On the 26th day of September, 2017, the following public hearing was held at Salt Lake Community College - Miller Campus, Karen Gail Miller Conference Room, 9750 S. 300 West, Sandy, Utah, 84070, from 9:00 a.m. to 4:00 p.m., before Teri Hansen Cronenwett, Certified Realtime Reporter, Registered Merit Reporter, and Certified Shorthand Reporter in the state of Utah.
MR. BRICKMAN: Good morning everyone. Thank you for being here. My name is Michael Brickman. I'm a special assistant in the U.S. Department of Education's Office of Postsecondary Education. I am pleased to welcome you to this public hearing, and I am joined at the table by Lynn Mahaffie, who is the Deputy Assistant Secretary for Policy, Planning and Innovation in the Office of Postsecondary Education.

This is the first of two hearings that we are convening to seek public input on postsecondary regulations and guidance that may be appropriate for repeal, replacement or modification, including regulations and guidance relating to federal student aid program and discretionary grant programs. The other opportunity to provide public comment is October 4th, 2017, at the Department's headquarters in Washington.

These hearings supplement other efforts to implement Executive Order 13777 entitled, "Enforcing the Regulatory Reform Agenda," and signed by President Trump on February 24th, 2017. This order established a federal policy to alleviate unnecessary regulatory burdens on the American public and directs all federal agencies to establish a Regulatory Reform Task force to evaluate existing regulations and make recommendations.
to the agency head regarding the repeal, replacement or modification.

The Task Force is also tasked with attempting to identify regulations that eliminate jobs or inhibit job creation; are outdated and unnecessary or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; rely in whole or part on information that is not publicly available; or derive from or implement executive orders or other presidential directives that have been subsequently rescinded or substantially modified.

Furthermore, the Task Force is directed to seek input and assistant from affected entities. To that end the Department has previously solicited written comments from the public to help inform the Task Force's evaluation of all of the Department's existing regulations and guidance. Today we appreciate the opportunity to hear in person your suggestions for achieving these objectives.

The Department began work on reducing postsecondary regulatory burden by establishing two negotiated rulemaking committees to develop proposed regulations to revise the gainful employment regulations and to revise the regulations on borrower defenses to
repayment of federal student loans and other matters.

The borrower defense negotiating committee will begin negotiations in November of 2017, and the gainful employment negotiating committee will begin negotiations in December of 2017. As a reminder, the deadline for nominations for negotiators to serve on these committees is this Friday, September 29th, 2017, and we look forward to working with your respective communities on these efforts.

Thank you for being here today and for dedicating your time and expertise to this very important process. Your perspectives are important to the success of this work. As to the logistics of this hearing, many of you have already signed up for times to speak, and we will be calling your names at the appropriate time. We have many time slots left today. If you have not signed up and would like to speak, please come to the table and see our ED staff. We would be happy to give you a time slot.

Please note that this hearing is being transcribed, and transcription will be posted to our website in the next few weeks. Also this is a public hearing, so please be aware there may also be people in the audience who are videotaping or audio taping. We welcome your written comments as well. If you have
comments here today that you would like to submit, you can hand them to me or to our ED staff at the front desk.

We have three scheduled breaks: One this morning from 10:30 to 10:40, a lunch break 12:00 to 1:00, and a break in the afternoon from 12:30 -- I'm sorry, from 2:30 to 2:40. If we don't have speakers scheduled, those breaks may be extended at our discretion.

We ask that you silence your cell phones while in the room. You are welcome to use cell phones in the lobby however. If you need any assistance, please speak with ED staff at the front desk, and when you are called to speak, please begin by sharing your name, and if you are representing an organization, the name of that organization. Thank you again for your participation in this important effort. We look forward to hearing your comments.

And with that we can start with the first speaker, and just an apology ahead of time if I mispronounce anyone's name. The first speaker scheduled is Whitney Barkley-Denney for the Center for Responsible Lending. Is Whitney here?

(No response.)

MR. BRICKMAN: All right. Well, if Whitney
joins us, she is welcome to speak. Next is Stephen Graham with the Law Office of Stephen Graham.  

MR. GRAHAM: Good morning. Thank you. My name is Stephen Graham. I'm an attorney from Spokane, Washington. We're a smaller law firm that does a lot of representation for students on university campuses on sexual assault allegations but also general disciplinary matters, academic integrity.

So to tell you a little bit about my background, I have been an attorney for about 22 years. I first worked as a prosecutor for a number of years. When I went into private practice, the idea of, you know, working on these sexual assault cases at first kind of seemed like something I wasn't necessarily interested in.  

And I kind of came upon this work by accident. We would represent somebody, go to one of these hearings with them, see if we could help, and I was really shocked at the level of due process or the lack of due process that existed on college campuses. We're taught in law school that the level of due process that you would receive would kind of scale depending on the significance of the liberty interest.

And on college campuses, we had these young men and women who were facing expulsion, and they would get
little more due process than they would get for a parking ticket or speeding ticket. And when somebody is kicked out of school, it's a real hardship for them. They or their parents have spent, you know, a hundred thousand dollars or more for this education. And if they are wrongfully kicked out, they never finish that degree. It's hard to get into any other school if their transcript has been marked.

And the level of due process, the hearing that we have, just really doesn't meet or match that sort of importance.

A lot of college professors, even if they are well intended, really struggle to play the part of a judge. It's not easy for them to do. And even after they have been doing it a number of years and receive training, they make a lot of mistakes. You know, they don't allow people to speak on certain subjects. You know, it's a minimal part of due process, the right to be heard. You know, they don't maintain the proper records.

We have been involved in the court system against Washington State University in Washington state, and they have really struggled in the last few years, so much that in Washington state, the courts have said, "Okay. No more." And we now have administrative law
judges doing the expulsion cases in Washington state, which really works well.

You know, the problem, you know, we really have is when the schools want to go forward when the police aren't done with their investigation. The police are the ones that are, you know, testing for DNA. They have all of the witness statements. A lot of times in Washington they have video recorded interviews of the witnesses. It's hard to obtain any of those records while the investigation is going.

And we have the -- the schools just want to go forward. They don't want to do any sort of continuances. Under the Dear Colleague letter, they felt mandated to kind of just railroad these cases through without giving proper, you know, accord to the rights of the defendant.

