorry, excuse me. We will have so-called colleges and universities that essentially put a textbook online with a few self-administered questions, and they will call it
a course. Rather than textbooks outrageously priced at a couple of hundred dollars, these will be textbooks that the U.S. government is shelling out thousands of dollars for with no real gains for students.

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

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

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

The complaints are valid, but they are not valid about the federal government. It is about the practices of accreditors. For example, the Higher Learning Commission tells its visiting teams to count the lecture hours in the course catalog or syllabus as, quote, the easiest approach to documenting compliance with the credit hour rule. Middle States also allows the mere use of course schedules, time scheduled in the classroom, as the credit hour measure. WASC Senior is the same. Reviewers are supposed to check that the number of credit hours matches the classroom hours and nothing more.
There is no need to change the regulation. Instead, the Department should take that issue off the agenda and instead notify accreditors that they will be asked for evidence that their reviews of schools examine credit hour allocations on the basis of student work, not seat time. Enforcing the work-based credit hour could be one of the most effective accountability tools available to the Department, perhaps making many other regulations less important.

The other rule, by the way, that I would put into that category of potentially game-changing is a 90/10 rule without the loopholes. There is nothing more powerful than a discerning customer holding a school accountable. The University of Phoenix was a quality school for many years when part of its strategy was catering to employers who paid for their employees to attend. The school became predatory when it no longer had that customer accountability but instead was just using federal aid as a hook to expand enrollment rapidly.
I don't think there's a way of closing those loopholes by regulation, but it is useful to keep in mind how many of the regulations we have would not be necessary if we had a 90/10 type rule where the loopholes were closed.

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

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

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

As I begin, I would like to emphasize that each of us here today has five minutes to address 15 topics. All of them are significant to the shape of American higher education and the federal student aid program. Five of them are related to accreditation, and ten others, numbered
in the initial notice, vary from the separation of church and state to the definition of the credit hour. I will not be able to address all of these topics in five minutes, and I don't think a negotiated rulemaking panel will be able to reach consensus on all these topics over the estimated nine days. This will allow the Department to write these rules any way it chooses, which I suspect is the intent of this Potemkin process.

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

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

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

By the early 2000s, when establishing access to full student aid funding for new and legitimately educational online classes, Congress zeroed in on the thing that makes those classes meaningful, regular and substantive interaction with the instructor, and that language was included in the 2008 Higher Education Act. Any revision of
this definition that takes faculty out of the educational process is defying Congress's instruction, not to mention common sense, and it's not worthy of taxpayer investment.

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

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

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

If the Department sincerely wants to make accreditors more responsive to stakeholder concerns, that could happen in a variety of ways via increased transparency in the accreditation
process. For instance, site visit reports and institutional self-analyses could be made available to the public and to researchers. This would go a long way toward preventing such national embarrassments as continued accreditation of institutions that hire people to pretend to be faculty and students when they actually have no faculty or students and accreditors who cannot detect this fraud as it is perpetrated.

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

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

MR. WASHINGTON: Twenty seconds left.

MS. PICKARD: -- than is reasonable for
three three-day negotiator meetings, even on the
two subcommittees described. But given the
Department's action on borrower defense and
gainful employment, this is hardly surprising.
Nevertheless, hope springs eternal in the hearts
of Beltway policy wonks. We urge you to
demonstrate seriousness about this process and
include faculty in it.

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

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

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

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

As a national leader in the assessment of learning, Thomas Edison values whether a student possesses college-level knowledge, not how they acquired that knowledge. Perhaps Thomas Edison is
the most appropriate name because, as a side note, Thomas Edison the man certainly had college-level learning while not college-level credits.

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

We continue to support the most accessible, timely, and affordable pathways to a college education and encourage the Department to immediately address ways to provide more flexibility to reputable institutions that seek to establish and expand their competency-based education programs. Specifically, the following actions are needed: address current definitions for regular and substantive interaction between students and instructors; support options for modification, including broadening the definition
of what constitutes instructors to include other academic staff and allowance of the use of asynchronous exchange and feedback between instructors, learning technologies, and students and, second, improve current restrictive requirements for mapping competencies to credit hours to focus more on meaningful and measurable outcomes, rather than seat time.

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

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

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

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

In closing, in a time when over 60 percent of adults have little to no college education, we must support innovation and create new Title IV options to fuel our knowledge economy
and fulfill academic goals for access, equity, and transfer of education. Current regulations restrict academic innovation and drive up instructional costs and time to degree.

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

MR. WASHINGTON: Thank you. Ashley Reich.

MS. REICH: Good morning. My name is Ashley Reich. I'm the Vice President of Student Financial Services at Liberty University. I've been working in higher education for a little over 11 years and, most recently, was a primary non-federal negotiator on the borrower defense to repayment rulemaking panel representing not-for-profit institutions.
I'd like to thank the Department for another opportunity to voice our desires with this upcoming regulatory package, and I hope that we are able to have another seat at the table later this year or early in the spring.

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

There are many crucial issues that will be discussed between the panels, and selecting the right individuals to sit at the table will be key. In addition, it is important to note that the Department has decided to review several items that seem to be an overreach that would include the definition of a credit hour, state authorization, accreditation issues, and other academically-related items. We would advise the Department to utilize established mechanisms to
reduce unnecessary interference in educational standards and definitions that have worked for decades.

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

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

In addition, as part of the reciprocity agreement, we are required to provide various disclosures surrounding the complaint process and licensure programs, and other states require
certain disclosure verbiage to be placed on our website once an approval has been given. Another disclosure requirement by the Department is unnecessary and creates additional man hours that should be spent counseling students and working through other unduplicated federal requirements. We would welcome collaboration with the Department on the impact of additional requirements for state authorization.

In regards to accreditation, the established accreditation process exists for the dual purpose of evaluating the quality of higher education for improvement and to determine institutional eligibility for federal funding from the Department of Education. Additionally, recent concern regarding the strength and rigor of the accreditation process has been voiced. Important changes must be made in the areas of enhancing accreditation evaluation teams, integrating a business process review component, moving authority over standards from Ed to the accreditation bodies, standardizing definitions
and metrics, encouraging innovation to lower costs, and eliminating regulatory burden. The Department has the authority to revoke accreditor recognition if a particular agency is determined to be ineffective. We would support a scale back of regulatory oversight in this area.

For eliminating barriers to innovation and competition, in the world of higher education today, eliminating barriers is needed. Many schools are working on creating programs that promote a more unique way of approaching educational options for students. Our institution has a substantial adult learner population that are looking to gain another credential to either add to their already completed degree program or to complete for the first time in order to increase their marketability and job readiness skills in the workforce. Many students are having to juggle a career and raising a family while attempting to pursue an education, and allowing flexibility and self-pace options are exactly what many students are requesting.
It is crucial that institutions continue to think outside of the box when it comes to learning opportunities. With trades on the rise and many jobs left vacant, I would like to encourage the Department to allow creative solutions to gaining an education, whether that means a credential or another degree program.

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

MR. WASHINGTON: Twenty seconds left.
MS. REICH: If left unfixed, students are going to see capitalized interest, as well as required payments that, if not made, will damage their credit.

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

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

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

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

TICAS is an independent non-profit organization that works to make higher education more available and affordable for people of all
backgrounds. Each year, the federal government invests over $150 billion in student loans, scholarships, and tax credits in higher and career education. The federal government can play a role in supporting high-quality innovation, but we recognize that the students most in need of higher education benefits are often harmed when federal money flows to innovation with too little accountability attached.