The -- you know, I can tell you a lot of anecdotes of the different hearings we have. The -- a lot of times there just seems to be an incentive built into the system whereas these school officials would just want to -- more interested in covering their back side than in really giving fair due process to either side.

We would -- obviously, in higher education a lot of these administrators are extremely well paid. I
know the last president of WSU, when he left, he was paid somewhere 800,000 a year. And a lot of these administrators seem, you know, kind of more focused on their own ambition and doing what's politically expedient rather than what's right for these students, so that's been a real frustrating part.

So we, you know, applaud the Department of Education's, you know, reconsideration of that Dear Colleague letter, the new Q and A that they have come up with. Hopefully we'll have some permanent regulations that will mandate more due process, such as the right to have an attorney speak on your behalf, and I think better training, if not trained lawyers making the decisions, law-trained individuals making the decisions. The right to cross-examine in some form the accuser.

A lot of times in Washington State University, their idea of a hearing is, well, you can't subpoena the accuser. And then the student disciplinary board doesn't have any subpoena authority. So you can have witnesses if you can, you know, ask them to come. But there's really no way to require that.

So their idea of a hearing is, well, we'll just have our investigator parrot back to the decision maker what the accuser told us. And that's it. And we just don't think that that's proper. And so we would
encourage more regulatory, you know, protections on the behalf of the students.

I'll leave it at that. I want to thank you for coming out to Salt Lake City and hearing us out in the west.

MS. MAHAFFIE: Thank you.

MR. BRICKMAN: Next we have Justin -- mispronounce this -- Utherdad. Justin?

(No response.)

MR. BRICKMAN: Next we have Richard Saunders representing himself.

MR. SAUNDERS: Yep. If I speak too quickly... That's my second copy.

MR. BRICKMAN: Thank you.

MR. SAUNDERS: Will you hold me to five minutes? Okay. My name is Dr. Richard Saunders. I have been a higher education faculty member in three U.S. states and am currently an academic dean at one of Utah's public universities, but because my voice at this public hearing represents my own view and neither my employer nor the state, please understand I will not name my affiliation. I speak rather as professional historian who studies American social history, people of the United States and the circumstances that affect them.
I must clearly disagree with the ideological assumptions behind Executive Order 13777 and oppose the proposed reform the administration intends to implement because it steadfastly ignores four historical realities.

First, because it ignores the entire history of U.S. education. Several years ago I studied the history of public education as background for a book. States created public education and public colleges after the civil war and then enforced public ed in the school -- reinforced public ed in the school consolidation movement of the 20th century.

Across the U.S. and largely independently, both steps were replicated in every state. Why? Because unregulated private education had completely failed to prepare an adequately educated work force for its then modern world. A comparatively few individuals did succeed, but functional literacy rates in the U.S. only reached 50 percent of adults in the 19 teens. Education was neither widespread nor uniformly reliable in the U.S. until state and federal governments established and enforced educational standards and credentialing.

Second, the rule proposal ignores both the purpose and broad outcome of regulation. The two things the founders feared most deeply were a standing army and
corporations. For a century corporations grew without a check. The entire 19th century unfolded on the premise of nonregulation. As a result, the entire sordid history of the American labor movement is grounded in the fact that U.S. corporations have protected profits and cut costs at the expense of their employees and customers.

Corporate colleges have done exactly the same thing in our day. The unrealistic promises and exploitative practices of institutions like Corinthian College and the self-styled Trump University defrauded quite profitably at students' expense without enforceable accountability.

From lawful public health ordinances to federal court decisions, government regulations have always, always, been the only force large and strong enough to protect private citizens and hold corporations and powerful private interests to account. Under the constitution interstate commerce clause, only the federal government has the stoke to adequately demand accountability from for-profit institutions operating nationally. Digital platforms make fraudsters slippery, and governments cannot respond adequately at the state or local level.

Third, because the country has recently tested
the privatization of education. Privatized local
education was tested in Michigan by Betsy DeVos. In her
native state Mrs. DeVos demonstrated an admirable
commitment to education reform, putting millions of her
own dollars into corporate-backed K-12 education. It
was a fair experiment that is proven an unmitigated
disaster for communities.

Investigative reports into Michigan schools
demonstrate not only the systematic failure of
privatization, but throw into glaring relief the genuine
harm done to employees and students under that
educational model. Neither the concept she has backed
nor the millions of personal dollars she poured into her
state have shown even a moderate social return on
investment.

In fact, if broad-based social improvement is
used as a metric, then as a social historian I have to
say I cannot find a single successful model of
large-scale educational privatization anywhere in the
United States. I can find thousands of failed ones,
both large and small.

Finally I oppose the federal executive's move
to legitimate corporatized education at the expense of
protecting consumers from predatory institutions because
it unambiguously dismisses the constitution itself to
advance an anti-constitution ideology.

The administration ignores both the country's mission statement made in the Preamble and the clearly stated charge in Article 1, Section 8. In both places the framers said that the federal government was to specifically promote the general welfare. Corporations were never accepted by the framers as a means to promote the general welfare.

In proposing the changes, the nation's executive turns its back on we, the people and the constitution its appointees publicly swore to uphold.

To conclude, if the country established public education because broad-based private education failed, if regulation has been the only effective safeguard for the common citizen against the powerful and the corporate, if educational privatization has been fairly tried and has failed, and if the movement is a clear contravention of the constitution itself, then clearly the proposal to delay, weaken or abandon borrower defense and gainful employment rules is not in the public interest.

Randy Weingarten spoke for teachers to the Department this past July. She noted that from preschool to graduate school, the students should be our common ground. Their needs and aspirations must trump profit and ideology. As an educator, as a community
member and as a parent, I wholeheartedly agree.

The educational future of -- the education of
future citizens and Americans consumer base should not
be judged or sacrificed on a profit margin. This
proposed rule change does not serve the country well.
Please do not allow the federal regulations currently in
place to be weakened. Thank you for allowing one
citizen a direct voice in government.

MS. MAHAFFIE: Thank you.

MR. BRICKMAN: Thank you. Is there anyone who
signed up for a time slot later in the day who would
rather speak now? And is there anyone here right now
who has not signed up who would like to speak?

(No response.)

MR. BRICKMAN: All right. Well, we will wait
for additional speakers to arrive, and if anybody else
would like to speak, please come up here.

MS. BARKLEY-DENNEY: Good morning. My name is
Whitney Barkley-Denney, and I am senior policy counsel
with the Center for Responsible Lending. We are a
national nonprofit that works to ensure fair, inclusive
financial marketplace that creates opportunities for all
responsible borrowers, regardless of their income.

Prior to joining the Center for Responsible
Lending where I led research and advocacy on student
loan issues, I worked as a staff attorney for a Mississippi's school rights law firm, the Mississippi Center for Justice. In my capacity at MCJ, I was the alternate legal services negotiator for the 2013 Gainful Employment Negotiated Rulemaking and the primary negotiator for legal clearances for 2014 Programmatic Integrity.

I am here today to strongly urge the Department to continue to support a commonsense, robust regulatory regime that protects the interest of borrowers and taxpayers. This would include leaving in place rules like the existing gainful employment and borrower defense regulations.

The U.S. Department of Education's approval of federal loans dollars is easily interpreted as a Good Housekeeping seal of approval. In the eyes of students and taxpayers, if the U.S. Department of Education is allowing federal dollars, taxpayer money to be sent to a school, that is an indication that the Department is at the very least subjecting them to evaluations that ensure that they're meeting their objectives and adequately training students in their field of study.

This is especially important in training and technical programs where students are seeking specific and discrete employment.
We have seen what happens when the Department fails to adequately regulate them. We can recite the names and the stories by heart. Corinthian Colleges, ITT, FastTrain, Marinello School of Beauty. These schools were finally closed but only after years of allegation of predatory behavior, terrible student outcomes, and disproportionate borrower defaults. The enforcement actions that led to their closure were, for too many American families, too little too late. And now this Department of Education is proposing rolling back even those protections.

In August the Charlotte School of Law was added to this inglorious roster, a school that had been dogged for years by sky high tuition, dismal bar passage rates, and low student placement percentages. And they were closed only because the State of North Carolina stepped in to protect their own students from this failed institution.

In fact, just two weeks before their closure, Charlotte School of Law announced to the press and former students that a deal with the Department of Education to restore student loan aid was imminent. Because the school closure was so slow, students who left the law school when their accreditation was first revoked are now possibly outside the window for a closed
school discharge for their student loans. And given that the announcement that borrower defense to repayment will be renegotiated, one has to wonder, will these students be stuck paying back loans from a failed for-profit school that was given too many chances?

The issues with institutions like Charlotte School of Law, ITT, and Corinthian are not new or surprising. Students and taxpayers can expect more of the same if we simply allow for-profit colleges to continue operating in the same way they always have.

Over the past several years, research from the center has consistently and clearly found that student loan borrowers who attend for-profit colleges have more debt and higher default rates when compared to their public school peers.

In terms of the disproportionate impact on low income individuals, our research found that an average of 61 percent of students -- time? Oh, sorry. Who attended all for-profit colleges in Colorado, Connecticut and Maine rely on Pell grants, as a proxy for low incomes, compared to 44 percent of students at public peer institutions. In those same states, the average for-profit borrower who graduates leaves school with $10,000 more in student loan debt than their public school peers.
Unfortunately for many for-profit college students leaving school with heavy loan debt haven't graduated. Our research in two states, Connecticut and Colorado, found that only 30 percent of for-profit four year college students actually complete their educations as opposed to 50 percent of those who attend four year public colleges. It's little wonder then that those for-profit four year students had nearly two and a half times the loan default rates of their four year public peers.

The sorry picture the for-profit industry in this research reveals is hardly limited to a few states. What we are finding as we compare non-profit and for-profit schools state by state is that the problems with for-profit schools are ubiquitous. They are not contained to one school or one region, and they are not improving. Instead, they are consistent across states and across the country. High cost, poor outcomes, and leaving students deeply in debt without the skills necessary to show gainful employment.

Beyond showing that poor for-profit outcomes fall disproportionately on the poor, research from CRL and others has found that minority students and women, in particular, are seriously overrepresented at for-profit schools. The overrepresentation of women and
people of color in these institutions that leave borrowers with unmanageable debt is even more concerning when one considers that women, and particularly women of color, are disproportionately affected by the student loan debt itself.

In fact, a recent study by the American Association of University Women has found that women hold two thirds of the nation's outstanding student loan debt. First generation students, students of families and students of color are better served by much lower cost community colleges and HBCUs that offer real student services and remedial classes resulting in better job completion and job prospects.

Of course, there are real people behind our research. In May and June of 2017 CRL conducted focus group inquiries with former for-profit students in Florida. Here is what one student had to say.

"Strayer is like the University of Phoenix. The people do everything for you. They do the loans for you. They do all that for you. They don't care how you are going to pay it back. You get this notion that you go to school and you get this big degree and you get this beautiful job. It doesn't work like that. When you go to schools for profit, they aren't telling you about the loans. They just want your money. They are
not going to sit here and say, 'Well, you just get this right here, you are going to have this much interest and you are going to have this much debt when you get finished."

The gainful employment rules finalized in 2014 have already begun to improve outcomes in our nation's for-profit colleges. Colleges have begun to eliminate their worst-performing programs, to freeze tuition and implement other reforms to improve outcomes for their graduates.

However, here in Utah, we have a great example of the urgent need for continued reform. At Broadview University, a for-profit university with five campuses in this state, a two year paralegal degree program costs more than $34,000 in tuition and fees, but graduates from that program can't expect to make more than $24,000 a year. It's little wonder that this school has a 20 percent three year cohort default rate.

The Department of Education has a responsibility to students and taxpayers to assure that they are not defrauded when they are attending a Department approved school. And if they are defrauded, the Department can and must make it right. Thank you so much for your time and attention.

MR. BRICKMAN: Is there anyone else who has a
scheduled time slot who would like to speak? Or anyone else who has not signed up and would like to speak?

(No response, and no one spoke from 9:36 a.m. to 9:44 a.m.)

MR. LITCHFIELD: Larry Litchfield is my name. I'm the vice president of academic affairs at Ameritech College. It's a private for-profit college here in Utah. I would speak on behalf of the proprietary sector. I recognize that there are some actors. They have been identified already as bad actors in the education arena. In fact, at one point I did work for a college that was purchased by one of those institutions. You notice I said that in past tense. I no longer work for that college.