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

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

Third, weakening the limitations on schools’ ability to outsource educational programming would undermine the oversight system tasked with ensuring sufficient educational quality and leave students confused over who was providing the education they are buying. Fourth, weakening protection for students and safeguards for taxpayer dollars through changes to state authorization or accreditation rules risks opening
the floodgates to unscrupulous schools, undermining the quality of higher education, and the integrity of federal spending.

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

In order to craft thoughtful improvements in these areas, it is imperative that the problems be defined carefully and precisely beyond unsubstantiated claims about stifled innovation. Furthermore, the Department's recent
actions provide little assurance that it will regulate responsibly. With a basic understanding of historical abuses and the risks of recreating them, already under the current administration the Department has delayed a rule respecting state sovereignty and oversight of distance education, undermined state's ability to protect student loan borrowers, ceased processing loan discharge applications of borrowers lied to by their institutions, and proposed weakening rules for future cheated students, as well as proposed gutting both disclosures and minimum required standards to prevent gainful employment programs, leaving students with debts they cannot afford.

We are deeply concerned that the Department's forthcoming rulemaking will weaken access to high quality higher education and key consumer protections for today's students, undermining the federal aid system through a new wave of abuses. The Department's proposed 2019 regulatory proposals must not serve to line the pockets of for-profit institutions, private
companies, and unscrupulous providers with students' and taxpayers' hard-earned dollars.

Thank you.

MR. WASHINGTON: Thank you. Deborah Adair.

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

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

The EQUIP Experimental Sites program has demonstrated to me a significant challenge in balancing student protection with the potential
benefits of innovative approaches to education. To get this right, and it's worth doing if we can do it well, we need to better understand where the risks for students really reside in an alternative innovative model and appropriately mitigate that risk. But we also need to understand where and how our traditional approaches to oversight, regulation, and compliance in the entire triad actually co-opt a non-traditional model and rob it of its potential impact.

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

If we are serious about this change in the HEA, we have to do more than make such
arrangements possible through work-around. We have to be serious about providing pathways and providing tailored oversight that can reasonably encourage the kinds of partnerships that will actually serve students.

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

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

A student taking courses at a distance,
or in-person for that matter, will also need appropriate support. This can be proactive based on data about student success, but a differentiator between a correspondence course and distance education would be that such academic and student support should also be provided reactively or just in time to support the student as unanticipated needs arise.

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

Thank you.

MR. WASHINGTON: Thank you. David Baime.

MR. BAIME: Good morning. My name is David Baime, and I'm the Senior Vice President for
Government Relations at the American Association of Community Colleges. The AACC represents the nation's more than 1100 community colleges across the country. My comments this morning will be somewhat brief, and then we will be submitting longer comments for the record.

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

I'm going to talk about four issues today very briefly. First off, accreditation. Of all the issues that are scheduled for review under this negotiated rulemaking, accreditation
is, without question, the most important topic because, to a large degree, it is the overarching guidance that is used and will provide and provides the structures under which institutions operate.

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

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

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

Also, the rule of construction to safeguard the traditional role between
institutions and accreditors from over federal involvement is important to keep mindful of. And then, finally, we've heard that the standardization of terms and definitions that have been required through the last administration has required a certain amount of rigidity for accreditors that they don't think is desirable.

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

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

Thirdly, very briefly, competency-based education, this is an area that community colleges have gotten deeply involved in
very quickly. It's a great form of allowing non-traditional learners and other learners to work outside a traditional academic setting at their own pace with guidance from institutions.

MR. WASHINGTON: Twenty seconds left.

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

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

MR. WASHINGTON: Thank you.

Josephine A. Welsh.

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

Regardless of the outcome of these negotiations, a focus on the quality of teaching and learning at our institutions remains central. Unfortunately, the current system of quality
assurance has created the 800-pound gorilla of accreditation, assessment of student learning.

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

Current accreditation standards make no mention of data quality. Data garnered through informal pedagogical tools, such as curriculum maps, alignment of student learning outcomes, rubric scores of small samples of student work, and focus on verbs used in the articulation of student learning outcomes are not the same as scientific research findings that adhere to standard wisdom of statistics, research design, and psychometrics.
Obviously, not every degree program can produce this sort of research.

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

Speaking with peer reviewers, I'm often shocked that they think it's the federal government, the Department, that's requiring these reports. If you'll check Section 496 of the Higher Education Act, it's not at all what it says. The Department does not prescribe a formula for student
learning assessment and, interestingly, neither do the regional accreditors. The expectations imposed on institutions appear to have emerged from site visitors themselves. As a social psychologist, I would call these expectations a socially-constructed reality.

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

The current system for ensuring students are learning is intellectually dishonest and it's ethically corrosive. If the Department can, in any way, encourage accrediting agencies to promote real longitudinal, scientifically-sound
evaluation research on student learning, to grant institutions the time it takes to produce such findings, to modify their training of peer reviewers, and to recognize the myriad ways institutions might be able to demonstrate student achievement consistent with their missions, many of us in the world of institutional effectiveness would be most grateful.

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

MR. WASHINGTON: Thank you. Sara Garcia.

MS. GARCIA: Thank you for the opportunity to comment on the Department's intent to establish a negotiated rulemaking committee. My name is Sara Garcia, and today I speak on behalf of the Center for American Progress's
postsecondary education team. We are deeply concerned that the proposed agenda would severely weaken at least one leg of the three-legged stool we call the federal triad intended to protect students and taxpayers.

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

The Department's notice of intent to establish a negotiated rulemaking committee is concerning for several reasons. First, many of these regulations fall under the purview of the Higher Education Act, the governing legislation covering all of higher education, legislation that is long overdue for an update. Getting these rules right requires careful consideration and the right balance of consumer protection and innovation, not a hastily-crafted ill-advised attempt at gutting
regulations with just one goal in mind. It is not clear why the Department would rush through a rulemaking session that will likely lead to rules that are outdated and need to be renegotiated at the passing of a new HEA.

Second, the sheer breadth and depth of the rules being targeted all at once raises deep concerns that any one of these issues would be thought through carefully in this process. The Department's notice lists at least 30 different regulations or regulatory subparts falling under 12 different topics to be addressed under a single committee. A majority of these regulations were written to correct for past abuses by poor-quality institutions that scammed students. These issues get at the very heart of what an institution of higher education is, from how long a program should be to how much interaction with students and expertise the professors should have to how learning should be measured. The Department has already had trouble producing necessary analyses from when it was working on just one issue at a
time, such as we saw during the borrower defense and gainful employment negotiated rulemakings, so how could it be possible to do the necessary due diligence on all of these items at once?

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

Among the eight projects approved, four have since shuttered before ever getting off the ground and only one applicant was recently approved to begin enrolling students. In analysis from the Education Council cautions that EQUIP has raised more questions and concerns than it has found answers and urges policymakers not to assume these
approaches are anywhere near ready to expand beyond an experimental stage. Yet, in an interview, a Department of Education official says that the negotiators should build on lessons learned under the EQUIP program, to which there have been none. These changes should not proceed unless they are based on robust experimentation and evidence.

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

Efforts to address burden and innovation should take into consideration the intended purpose of each regulation it hopes to change and what it seeks to accomplish to ensure
the Department is not creating regulatory loopholes.

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

MR. WASHINGTON: Thank you. Tanya Ang.