So I just wanted to give a little bit of information about our institution in particular just so that you can understand that there are some proprietary for-profit schools who really try to do a very good job. We have been in business since 1979. We have gone through a few changes in our structure and programs and whatnot, but basically we have been trying to serve the community as far as programs in health care. That's exclusively what we operate in. Nursing is our largest program.

We have a total population of about 600
students, again, most of which are associate degree nursing students. We also have an RN to BSN degree completion program that is exclusively online. We have a dental -- or sorry, medical assisting program, a dental laboratory technician program, and a recent occupational therapy assistant program that we have established.

Any time we put in a new program, we are mandated not only by our accrediting body but by our executives that we research very carefully to make sure that this program is something that there is a need for, that, A, we could have students that are interested in the program. But even more important than that, by the end of their program, they can go into the field and have a -- and have a good paying job and fill a market niche.

So having said that, obviously, one of the processes we go through with our financial aid is to make sure that students understand what the difference is between grants and loans, make sure they understand that the loans they will be paying back, how much they will be paying back. In fact, with our nursing program, they only get about 50 percent of the program as far as federal government money is concerned. They have to come up with the rest of the money either out of their
pocket or some other means.

So our -- I am trying to remember the latest figures now. Again apologize in the fact that I wasn't prepared to present today. So this is all just going off the top of my head right now. As far as our 90/10 is concerned, we are not even remotely close. We're about 58 percent is basically our level right now.

So we go through quite a process. We screen our students very carefully. It's not a case of, if you are alive, you are good for five. If you use a pen, you are good for ten. We do not go by that model at all. In fact, we have our students go home and really think about it, if they really want to attend our programs or not. And we don't accept all of the students. In fact, most of -- or not most. Several of our applicants are turned away. We just don't accept everybody.

We really do a very good job of educating our students. We have very rigorous programs. They are accelerated. We are here to fill a shortage in the nursing program, especially in our state. The public schools were not able to provide all of the nurses that are necessary, and so we have stepped in to fill that niche.

We make sure that our students are counseled all the way through the process so they know exactly
what they are getting into, they know exactly what they
are signing up for, go through loan counseling before
they start. At the end of the program we go through the
exit counseling as well with our students so they
understand the amount of debt that they will have and
the repayment liability that they, of course, will have.

In terms of -- in terms of our outcomes, we
have, almost at any given time during the course of the
year, we have a retention rate that is over 95 percent
of our students. Our placement rates at the end of
graduation run anywhere from 90 to 95 percent. We have
employers in the community that are begging us for more
grads, and in fact, our graduates a lot of times are
preferred over some of the other schools.

We have, as far as our NCLEX pass rates are
concerned for first-time pass rates, right now we're
running at 92 percent. A year ago we ran for the whole
year at 95 percent first-time pass rate.

Again, I am not disputing the need for controls
because there were and there probably still are some
actors out there that are just run-away trains just
for -- heading for a crash. I get the fact that some
are just all about the money. They are businessmen.
They are not educators. They really want to just take
the students' money and just run them through as fast as
they possibly can. I get that.

I am not arguing that. All I am saying is, not all of us operate that way. Some of us have some very solid programs. We are very caring individuals. We work very hard to make sure that our students are well trained, well-educated and that they can go out and be very successful.

And our nurses are up against all of the other nurses in the community, and they all start at the same rate. They don't have lower pay rates, and they can make very good money for their families and support their families and be able to pay back their loans. So I appreciate your time. Thank you so much.

MS. MAHAFFIE: Thank you.

MR. BRICKMAN: Is there anyone else here that still wishes to speak?

(No response, and no one spoke from 9:51 a.m. to 10:25 a.m.)

MS. BITTER: Clearly I am new to this. So my name is Caroline Bitter, and I'm from Salt Lake Community College. I'm the assistant director of compliance and training, and my director asked me to come and sit in and listen. And she asked one thing about gainful employment.

She was just kind of wondering if you guys --
if the Department of Education was going to be looking at reducing the regulatory requirements for gainful employment, if that is in the works, if that's in consideration, because we are a community college. We do credit and clock hour, so we have a fair amount of programs that we do have to report on.

COURT REPORTER: I'm sorry. Could you spell your last name?

MS. BITTER: Oh, Bitter like the taste, B-I-T-T-E-R.

MS. MAHAFFIE: Thank you very much. And to answer your question, yes. We have announced that we are going to do a negotiated rulemaking to take another look at the gainful employment regulations. All of the Title IV regulations are done through a negotiated rulemaking process where we bring in representatives of various constituents to negotiate the rules with us.

And we have announced that, and as a matter of fact, we have requested nominations for negotiators by September 29th. So that's coming up very soon. So if anybody is interested in being a negotiator, please nominate yourself or your colleagues. And we will be looking at that, and certainly through that process, the regulatory burden will be a factor that we are looking at. Thank you.
We'll do a 10 minute formal break now, and if we don't have anybody by 11 o'clock, we'll extend the lunch break to have it be from 11:00 to 1:00. We do have people signed up to come at 1:00 in the afternoon. Thank you.

(Recess from 10:30 a.m. to 10:58 a.m.)

MS. MAHAFFIE: Okay. We're going to go ahead and break for lunch until one o'clock. We do have a few people scheduled to speak at one. Enjoy your lunch.

(Lunch Recess from 10:59 a.m. to 1:00 p.m.)

MR. BRICKMAN: All right, ladies and gentlemen we're going to get started again. We have a handful of speakers ready to go. First, just a couple of housekeeping items. The first item is to again, remember this meeting is being transcribed, so we ask that you please present clearly and speak into the microphone so that your words can be accurately reflected in the final transcription.

Next, we will have a brief break between 2:30 and 2:40, and we expect to quit around four. But if we have gotten through most of our speakers, we may extend that break. But we still will be concluding at four.

Once we start with the first speakers, if you have not signed up yet and would like to speak, please come find me or my colleague Lynn. And we'd be happy to
get you on the list. So with that, we have the next
speaker, who is Nicholas Wolfinger from University of
Utah. And I understand he would like to speak at the
lectern, and that's fine.

MR. WOLFINGER: Just so I have a place to put
my computer. Thank you and thank you for having me
today. My name is Nicholas H. Wolfinger, and I'm here
to talk about Title IX.

I'm a tenured professor at the U where I have
taught for about 20 years. My remarks today are an
excerpt from an article I am published last month in
the magazine Quillette. Please ask me afterwards if you
like more information.