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

VES understands the desire to encourage and improve innovation in higher education but takes issue with several of the regulatory rollbacks that consequently undermine critical protections for students while permitting low
quality education providers to waste taxpayer dollars. These regulations were put in place after bad actor schools bilked the Department and cheated taxpayers of hundreds of thousands of dollars.

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

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

In 1992, in the wake of the U.S. Government Accountability Office report that found
modern correspondence schools had twice the student loan default rates of their colleges and universities, Congress resolved to act. They decided that the institutions had to show that they offered students regular and substantive interaction with faculty members at least half of the time or for at least half of the students to receive federal aid.

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

States have a long history of protecting students from predatory and low quality colleges. They are a crucial member of the program integrity triad with the accrediting agencies and the Department, providing vital oversight and ensuring colleges are complying with both federal and state law.
The current state authorization regulations require colleges to obtain each state's authorization to offer their programs to students in that state and receive federal financial aid. The Department should ensure that states maintain their ability to authorize schools that meet their standards and protect their citizens from fraud and other abuses.

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

Additionally, we need robust disclosure regarding all college programs, specifically distance education or correspondence courses, to protect prospective students and make
certain they can make fully informed decisions in the market when considering enrollment. Eliminating these disclosure requirements would put students at a disadvantage as it would open the door for aggressive and deceptive practices by recruiters and schools.

The Department must be a good steward of taxpayer dollars and, therefore, keep quality standards that protect both students and taxpayers. This is evidenced by the recent fraudulent practices enclosure of institutions, such as ITT Tech and Corinthian Colleges. These schools show that there are bad actors attempting to defraud students and the government. The weakening of these proposed regulations would pave the way for similar bad actors to offer low quality education and hurt those we represent, service members, veterans, and their families who use their hard-earned military education benefits to go to school and are often the targets of predatory schools looking to capitalize on these benefits. Many are first generation and other under-served
student populations who believe the federal government's stamp of approval for the school to offer Title IV funds means the school is a high quality school. Unfortunately, we know all too well this is not always the case. Unfortunately, students find out too late that this is not always the case.

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

MR. WASHINGTON: Thank you. Wesley Whistle.

MR. WHISTLE: Good morning. My name is Wesley Whistle, and I'm an education policy advisor at Third Way. We know college has become a necessity in our changing economy. A majority of jobs require some sort of postsecondary credential, yet the continued actions of this department to repeal and modify necessary regulations puts in jeopardy the ability of
students and taxpayers to see a return on the investment they make in higher education each year. While regulations alone would not solve the challenges we face, I'm here today to strongly advocate for the need to strengthen, not weaken, federal oversight of our higher education system. The Department is obligated to uphold two basic promises to its constituents. One, ensure students have a baseline quality of education no matter what type of program or institution they attend, what state it's based in, or if it's delivered online or in person. Two, safeguard taxpayer dollars so they aren't sent to programs and institutions offering a low quality education and wasting federal financial aid dollars.

First, let's look at state authorization. States play a vital role in institutional oversight and consumer protection for students. We're concerned delaying this rule will make it difficult for online students to obtain licensure in their state but only the state where their online institution is physically
located. Imagine an online nursing student who played by the rules, worked hard, and graduated, only to be ineligible for their nursing license unless they move states. This effectively renders their degree worthless, leaving them in debt and unable to get the job they wanted.

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

There are also grave concerns with altering the regular and substantive interaction rule. Online education is meant to provide flexibility for those that want or need it, but not at the expense of losing access to the experts who are supposed to teach them. Yet, loosening this regulation for online programs to provide regular and substantive interaction will open the door to bad actors who won't require instructors to spend the needed time with students. We know this is
true. Before the Department put this rule in place, institutions outsourced over 50 percent of instruction to non-experts, some of them call centers, when students needed assistance. Imagine that same nursing student needing to understand an issue but having been directed to a call center instead. The Department shouldn't ignore the risks of outsourcing instruction and, instead, should require a minimum level of teaching and learning by trained and qualified instructors at all programs.

Next, I want to address the definition of the credit hour. The credit hour provides a baseline of the time and learning a student does. Before this definition was established, some institutions received more federal aid dollars for less instruction time than at other institutions, such as one awarding up to 27 credit hours for a semester and receiving a comparable amount of Pell Grants and student loans, yet similar institutions evaluated that same workload as only 18 credit hours.
This also opens the door to problems with the nearly 10 percent of students who transfer each year because institutions may be less likely to accept credits if they have no guarantee a sufficient amount of learning was completed. The Department must keep this rule to guarantee a floor for work and learning and prevent bad actors from receiving more federal aid dollars for less time educating students, leaving students up Pell eligibility, taking out more loans, all the while getting less in return.

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

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

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

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

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

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

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

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

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

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

Second, we believe the Department's
proposal to create subcommittees to engage content experts to guide language and process is a good idea. However, the Department only identified two topics to be assisted by subcommittees. Given the breadth of scope and complexity of the issues on this list, more than two topics named in the Department's announcement would benefit from a subcommittee. Several other topics should be subject to a subcommittee, an example of which a state authorization subcommittee that would include state regulators, institutional compliance personnel, state authorization policy experts, and representatives from NC-SARA would provide the best opportunity to reach an enforceable and effective final regulation. The previous versions of the regulation have encountered delays due to process errors and language that conflicted with state compliance requirements. A subcommittee for those core functions for accreditation requires experts to understand how implementation of a new regulation would be managed by institutions and overseen by
these accreditation agencies.

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

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

I appreciate your time today. Thank you very much.

MR. WASHINGTON: Thank you. Jarrod Thoma.

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

I earned my education through years of service and sacrifice during enlistment. After my discharge from the Army, I was eager to pursue a lifelong passion for electronics by earning my engineering degree. I enrolled in DeVry University, but it didn't take long for me to realize that this for-profit college was failing to deliver on many of the promises recruiters had made to me.
In particular, after transferring from DeVry campus to another, it became clear to me that the school was making cost-saving cuts that negatively impacted the quality of our education. I saw that the quality of course materials and equipment used for instruction were subpar and not as advertised and that the standards of the same institution were completely different at the two different branch locations.

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

As I was starting to accumulate debt, including $52,000 in additional student loans, I made the decision to complete my engineering degree
at DeVry. However, upon entering the job market, I quickly found a degree from a for-profit college was not worth the paper it's printed on, and it actually hurt my job prospects. Through hard work and a little luck, I was finally able to secure an engineering position after over two and a half years.

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

Not long after I graduated from DeVry with what turned out to be a worthless degree and subpar training, other bad schools went bankrupt and left other students and veterans in even worse spots. Education companies, like ITT Technical Institute and Corinthian were run into the ground, despite having taken millions of taxpayer dollars which shows the need for regulations to protect
students like myself from lies, fraud, predatory recruiting, and marketing tactics.

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

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

MR. WASHINGTON: Thank you. Melinda Thoma.

MS. THOMA: Hello and good morning. My name is Melinda Thoma. I am a mother and proud wife of U.S. Army veteran Jarrod Thoma, who just spoke. We have traveled here today with our two
young children to testify about how a lack of good regulations allowed a terrible school to defraud my husband and take his GI Bill, only to leave him and our family with mountains of debt that we shouldn't have to begin with and now cannot afford to repay.