I support the broader aims of Title IX with
respect to gender equity in higher education. Indeed,
my 2013 book, "Do Babies Matter? Gender and Family in
the Ivory Tower," address the barriers that female
academics often face.

That having been said, I think the Department
of Education's 2011 letter to American universities, now
infamous as the Dear Colleague letter, has perverted the
original intent of Title IX by turning higher education
into a gigantic star chamber that tramples the rights of
faculty and students alike in a misguided crusade
against sexual violence.
The Dear Colleague letter authorized campus tribunals against those suspected of sexual assault or harassment using the lowest possible burden of proof, the preponderance of evidence standard. This has sometimes been called 50-50 and a feather.

The Dear Colleague letter also set up a federal registry to shame universities and threaten them with the loss of federal funds if they didn't show adequate vigor in ferreting out perceived sexual harassment through violence on their campus. The stage was thus set for a witch hunt. Colleges had every incentive to prove -- pursue any charges filed on campus no matter how flimsy, and they needed to do this or face the wrath of the federal government.

This is how I found myself facing charges last year for telling a colleague that I had proposed to my wife at a strip club. It didn't matter that I had told her and several other colleagues this in the late 1990s off campus and over drinks. It still showed up in my complaint. I find it very probable that she was actually offended. Instead, she was simply settling a score.

The dossier my university presented against me also included allegations of an unnamed reporter who had called my academic department to complain about
something I had said to her. What reporter? I have talked to hundreds of them in the course of my career. What had I said? I don't have a clue. Potty mouth is a good bet since it often is with me.

But I knew nothing. All I knew was that a reporter called to complain. I didn't know the answers to my other questions, and I never will. In fact, I don't even know if I had ever even talked to this journalist, or for that matter if she is actually a journalist. All I know is that someone contacted my department to complain about me, and the university saw fit to include this evidence into official proceedings.

It is hard to imagine anything that could have a more chilling effect on scholarly research and teaching than the prospect that anyone can contact your university to complain about anything you said at any time.

I also stood accused of gender bias. What was the evidence? At one point in a faculty meeting two years ago, I had criticized my department at the University of Utah. More specifically, I had shown support for an outside committee that had criticized my department. This indirect criticism of my department was construed as gender bias because my department head is a woman. It doesn't matter that she might have been
my best friend in the department for years. Ultimately, I was exonerated after a review process that lasted several months. And I was very lucky. Many faculty careers have been ruined, and many students have been expelled from college. My costs were limited to all the time I wasted writing memos and responses and the $14,000 I paid in attorneys' fees. Contrary to what Washington senator Patty Murray and others have insinuated, reforming Title IX isn't about giving rapists a free pass. Justice for victims of sexual assault should come from the legal system, not kangaroo courts that are ill equipped to adjudicate felony charges.

Indeed, the relished pursuit of offenders for non-offenses, just kissing one's sleeping boyfriend, which was actually the basis of charges at Brandeis University, charges like that are an insult to people who have actually survived sexual assault.

Education Secretary Betty DeVos has proposed sensible reforms to stop this miscarriage of justice that has ensued from the Dear Colleague letter. It's high time her suggestions were implemented. Thank you for your time.

MR. BRICKMAN: Next we have Cheryl Kesson from Champion College Services.
MS. KESSION: Hi. Thank you. My name is Cheryl Kesson, and I am from Champion College Services. We are a default prevention company located in Phoenix, Arizona. And I am here to review some suggested changes regarding five different regulations submitted in detail by our CEO, Marilyn Hammer, in our written comments.

Our first suggested regulatory change is regarding mandates for student loan payment application. We suggest that we remove language that is harmful to federal student loan borrowers who are making payments in excess of the required monthly payment amount and replace it with regulatory language that ensures prepayments are applied to reduce costs and financial burdens for students.

The current regulations give lenders and servicers the discretion to apply payments in excess of the required monthly payments towards future payments. Not only is this against the law in some states but encourages predatory practices that harms students. Lenders and servicers should be mandated to apply excessive payments to principal reduction unless specifically instructed otherwise by the borrower.

Next is a suggested regulatory change for mandates for default prevention plans. The current regulations have no defined end date for institutions
that successfully reduce their cohort default rate after being mandated to develop and implement a default prevention plan.

Some schools that were mandated to have a plan in place not only have their three most recent official cohort default rates under the threshold, but they also have several additional years under the thresholds. These schools are not receiving notices to release them from any mandated obligations.

Default prevention plans have to be malleable in order to adapt to both the programs being taught and changes caused by severe economic conditions. Mandates should be lifted in a specific period of time for when a school has been successful in lowering their default rates under the thresholds. This reduces labor and financial burdens for the schools, the Department, auditors and taxpayers.

Our third suggested regulatory change regards corrections for default statuses processed in error. Beginning in 2014 the U.S. Department of Education adjusted cohort default rates for those schools in jeopardy of losing Title IV funding by excluding from the calculation those defaulted loans where one or more of a borrower's loans were in default status while at least one of the borrower's loans remained in current
status for a period of at least 60 consecutive days. A reasoning for the adjustments was that these defaults were a result of poor servicing that led to inappropriate default claims. The primary concern is that corrections have never been made for both students and parent student loan borrowers, even though they have suffered severe consequences from these defaults.

The secondary concern is that all institutions, not just those in jeopardy of losing funding, were affected by these defaults that should have not been in default status in the first place.

The request for regulatory changes is twofold. One, a process for reversing default statuses needs to be defined and two, a CDR correction process for all affected institutions.

Our fourth is for mandates for third party servicer audits. Third party servicers and the criteria for their compliance audits have been defined in law and regulation since 1994. Interpretations of these definitions were applied consistently in statute regulation and many versions of the student aid handbook until July 9th, 2015, when the Department of Education changed their compliance audit interpretation through a Dear Colleague letter.

These changes from ED expanded historic
definitions and applications of very specific third party functions directly related to student aid funding, required additional functions, and included many nonrequired functions and companies that had never been subject to third party compliance audits before.

ED does not have the authority to substantially change laws and regulation without a statutory change or a negotiated rulemaking process. The thousands of companies affected by these changes did not have an opportunity to negotiate or give public comments. Furthermore, the OIG audit guide lacks criteria and guidance for these newly defined audits to be completed. To date many functions that are defined as regulatory requirements have been included in ED's training materials, and yet in the most recent OIG audit guide published in September of 2016, there is still no clearly defined criteria for audits.