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

Jarrod wanted to be an electronics engineer so, like many service members leaving the military, saw a DeVry advertisement and, after talking to a school recruiter, decided to enroll. My husband and I met during his senior year at DeVry, and I can tell you how determined my husband was and still is to succeed and how disappointed he felt when he realized DeVry was not investing in his education the way that they had advertised.
During those years, it was a struggle to not only go to school but battle the issues he faced at DeVry; and, unfortunately, since his graduation, it hasn't gotten any easier. I have watched him apply to so many jobs and, even as a military veteran, employers simply won't hire someone with a degree from a for-profit school like DeVry.

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

I cannot begin to describe the toll this mountain of unfair and unnecessary debt has caused our family. My husband and I are raising two
children and working our tails off just to afford the bills and put food on our table. The lingering impact has negatively impacted our credit rating, which, in turn, hampered our ability to find a mortgage for our family home.

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

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

MR. WASHINGTON: Thank you. Karen McCarthy.

MS. MCCARTHY: Thank you for this opportunity to contribute considerations for the
upcoming negotiations on behalf of the National Association of Student Financial Aid Administrators and our nearly 3,000-member postsecondary institutions. Several of ED's proposed topics for negotiations are related to innovative learning models, so I'll begin my comments there.

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

The Higher Education Act and Title IV regulations look at seat time, students completing a certain number of courses and hours within a defined academic period with requirement on instructional time, rather than evidence of student learning. Ultimately, the federal student aid system must be updated to allow for
greater access to programs that are not based on traditional credit or clock hour models. While we applaud ED's efforts to modify regulations with this goal in mind, this is fundamentally an issue that must be tackled by Congress in the pending reauthorization of the Higher Education Act.

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

NASFAA appreciates ED's efforts to clarify state authorization rules for distance education. While it is imperative to ensure that these distance education programs provide the same level of quality as brick-and-mortar institutions, regulations intended to guarantee quality should
not be so onerous as to jeopardize the existence
of high-performing programs.

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

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

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

A 2015 report from the Government
Accountability Office found that 63 percent of TEACH Grant recipients had grants converted to loans in the year they studied, 86 percent of which were involuntary conversions. Conversion-to-loan occurs when the recipient does not complete the teaching requirement or fails to provide the required documentation.

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

Broadly speaking, we are concerned that the number and complexity of the topics that the single negotiating team will be expected to address
is unrealistic. ED proposes 11 topics for negotiation. Several of these, such as accreditation issues, are expansive enough to support their own dedicated team of negotiators. Concentrating many diverse issues into one negotiating committee renders the consensus approach near impossible and creates time management issues.

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

ED's new approach --

MR. WASHINGTON: Twenty seconds left.

MS. MCCARTHY: -- deprives all
negotiators and ED staff of a thorough, thoughtful discussion of the issues and undermines the goals of the negotiated rulemaking process. We strongly urge ED to establish multiple committees so that each team may focus on issues in-depth.

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

MR. WASHINGTON: Thank you. Jody Feder.

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

I'd like to begin by offering a few thoughts on some of the items set forth in the Department's very ambitious negotiated rulemaking announcement. In general, NAICU supports the maintenance of an accreditation process built upon independent peer review. The existence of an
effective non-governmental means for assessing academic quality makes possible the diversity and independence of U.S. institutions of higher education. As such, any changes made to accreditation must take into account individual institutions and their missions and must respect institutional autonomy.

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

Regarding state authorization of distance education programs, NAICU urges the Department to thoroughly consider the challenges associated with colleges receiving authorization from every state in which it enrolls students in
its programs. We recommend an approach that will protect students and that recognizes the significant burden placed on institutions that enroll transient populations of students.

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

NAICU also advocates for repeal of the credit hour definition. Having a federal definition of credit hour is inappropriate because it leads to government interference in the academic
decision-making process and limits the flexibility of institutions to develop new models of higher education to meet the needs of current and future students.

Likewise, NAICU urges the Department to rethink the restructuring of convertible grant-to-loan programs, such as the TEACH Grant program, to ensure that borrowers are not held to unrealistic eligibility standards. In addition, as the Department considers barriers to innovation, competition, and student success, including issues related to direct assessment programs, competency-based education, regular and substantive interaction, program length, relationship with other institutions, the teach-out process, and the definition of foreign schools which needs to be re-examined, the Department must be mindful of the balance between encouraging innovation and preventing fraud and abuse. One way to do so is to test ideas first to ensure that they do not provide opportunities for unscrupulous school operators to take advantage of
students and taxpayers. In the past, tools, such as demonstration programs or experimental sites, have provided an avenue for controlled experimentation and innovative approaches before a full-scale federal investment is made.

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

Finally, NAICU is encouraged that the
The Department has publicly committed to holding a negotiated rulemaking committee dedicated to the financial responsibility standards in its proposed borrower defense as to repayment regulations. We urge the Department to maintain consistency with its recent stance on financial responsibility by devoting a negotiated rulemaking committee dedicated to reforming the methodology and implementation of the financial composite scores.

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

MR. WASHINGTON: Thank you. Alison Gill.

MS. GILL: Thank you for allowing me to speak today on the proposed rulemaking. My name is Alison Gill, and I'm the Legal and Policy Director for American Atheists. American Atheists is a national civil rights organization that works to achieve religious equality for all Americans by protecting what Thomas Jefferson called the wall of separation between religion and
government created by the First Amendment. As advocates for religious liberty and equality, American Atheists opposes laws and policies that would favor religion over non-religion or provide special privileges to religious organizations.

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

Our nation has a long history of fostering diverse educational institutions,
including both religious and secular institutions of higher education. Recognizing that the separation of religion and government is the bedrock of religious liberty, the Supreme Court has stepped in to ensure that states and the federal government refrain from unconstitutionally favoring religious educational institutions or impeding their ability to operate.

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

Through this rulemaking, the Department seeks to revise regulations in light of the Trinity Lutheran Church of Columbia v. Comer,
a 2017 Supreme Court decision which was expressly limited to discrimination based on the religious identity with respect to playground resurfacing. Legally, this case has precisely zero effect on federal regulations pertaining to the Higher Education Act. However, the case has been repeatedly misapplied to justify special dispensation and regulatory exemptions for religious organizations.

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

Although the current Title IV HEA regulations interact with religious institutions in numerous ways, none of them single out religious people or groups for unfavorable treatment based on their religious nature, and so Trinity Lutheran
is not applicable to these regulations. Instead, the current regulations service to effectuate programmatic goals, such as protecting students and borrowers, within the boundaries established by the establishment clause.

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

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

Limitations on funding for religious purposes. Money that is given directly to educational institutions may not be used for inherently religious or sectarian purposes and limitations on subsidies for religious activities.

Students and organizations are ineligible for
certain types of subsidies and loan forgiveness programs if the student would work on inherently religious activities through the program, such as support for religious worship or sectarian instruction. Without this limitation in place, the government would be directly subsidizing individuals to engage in religious activities. Each of these limitations is clearly required by the establishment clause.

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

MR. WASHINGTON: Twenty seconds left.

MS. GILL: -- purposes in case accreditation is lost or is a result of religious beliefs and institutions are considered or authorized as educational institutions if they are exempt from state authorization as religious institutions under state law.
Finally, we will note that the government may implicate the establishment clause for going too far to accommodate religious institutions. Thank you so much for allowing me to speak. We'll submit more detailed comments for the record.

MR. WASHINGTON: Thank you. William Pena.