Our last topic is for the expansion of loan servicing appeals. The -- we suggest that we expand the criteria of loan servicing appeals to identify issues in loan servicing. Since the beginning of the student loan program, harmful situations have occurred to student and parent loan borrowers with significant consequences to the institutions serving the students and taxpayers. In most cases these situations are discovered after a
significant amount of damage has occurred.

By expanding the criteria of loan servicing
appeals to identify issues in loan servicing, the
Department of Education will have pertinent knowledge of
issues earlier in the process and will be able to take
corrective actions to limit the damage and costs
involved. This will help ensure higher quality
servicing for students and reduce administrative costs.

Early intervention to ensure proper quality
loan servicing would have many benefits, including
preventing student loan borrowers from the severe
consequences of default, allowing schools to properly
respond to cohort default rates based on their
performance and not inflated default rates. And it
would save the taxpayers money because servicing current
loans is less expensive than servicing defaulted loans.

The goal of expanding loan servicing appeals is
to ensure proper quality loan servicing that protects
the fiscal interest in the borrowers' rate to a full due
diligence servicing period. Detailed suggestions for
all the amended regulatory language have been submitted
in our comments, and I have copies for you here today as
well. Thank you.

MR. BRICKMAN: Okay. Next we have Bob Collins
with Western Governors University.
MR. COLLINS: Good afternoon. Welcome to Salt Lake City. My name is Bob Collins. I'm the vice president of financial aid for Western Governors University headquartered here in Salt Lake City. Thanks for being in our back yard.

I have been an active financial ED administrator for more than 35 years. I am active in the state and national and regional association of financial aid professionals, and I have also been a member of several negotiated rulemaking sessions as well.

I would like to go on the record of endorsing the recommendations made by the National Association of Student Financial Aid administrators. I'll submit those with my comments, but I would like to speak to the experimental sites initiatives.

Excessive student loan debt is a serious problem for students and the economy. In an effort to provide students with information that will help them understand the impact of their borrowing, WGU launched its Responsible Borrowing Initiative in July of 2013, by providing more information to students about their loans and recommending students only borrow what they need, not the maximum allowable amount.

The ultimate goal of the RBI program,
Responsible Borrower Initiative, is to promote responsible borrowing and reduce student loan debt without waivers of law or regulation. With the simple business process change, the results after four years demonstrate a significant reduction in student borrowing at WGU, lowering the average borrower indebtedness from five years ago at $21,000, a little over $21,000, to just slightly over $16,000 for the most recent graduating class of undergraduate students. Significant reduction.

So in June of the 2012, the U.S. Department of Education accepted Western Governors University as a participant in the experimental sites initiative. This one was to limit the amount students borrow in federal loans. Schools accepted to participate in the experimental sites have waivers of certain regulations to experiment with the federal student aid delivery system comparing the outcomes of the target group with a control group.

This particular experiment would allow an institution to establish a written policy where for students enrolled in a particular educational program or on some other categorical basis, it would reduce by at least $2,000 the amount of an unsubsidized direct loan that the otherwise eligible student would receive.
So WGU wants to ensure incoming transfer students have sufficient federal funds to complete the program of study without exhausting eligibility based on federal aggregate student loan limits before graduating.

WGU conducted research of empirical data to analyze the persistence and graduation rate of WGU incoming transfer students with significant amounts of outstanding principal balance in federal student loans from attendance at prior colleges.

So based on this empirical data on this analysis, for new students starting on or after January 2013, the selection criteria for students in our target group would be undergraduate students with an outstanding principal balance of $30,000 or more from prior colleges. They would be limited to essentially direct costs only, $6500 per academic year.

For graduate students if they had a outstanding principal balance of $40,000 or more, they would be limited to roughly direct costs of $7500 per academic year.

WGU continues in this limiting unsubsidized loan experiment, and we have more than 12,000 borrowers in that target group currently. And the idea is to help inform the Department of Education with evidence-based, data-driven decision making for revisions to future law
and/or regulations.

So as stated earlier, we participated in the --
we launched a Responsible Borrowing Initiative in July
of 2013 to recommend students borrow only unmet direct
costs. A majority, significant majority of our
students, accept the recommended loan amounts. Roughly
two thirds of our students accept what we recommend.

So in July of 2014, WGU implemented the unequal
disbursements experiment in situations when direct costs
will vary in the academic year. For example, certain
nursing programs have a one-time science fee in the
first term, and certain teachers college programs have a
demonstration teaching or practicum fees at the end of
the program. The unequal disbursement experiment allows
these students to pay direct costs when the costs are
due without borrowing in excess because of equal loan
disbursement rules.

Another situation occurs which require multiple
disbursements for one-term awards in the six month
payment period. Students in these situations need more
funding upfront for technology costs or other
education-related expenses, and the unequal disbursement
experiment accommodates those students, notwithstanding
the 75/25 percent split, the required split.

Additionally, students reaching their Pell
lifetime eligibility could use -- also benefit from unequal disbursements without excessive borrowing.

The cumulative data is overwhelmingly consistent with our initial intent. 74 percent of the target group are in a nursing or teaching college. 79 percent of the target group accepted recommended loan amounts. In other words, thousands of WGU students are borrowing only what they need, and they get the money when they need it.

Generally, the remaining 26 percent of the target population have one-term loans. They are at the end of the program or have met their lifetime eligibility for Pell or need additional allowance for educational costs.

It is important to note the multiple disbursement requirement for one-term loans is a common occurrence for WGU students. ED regulations on the other hand allow a single disbursement for one-term loan periods of four and a half months or less. If the loan period is greater than four and a half months, the multiple equal disbursement rule applies. Because WGU has a six month payment period and six month term, we must make multiple disbursements of equal amounts, even though we charge tuition and expect payment in full at the beginning of the term.
Unfortunately, the Department sunset this experiment in June of 2016 because of the low participation rates. Only 10 schools were participating. WGU respectfully requests reconsideration of this regulation for several reasons. First and foremost, the experiment is doing exactly what we expected, meeting the needs of students to pay direct costs when those costs are incurred without over borrowing.