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

SNHU is a private non-profit university founded in 1932 serving over 135,000 students around the world. At SNHU, we seek to expand access to education by removing barriers and creating high quality, affordable, and innovative pathways to meet the unique needs of each and every student. I lead the university's financial aid interests relating to emerging and alternative learning models, including competency-based
education, direct assessment programs, and the Department's experimental sites initiatives. I also oversee the student financial services office serving the students and business partners of SNHU's College for America Program, which was the first direct assessment program in the nation to receive approval for Title IV eligibility.

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

The hallmark of CBE lies within the name and focus: an individual's competency, a demonstration and validation of what they know and can do. In the CBE field, we say that learning is constant and that time is variable. And in many CBE models, this is in direct conflict with the current Title IV rules and regulations which are
still entrenched in the notion that the amount of
time spent acquiring learning is more important
than whether a student can apply knowledge, skills,
or abilities.

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

Additionally, current rules define
either term-based or non-term calendars for Title
IV programs. Non-term calendars are better suited
to student-directed pacing but are
administratively problematic with no economies of
scale. Bridging the gap between these calendar types requires flexibility. Schools rely on defined periods of registration, billing, and other functions to leverage automation and to manage operational costs, but students must also be enabled to begin and end academic work suited to their needs and abilities.

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

Rules for satisfactory progress, or SAP, in Title IV eligibility are not always
appropriate measures for innovative learning models. The traditional grade point average is not relevant when a minimum level of performance is required to progress through a program. The quantitative measurement for SAP penalizes students who elect to enroll in many courses with the ultimate goal of acceleration. Under current rules, a student really should only enroll in as many courses or competencies that they are guaranteed to complete within a given period, thereby reducing the potential for acceleration. An alternative approach could be to codify a minimum completion threshold per specified period that ultimately leads to timely program completion.

Finally, a critical issue facing innovative models is regular and substantive interaction. The lack of clear and consistent federal guidance in this area has thwarted understanding in the field around program design and practice. However, we urge exercising caution when establishing definitions for regular or
substantive in order to afford flexibility and efficacy.

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

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

MR. WASHINGTON: Twenty seconds left.

MR. PENA:--innovative pathways to degrees and skills to meet employer needs and to help students succeed. We are pleased to see the Department playing a key role in creating a more effective framework for institutions to strengthen in this innovative area and SNHU looks forward to engaging further on these and related matters as the process moves along.
Thank you for your time today and your consideration of these comments.

MR. WASHINGTON: Thank you. Don Sweeting.

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

Today I wish to speak about the importance of accrediting agencies honoring an institution's specific mission in the accreditation process. But before speaking to this issue, I would like to thank the Department for the opportunity to speak about issues facing
colleges and universities, and I want it known that we do value accreditation and believe it sharpens schools like ours as we seek to train students. We are accredited by the Higher Learning Commission. Their assessment guidelines and information about best practices have helped us strengthen our university's effectiveness. The HLC Academy, of which we are part, has been very supportive and has given us both a framework for what a healthy university looks like and an opportunity to network with other universities.

However, I do come today with a deep concern about a recent HLC alpha document which proposes changes to HLC standards of accreditation. The new suggested changes would remove language that requires the accreditor to take into account each institution's specific and diverse mission, religious or otherwise, when assessing the institution's commitment to diversity. Previously, the Higher Learning Commission clearly acknowledged that schools necessarily differ in their diversity policies and
procedures. The original guidelines stated that each school should act as appropriate within its mission and for the constituencies that it serves.

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

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

What would make this agency believe
that it is appropriate to tamper with the religious
principle of Christian institutions that long ago
proved their academic merit? The nature of HLC's
proposed changes threatens not only religious
institutions but also the autonomy of all colleges
and universities within its jurisdiction.

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

We are asking HLC that the original
enabling language in the accreditation standards
be restored before these proposed changes are
adopted. We are encouraged that the Department of
Education is considering making respect for
institutional mission and reducing barriers for
faith-based institutions a priority so that
standards don’t interfere with the faith base of institutions. We ask the Department to communicate the importance of this to all accrediting agencies. We also ask the Department to clarify what it means for accrediting agencies to respect religious mission because there is no precise definition of religious mission of what it means to respect to religious mission. This lack of definition leaves accreditors open to reach a different understanding of what this means, interpreting it so narrowly that it threatens religious schools.

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

Furthermore, we ask the Department to clarify how it will enforce the requirement for
accrediting agencies to respect religious mission. Surely, we do not wish to threaten the existence of the many colleges and universities in our country that are convictionally faith based. Their contribution to our nation is immense. They have a long record to prove it. They, in fact, laid the foundation for all higher education in America. Thank you.

MR. WASHINGTON: Thank you. Spiros Protopsaltis.

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

Before joining the university, I worked for three and a half years in the Department of Education's Office of Planning, Evaluation, and Policy Development, first as a senior policy advisor and then as deputy assistant secretary for higher education and student financial aid. Please note that the following comments are my own
and do not reflect the views and official positions of my employer, George Mason University.

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

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

Second, it is important not to weaken but instead strengthen the regulations governing the requirements that high-risk and low-performing accrediting agencies must meet to the extent
allowed under statute. As has become evident, current regulations have proven ineffective in adequately scrutinizing accreditors for fulfilling their key responsibilities of ensuring baseline levels of acceptable quality and performance, as well as engaging in continuous improvement in quality and practice.

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

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

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

Given this move, implementation of the brick-and-mortar rule in late 2016, the Department ensured that six million students taking classes online were also attending institutions that are
legally authorized and monitored by states, as required by law. By doing this and closing the loophole, the Department leveled the playing field.

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

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

By criticizing the current definition as a measure of seat time that stifles innovation,
it is apparent that either critics have not read carefully the definition --

MR. WASHINGTON: Twenty seconds left.

MR. PROTOPSALTIS: I'm sorry?

MR. WASHINGTON: Twenty seconds left.

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

MR. WASHINGTON: Time.

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

MR. WASHINGTON: Emmanual Guillory.

MR. GUILLORY: Hi, my name is Emmanual Guillory. I'm the Director of Public Policy and Government Affairs at the United Negro College Fund. Thank you for the opportunity to provide
input to the Department of Education regarding the efforts to establish a negotiated rulemaking committee to prepare proposed regulations for the federal student aid programs authorized under Title IV of the Higher Education Act of 1965. These regulations are of great importance to the United Negro College Fund, as they impact our nation's historically black colleges and universities and the students they serve.

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

While HBCUs represent three percent of all institutions of higher education, they have a large impact by enrolling ten percent of all African-American students, awarding 17 percent of African-American bachelor's degrees, awarding 24 percent of African-American STEM bachelor's degrees, and having a total economic impact of
$14.8 billion.

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

While we believe in a well-balanced approach, we also champion policy proposals that will strengthen the current system. When examining the decision-making bodies that conduct the peer review process, we find that better representation of experts with knowledge and experience working in and with HBCUs should be present. Due to the mission and history of HBCUs, these institutions face unique challenges and having someone with a deep understanding or our
institutions could enhance the quality of both accrediting agencies and the nation's HBCUs.

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

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

With this said, the ability of HBCUs to provide innovative models of education is vitally important. When institutions are able to be innovative, a positive outcome is that students can
experience an enhanced quality of education that allows them to obtain their desired knowledge, graduate faster, and have less student loan debt. The key to this approach is not sacrificing quality in the name of innovation.

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

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

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

MR. WASHINGTON: Twenty seconds left.