Second, while we are one of 10 institutions, we had nearly 12,000 WGU students that took advantage of this and benefitted from this waiver. The initial results and outcomes are compelling evidence of success. Without this waiver, students are inclined to borrow more than necessary.

Third, the one-term greater than four and a half month loan period multiple disbursement rule simply does not make sense in a nontraditional educational model. WGU looks forward to working with the Department to implement regulatory reform and to provide relief to students as well as institutions and other stakeholders while continuing to safeguard program integrity. Thank you.

MS. MAHAFFIE: Thank you.

MR. BRICKMAN: And our final registered speaker
is Marion Noble, Families Advocating for Campus Equality. After Marion speaks, if there's anyone else who would like to speak, come and register.

MS. NOBLE: Hi. Would you be okay if I use the podium?

(Discussion off the record about speaking at the podium.)

MS. NOBLE: Hello. My name is Marion Noble. Thank you for allowing me to share my experience of the impact of Title IX on our family.

I am a survivor. I am a 30 year survivor. I know what it means to be violated. I know what it's like to be afraid to tell anyone what happened for fear that I would not be believed. And even worse, that I might be blamed for what happened. At the time I told only one girlfriend that I had been raped by a man on our second date. Back then women didn't feel safe going to people in authority for help.

More urgently, however, I am also a victim from which I will never heal completely. I have experienced something far worse than my being raped. I have been victimized by a corrupted Title IX process that devastated our family and destroyed my son. Sorry. That's why I needed the podium. My faith in humanity and justice has been shaken to its core.
Six weeks into his freshman year, Charlie drank hard alcohol to excess and had a sexual encounter with Sally, a woman who attended the all-female sister school next to his college. Charlie and Sally attempted to have intercourse multiple times for close to two hours, but Charlie was too drunk and was not able to maintain an erection so the condoms kept falling off. Sally admittedly gave him repeated oral sex to try to make it work.

Sally, on the other hand, had not had any alcohol to drink, although she later claimed she was drunk, but her text message to her girlfriends would prove otherwise. After sobering up, Charlie pretended he was not able to recall having gotten together with her the previous evening. He just wanted to put this, his first sexual experience, behind him. So in the morning a couple hours later Charlie texted Sally asking about the previous night. Sally texted back, quote, we did it 10 times, dot, dot, dot, and it was more than 10. I just lost count.

Sally was cheery and made arrangements to get together with Charlie in person that same day. When they got together, she gave him a gift, a prized comic book, something that they loved. They both loved comics. Wrapped in cellophane, which she thought he
would really like. She later texted him about getting
together so that Charlie could teach her about DC Comics
and she could teach him about Marvel Comics.

That same day she revealed her feelings for
Charlie through texts she sent to two girlfriends. And
I won't quote them because it may be too -- she just
wanted Charlie. "I just want Charlie. Hee, hee, haw,
haw. But I have to hope for the best but prepare for
the worst," to one girlfriend. Next one, "I think he's
so hot," all in capital letters. She is going crazy.
Going -- he is so hot. Winkie emoji. "I just hope he
will go for me."

This is the same day that they had completed
their sexual encounter. She and Charlie got together a
few times privately but never again had another sexual
encounter. They remained on friendly terms and would
see each other at various dorm and campus parties.
She even added him to Snapchat a month after
the sexual encounter. She attended Charlie's 19th
birthday party, and that was four months after the
sexual encounter. She happily participated in throwing
him in the fountain at the school, which was a
tradition, birthday tradition for anybody who had a
birthday. She followed that with a warm wet embrace.

One can imagine that it came as a complete
shock to Charlie that five months after their sexual encounter Sally filed a Title IX sexual assault claim against him. Charlie was perplexed and horrified all at the same time. The official letter from the Title IX office informed Charlie that he had been accused of sexual assault, but the letter was otherwise silent about the factual basis or the particulars of this accusation.

When he asked the attorney, slash, investigator the college had hired to conduct the investigation, he asked to see the complaint. She told him there was nothing to see. So therefore, Charlie was never given notice of what exactly he was accused of, and he had no possible way of knowing.

The attorney, slash, investigator conducted a total of three interviews of Charlie. All of these interviews were conducted before he was ever told what he was actually accused of, apart from the vague categorization of, quote, sexual assault.

Meanwhile, the investigator passed along the key elements of Charlie's testimony to Sally. Summaries of Sally's testimony prepared by the investigator clearly revealed how Sally kept changing her story to directly counteract anything that Charlie said. All the while Charlie was kept completely in the dark.
Once the preliminary report was issued two months after the complaint was filed, Charlie was finally given the specifics of the accusation. The Title IX office refused nearly 100 percent of Charlie's requests for additional questioning, including follow-up questions of Sally and a re-interview of himself.

Not until Charlie read the preliminary report did he become aware that there was one key witness noticeably missing from Sally's witness list. A girlfriend of Sally's had accompanied her the day after their sexual encounter to both the on-campus health center and off-campus urgent care. The absence of this witness strongly suggested that this girlfriend's testimony could have or would have further undermined Sally's false allegation of, quote, rough sex and bruising from Charlie supposedly holding her down to assault her.

This girlfriend could have also shed light on Sally's feelings for Charlie, given the amount of time the two girlfriends spent together that day. But the college refused Charlie's request to interview the single most knowledgeable witness apart from Charlie and Sally themselves.

In a he-said, she-said case where the lowest possible standard of preponderance of the evidence is
used, the college's refusal to interview this key witness deprived Charlie of even a semblance of due process. The college review panel chose to disregard the medical report that showed that Sally was lying about her purported injuries. The medical report from urgent care stated, quote, exam is unremarkable, end quote.

Sally texted Charlie right after leaving urgent care, and she said she was diagnosed with a ruptured ovary. The report stated, assessment, semicolon, menstrual disorder, end of quote. This was certainly to be expected since Sally had taken Plan B immediately after the sexual encounter to avoid pregnancy, since she didn’t want to get pregnant with the condoms falling off, and bleeding is a known and expected side effect after taking Plan B.

Also, per California penal code 11160, medical personnel are required to report any suspected sexual assault to the authorities. And if they don’t, they can have their licenses revoked. No such report was made because there was no suspicion of sexual assault.

Amazingly, while denying Charlie due process, the college allowed Sally to admit into the record nine additional pages she wrote of clarifications, in quotes, and corrections, in quotes, to the testimony provided by
other witnesses.

Finally the attorney hired by the college to serve as the investigator, one, conducted all the interviews and prepared the preliminary investigation report; two, prepared the final investigation report from which the panel drew its conclusion; three, this person served as the head of the three person review panel along with two faculty members; four, had one of the three votes in making the finding of responsibility; and, five, drafted the written findings of the review panel.

In other words, the college assigned to a single outside attorney investigator, assigned the multiple roles of police investigator, jury foreman and judge. Charlie's fate was thus placed in the hands of a single person, a person hired to manufacture a finding of responsibility regardless of the facts.

Charlie never had the benefit of a formal hearing held before the review panel. There was no hearing at all. Incredibly, the Title IX office at his college drafted a response to Charlie's appeal during the summer, submitted it to the record as if Sally had written it. Sally was unavailable. She was -- it was during the summer. She may not even be aware the college did this. In other words, the college Title IX
office acted as an advocate and counsel for Sally.

Charlie was ultimately found responsible and suspended for one year. The finding came as a complete shock. He believed that because the hard evidence clearly showed the sex with her had been entirely consensual, she wanted him as a boyfriend, there would be no finding of responsibility. Charlie had all along clung to the belief that the truth would ultimately prevail and he would be exonerated.

When he was not exonerated, he could not wrap his mind around how a kangaroo court could exist in the U.S. and be permitted to completely ruin his life. Charlie found that life was no longer worth living, and he attempted suicide twice. We had hoped -- we had hoped that since he was not expelled and instead faced a one year suspension, he would ultimately recover from the ordeal. But it proved too much for him to handle.

Living with the unjust finding on his disciplinary record, the embarrassment he felt knowing others might believe the findings were true, the separation from his close-knit group of friends at college, disappointing his late father who had devoted his life to this college where he had served as a college trustee, and the necessity of Charlie moving back home, Charlie received months of intensive
psychotherapy.

Following his mental breakdown, he was diagnosed with severe depression that included debilitating panic attacks as well as PTSD tied to the trauma of the corrupted Title IX proceedings and unjust findings.

At the end of his suspension year, Charlie insisted on returning to the same college that had suspended him so he could hold his head high and show the Title IX personnel who worked to ruin his life that he could rise above this horrible miscarriage of justice.

While back in school, Charlie learned from more than one of Sally's girlfriends that they now regretted their roles in the Title IX process and realized that Sally had been lying all along. Sadly, this news came too late to make a difference to the findings as they had already been issued.

Charlie was able to complete the first semester of his sophomore year despite mounting health issues, but ended up in a full psychosis halfway through spring term. Charlie was diagnosed with schizophrenia, the most dreaded of all mental illnesses. According to a psychiatrist and various psychotherapists, his diagnosis was a direct result of the trauma he suffered in the
corrupted Title IX process and the resulting finding of responsibility.

Sadly, Charlie had to be involuntarily committed to a lockdown mental health facility. Eventually he moved into an in-patient residential treatment where our out-of-pocket expenses have been $26,000 a month. Schizophrenia has robbed Charlie of his once brilliant mind, his sharp wit, his self-esteem, his energy and motivation. He now has ADD and OCD and therefore cannot concentrate. Once a prolific reader of philosophy books, he is no longer able to read for content.

His adrenal glands are failing, which means he is producing almost no cortisol. Without cortisol he cannot get out of bed or respond to the instinctive fight or flight response necessary for survival. Given all of these complaints, he cannot live independently as he would fall into a deep slumber and never wake up to eat, drink or take his many medications. He has already been hospitalized for dehydrations and infections.

As you know, Mr. Biden has come out strongly against Betsy DeVos's position to revoke the Dear Colleague letter. Mr. Biden seems to believe that all women will tell the truth when it comes to sexual assault and that due process is not required in a
college administrative proceeding.

I for one tell you that Mr. Biden is greatly mistaken. There is so much at stake for those accused of sexual assault; their entire futures, education, friendships, job prospects, their minds, that the Title IX process at colleges across the countries must afford them due process.

To say the Title IX process had a ruinous effect upon our son and our family is an understatement. Tragically, we are now mourning the death of the son we once knew. It is hard to believe that our experience with Title IX could be worse than his father's year-long battle for life that included two craniotomies, radiation, chemotherapy and nearly dying seven times from brain hemorrhaging before he ultimately succumbed to brain cancer in his forties when Charlie was only five years old. But it is in fact far worse.

So I can tell Mr. Biden that I understand that it is horrible to lose a beloved family member to brain cancer at their prime as he did his beloved son. But I can also say that Mr. Biden was blessed to lose his son to brain cancer, rather than losing him 20 years before his prime to a corrupted Title IX process that caused our son to lose his mind. Once a naked accusation has been made, that's pretty much the end of the road for
the accused.

I came up with a slogan. I accuse, you lose would be an apt slogan on college campuses in today's Title IX environment. My son's college viewed subsequent regret for having engaged in sex the same as having withheld the consent from the very beginning. It made no difference to the college that the subsequent regret was not expressed at the time of the sexual encounter but five months later. Subsequent regret is not rape.

Thank you for allowing me to address you. Much needed reform in the handling of the Title IX complaints has come too late to save Charlie. It is imperative to fix a completely broken and unjust system that is destroying so many young lives and families. Sorry for my emotion. Thank you.

MR. BRICKMAN: Are there others wishing to speak?

(No response.)

MR. BRICKMAN: All right. At this time we're going to keep the session open. We will be here until four o'clock in case anybody else comes who wishes to speak. You all are welcome to stay here or we will let everybody know if there are additional speakers.

(Recess from 1:38 p.m. to 4:00 p.m.)
MR. BRICKMAN: It is now four o'clock. This hearing has concluded. Thank you for your participation.

(Proceedings concluded at 4:00 p.m.)

CERTIFICATE

STATE OF UTAH

COUNTY OF SALT LAKE

I, Teri Hansen Cronenwett, Certified Realtime Reporter, Registered Merit Reporter and Notary Public in and for the State of Utah, do hereby certify:

That the above and foregoing contains a true and correct transcription of the public hearing that was held by the Department of Education at Salt Lake Community College, Miller Campus, Sandy, Utah, on September 26, 2017.

Certified to by me this 3rd day of October, 2017.

/s/ Teri Hansen Cronenwett
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