MR. GUILLORY: -- to the planning, preparation, and implementation of academic
programs remains a priority. However, we do not support the behaviors of any institution to intentionally commit fraud in the student aid programs, especially as it relates to credits given in academic programs. We believe in the utmost importance of institutional accountability to federal dollars and look forward to reviewing upcoming proposals to alter the Department's current approach.

MR. WASHINGTON: Time.

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

MR. WASHINGTON: Dr. J. Bradley Creed.

DR. CREED: Good morning and thank you for this opportunity to address these important topics related to accreditation and proposed negotiated rulemaking. I am J. Bradley Creed, President of Campbell University in North Carolina, located 30 miles south of Raleigh, the state capital in the research triangle. Campbell University is a faith-based institution with an
enrollment of 6500 students and 325 full-time faculty with several schools, including not only a college of arts and sciences but a college of pharmacy and health sciences, divinity law, education, business, and a new college of osteopathic medicine. I am only the fifth president in its 131-year history, and I'm charged with a special stewardship for its mission.

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

Like other religious-affiliated schools, Campbell accepts students from different backgrounds and religious faiths and no faith at all. Campbell is informed and inspired by its Christian mission and pursues a vision of graduating students with exemplary academic and
professional skills and who are prepared for purposeful lives and meaningful service.

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

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

Campbell opened its law school 42 years ago. It was the first law school in North Carolina in 30 years. When it opened a school of pharmacy in the mid-1980s, it was the first time in 40 years a new school of pharmacy had opened in the nation.
And in the last five years at Campbell, we have graduated our first class of students in the physician's assistance program, physical therapy, masters of public health, nursing, and osteopathic medicine.

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

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

The process for accreditation with clear measurements in baseline effectiveness indicators are essential. I'm a strong supporter of regional and program accreditation and currently serve on the board of our regional
accrediting agency. In addition to regional accreditation with SACSCOC, Campbell has 16 other programs with specific accreditations.

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

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

Thank you for the time to give these remarks.

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

The IEC is an association of foreign institutions of higher education that participate in the Higher Education Act's direct loan program for the benefit of degree-seeking American students. The members of IEC include public and non-profit colleges and universities located in some 14 countries on five continents and represent some of the world's highest quality, most prestigious institutions.
IEC members are necessarily governed by the laws and regulations of their home countries. IEC supports measures that protect the integrity of the federal student loan programs but seeks changes to regulations that make compliance extraordinarily difficult or impossible for foreign institutions or that cause great expense for institutions with a small percentage of enrolled American students.

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

Laws meant for U.S. institutions don't make sense for foreign universities with small numbers of American students relative to their
total enrollment. And IEC will submit detailed
comments to the-- at the appropriate time next
week.

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

This has become a serious issue because
of the change in the way that students wish to study
today. The Higher Ed Act gives the Department
broad authority to determine by regulations
whether a foreign institution is comparable to a
U.S. institution of higher education, but the
authority needs to be clarified. The Department
regulations currently prohibit U.S. students that
received direct loans from taking any courses at
another institution unless that institution is
itself an eligible institution. They also prevent
the student from taking any courses in the United
States with a limited exception for doctoral
students.

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

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

In the case of institutions in the
United States, it makes no sense for a student getting direct loans to not have the opportunity to come to the United States for a small portion of their program of study since that does provide the opportunity to network and hopefully prepare for employment upon graduation so that they can repay their federal student loans.

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

MR. WASHINGTON: Twenty seconds left.

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

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

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

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

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

CONGRESSMAN TAKANO: Well, good morning. I guess it's still morning. My name is Mark Takano and I represent California's 41st congressional district and I'm here because I am growing increasingly concerned about the Department's agenda of deregulation in favor of
predatory for-profit institutions.

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

Promising the idea of an accessible and flexible education experience for-profits targeted vulnerable students: women of color, veterans and low-income students working to make their American dream a reality. While students saw attainable opportunities in the intentionally misleading multi-million dollar advertisements by for-profit institutions these institutions saw an increased enrollment as a benefit to their bottom
Because of the predisposition of for-profits to put their financial interests above student success and financial well-being, the announcement of a negotiated rulemaking process by the Department that seeks to deregulate protections of federal student aid programs is a cause for grave concern. Time and time again we have heard the stories of students who were defrauded by for-profit colleges. We've heard stories of student veterans who wanted to expand their opportunities as they transitioned back to civilian life but were instead cheated, cheated out of their educational benefits by for-profits that didn't live up to their promises.

Through the reauthorization of their Higher Education Act Congress has taken concrete steps to protect students and their federal student aid. For example, after student veterans were exploited by home study programs with limited faculty interaction Congress required regular and substantive interaction between students and
instructors in order for online programs to qualify for federal student aid. This was an important step in promoting access to quality online programs for students and helped uphold the integrity of the student aid system.

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

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

I want to close with this reminder: The Department of Education is responsible for
protecting students. It is not responsible for helping the bottom line of predatory for-profit institutions. Since Secretary DeVos has presided over this department the Department has completely abandoned that responsibility. Too many student veterans have been cheated out of their benefits by for-profits. Too many working women have been deceived by the false promises of opportunity from for-profits. Too many low-income workers hoping to rise up to the middle class are now stuck with a degree that does not provide them with gainful employment to repay the massive debt they accrued.

The Department of Education must put students first --

MR. WASHINGTON: Twenty seconds left.

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

MR. WASHINGTON: Thank you.

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

(No audible response.)

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

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

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

1:02 p.m.

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

Would Emily Bouck come forward to testify?

MS. BOUCK: All right. Thank you for the opportunity to comment on the Department's intent to establish negotiated rulemaking. My name is Emily Bouck and I'm the Policy and Advocacy
Director at Higher Learning Advocates, a non-profit advocacy organization working toward bipartisan federal policies to better serve today's students.

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

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

The sheer number of topics proposed by the Department in their notice is far too many
topics to be considered by a single negotiated rulemaking panel. Even with the intent to hold two subcommittees the diversity and complexity of these topics could only be earnestly debated through multiple panels, not one. We urge the Department to limit the number and breadth of topics considered at this time to ensure negotiators have the expertise to debate these issues and increase the likelihood of consensus aimed at improving student outcomes.

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

If the Department moves forward with the negotiated rulemaking effort on accreditation, it’s important to acknowledge that what existing federal policy asks of accreditors is too focused on inputs instead of outcomes. In any regulatory effort this must be flipped and student outcomes
must be prioritized. We urge the Department to select negotiators and offer any changes through the lens of putting student outcomes first.

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

In addition, we believe the Department should establish another separate panel if they wish to move forward in considering the types of educational programs that can be eligible for federal student aid. Related topics such as competency-based education, direct assessment programs, regular and substantive interaction and the credit hour should also be considered in this
panel. The goal of such a panel should be to break down barriers for today's students while ensuring all programs provide the highest level of quality. It would be detrimental to simply remove existing guardrails without replacing them with updated protections.

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

MR. WASHINGTON: Thank you.

Justin Elliott?

MR. ELLIOTT: Good afternoon. My name
is Justin Elliott and I'm the Vice President of Government Affairs for the American Physical Therapy Association, APTA.

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

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

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

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

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

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

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

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

APTA has concerns that modifications to
the regulations governing accreditation agencies mandating that they be separate and legally independent from professional associations will create undue burdens and costs that could have a negative impact on entities like CAPTE. Increased costs and burdens could put the accreditation process in jeopardy and CAPTE satisfies the Department's education -- the Department's rules that it have adequate and administrative staff and financial resources to carry out its accrediting responsibilities.

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

Although APTA and CAPTE have a very cooperative relationship, CAPTE enjoys full autonomy in adopting the standards for accreditation and the application of those standards. APTA is prohibited from interfering
with CAPTE decisions, however, APTA is committed to supporting CAPTE, including financially, because we believe it’s important for them to meet their mission.

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

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

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

DR. GANGONE: Thank you for this opportunity to speak with you today. My name is
Dr. Lynne Gangone and I'm the President and CEO of the American Association of Colleges for Teacher Education. AACTE is a national alliance of educator preparation programs dedicated to high-quality, evidence-based preparation that assures educators are profession-ready as they enter the classroom. Our member institutions include public and private colleges and universities in every state, the District of Columbia, the Virgin Islands and Guam. Through advocacy and capacity building AACTE promotes innovation and effective practices that strengthen educator preparation.

The educator preparation profession faces increasing challenges including critical teacher shortages in high-field areas such as STEM and special education, the recruitment and preparation of the next generation of teachers in the face of declining enrollment in teacher preparation programs, the retention of teachers instead of replacing those who depart early in their careers, and the persistent
under-representation of teachers of color in the education profession.

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

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

The TEACH Grants do not circumvent other key federal student financial aid programs such as Pell Grants, but augments the federal
support for these teacher candidates.

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

Earlier this year through coverage by National Public Radio as well as several lawsuits it has come to light that erroneous conversions have occurred and the source of these erroneous conversions are in fact the servicer. Recipients, teachers in some of our nation's most challenging classrooms, suffering from such detrimental conversions, report having no path of recourse from the servicer and no support from federal student aid or the Department in dealing with the servicer and their errors. As with servicers of any similar debt, the servicer makes more money when a TEACH Grant converts to a loan. However, since
this situation has come to light, there has yet to be appropriate oversight and accountability of the servicer fed loan. It should also be noted that fed loan is contracted to handle the Public Service Loan Forgiveness Program.

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

MR. WASHINGTON: Thank you. Coni Pasch?

MS. PASCH: Good afternoon. My name is Coni Pasch and I'm a recent graduate of Capella University with a bachelor's degree in leadership and management and a master's degree in business administration and a certificate in management. I pursued my educational career through Capella's FlexPath Program, a direct assessment program that measures progression through the demonstration of competencies instead of the accumulation of credit
The direct assessment model provides an innovative way for busy students to achieve their educational goals on a timeline that works best for them. Unfortunately, many schools are unwilling or unable to provide direct assessment programs because of existing regulatory challenges.

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

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

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

The accomplishment of obtaining these degrees and completing the assessments and do it as a full-time professional changed who I was as a person. It gave me confidence to step outside my comfort zone, take risks and face challenges head on. Programs like FlexPath empower today's students to go where they potentially have never thought they could go before.
Because of the flexibility and affordability of Capella's FlexPath program I could move at my own pace, save on tuition costs and obtain both degrees in half the time of a traditional credit hour program. If more schools took this approach to education, non-traditional students like myself, would be able to pursue their educational goals while juggling personal and professional priorities.

Unfortunately, there are some regulatory challenges that make it hard for more schools to offer direct assessment programs. Through the negotiated rulemaking process the Department of Education should propose regulatory changes that allow programs like FlexPath utilizing subscription period pricing to operate under standard term financial aid rules. The Department should also modify the R2T4 rules for modular programs to allow for the calculation to consider the period of actual enrollment versus requiring the calculation to include courses that have not yet started.
These two changes would remove many of the operational hurdles schools face when they consider offering direct assessment programs and would allow greater access to flexible assessment high-quality education for students like myself who are interested in pursuing their degree while juggling several priorities.

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

MR. WASHINGTON: Thank you.

Bernard Fryshman?

MR. FRYSCHMAN: My name is Bernard Fryshman. I'm the Executive Director of the Association of Advanced Rabbinical and Talmudic Schools Accrediting Commission. I've been doing that since 1973, and so I've been involved in a whole variety of issues and concerns and matters that I want to touch upon. I'll have a more complete presentation in writing. The five minutes is not enough to touch on everything, but
I do want to mention a few issues of concern. My first area of concern is informed consent. Far too many innovative, quote/unquote, "experimental, unverified, unreliable programs" are being offered to students and sometimes students devote time, money, expense, expense in the sense of their lives, and come out without a good degree, without real knowledge. Sometimes they get a degree and the degree is not worth very much when they try to apply it, try to get licensing, try to get onto conventional programs. So that the Department, whenever it considers innovative, experimental or new kinds of approaches to education should always attach a requirement of informed consent. A student should be asked to sign an informed consent document saying that he or she recognizes that the outcome of this program hasn't been verified and hasn't been tested. It's not the sort of thing that's had hundreds of years of experience, a path, a trajectory towards a degree, towards a degree that means something, and there may be some failure.
That informed consent should be an absolute necessity for -- to protect every student in every kind of program.

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

Nothing should be allowed to be put into law without experimentation, rigid experimentation, scientific experimentation, the kind of experimentation that takes years to carry
out in the medical profession. We don't -- we try
to make sure we don't hurt people's health with new
drugs. We shouldn't hurt students' intellectual
health with new programs without knowing for sure
that there's at least an experimental indication
that this might help.

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

The Department and NSICI have been
handling this very wisely, but I wanted to suggest
that there's another approach. The Department
should have provision to put the onus on an
accrediting agency to demonstrate compliance
without using the guidance in the regulations of
the Department itself. In other words, the Department sometimes says there's guidance that explains how the Department expects compliance to be demonstrated. Sometimes it doesn't work. Sometimes it will be much easier, much more effective and much more accurate to allow an accrediting agency to demonstrate on its own how it complies with the Department's regulations. So that's just a recommendation --

MR. WASHINGTON: Twenty seconds left.

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

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

MR. WASHINGTON: Time.

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

MR. WASHINGTON: Your time has expired.

MR. FRYSCHMAN: Pardon?

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

MR. FRYSCHMAN: I'm done.

MR. WASHINGTON: Okay. Thank you.

MR. FRYSCHMAN: Okay. Thank you.

I'll have lots more to say in writing.

MR. WASHINGTON: Yes.

Jesse O'Connell, please?

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

I'm Jesse O'Connell, Strategy Director for Lumina Foundation. Lumina is the nation's
largest private foundation focused specifically on increasing student access and success in postsecondary education. In fact, we're committed to making success and opportunity in postsecondary education available to everyone. We're especially focused on those who've historically faced barriers to success including low-income students, students of color and working adults.

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

Without a doubt the work of this
Negotiated Rulemaking Committee will have a meaningful impact on this change effort. And so if I may, I'd like to suggest some basic steps for the Committee to consider as it approaches this work. These suggestions will be shared in greater detail in our written comments, but today I'd like to offer three key pieces of feedback:

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

When it comes to accreditation focus on outcomes, not inputs. We're pleased to see the suggested discussion topics for improving
accreditation include a specific reference to emphasizing criteria that focused on educational quality. We urge you to embrace this idea to ensure that accreditors measure what matters. In short, they should pay less attention to institutional inputs and instead focus on specific student-level results, things like learning outcomes, employability outcomes, completion rates and student loan repayment rates. It's important to disaggregate data to understand how will institutions are serving their students of color and other key student populations.

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

First, members should approach changing the requirement for regular and substantive interaction between faculty and students with the dual mindset of innovation and quality. This requirement should be updated to
reflect the current world we live in, but still ensure that when a student uses their Pell Grant or their student loans, they can expect a rigorous learning experience.

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

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

Similarly, the Committee should take a fresh approach when considering direct assessment and competency-based learning. Both of these are
powerful tools that can help students, particularly adult students, earn degrees and other high-quality credentials. Merely simplifying the process for direct assessment and competency-based education will fall flat if quality is not at the forefront of this effort. I would urge you to ensure that, as with consideration of quality for the criteria of the recognition of accrediting agencies, quality and improved outcomes rather than simplification, be the primary focus of negotiations on this topic.

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

MR. WASHINGTON: Thank you.

Michale McComis?

MR. McCOMIS: Good afternoon. My name is Michale McComis. I'm the Executive Director with the Accrediting Commission of Career Schools and Colleges. I've been in that position for 24 years and have had the pleasure of putting together four petitions for recognition with the
Department. We're very pleased to be here this afternoon to talk a little bit about the proposed rulemaking and to give some suggestions as the Committee thinks about how to move forward.

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

There are some more minute matters that I would bring to the Committee's attention. The
first is regarding the federal definition of a credit hour. And I won't speak to whether it's appropriate or not to have in the Federal Regulations a definition of the credit hour, but I will speak to the area in 602 that requires accreditors to enforce the federal definition of a credit hour. And so that becomes quite problematic for accreditors that are then used as a proxy to enforce the Department's own regulation.

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

I would encourage the Department to think about ways to allow institutional and programmatic accreditors to partner so that we can reduce overlap and duplication in those two processes and make it more palatable to
institutions to engage in both institutional and programmatic accreditation.

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

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

I would encourage the Department in its
use of the regulations and also to some -- with some
degree the use of the sub-regulatory guidance to
in all instances be looking to apply a level playing
field across all recognized agencies and to fairly
look at the way in which all accreditors are held
accountable to the Federal Regulations and
particularly how they look at the process and
student outcomes.

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

But at the end of the day have that
requirement --

MR. WASHINGTON: Twenty seconds left.

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

MR. WASHINGTON: Thank you.

Sekinah Hamlin?

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

They have colleges, universities and theological schools that actively engage in providing quality education and training of persons starting out in adulthood as well as those that are going back to be educated in a new field or discipline based on new job markets in order to better support their families, those that have been
in the job market and coming back for added certifications to qualify for positions that will provide better salaries and benefits, and even those that have retired from or left careers to pursue their true vocation and calling, that of ordained ministry or set apart, as we say, religious and denominational leadership.

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

Program integrity in our higher education system relies on the triad consisting of oversight by the Federal Government, state governments and accrediting agencies. Each component of the triad plays an essential part in assuring that students have access to high-quality
higher education opportunities and their institutions operate with accountability. This dynamic has been tested over the past few decades as we have seen the rise of the for-profit college sector coupled with widespread programmatic abuses particularly within this rapidly growing sector.

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

The need for regulation was clear and simple. There is no reason why online education should be exempted from full oversight under the triad especially when millions of American students and borrowers attend school online and
billions of dollars in federal funds flow through these programs.

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

Recent data from the National Council of the State Authorization Reciprocity Agreements also gives us some insight into the scope of online enrollment in the United States. Fourteen ninety-five institutions are SARA members serving 1,166,560 students of this count. Only 2,171 students fall outside the SARA guidelines and 966,389 fall within them. These numbers indicate that any delay in implementation of change of these rules will have a far-reaching effect on our higher
education system. Further, the extent of distance education participation coupled with the fact that the majority of these programs are for-profit lends even more urgency to the need for swift un-delayed implementation of the final rules, not a rewrite.

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

MR. WASHINGTON: Twenty seconds left.

REV. HAMLIN: -- of money to attend. Very few participants, including those who left school many years previously, were able to make any progress in repaying their debts given by these institutions. The impact of heavy student debt burdens was both psychologically and material. Participants had no --
MR. WASHINGTON: Your time has expired.

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

MR. WASHINGTON: Thank you.

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

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

WASC appreciates and supports the Department's interest in considering regulatory
improvements, and I have three main points about scope, innovation and risk:

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

We need to understand each institution's financial health and to assure that there are resources and reasonable strategies to sustain it so that our standards can be met and students can be served into the future. The complex decisions we make about structural changes, institutional resilience and student success require that we evaluate key finance and governance factors. Every gatekeeping
accrediting agency should have the responsibility and expertise to do that.

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

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

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

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

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

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

Let me close with my hopes for this rulemaking: Starting in 1993 I helped the Department implement the new Neg Reg requirement,
and long ago I guided the financial responsibility rulemaking to an unexpected consensus. In short, I have a rare affection for this strange initially unwelcome process because at its best it promotes genuine negotiation and development of smarter rules. I have seen people listen and learn from each other --

MR. WASHINGTON: Twenty seconds left.

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

MR. WASHINGTON: Time.

MS. STUDLEY: That factor has made a significant difference in whether negotiations are effective, constructive and civil. The need to
MR. WASHINGTON: Your time has expired.

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

(No audible response.)

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

MR. WASHINGTON: Thank you.

Shirley V. Hoogstra? Yes, she's not scheduled to speak until 3:40. I was calling to see if she was in attendance and if she would like to speak early.

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

(No audible response.)
MR. WASHINGTON: Okay. Seeing none, we are going to break until 3:00 p.m. and reconvene allowing us time for any walk-in testimony and also time for Shirley V. Hoogstra to present at 3:40. So we will reconvene at 3:00 p.m.

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

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

MR. WASHINGTON: Hello, ladies and gentlemen, and welcome back. We are reconvening at 3:00 p.m. If anybody in the audience would like to make a public statement, please just approach the podium. We do have a speaker scheduled at 3:40 to make public testimony. Thank you.
MR. WASHINGTON: Hello, ladies and gentlemen. We're going to resume with the public hearing. We have Shirley V. Hoogstra.

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

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

We will be submitting detailed comments
in writing next week, but I wanted to highlight a few specific areas today.

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

Religious mission permeates our institution's policies and practices so we believe that the Department should provide clarity and a definition like that in the PROSPER Act, which says the term "religious mission" includes an institution of higher education's religious tenets, beliefs, teachings, policies or decisions related to those tenets and beliefs or teachings including policies, decisions concerning housing, employment, curriculum, self-governance or student admission, continuing education or graduation. So it just expands so that it's a
comprehensive definition and does not get confusing.

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

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

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

Third, certainty. To ensure
institutions have recourse the process should require the Department to act not simply allow it to act.

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

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

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

Let me conclude. The diversity of
higher education institutions has contributed to the United States being the best in the world. Christian higher education and faith-based higher education generally is an important part of this diversity. Just today in the Wall Street Journal they published an article noting that 11 institutions that rank the highest in student engagement, 8 of them were faith-based.

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

Per the establishment cause the Government should neither favor nor prevent the inclusion of religion in higher education, rather in our marketplace of ideas religious institutions of higher education should be allowed to compete on an equal footing with their peers. And we
believe the measures outlined above achieve this by ensuring all institutions, including religious institutions, can have their missions and autonomy respected so they can best serve their students.

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

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

(Pause.)

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

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